

**DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION-V, NORTH-WEST GOVT. OF
NCT OF DELHI
CSC-BLOCK-C, POCKET-C, SHALIMAR BAGH, DELHI-110088.**

**Complaint Case No. CC/310/2019
(Date of Filing : 20 Apr 2019)**

1. SUSHMA DANG

W/O SH. ASHOK DANG R/O 153,1ST FLOOR,
GUJRAWALA TOWN,PART-I,DELHI-09

.....Complainant(s)

Versus

1. HDFC LIFE INSURANCE CO.LTD.

THROUGH ITS MANAGER,HDFC LIFE
INS.CO.LTD.,SUMAN TOWER PN 35/36,D.P. CENTRAL
MARKET ASHOK VIHAR,DELHI-110052

2. TREATMENT TAKEN AT PENTA MID HOSPITAL

7 LOCAL SHOPPING CENTER,DERAWAL
NAGAR,GUJRAWALA TOWN PH-IV,DELHI-110009

.....Opp.Party(s)

BEFORE:

SANJAY KUMAR PRESIDENT

PRESENT:

Dated : 07 Jun 2024

Final Order / Judgement

ORDER

07.06.2024

Sh. Sanjay Kumar, President

1. Brief facts of the present case are that complainant took the mediclaim insurance from the OP vide policy no.90211972 UIN No.101N087V02 client ID noi.95227053, CCN No.3952768/. It is stated that complainant was admitted in Pentamid hospital at 7, Local Shopping Centre, Derawal Nagar, Gujarawala Town Phase-IV, Delhi from 28.06.2018 till 03.07.2018, the complainant was diagnosed from acute febrile illness with iron deficiency and anemia and the same was diagnosed by Dr. Rajesh Gupta. It is stated that the complainant was treated in the abovesaid hospital for the said ailment and her expenditure on her treatment was of Rs.80,000/-.
2. It is stated that complainant informed the OP about the ailment, after she was discharged and submitted all the final break bill of the hospital and all the required documents to the OP for repudiated his claim. It is stated that OP vide its letter dated 10.08.2018 rejected the claim of the complainant with the reason that the complainant has a past history of lleocecal i.e TB since October, 2015 which was not disclosed to the OP prior to the application form dated 11.01.2016. It is further stated that after receiving the rejection letter, the complainant replied to the OP that her claim has been wrongly rejected as discharge summary of the complainant does not indicate that complainant was suffering

from T.B and all her test were conducted by reputed laboratory and there is no indication of TB at all. It is stated that after receiving the rejection memo, the complainant again approach the concern doctor and he issued a certificate which clearly indicates that complainant was admitted with Febrile illness with suspected axcerbition of IBD and was treated with IV fluids and IV antibiotixe. Moreover, there is no fraction of these symptoms with any previous record of illness. There is not any base of claim rejection for present illness.

3. It is stated that the complainant alongwith the certificate of doctor wrote a letter dated 06.09.2018 to the OP to clear her claim but till date OP neither reply the letter nor comply the same. It is further stated that on 18.10.2018 the complainant also moved an application for claim review committee (Health Insurance), HDFC Life Insurance Co. Ltd. 11th Floor, Lodha Excelus, Apollo Mills Compound, M.M Joshi Marg, Mahalaxmi, Mumbai thereby praying for rejection of claim may be set aside, hence this complaint. It is stated that till date OP neither reply n or has repudiated the claim amount hence this complaint.
4. It is stated that the claim of the complainant was rejected on the disease which never happened to complainant and OP also not filed any documentary evidence/proof to prove that complainant is suffering from TB. The complainant is seeking direction to OP to pay a sum of Rs.80,000/- to the complainant, to pay a sum of Rs.2,00,000/- towards mental agony, harassment, torture, pain, agony, deficiency in service etc, to pay sum of Rs.21,000/- towards litigation charges and any other order which deem fit and proper.
5. OP filed WS and taken preliminary objections that the present complaint is not maintainable as the complainant has not approached this Hon'ble forum with clean hands stating the distorted and inchoate facts before this Hon'ble forum with malafide intentions of misleading this District Forum as the complainant is a well educated person and had knowledge of terms and conditions of the policy and chose not to avail the cancelation of policy during the free look period. The complaint suffers from the virus of suggestion falsie and suppression varie.
6. It is stated that the present complaint is a vexatious and malafide since it makes false and frivolous allegations against the OP and the contents of the same are clearly an afterthought. It is further stated that there is no deficiency of service on the part of OP and therefore, no case is made out against the OP. It is stated that complaint is without any cause of action against OP. It is stated that after duly accepting the terms and conditions of the policy the complainant can not retract from the said terms and conditions and therefore, the present complaint is nothing but abuse of process of law.
7. It is further stated that the entire complaint of the complainant is based on disputed questions of facts and misrepresentation which in view of settled law does not come with in the domain of this Hon'ble Forum for determination. It is stated that the present complaint is not maintainable for want of cause of action as the complainant was governed by the contract of insurance which came into existence only after the complainant had given assent to the same by not availing the freelook of the policy. The law has been well settled by the Hon'ble National commission in RP No.4463/2014.
8. It is stated that the present complaint is not maintainable for want of cause of action as the contract is the key governing the policy and conditions of contract regarding cancelled policies and said terms of the policy are the main governing conditions to the present dispute. It is further stated that after failing to avail the option of cancellation of policy during free look period the complainant is bound by the said terms and conditions and cannot retract from them. It is further stated that the present complaint is not maintainable

as the complainant has not pointed out any deficiency in service or unfair trade practice on the part of OP.

9. It is stated that the present complaint is further not maintainable as the documents annexed with present complaint are against the complainant and the complainant cannot escape from those facts as mentioned in the said documents. It is stated that OP is under no obligation to pay and is further entitled to cancel the policy of the complainant as the complainant had obtained the said policy on the basis of misrepresentation, concealment and false declaration at the time of availing the said policy and mentioned wrong information deliberately at the time of filling up the proposal form for obtaining the said policy.
10. On merit all the allegations made in the complaint are denied by OP and reiterated contents of preliminary objections. It is stated that the policy in question was issued to the complainant after acceptance of proposal forms by OP duly filed up by complainant believing the statement of complainant to be true. It is further stated that that the policy no..90211972 was a contract having certain exclusion clause, incorrect information and non disclosure, waiting period and fraudulent claim clauses from the date of inception and only after understanding and after agreeing with the same the complainant opted to choose the policy. Copy of policy filed on record. It is further stated that the copy of the policy was received by the complainant in January 2016.
11. It is stated that as per regulation of IRDA and terms and conditions of the said policy complainant was given an option called “cancellation in the freelook period” to cancel the policy in question if complainant was not agreeable to any of the provisions of the policy and a letter dated 12.01.2016 was sent to complainant. It is further stated that complainant did not raise any concern regarding the policy features and the terms and conditions of the said policy within said period and never exercised the freelook cancellation option and it demonstrate that complainant was fully satisfied and agreed to the terms and conditions of the policy in question.
12. It is stated that complainant on 28.06.2018 was admitted at Pentamed Hospital and was diagnosed with case of Acute Febrile Illness with Exacerbation of IBD Grade II Hemorrhoid (Piles) with iron deficiency Anemia and discharged on 03.07.2018. It is further stated that during the treatment the treating doctors specifically mentioned that the patient/complainant took anti tuberculosis treatment ATT in October 2015 till September 2016 for Ileo-Cecal (Joint between small intestine ending and large intestine beginning) TB. It is stated that complainant conveniently concealed this fact while applying for the present policy and therefore in accordance with policy provisions i.e clause part B, clause 2 of part C, clause 1 of part D and clause 1, 3,6 and 7 of part F of the policy the claim of the complainant was repudiated and policy was cancelled. The OP alleged that clinical investigation with doctor certificate of pentamed hospital filed which clearly reveals the pre existing disease which was concealed by complainant while applying for the present policy. It is stated that complainant at the time of inception of policy has committed fraud with OP. The OP relied on judgment of Grasim Industries Ltd. Vs Aggarwal Steel (Civil Appeal No.5994 of 2004) decided on 20.10.2009.
13. Complainant filed rejoinder to the WS of OP and denied all the allegations made in the WS and reiterated contents of complaint.
14. Complainant filed evidence by way of her affidavit and reiterated contents of complaint. Complainant relied on copy of insurance policy Ex.CW1/1 colly., copy of bill issued by hospital Ex.CW1/2, copy of letter/reply dated 06.09.2018 sent to OP Ex.CW1/3, copy of

- claim form Ex.CW1/4, copy of repudiation letter sent by OP Ex.CW1/5, copy of letter dated 06.08.2018 Ex.CW1/6, copy of review application filed by complainant Ex.CW1/7, copy of reminder/letter dated 16.12.2018 Ex.CW1/8, copy of doctor certificate Ex.CW1/9, copy of adhar card Ex.CW1/10 and copy of discharge summary Ex.CW1/11.
15. OP filed evidence by way of affidavit of Kunal Aurora, Deputy Manager Legal and reiterated contents of WS. OP relied on copy of letter of authority Ex.P-1, copy of proposal form and policy Ex.OP2 colly., copy of letter dated 12.01.2016 Ex.OP3, copy of doctors certificate of pentamid hospital Ex.OP4 Colly and copy of repudiation letter Ex.OP5 colly.
 16. Written arguments filed by complainant as well as by OP.
 17. We have heard Sh. Ashok Dang husband of complainant and Sh. Rajeev Aneja counsel for OP and perused the record.
 18. It is admitted case of the parties that complainant had taken insurance policy from OP having policy no.90211972, HDFC Life Health Assure Plan and the risk commencement date was 11.01.2016. It is admitted case of the parties that complainant was admitted at Pentamed Hospital Gujranwala Town and diagnosed with case of Actue Febrile Illness with exacerbation of IBD Grade II Hemorrhoid (Piles) with Iron Deficiency Anemia and discharged on 03.07.2018. The documents of treatment filed on record. The OP carried out detailed investigation through Paramount Health Services and Insurance EPA Pvt. Ltd. As per investigation report dated 08.08.2018 the complainant had undergone treatment and took anti tuberculosis treatment from October 2015 till September 2016 for Ilco-Cecal (Joint between small intestine ending at large intestine beginning) TB. According to OP the complainant concealed the facts about this treatment, therefore, the claim was repudiated and policy was cancelled.
 19. It is pertinent to mention here that the complainant filed on record a certificate issued by treating doctor dated 22.08.2018 wherein it has been specifically mentioned that ***“the patient was diagnosed with Actue Febrile Illness with suspect exacerbation of IBD (No evidence of IBD available). Since the patient was LAMA, a conclusive diagnosis with relation to IBD was not made. As per history taken, the patient took treatment of Anti Tuberculosis Drug for suspicion of Ilco-Cecal TS in the part. However there is no evidence that patient has Ilco-Cecal TB in the past. Moreover, there were no sign of Ilco-Cecal TB in the present admission of the patient and current admission (28.06.2018-03.07.2018) cannot be attached to it. Patient was admitted with Febrile Illness with suspicion of IBD and was treated with ZV Fluids and IV Antibiotics. There is no correlation of these symptoms with any previous episode of illness”***.
 20. The discharge summary filed on record Ex.CW1/11 also clearly mentioned that complainant was treated for the disease Actue Febrile Illness with exacerbation of IBD Grade II Hemorrhoid (Piles) with Iron Deficiency Anemia and treated for the period 28.06.2018 to 03.07.2018. The medical treatment record and discharge summary filed on record do not mention with regard to any connection of alleged antituberculosis treatment with the disease for which complainant had undergone at Pentamed Hospital. However as per investigation report filed by TPA Dr. Arvind mentioned about Ilco-Cecal TB and took ATT from October 2015 till September 2016. It is pertinent to mention here that OP after receiving the letter of treating doctor did not take any opinion from independent doctor to establish that the alleged previous ailment of suspected tuberculosis of complainant is responsible for the disease for which complainant had taken treatment at Pentamed Hospital. We have also gone through the terms and conditions of the policy and the

proposal form of the complainant. For arguments sake in case complainant had disclosed the treatment for suspected tuberculosis and suffered from any disease relating to tuberculosis than there is a clear case of concealment and misrepresentation or violation of clause 25 of the terms and conditions. It is not out of place to mention that the deceased for which the complainant was admitted at Pentamed Hospital and seeking claim has not relation with the suspected treatment of tuberculosis. This fact is corroborated by the treating doctor letter as discussed hereinabove wherein specifically treating doctor has given opinion being expert that the disease Acute Febrile Illness has no relation or connection with history of treatment for suspected Ilco-Cecal disease treatment.

21. On the basis of above observation and discussion the repudiation of the claim of complainant is unjust, unfair, arbitrary and cancellation of policy is also in appropriate, illegal, and arbitrary. The complainant has established deficiency of service on the part of OP.
22. We direct OP Insurance company to pay Rs.80,000/- alongwith 6% interest per annum from the date of filing of present complaint till realization, to pay compensation of Rs.30,000/- and litigation expenses Rs.15,000/-within 30 days from the date of receipt of copy of this order. In case of default OP insurance company is directed to pay interest @ 9% till realization on the amount of Rs.80,000/- and Rs.30,000/-. File be consigned to record room.
23. Copy of the order be given to the parties free of cost as per order dated 04.04.2022 of Hon'ble State Commission after receiving an application from the parties in the registry. The orders be uploaded on www.confonet.nic.in.

Announced in open Commission on **07.06.2024**.

SANJAY KUMAR

PRESIDENT

NIPUR CHANDNA

MEMBER

RAJESH

MEMBER

**[SANJAY KUMAR]
PRESIDENT**