STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB, CHANDIGARH.

First Appeal No.508 of 2022

Date of institution : 10.06.2022
Reserved on : 20.05.2024
Date of Decision : 11.06.2024

1. Star Health and Allied Insurance Company Limited, SCO 25, B-Block, Ranjit Avenue, Amritsar through its Authorized Signatory.

2. Star Health and Allied Insurance Company Ltd. No.15, Shree Bala Ji Complex, Ist Floor, Whites Lane, Royapetthach, Chennai-600014 through its Authorised Signatory.

….Appellants/Opposite Parties

Versus

Anita Kumari wife of Shri Ram Chand Thakur, resident of H. No. 999/7, Gali Devi Wali, Ucha Diwan, Jaura Pipal Amritsar.
88375-28239, 94641-19189

….Respondent/Complainant

First Appeal under Section 41 of the Consumer Protection Act, 2019 against the order dated 09.03.2022 passed by the District Consumer Disputes Redressal Commission, Amritsar.

Quorum:-

Hon'ble Mrs. Justice Daya Chaudhary, President
Ms. Simarjot Kaur, Member

1) Whether Reporters of the Newspapers may be allowed to see the Judgment? **Yes/No**

2) To be referred to the Reporters or not? **Yes/No**

3) Whether judgment should be reported in the Digest? **Yes/No**

Present:-

For the appellants : Sh. Neeraj Khanna, Advocate
For the respondent : Sh. Neeraj Yadav, Advocate

SIMARJOT KAUR, MEMBER :

Appellants/Opposite Parties i.e. Star Health and Allied Insurance Company Limited, have filed the present Appeal **through their Authorized Signatory** to challenge the impugned order dated 09.03.2022 passed by the District Consumer Disputes Redressal Commission, Amritsar (in short, "the District Commission"), whereby the Complaint filed by the **Respondent/Complainant-Anita Kumari** had been allowed**.**

2. It would be apposite to mention here that hereinafter the parties will be referred, as were arrayed before the District Commission.

3. Briefly, the facts of the case as made out by the Respondent/Complainant in the Complaint filed before the District Commission are that the husband of the Complainant Mr. Rohit Thakur had purchased the Medi Classic Insurance Policy of the Opposite Parties. Said Policy No. P/211111/01/2017/006539, which was valid for the period 31.12.2016 to 30.12.2017 for a sum assured of Rs.4,00,000/-. It was alleged by the Complainant that only the cover note of the policy was provided.

4. On 28.12.2017 the insured-Rohit Thakur had suffered with the problem of breathlessness, cold sweating. For medical check-up, he had approached EMC Super Speciality Hospital, Shakti Nagar, Amritsar. Later his BP was not recordable and ultimately he expired in the said Hospital on 05.01.2018. He had spent an amount of Rs.2,99,438/- for the said treatment. Thereafter, the Complainant had lodged the claim, which was repudiated by the Opposite Parties vide letter dated 18.04.2018. It was stated in the repudiation letter that the disease Hepatobiliary of the insured

Rohit Thakur was not covered during the first year of the policy. Said ground taken by the Opposite Parties was totally illegal and arbitrary.

5. Stating the act of the Opposite Parties to be **deficiency in service and unfair trade practice**, it was prayed in the Complaint that the Opposite Parties be directed to pay an amount of Rs.2,99,438/- spent on treatment, Rs.1,00,000/- as compensation and Rs.50,000/- as litigation expenses.

6. Upon issuance of notice in the Complaint, the Appellants/ Opposite Parties had filed the written statement by stating therein that the insured-Rohit Thakur was admitted in the Hospital on 28.12.2017 with the complaint of breathlessness. He was diagnosed of having problem of CLD with Hypoglycemia i.e. the problem related to liver problem and low sugar. The insured had incurred expenses on the treatment of the said disease. The claim lodged by the Complainant had been scrutinized as per terms and conditions of the Insurance Policy and it was found that as per Exclusion Clause No.3 of the policy, the problem of the insured had not been covered during the first two years of the policy. Since the insured had suffered with the said problem and expired during the first year of the insurance policy, therefore, the claim was not payable. It was also pleaded that if in any circumstances the Insurance Company was liable to pay the amount then the maximum liability of the Company under the terms and conditions of the policy was up to the level of Rs.2,66,327/-. It was pleaded that the Complaint was devoid of merits and dismissal of the same was prayed for.

7. After considering the contents of the Complaint and the reply thereof filed by the Opposite Parties as well as on hearing the oral arguments raised on behalf of both the sides, the Complaint filed by the

Complainant was allowed by the District Commission vide order dated 09.03.2022. The relevant portion of said order as mentioned in Para-10 is reproduced as under:

> "10. In view of the above discussion, we allow the complaint and the opposite parties are directed to pay the amount of Rs.2,66,327/- alongwith interest @ 9% p.a. from the date of filing of the complaint till realization. Opposite parties are also directed to pay compensation of Rs.10000/- and litigation expenses of Rs.5000/- to the complainant.
>
> Compliance of this order be made within 30 days from the date of receipt of copy of this order; failing which complainant shall be entitled to get the order executed through the indulgence of this commission."

8. The aforesaid order dated 09.03.2022 passed by the District Commission has been challenged by the **Appellants/Opposite Parties** by way of filing the present Appeal by raising a number of arguments and grounds.

9. **Mr. Neeraj Khanna, Advocate, learned counsel for the Appellants** has submitted that the insured was admitted in the Hospital on 28.012.2017 with the problem of breathlessness and Chronic Liver Disease with Hypoglycemia. He did not recover from the said problem and expired on 04.01.2018. As the problem had occurred during the first year of the policy so the same was not covered under Exclusion Clause No. 3 of the terms and conditions of the policy. It was pleaded that all the treatments relating to (Conservative, Interventional, Laparoscopic and Open) for Hepatobiliary, Gall Bladder and Pancreatic Calculi and Genitourinary Calculi were not covered during first two years of the policy. Every claim is considered as per terms and conditions of the Policy and both the insured and the insurer are bound to follow the terms and conditions of the policy in question. The Appellants in support of their

contentions relied upon the judgment, the law laid down by the Hon'ble Apex Court in "M/s Suraj Mal Ram Niwas Oil Mills (P) Ltd. Vs. United India Insurance Co. Ltd. and another", Civil Appeal No. 1375 of 2003, decided on 08.10.2010. Further it was pleaded that if any person takes the policy, he is supposed to know about all the terms and conditions of the policy by following the judgment of the Hon'ble Supreme Court of India held in "General Assurance Society Ltd. Vs. Chandumull Jain and Another" and this Commission held in "Oriental Insurance Company Limited and Ors. Vs. Narinder Kumar Mittal and Ors". It was pleaded that the District Commission had passed the order on the basis of assumption and presumption by ignoring the terms and conditions of the policy.

10. On the other hand, **Mr. Neeraj Yadav, Advocate, learned counsel for the Respondent** has submitted that the insured was admitted with the problem of breathlessness and cold sweating. Neither the said problem of the insured was a pre-existing disease nor the Appellants had tendered any document to prove that the problem of the insured was a pre-existing disease. The problem/disease suffered by the insured had not been specifically mentioned in the Exclusion Clause of the Insurance Policy. The death of the insured had occurred as his BP was unrecorded and it could not be controlled. The OPs had illegally and wrongfully stated that the insured had previously undertaken the treatment related to Hepatobiliary disease, which was not covered in the first year of the policy. The OPs had not produced any evidence that the terms and conditions of the policy were supplied to the insured/Complainant. The District Commission had rightly observed about the functioning of the Insurance Companies regarding rejection of genuine claim by the OPs on baseless grounds. He has relied upon judgment in case of **M/s Modern Insulators Ltd. Versus Oriental Insurance Co. Ltd.,** Civil Appeal No. 6895 of 1997,

decided on 22.02.2000, **"National Insurance Company Ltd. Versus Mona Ohri & Anr.",** First Appeal No. 1583 of 2002, decided on 25.03.2011 and **"The New India Assurance Company Limited Versus Vikram Goyal"**, First Appeal No. 461 of 2021, decided on 22.02.2023. It was prayed that the Appeal of the Appellants be dismissed with costs.

11. We have heard the arguments of learned Counsel for the parties and have also carefully perused the impugned order passed by the District Commission, written arguments submitted by the parties and all the relevant documents available on the file. We have also gone through the judgments cited by both the parties.

12. Admittedly Rohit Thakur the husband of the Complainant was insured with the OPs for the period 31.12.2016 to 30.12.2017. During the subsistence of the insurance policy, he was admitted in EMC Super Specialty Hospital, Shakti Nagar, Amritsar as he had suffered with the problem of breathlessness, cold sweating etc. Later on his condition did not improve and due to un-recordable BP, he had expired 05.01.2018. Since he was insured, therefore, his wife/Complainant had duly lodged the claim for reimbursement of the amount of Rs.2,99,438/- with the OPs. However, OPs had repudiated the said claim on the ground that as the problem had occurred to the insured during the first year of the policy, therefore, the claim was not payable as per Exclusion Clause of the policy in question.

13. Now the main issue for adjudication before us is as to:-

(1) Whether the problem of the insured was covered under Exclusion Clause No.3 of the policy in question or not?

14. We have gone through certain documents to establish as to whether the problem of the insured covered under the Exclusion Clause or not. We have also perused the medical records of EMC Super Specialty Hospital, Amritsar during the admission of Rohit Thakur, which are as under:-

Sr. No.	Page No.	Remarks
1.	37	**History Sheet –** Pt. came in hospital along with the case of breathlessness/cold sweating/ghabrahat. RBS – 23mg/dl. So, admitted for further management and treatment
2.	41	**Plan of Care Form –** Diagnosis with complaints in brief – **Cirrhosis liver** **Possible Complications: Hypotension – Respiratory distress – Cardiac Arrest**
3.	43	**On 28.12.17 -** Initial Assessment done by Dr. Aabid Hussain i/c (Critical) xxxx Urine Output Nil Cirrhosis liver along with Hypo Glycaemia Loss Results : Lti Fluid Plant : CBC/RFT/LFT/Viral/PTI/INR Respiratory Treatment
4.	45	**Adv. –** CST RD for Charter BIPAP support Take consent for BIPAP support Ventilator support (SOS) Seriousness explained to attendant 28.12.2017 5.30 AM

15. On perusal of the medical record of EMC Super Specialty Hospital, which includes History Sheet and Plan of Care Form. In Plan Care Form, the attending Doctor had diagnosed the problem of the insured as Cirrhosis Liver. Further the Doctor had recorded that there could be a possibility of complications like Hypotension, Respiratory Distress and Cardiac Arrest. So, the patient was admitted for further management and treatment. The patient had remained on ventilator support and was administered emergency drugs but his vitals could not be revived. He went into multi organ failure followed by Cardiac Arrest and Respiratory Distress. He was given Cardiopulmonary Resuscitation (CPR) and

declared dead at 5.00 am on 05.01.2018. It is observed that the insured had encountered sudden problem of breathlessness and cold sweating and he was hospitalized. On perusal of medical record, it can be safely deduced that it was a sudden medical condition of the patient and not an ongoing condition. The entire medical condition had arisen during the subsistence of the policy. Nowhere, the OPs have tendered into any evidence that the insured had any pre-existing disease. The OPs had repudiated his claim by taking a ground of Exclusion Clause No.3 of the Policy.

16. We have carefully gone through the Repudiation Letter (Ex. C-10) and said Exclusion Clause No.3. The said Exclusion Clause primarily deals with pre-existing diseases until 48 consecutive months, any disease contracted by the insured person during the first 30 days of the commencement of the policy, all conservative treatments etc. The said Clause however does not deal with any emergent medical condition encountered by the insured in first two years of the policy. Whereas in the case of insured Rohit Thakur, the medical condition was sudden and he was admitted in Emergency for further management and treatment of his medical condition.

17. Rohit Thakur had been insured under the policy for the period w.e.f. 31.12.2016 to 30.12.2017, therefore, it is clear that at the time of admission in hospital, almost full policy period had elapsed i.e. nearly 1 year. His claim had been repudiated as per Exclusion Clause No.3. It has been recorded in the repudiation letter that the Company was not liable to pay any expenses incurred by the insured person for treatment of chronic liver disease during first two years of continuous operation of insurance cover. Said disease of the patient had been stated as Chronic and not

Acute by OPs. We deem it appropriate to differentiate between these two medical terms to reach the conclusion:-

> *"Chronic illness is the disease which persist for a long time or constantly reoccurring. Whereas Acute disease is severe and sudden."*

18. In light of the aforesaid observations, it is apparent that the medical condition of the insured was of a sudden/acute nature and not chronic. The OPs have not produced any evidence to this effect while citing his condition as Chronic Liver Disease i.e. any medical record that he was under treatment for such disease before being hospitalized. The OPs have also failed to give any cogent explanation that why an insured, who suffers from sudden/emergent medical condition is not eligible for reimbursement of medical expenses incurred by him. Thus, it is clear that the problem of the patient was sudden and the repudiation of the said claim was based upon mere conjectures and frivolous grounds. As such, we do not find any force in the submission of the OPs that the said problem was not covered under Exclusion Clause No. 3 of the OPs Insurance Policy. We deem it appropriate to observe that **the Insurance Companies normally process the claims, and reject the same on hyper technical grounds. The purpose of insurance is to secure oneself/family from any sudden medical problem in future. If the insurance companies do not redress the problem of sudden medical conditions, then the entire purpose of purchase of insurance policy is lost leading to frustration amongst insurer. The ground taken by the OPs that the Complainant was not eligible for reimbursement of Insurance is rejected on the said observation.**

19. The OPs themselves had admitted in their written statement that as per the terms and conditions of the policy, the claim was liable to

be payable then the liability of the OPs would be limited to Rs.2,66,327/- only. The District Commission has also considered this submission of the OPs and had awarded the actual expenses incurred by the insured i.e. Rs.2,66,237/-. The Complainant has not filed any Appeal for enhancement of the said amount. Thus, the OPs are held liable to process his claim for an amount of Rs.2,66,237/-.

20. Accordingly, we do not find any illegality or infirmity in the impugned order of the District Commission. Said order is based on proper appreciation of the record. **First Appeal No. 508 of 2022 of the Appellants-Insurance Company is hereby dismissed being devoid of merits**.

21. Since the main case has been disposed of, so all the pending Miscellaneous Applications, if any, are accordingly disposed of.

22. The Appellants had deposited a sum of Rs.1,76,060/- at the time of filing of the Appeal. Said amount, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the District Commission forthwith. The Respondent/Complainant may approach the District Commission for the release of the same and the District Commission may pass appropriate order in this regard in accordance with law.

23. The Appeal could not be decided within the statutory period due to heavy pendency of Court Cases.

(JUSTICE DAYA CHAUDHARY)
PRESIDENT

(SIMARJOT KAUR)
MEMBER

June 11, 2024.
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