IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 25.11.2020
Date of Reserving the order : 25.10.2024
Date of Decision : 06.12.2024

FIRST APPEAL NO.- 137/2020

IN THE MATTER OF

National Insurance Company Limited
National Legal Vertical,
2E/9, Third Floor,
Jhandewalan Extension
New Delhi-110055

(Through: Ms Geeta Malhotra, Advocate)

.....Appellant

VERSUS

1. Smt. Shanta Devi
   W/o Sh. Ram Kumar Gupta
   R/o A-68, Rajouri Garden
   New Delhi-110034

   (Through: Mr Govind Rishi, Advocate)

   ....Respondent no.1

2. Fortis Hospital, (Performa Party)
   A Block, Shalimar Bagh,
   Delhi-110088

   ....Respondent no.2

CORAM:

HON'BLE MS. BIMLA KUMARI, PRESIDING MEMBER (FEMALE)

1. Whether reporters of local newspapers be allowed to see the judgment? Yes
2. To be referred to the reporters or not? Yes

Present: None for the appellant

None for the respondent

HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

ORDER

1. By this judgment I shall dispose of appeal which has been filed by the appellant against the impugned order dated 17.03.2020 passed by the District Consumer Disputes Redressal Forum North-West, Shalimar Bagh, Delhi in a complaint case no. 905/2016.

2. Brief facts of the case as per complaint are that the complainant, Ms Shanta Devi along with her husband Shri Ram Kumar Gupta purchased a mediclaim policy bearing no. 360200/8500298/99 from opposite party no.1 on 15.08.1999. The said policy had been renewed every year by the opposite party no.1 and the renewed policy for the year 2013 was policy no. 361303/48/13/8500000929 and the said policy was issued by the opposite party no.1 against the money consideration, which was duly paid by the complainant.

3. It was the case of the complainant that on 17.07.2014, she fell on the floor, when she was standing. She was

immediately taken to Dr. Rajiv Chawla, who examined her and advised for immediate hospitalisation on account of her precarious health condition i.e.T-2 DM, poorly controlled diabetes mellitus with Hypertension Grade-III, Obesity leading to severe OSA. Dr Rajiv Chawla also opined that she needed Bariatric surgery. Thereafter, the complainant was referred to Fortis hospital i.e. opposite party no. 2 and was admitted there on 17.07.2014. The hospital clinical diagnosis revealed that she was suffering from poorly controlled diabetes mellitus with hypertension, osteoarthritis and morbid obesity (BMI 41.4 Kg/M). She was also suffering from backache, stress incontinence reflux acidity, snoring, joint pains, lower limb venous insufficiency. She was evaluated for Bariatric metabolic surgery and the surgery was done on 18.07.2014. She was discharged from the hospital on 21.07.2014 after making a payment of Rs.4,01,250/-.

4. It was the further case of the complainant that at the time of taking treatment and surgery she was having a valid policy and the treatment was covered under the policy. After the treatment, she filed the detailed medical claim with the opposite party no.1 amounting to Rs.4,10,633/-. But to her utter shock and surprise, her claim was repudiated by the office of the opposite party no.1 vide letter dated 26.02.2015 in an arbitrary and mechanical manner on the ground that the treatment being of Obesity and its complications. Thereafter, the husband of the complainant approached the Consumer Relationship Management Department of opposite party no.1 vide letter dated 07.01.2016 and brought to the notice of opposite party no.1, the circumstances under which complainant required hospitalization, treatment and surgery. The opposite party no.1 filed reply vide its letter dated 21.01.2016. The complainant again wrote letter dated 21.03.2016

to the senior officials of opposite party no.1 and requested them to look into the matter. However, opposite party no.1 vide letter rated 04.04.2016 informed the complainant that her claim was reviewed by the highest level in the office of opposite party no.1 and it confirmed the action taken by it vide letter 26.02.2015 and repudiated her claim. Thereafter, the complainant sent legal notice dated 05.07.2016 to opposite party no.1 which was duly received by opposite party no.1 but no reply was given by it.

5. It was the further case of the complainant that the action of the opposite party in refusing her claim amounted to deficiency in service. Hence, she filed the complaint before the District Forum for directions to the opposite party no. 1 to release the claim amount of Rs.4,10,633/- along with interest @18% per annum from the date of lodging her claim as well as compensation of Rs.1,00,000/- and Rs.55000/- as litigation costs.

6. The matter was contested by the opposite party no.1 by filing the written statement, wherein the opposite party no. 1 admitted of having issued the mediclaim policy bearing no.361303/48/13/8500000929, to the complainant and her husband but stated that the insurance was given to them subject to the terms and conditions of the policy. The complainant took the treatment on account of Obesity and its complications, which was excluded from the scope of insurance policy. The complainant was suffering from diabetes for the last 2 years, which was a pre-existing disease and the same was not falling within the purview of insurance policy. The claim of the complainant was repudiated as per contract of insurance, entered into between the insured

and insurer and there was no 'deficiency of service' on the part of the opposite party no. 1.

7. Opposite party no. 2 also filed written statement, wherein the factum of admission of complainant in hospital on 17.07.2014 and discharge on 21.07.2014 was admitted. It was further submitted that the Bariatric surgery of the complainant was done in the hospital, which was successful. At the time of discharge, the opposite party no. 2 raised a bill of Rs.04,11,250/- which was accepted by the complainant. The opposite party no. 2 had given some discount to the complainant and complainant deposited an amount of Rs.4,01,250/- through cheque.

8. The complainant filed separate replications to the written statements of opposite party no. 1 and no.2 wherein it was submitted by her that opposite party no.1 had taken a misleading plea.

9. The complainant filed the evidence by way of affidavit and placed on record the insurance policy and several other documents.

10. The opposite party no. 1 also filed evidence by way of affidavit of Mr Rajneesh Kumar, the Administrative Officer of opposite party no. 1.

11. The opposite party no. 2 also filed the affidavit of evidence of Mr Mahipal Bhanot, the authorised signatory of opposite party no. 2.

12. The complainant as well as the opposite parties filed their respective arguments before the District Forum.

13. Ld. District Forum after going through the material on record inter-alia passed the following order:-

> *8. This forum has considered the case of the complainant as well as OPs in the light of evidences and documents placed on record by the parties. The case of the complainant has remained consistent and there is nothing on record to disbelieve the case of the complainant. The documents and evidence of the parties show that the complainant was hospitalized in Fortis Hospital, Shalimar Bagh, Delhi for the treatment of poorly controlled diabetes Mellitus with hypertension, osteoarthritis and morbid obesity (BMI-41.4 Kg/m), Laparoscopic Roux-en-Y Gastric Bypass. This fact is not disputed by OP-1. The sole defence taken by OP-1 is that the complainant has concealed the material fact that she was suffering from pre-existing disease for the last 2 years and as such the claim rightly repudiated by OP-1. This contention/defence of OP-1 is resisted vehemently by the complainant.*
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> *9. We have considered the point in issue. The defence of OP-1 is of no value to OP-1. OP-1 has failed to prove the fact that for cosmetic surgery the complainant underwent hospitalization, treatment and surgery in OP-2 hospital. OP-1 has not disputed the age of the complainant as 67 years. Thus, the defence taken by OP-1 cannot be considered. Thus, it appears that OP-1 has taken a false and bogus defence and in these circumstances, this Forum is of opinion that OP-1 was not justified in denying the claim of the complainant. Thus, OP-1 is held guilty of deficiency in service and unfair trade practice.*

10. Thus, holding guilty for the same, we direct OP-1 to: -

i) To pay to the complainant an amount of Rs. 4,10,633/- being the amount paid by the complainant to the hospital for the hospitalization, treatment and surgery etc. expenses.

ii) To pay to the complainant an amount of Rs.1,00,000/- as compensation for causing harassment and mental agony.

iii) To pay to the complainant an amount of Rs. 10,000/- towards cost of litigation.

11. The above amount shall be paid by OP-1 to the complainant within 30 days from the date of receiving copy of this order failing which OP-I shall be liable to pay interest on the entire awarded amount @ 10% per annum from the date of receiving copy of this order till the date of payment. If OP-1 fails to comply with the order within 30 days from the date of receiving copy of this order, the complainant may approach this Forum u/s 25/27 of the Consumer Protection Act, 1986,

12. Let a copy of this order be sent to each party free of cost as per regulation 21 of the Consumer Protection Regulations, 2005. Thereafter file be consigned to record room.

14. It is the case of the appellant that Ld. District Forum did not appreciate the submissions of appellant regarding the terms and condition of the policy. The Ld District Forum did not consider the documents and the reputation letter and wrongly held that the claim was repudiated mainly for pre-existing disease. The Ld. District Forum

ignored the contents of discharged summary, which clearly showed that the patient was admitted with many diseases but she was treated for Laproscopic surgery and no treatment was given to her for other diseases such as hypertension and diabetes etc. The Ld. District Forum did not go through the complete records filed by the complainant herself and did not notice that IPD Registration form, wherein the column for referral doctor was kept blank. The prescription issued by Dr Rajiv Chawla is not authenticate one and was managed by the complainant to mislead the appellant and the Ld. District Forum. The Ld. District Forum ought to have ignored the additional defence of pre-existing disease taken by the appellant. The Ld. District Forum completely ignored the written submissions filed by the appellant and passed the impugned order in a mechanical manner without appreciating the terms and conditions of policy. The impugned order passed by Ld. District Forum is devoid of merits. The appellant has prayed that the impugned order passed by the District Forum be set aside and the appeal filed by the appellant be allowed.

15. Respondent no.1 filed reply to the appeal, wherein it was submitted that the appeal is not maintainable as the Ld. District Forum considered all the relevant issues and upon detailed judicial analysis and on the basis of documentary evidence passed the judgment. All the averments made by the appellant were also raised by the appellant before the Ld. District Forum and Ld. District Forum has decided the matter after going through the pleadings and arguments of the parties. The respondent no.1 has prayed for dismissal of the appeal with heavy costs.

16. Respondent no. 2 has opted as not to file reply to appeal, being performa party, as per order dated 30 January 2024.

17. The appellant as well as respondent no.1 have filed the written synopsis.

18. I have gone through the material on record. I have also heard ld. counsel for the parties.

19. The Only question for consideration is whether there is any illegality or material irregularity in the impugned order passed by the Ld. District Forum.

20. It is the main contention of the appellant that the case of respondent no.1 was falling under the exclusion clause 4.9 of the policy. The appellant was not liable to make payment to respondent no.1 in respect of the treatment of obesity and the conditions arising therefrom (including morbid obesity and any other weight control management program/service supplies or treatment). Since, the respondent no.1 took the treatment on account of obesity and she was not treated for any other diseases, as per discharge summary, she was not entitled for the claim amount.

21. Now, a perusal of record shows that on 17.07.2014, the respondent no.1 was taken to North Delhi Diabetic Centre, belonging to Dr. Rajiv Chawla (page 58 of the appeal) where she was advised for hospitalization and evaluated for Bariatric surgery in view of severe OSA/poorly controlled T-2 DM, and Hypertension and severe OAS knees & stress incontinence. Thereafter, she was taken to Fortis hospital and was admitted on the same day i.e.17.07.2014, as per the

Discharge Summary(page 62 of appeal). It is worth noting that at the time of her admission at the Fortis hospital, she was having poorly controlled diabetes mellitus with Hypertension and morbid Obesity and was evaluated for laproscopic Roux-en-y Gastric Bypass. Accordingly, the surgery was done by respondent no. 2 on 18.07.2014 and she was discharged on 21.07.2014 after making a payment of Rs.04,01,250/- which is admitted by the hospital i.e. respondent no. 2 before Ld. District Forum. It is significant to note that the condition of the respondent no.1 was precarious as she was suffering from various elements, as per Discharge Summary, for which she required surgery. It is also worth noting that at the time of admission of respondent no.1, she was a senior citizen and was 67 years old. In these circumstances, it can be safely concluded that Bariatric surgery was done on respondent no.1, on account of existing complications, which the respondent no.1 was having and to ensure that she does not develop complications, which could have proved to be life threatening. I am of the considered view that the respondent no.1 did not undergo the surgery in order to enhance her beauty at the age of 67 years.

22. Further, I would like to refer the judgment of Hon'ble NCDRC in **New India Assurance Company Ltd and another versus Anita Chaudhary and another reported in 2016(4) CPJ 378** wherein it was inter-alia held as under**:**

> ***"Morbid Obesity is a serious disease that might be associated with severe complications which might be life threatening. The patient had history of obesity and gained weight for 15 years and attained maximum weight of 224***

kg. Discharge summary reveals that diagnosis of insured was 'super obese' and he was hypertensive.

23. In above referred case, Hon'ble NCDRC awarded the compensation to the consumer.

24. Further, in **United India Insurance Co. Ltd versus Sunil Gupta and another reported in 2015(2) CLT 318** wherein it was inter-alia held by Hon'ble NCDRC as under:

"Bariatric surgery for morbid obesity was not aimed at improving the physical appearance of the complainant or to enhance the beauty. It was aimed at ensuring that he did not develop complications which might later prove to be life threatening. The treatment taken by the complainant cannot be faulted and the order of the insurance company to repudiate the claim on this point was held to be an error and it is not covered under the exclusion clause".

25. Further, I find no force in the contention of the appellant that the respondent no. 1 was treated only for Bariatric surgery and not for any other disease.

26. Now a perusal of Consent form (page 57 of the appeal) clearly shows that she was discharged from the Fortis hospital upon the assurance given by respondent no.1 that she would take all the treatment advised to her at her home under supervision and she would be fully responsible for the same. Further, the respondent no.1 was called for follow up treatment on Friday and in case of nutritional advice, she was

directed to consult Ms Purva Gulyani and Ms Sonali. The undersigned also find no force in the contention of appellant that no treatment was given to respondent no.1 by the respondent no.2 for other diseases such as hypertension and diabetes etc. It is worth noting that the hypertension and diabetes etc. are not such diseases for which a person is required to remain admitted in the hospital. It is significant to note that hypertension and diabetes are the lifestyle disorders/diseases which can be cured by medication. It is also worth noting that the appellant has not placed on record any material to show that the respondent no.1 did not require the Bariatric surgery and underwent the surgery, to enhance her beauty at the age of 67 years.

27. In these facts and circumstances of case, the undersigned is of the considered view that the appellant was not right in repudiating the claim of respondent no.1 on the ground that her case was falling under the exclusion clause as she took the treatment on account of her obesity.

28. Hence, I do not find any illegality or material irregularity in the impugned order passed by Ld. District Forum, which requires interference by this commission. I find no merits in the appeal filed by the appellant company.

29. Accordingly, the appeal filed by the appellant is hereby dismissed. Consequently, the order dated 04.12.2020 passed by this commission regarding staying of proceedings pertaining to Execution petition in CC No. 905/16 is hereby vacated.

30. However, in the facts and circumstances of the case the parties shall bear their own costs.

31. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

32. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986.

33. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

34. Appeal files be consigned to record room along with a copy of this Judgment.

35. Trial court record, if any, be sent back alongwith copy of this Judgment.

(BIMLA KUMARI)
Member (Female)

PRONOUNCED ON 06.12.2024