IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 14.01.2015
Date of hearing: 11.07.2024
Date of Decision: 02.12.2024

FIRST APPEAL NO.-26/2015

IN THE MATTER OF

MS. SURILLA MATHUR
WIFE OF LATE MR. J. S. MATHUR,
RESIDENT OF A-45/11,
DLF, PHASE I, GURGAON,
HARYANA.
AND ALSO, AT:
RASHMI MALLEABLES,
KATRA BAZAAR, SHIKOHABAD,
DISTRICT FIROZABAD,
UTTAR PRADESH.

(Through: Mr. Gagan Mathur, Advocate)
…Appellant

VERSUS

1. M/S. ORIENTAL INSURANCE COMPANY LTD.,
THROUGH ITS
CHAIRMAN & MANAGING DIRECTOR/ PRINCIPAL OFFICER,
REGISTERED OFFICE: ORIENTAL HOUSE,
P. B. NO. 7037, A-25/27, ASAF ALI ROAD,
NEW DELHI-110002.

(Through: Mr. S.K. Pandey, Advocate)
…Respondent no.1

2. **M/S. HERITAGE HEALTH SERVICES PVT. LTD,**
1102, RAHEJA CHAMBERS,
FREE PRESS JOURNAL ROAD,
NARIMAN POINT, MUMBAI 400021.

…Respondent no.2

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Non for appellant.
Mr. S.K. Tyagi, proxy counsel for Mr. Abhishek Singh, counsel for respondent no.1.
None for the respondent no.2.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

> *"The complainant has filed the present complaint against O.P under section 12 of Consumer Protection Act, 1986. The facts as alleged in the complaint are that complainant had taken a Travel Insurance policy bearing No.121800/6231/1076538 Travel Tag No.7241947 dated 11.01.2008 against payment of Rs.19875/- as premium for a period of 180 days for travel of complainant to Singapore. The date of departure being 15.01.2008 and the arrival date being 13.07.2008 It is alleged that the geographical coverage of the policy was throughout the world excluding USA and Canada. It is also alleged that the complainant after taking the above Overseas Mediclaim Insurance policy coverage from the O.Ps went to Singapore on 15.01.2008 to visit her son and his family. It is alleged that the complainant while in Singapore, sometime in February 2008, suddenly developed acute knee pain. She was hospitalized in Raffles Hospital, Singapore on 10.03.2008 where she suddenly felt dizziness and collapsed, where she remained up to 15.03.2008. It is also alleged that son of complainant immediately informed the O.P-I vide fax*

dated 11.03.2008 and requested it for cashless payment facility but O.P- 1 advised to make payment first and then apply for reimbursement Complainant had spent S$ 44,891.15 (Rs.13,46,735/-) on her treatment. It is alleged that complainant filed claim form for reimbursement of medical expenses along with all required documents but O.P-1 had refused the same. Complainant has also sent a legal notice dated 28.11.2008 but to no avail. On these facts complainant prays that O.P be directed to pay a sum of Rs. 13,46,735/-, apart from cost and compensation as claimed."

2. The District Commission after taking into consideration the material available on record passed the order dated **18.11.2014**, whereby it held as under:

"4. We have carefully gone through the records of the case and have heard submissions of Ld. Counsels of the parties.

5. It has been argued on behalf of the complainant that the complainant had taken policy of US $ 2.5 lac from the O.P and visited Singapore where she suffered from knee pain and when she was checked she was referred to Cardiologist and had to immediately undergo procedure. It is argued that complainant did not have the knowledge of heart condition and no evidence has been placed on record that diabetes or high cholesterol were direct and proximate cause for heart conditions. It is also argued that no medical examination of O.P was conducted by the O.P and premium was accepted. It is argued that repudiation of the claim on the ground of pre-existing disease is not justified. On the other hand it has been argued on behalf of the O.P that opinion of Dr. Ashok Kumar has been placed on record which clearly shows that the HTN, DM,

Hypercholesteremia were the direct and proximate cause for the heart conditions for which she had been under treatment in India, therefore, it has been rightly repudiated.

Ex. CW-1/6 shows that the complainant was examine on 24.02.2008 for some knee problem, prescribe certain medicine. Thereafter, she was examined at Raffles Hospital and the doctor came to the conclusion that she was suffering from ischemic heart disease with moderately reduced LV systolic function 3 vessel coronary artery diseases was the diagnosed by the Hospital with the successful stenting of the RCA and LAD was carried out. The total amounting of SS 44,891.15 (Rs 13,46,735/-) was spent on her treatment. It is not disputed that O.P had repudiated the claim on the ground of pre-existing diseases.

7. The O.P has proved on record the term and conditions of the policy as per clause 11 which excluded Pre-existing condition: The pre-existing condition means any sickness/ illness which existed prior to the effective date of this insurance including whether or not the insured person had knowledge that symptoms were related to the sickness/ illness." Complication arising from a pre-existing condition will also be considered part of the pre-existing condition. From the term and conditions it is clear that if the insured was having any pre-existing condition, whether she had no knowledge thereof, if condition developed subsequently, that would be treated as pre-existing condition. In his affidavit of Mr. Satish Chander, Deputy Manager O.P has placed on record opinion of Ashok Kunnure (M.D) from Bombay. In the present case the doctor DM. has specifically opined that the patient has history of

HTN, Hypercholesteremia. He has also stated that she was known case of 1TN, DM & high cholesterol for which she had been under treatment in India itself. He had examined her echo which showed findings s/o old heart disease. He has specifically opined that IHD is an old problem & is complication of
HTN, DM & high cholesterol. No opinion to the contrary has been placed on record by the complainant. In the absence of contrary opinion the opinion of the Dr. Ashok placed on record will have to be taken into account. It is particularly because the genuineness of medical opinion placed on record by O.P has not been challenged by the complainant. On the basis of the documents, we come to the conclusion that ischemic heart diseases suffered by the complainant was the direct and proximate effect or HTN,DM & high cholesterol for which the complainant was under treatment in India itself.

8 The complainant has relied upon an authorities reported as Hari Om Agarwal Vs. Oriental Insurance Co. Ltd. AIR 2008 DELHI 29, Tirath Dass Vs. New India Assurance Co. Ltd. III (2005) CPJ 205 Delhi (SC), Oriental Insurance Co. Ltd. Vs. Hemant Bhandari (2005) CP) 418 Delhi (SC), New India Assurance Co. Ltd. Vs. Mary Jane Govias & Ors. IV (2006) CP) 228 (NC) and O.P. Kingar Vs. New India Assurance Co. Ltd. & Ors. 1 (2007) CP) 57 (NC). The jurisdiction of this forum to decide dispute between the parties is total narrow. We are to see whether according to contract entered into between the parties there any deficiency on the part of Insurer. In the present case the condition specifically provided that if the insured had been suffering from any condition, symptoms of which might appear subsequently, would be treated as pre-existing condition even if the insured

had no knowledge thereof. treatment. In the present case the complainant husband was under

9 In Homoeopathic Medical College and Hospital, Chandigarh Vs. Miss Gunita Virk I (1996) CP) 37 (NC) which decision has been given by a five member bench consisting of Hon'ble President and four Hon'ble Members of the Hon'ble National Commission, in this decision the complainant had taken admission in the Medical College which had made a provision in the prospectus making the fee non-refundable. Question arose whether consumer for a, under the Consumer Protection Act, have jurisdiction to check validity of such clause in the prospectus? The answer was given in the negative by five member bench of Hon'ble National Commission. It was held that "for a constituted under the Consumer Protection Act has no jurisdiction to declare any rule in the prospectus of any Institution as unconscionable or illegal. It is for the Civil Court to determine this point".

10. In view of the reasons given above we come to the conclusion that since the complainant has been suffering from HTN, DM & high cholesterol, the ischemic heart diseases suffered by the complainant is the direct and proximate result of pre-existing ailments the above said diseases as opined by Dr. Ashok. In these circumstances, it cannot be ONSU UMI that repudiation of the claim of the complainant is illegal or unjustified. We are of the considered opinion that complainant is no entitled for any relief. Complaint is, therefore, dismissed."

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Opposite Party has preferred the present appeal,

contending that the District Commission wrongly interpreted the term "pre-existing condition," holding that it would mean any sickness/illness which existed prior to the effective date of insurance, including cases where the insured person had no knowledge that symptoms were related to the sickness/illness. The counsel for the Appellant further submitted that the District Commission failed to consider that the Respondent had accepted the premium for the said policy and no medical examination was conducted by them. Therefore, they cannot deny the claim of the Appellant on the ground of a pre-existing disease. He also submitted that the District Commission wrongly relied on the opinion of Dr. Ashok Kunnure of the Respondent company, who wrongly alleged that the patient had a history of HTN, DM, and Hypercholesterolemia, for which the Appellant had been under treatment in India, as these allegations were not supported by any evidence or affidavit from the doctor.

4. The counsel for the Appellant further submitted that the District Commission erred in holding that the ischemic heart disease suffered by the Appellant was a direct and proximate effect of HTN, DM, and high cholesterol, without Dr. Ashok Kunnure having any occasion to examine the Appellant. Moreover, the Respondent failed to prove any nexus between the alleged pre-existing disease and the heart disease suffered by the Appellant. Pressing the aforesaid submissions, the Appellant prayed for setting aside the impugned judgment.
5. The Respondent no.1, on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the entire material available on record was properly

scrutinized before passing the said order. Further, The Respondents submitted that, as per the terms and conditions of the policy under clause 11, which excludes pre-existing conditions, "Pre-existing condition means any sickness/illness which existed prior to the effective date of this insurance, including whether or not the insured person had knowledge that symptoms were related to the sickness/illness. Complications arising from a pre-existing condition will also be considered part of the pre-existing condition. Also, As per terms and conditions, it is clear that if the insured had any pre-existing condition, even if she was unaware of it, any condition that developed subsequently would be treated as a pre-existing condition.

6. Further, the Respondent no.1/Opposite Party, placed an opinion of Dr. Ashok Kunnure (M.D.) from Bombay on record, wherein he specifically opined that the patient has a history of HTN and Hypercholesterolemia. He further stated that she was a known case of HTN, DM, and high cholesterol, for which she had been undergoing treatment in India. He examined her echocardiogram, which showed findings indicative of an old heart disease. He specifically opined that IHD is an old issue and is a complication of HTN, DM, and high cholesterol. The counsel for the Respondent argued that no contrary opinion has been placed on record by the Appellant Complainant. In the absence of any contrary opinion, the opinion of Dr. Ashok placed on record must be taken into account, particularly because the genuineness of the medical opinion submitted by the Respondent no.1/Opposite Party has not been challenged by the Appellant.
7. The Appellant has filed its written argument and relied upon the following judgment:

i. Tirath Dass VS New India Assurance Co. Ltd. [reported in III (2005) CPJ 418];

ii. Oriental Insurance Co. Ltd. VS. Hemant Bhandari [reported in III (2005) CPJ 205];

iii. Oriental Insurance Co. Ltd. VS. Mjane Govias & Others [IV (2006) CPJ 228 (NC)];

iv. Revision Petition no. 1696 of 2005, titled as Praveen Damani vs. Oriental Insurance Co. Ltd., decided on 03.10.2006 by the Hon'ble NCDRC.

8. We have perused the material available on record and heard the counsel appeared on behalf of the Appellant.

9. The main question of consideration before us is whether the Respondents are justified in repudiating the claim of the Appellant on the ground that the Appellant had suffered from pre-existing disease ***i.e., Hypertension, Diabetes mellitus and Hypercholesterolemia at the time of obtaining the policy***.

10. On the concept, meaning and import of word disease, pre-existing disease in reference to medical insurance this commission has drawn following ten conclusions in a highly extensive, dissecting manner in their decision ***Pradeep Kumar Garg v. National Insurance Co. Ltd., FA-482/2005 decided on 01.08.2008.*** These are as:

"a. Disease means a serious derangement of health or chronic deep-seated disease frequently one that is ultimately an insured must have been hospitalized or operated upon in the near proximity of obtaining the mediclaim.

b. Such a disease should not only be existing at the time of taking the policy but also should have existed in the insured had been hospitalized or operated upon for the said disease in

the near past, say, six months or to disclose the said fact to rule out the failure of his claim on the ground of concealment of information as to.

c. Malaise of hypertension, diabetes, occasional pain, cold, headache, arthritis and the like in the body are normal modern day life which is full of tension at the place of work, in or out of the house and are controllable on standard medication and cannot be used as concealment of pre-existing disease for repudiation of the insurance insured in the near proximity of taking of the policy is hospitalized or operated upon for the treatment of these other disease.

d. If insured had been even otherwise living normal and healthy life and attending to his duties and daily chores person and is not declared as a diseased person as referred above he cannot be held guilty for concealment medical terminology of which is even not known to an educated person unless he is hospitalized and operated particular disease in the near proximity of date of insurance policy say few days or months.

e. Disease that can be easily detected by subjecting the insured to basic tests like blood tests, ECG etc. the insured to disclose such disease because of otherwise leading a normal and healthy life and cannot be branded as diseased.

f. Insurance company cannot take advantage of its act of omission and commission as it is under obligation to issuing mediclaim policy whether a person is fit to be insured or not. It appears that insurance companies obligation as half of the

population is suffering from such malaises and they would be left with no or very little.

Thus, any attempt on the part of the insurer to repudiate the claim for such non-disclosure is not permissible, exclusion clause invokable.

a. Claim of any insured should not be cannot be repudiated by taking a clue or remote reference to any so-called discharge summary of the insured had concealed his hospitalisation or operation for the said disease undertaken reasonable near proximity as referred above.

b. Day to day history or history of several years of some or the other physical problem one may face occasionally landed for hospitalisation or operation for the disease cannot be used for repudiating the claim. For instance suffered from a particular disease for which he was hospitalised or operated upon 5, 10 to 20 years ago and living healthy and normal life cannot be accused of concealment of pre-existing disease while taking mediclaim being cured of the disease, he does not suffer from any disease much less the pre-existing disease while taking as after being cured of the disease, he does not suffer from any disease much less the pre-existing disease.

c. For instance to pay that insured has concealed the fact that he was having pain in the chest off and on for years diagnosed or operated upon for heart disease but suddenly lands up in the hospital for the said purpose and disentitled for claim bares dubious design of the insurer to defeat the rightful claim of the insured on flimsy are not rare where people suffer a massive

attack without having even been hospitalised or operated upon years or so.

d. Non-instance of hospitalisation/or operation for disease that too in the reasonable proximity of the date of the only ground on which insured claim can be repudiated and on no other ground."

11. From the above dicta it is clear that unless and until a person is hospitalised or undergoes operation of a particular disease in the near proximity of obtaining insurance policy or any disease for which he has never undergone operation is not a pre-existing disease.

12. The issue of pre-existing disease has been dealt with by the Hon'ble NCDRC in the matter of ***Tarlok Chand India Insurance Co. Ltd. RP-686/2007 decided on 16.08.2001*** holding as under:

"Infact, ***the onus to prove that she had a pre-existing disease was on the respondent who failed to file or credible evidence in support of its case.*** *Further, the deceased had been taking he mediclaim insurance the respondent right from 1996 and she had also as per the practice, been examined by the doctor respondent/insurance company who has nowhere recorded that she had any medical problem relating."*

13. The Hon'ble NCDRC is yet another judgment in ***National Insurance co. Ltd. vs. Rai Narain-2008 NCT 559 NCDRC*** held as under:

"Most of the people are totally unaware of the symptoms of the disease that they suffer and hence they liable to suffer because the Insurance Company relies on their clause 4.1 of the policy in a mala-fide repudiate all the claims. No claim is payable under the medi-claim policy as every human being is diseases are perhaps pre-existing in the system totally unknown to him which

he is genuinely unaware Hindsight everyone relies much later that he should have known from some symptom. If this is so every medical studies and further not take any insurance policy."

14. The Hon'ble NCDRC in the matter ***of Praveen Damani v. Oriental Insurance Company Ltd. as reported 189 (NC)*** has held as under:

"*....If this interpretation is upheld, the Insurance Company is not liable to pay any claim, whatsoever, person suffers from symptoms of any disease without the knowledge of the same. This policy is not just a contract entered only for the purpose of accepting the premium without the bona fide intention benefit to the insured under the garb of pre-existing disease. Most of the people are totally unaware the disease that they suffer and hence they cannot be made liable to suffer because the Insurance Company their clause 4.1 of the policy in a mala fide manner to repudiate all the claims. No claim is payable policy as every human being is born to die and diseases are perhaps pre-existing in the system totally which he is genuinely unaware of them. Hindsight everyone relies much alter than he would have known symptom. If this is so every person should do medical studies and further not take any insurance policy facts on record, there is no material to show that the petitioner had any symptoms like chest pain etc. 11.08.2000."*

15. The fact that the onus to prove that insured was suffering from pre-existing disease is on the Insurance Company the orders of the Hon'ble NCDRC in the matter of ***LIC of India v. Priya Sharma and Ors***. as reported in (NC). Secondly, if the policy was issued by the insurance company without proper verification, they cannot the claim at the later

stage, as per the view held by the Hon'ble NCDRC in the *Revision Petition no. 1676 of 2015****, Oriental Insurance Co Ltd. v Dipender Kaur decided on 07.10.2015.***

16. We further deem it appropriate to refer to ***Revision Petition No. 3557 of 2013*** titled as ***"Sunil Kumar Sharma vs. TATA AIG Life Insurance Company and Ors"*** decided on ***01.03.2021***, wherein the Hon'ble National Commission has dealt the issue of pre existing disease and held as follows:

> *"14. Moreover the claim had been repudiated only on the ground that the insured was suffering from diabetes for a long time. So far as life style diseases like diabetes and high blood pressure are concerned, Hon'ble High Court of Delhi in Hari Om Agarwal Vs. Oriental Insurance Co. Ltd., W.P.(C) No. 656 of 2007, decided on 17.09.2007 held as under:*
>
> > *"Insurance-Mediclaim-Reimbursement-Present Petition filed for appropriate directions to respondent to reimburse expenses incurred by him for his medical treatment, in accordance with policy of insurance-Held, there is no dispute that diabetes was a condition at time of submission of proposal, so was hyper tension-Petitioner was advised to undergo ECG, which he did-Insurer accepted proposal and issued cover note-It is universally known that hypertension and diabetes can lead to a host of ailments, such as stroke, cardiac disease, renal failure, liver complications depending upon varied factors-That implies that there is probability of such ailments, equally they can arise in non-diabetics or those without hypertension-It would be apparent that giving a textual effect to Clause 4.1 of policy would in most such cases render mediclaim cover meaningless-Policy would be reduced to a contract with no content, in event of happening of contingency-Therefore Clause 4.1 of policy cannot be allowed to override insurer's primary liability-Main purpose rule would have to be pressed into service-Insurer renewed policy after petitioner*

underwent CABG procedure-Therefore refusal by insurer to process and reimburse petitioner's claim is arbitrary and unreasonable-As a state agency, it has to set standards of model behaviour; its attitude here has displayed a contrary tendency-Therefore direction issued to respondent to process petitioner's claim, and ensure that he is reimbursed for procedure undergone by him according to claim lodged with it, within six weeks and petition allowed."

15. In RP No. 4461 of 2012, Neelam Chopra Vs. Life Insurance Corporation of India & Ors., decided on 08.10.2018, (NC), it was held that:

"11. From the above, it is clear that the insurance claim cannot be denied on the ground of these life style diseases that are so common. However, it does not give any right to the person insured to suppress information in respect of such diseases. The person insured may suffer consequences in terms of the reduced claims.

14. Moreover, the non-disclosure of information in respect of this life style disease of diabetes, will not totally disentitle the complainant for indemnification of the claim in the light of the judgment of Hon'ble High Court of Delhi in Hari Om Agarwal Vs. Oriental Insurance Co. Ltd., (supra)."

16. Based on the above discussion, I am of the opinion that the Insurance Company had not been able to prove beyond doubt that the Complainant was suffering from diabetes before filing of the proposal form. It is also to be noted that the Insurance Company had given Insurance to a person of 66 years of age without any preliminary medical examination which could have definitely revealed whether the proposer was suffering from diabetes or not. It is commonly known that a person of 66 years of age has a high probability of suffering from common lifestyle diseases like diabetes and hypertension. If the company is ready to take the risk at this age of the proposer, without any preliminary medical examination, then the company should be

ready to honour the claim also because the chances of death of such persons are more during the currency of the Policy."

17. From the aforesaid settled law, it is clear that the common lifestyle disease like diabetes and hypertension, cannot be treated as pre-existing diseases, therefore, cannot be a ground of repudiation of the claim by Insurance companies. Returning to the facts of the present case, the Respondents have repudiated the claim of the Appellant on the basis of the common lifestyle disease i.e. ***Hypertension, Diabetes mellitus and Hypercholesterolemia.***

18. Further, it is a well-settled principle that, before issuing an insurance policy, the insurance company should conduct medical tests to determine whether the person has any pre-existing diseases. However, in the present case, the Respondents failed to show any evidence that any medical tests or examination were conducted before issuing the policy in question. Moreover, it is evident that the Appellant was nearly 70 years old when she applied for the policy, and it is commonly known that at such an age, one could have common lifestyle diseases. Yet, the Respondents issued the policy without any medical examination. Therefore, at this later stage, they cannot repudiate the Appellant's claim on the grounds that she had a pre-existing illness at the time of obtaining the policy. Furthermore, we have reviewed the certificate issued by Dr. Ashok, in which it is noted that the Appellant initially visited for treatment of pain in her left knee, during which other health issues were discovered. This indicates that she had no prior knowledge of any heart-related disease. In this report, Dr. Ashok also mentioned that the Appellant was undergoing treatment in India, but there is no evidence specifying what treatment she was receiving from which hospital and

since when or for which condition. So be it, the Respondent cannot deny the Appellant's claim solely based on a common lifestyle disease.

19. In view of aforesaid discussions done and the legal position as settled, we hold that the Respondents are deficient in providing services to the Respondent by rejecting the claim of the Appellant in the guise of non-disclosure of pre-existing disease.

20. Consequently, we hold that the District Commission erred in dismissing the complaint of the Appellant on the ground that there is no deficiency on part of the Respondents. Therefore, we set aside the order dated 18.11.2014 passed by the District Consumer Disputes Redressal Commission- I (North), GNCT of Delhi, Tis Hazari, Delhi – 110054.

21. Keeping in view the facts and circumstances of the present case, the Respondents are directed to pay a sum of Rs. 13,46,735/- i.e., Cost of Medical Expenses to the Appellant along with interest @ 6% p.a. calculated from 08.09.2008 (being the date on which the said claim of the Appellant was repudiated) till 02.12.2024 (being the date of the present judgment).

22. In addition to the aforesaid and taking into consideration the facts of the present case, the Respondents are directed to:

    A. ***Rs. 1,00,000/-*** as cost for mental agony and harassment to the Appellant/Complainant; and

    B. The litigation cost to the extent of ***Rs. 50,000/-.***

23. The directions mentioned in para 21 shall be complied by the Respondents within two months from the date of judgment. In case of failure to comply with the same within two months, the entire amount would entail a penalty of 9% p.a. till the actual realization of amount.

24. Application(s) pending, if any, stands disposed of in terms of the aforesaid judgment.
25. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
26. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
02.12.2024

LR-ZA