Convenient Shopping Centre, Saini Enclave, DELHI -110092
DELHI EAST

Complaint Case No. CC/137/2019
(Date of Filing : 24 Apr 2019)

1. DALJEET KAUR
. .....Complainant(s)

Versus

1. APOLLO MUNICH HEALTH INS.
. .....Opp.Party(s)

BEFORE:
SUKHVIR SINGH MALHOTRA PRESIDENT
RAVI KUMAR MEMBER
MS. RASHMI BANSAL MEMBER

PRESENT:

Dated : 23 Nov 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)

GOVT. OF NCT OF DELHI

CONVENIENT SHOPPING CENTRE, FIRST FLOOR,

SAINI ENCLAVE, DELHI – 110 092

C.C. No. 137/2019

Smt. Daljeet Kaur

R/o. 4/2876, Gali No. 15, Bhola Nath Nagar,

Shahdara, Delhi-110032. ….**Complainant**

Versus

HDFC ERGO General Insurance Company Ltd.

(Previously known as Apollo Munich Health Insurance Co. Ltd.,)

……OP

(Through its Manager/Principal Officer/Managing Director/Director)

Central Processing Centre,

5th Floor,Tower-I, Stellar IT Park, C-25, Sector 62, Noida-201301.

Also At:-

Registered office:-

101, First Floor, Inizio, Cardinal Gracious Road, Chakala, Opposite P Plaza, Andheri (East), Mumbai City, Maharashtra, (India)-400069.

Date of Institution: 24.04.2019

Judgment Reserved on: 23.11.2023

Judgment Passed on: 23.11.2023

QUORUM:

Sh. S.S. Malhotra (President)

Sh. Ravi Kumar (Member)

Ms. Rashmi Bansal (Member)

Order By: Ms. Rashmi Bansal (Member)

JUDGEMENT

The present complaint is being disposed of by the commission whereby the complainant alleged deficiency in service by OP in repudiating the Mediclaim to the complainant.

The complainant has filed the complaint initially against Apollo Munich but later on amended memo of parties thereby substituting the name of the original OP from Apollo Munich to HDFC ERGO General Insurance Ltd was filed & it was taken on record and therefore the cause title shows the name as per amended memo of parties.

1. It is the case of the complainant that she is the Mediclaim policy-holder of OP from 23.07.2017 to 22.07.2018, comprehensively insuring for all the ailments. On 29.09.2017, the complainant was hospitalised in Sir Ganga Ram Hospital, New Delhi for her medical treatment for "left common nerves paresis" and was discharged on 30.09.2017. A total sum of Rs.97,566/- was paid to the hospital for the aforesaid treatment and thereafter claim was filed with OP along with all the medical prescriptions and bills, however, the OP vide it various letters kept on asking for more additional documents like all investigation, treatment and follow-up records pertaining to diabetes, hypertension, thyroid since first diagnosis on & notarised affidavit of Rs. 100/- Stamp Paper from the treating doctor regarding duration of diabetes, hypertension and thyroid, which are unwarranted and uncalled for, as asking affidavit from attending doctor on stamp paper is not appropriate and possible as per general practice & precedents, and it is further stated that such demand is just a lame excuse to deny her, *bona fide* legitimate claim against valid/legal Mediclaim policy.
2. Complainant further submits that on one side, OP asked for the additional document vide email dated 02.07.2018 at 12:26 PM and simultaneously in next 2 minutes at 12:18 PM e-mailed rejection letter dated 02.07.2018 i.e. on the same day, which shows that OP had already made-up its mind to reject her claim and has been sending reminders for the sake of the formality to make out a false ground of rejection. Such conduct establishes OP's mal, dishonest and unfair trade practice and such intentional wilful negligence is amounting to deficiency in service on its part which resulted in harassment and mental agony to the complainant. The legal notice dated 04.04.2019 of the complainant to OP remained unanswered. Complainant prays for release of his claim amount of Rs.97,566/- along with compensation of Rs.2,00,000/- .
3. OP filed reply thereby admitting the policy in the name of the complainant but submits that *prima facie* no cause of action has arisen in favour of the complainant to file the present complaint as admittedly, despite receipts of the letters and reminders from the OP, the complainant has failed to submit the mandatory documents as required by the OP for processing the claim and due to non-compliance her claim was 'closed' in accordance with clause section VI i (i) of terms and conditions of the policy, hence, the present complaint is liable to be dismissed with exemplary cost and that there is no deficiency of service on its part. The allegations of the complainant reveal the *mala fide* intention of the complainant to extract money wrongfully from the OP.
4. OP further submits that from the medical record filed, it is clear that the complainant had been suffering from pre-existing disease of hypertension and diabetes from last three years and hypothyroidism for last five years. Therefore, OP requested the complainant for further documents relating to the said ailments, including affidavit of the treating doctor regarding the status of the said ailments. However, the complainant did not submit the required documents and hence, the claim is not payable due to non-compliance of the requested documents by the complainant and was rejected accordingly. Moreover, prims facie it appears that complainant has concealed material facts about the prior medical history of health ailments before taking up the insurance policy and had given the false

declaration in the proposal form about her health and diseases. Since there is violation of the very fundamental law of contract of insurance '*uberrima fides',* therefore, is *void ab initio.* Therefore, OP has rightly exercised its right to close/declinethe claim and the present complaint is without cause of action and liable to be dismissed with cost.

5. Complainant has filed rejoinder thereby denying OP's version and reiterated her complaint. Both the parties have filed their respective evidences along with documents.
6. In support of her case, the complainant has filed copy of Aadhaar card Ex. CW1/1; copy of medi-claim policy, Ex. CW1/2; discharge summary dated 30.09.2017, Ex. CW1/3; copy of medical bills of Rs.97,566/- with receipts, Ex. CW1/4, Mediclaim card, Ex. CW1/5; photo copies of all the letters, reminders Ex. CW1/6 – Ex. CW1/9; letter dated 02.07.2018, at 12:26 PM, Ex. CW1/10; rejection letter dated 02.07.2018 at 12:28 PM, Ex. CW1/11 and legal notice dated 04.04.2019, Ex. CW1/12. Complainant has also filed an affidavit dated 14.09.2022 of Dr. Gaurav Siwas, member of the team led by treating doctor Dr. Mahesh Mangal, as CW-2, stating that on 29.09.2017, the complainant was hospitalised at Sir Ganga Ram Hospital for her treatment suffering from left common perineal nerve paresis and that she was not on any medication for hypertension, diabetes and hypothyroidism at the time of treatment.The complainant has also relied upon the judgment of the Hon'ble Supreme Court in civil appeal no. 8386/2015 Manmohan Nanda Vs. United India Assurance Co. Ltd.
7. In support of his case, OP has filed proposal form dated 15.07.2017, Ex. RW1/3, copy of policy Ex. RW1/4; copy of pre-authorisation form and query letter, Ex. RW1/5; Copy of prescription dated 30.07.2017 and denial of cashless letter Ex. RW1/6 (colly), investigation report along with relevant documents, Ex. RW1/7 Colly; letter and reminder sent to complainant, Ex. RW1/8 Colly; and rejection letter, Ex. RW1/9;
8. This Commission has perused the documents filed by the both the parties and heard the oral arguments. The discharge summary dated 30.09.2017 under the heading of clinical history has mentioned that the patient has the history of accidental fall while walking around one and half months back and sustained injury to left knee, with swelling and pain over knee, complaintwith respect to loss of sensation over lateral aspect of knee and foot.
9. The Commission has noticed that vide email dated **02.07.2018**, at 12:26 PM, the so called first reminder, the OP has stated that all the documents are received except notarised affidavit on 100/- Stamp Paper from treating doctor and the same requirement is shown as pending and vide following email dated same i.e. 02.07.2018 at 12:28 PM the OP has issued rejection letter to the complainant on the ground that requirements of the documents raised by the OP has not yet been complied with and therefore the claim is rejected. However, it is further mentioned in the said email, that complainant may provide notarised affidavit on 100/- Stamp Paper from the treating doctor regarding duration of diabetes, hypertension, thyroidism to reopen the claim and to decide on admissibility.
10. Again, vide letter dated 27.07.2018 OP asked the complainant to provide treating doctors affidavit stating duration of above-mentioned disease till 06.08.2018 and also mentioned that in case of non-receipt of the complete requirement by the stipulated date, the claim would be considered as withdrawn and application would be closed.
11. Documents on record also show that a certificate was issued by the treating doctor on 12.12.2017, certifying that patient is not on the medication for hypertension, diabetes, thyroid, and that it is wrongly prescribed, despite that OP, vide letters dated 16.01.2018, 02.07.2018 and 27.07.2018 kept asking to provide the certificate from the treating doctor on notarised stamp paper. A fresh affidavit by another team doctor Dr. Gaurav Siwas was also filed by the complainant before commission but OP has not proceeded with the claim of the complainant.The processing of the claim revolves around the requirement of OP for

the certificate from the treating doctor on notarised 100/- stamp paper with respect to duration of diabetes, hypertension, thyroidism. Therefore, there are two issues involved, first, whether diabetes, hypertension, thyroidism has any relation with the current treatment of the complainant? and secondly can a certificate on notarised stamp paper be demanded from the treating doctor?

12. The perusal of the document shows that the complainant suffered from an accidental fall and got knee injury and she was admitted in the hospital. The fall or injury was accidental and can happen to anyone & it cannot be said to pre-existing ailment. Therefore, the said diseases if any had no relation with the current treatment of the complainant. Moreover, this has been settled by Hon'ble NCDRC that these are the normal life style diseases and the same should not be the impediments in consideration of the insurance claims. Further, Hon'ble Supreme Court of India in civil appeal no. 8386/2015 ***Manmohan Nanda Vs. United India Assurance Co Ltd*** vide, its order dated 06.12.20 has held: "*Though it is the duty of the proposer to disclose to the insurer, all material facts as are within his knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. But the proposer can only disclose what is known to him, the proposer's duty of disclosure of his actual knowledge, it also extends to those material facts which in the ordinary course of business, he ought to know. However, the assured is not under a duty to disclose facts which he did not know, and which he could not reasonably be expected to know at the material time."* OP failed to establish that complainant has been suffering from the said ailment while taking the said policy.
13. Secondly, the demand of OP for the certificate of the treating doctor on the notarised 100/- stamp paper, is not viable for the patient to get from the treating doctor at any hospital. Despite those two certificates dated 12.12.2017 and 14.09.2022 were issued by the treating doctor and his teammate respectively certifying that patient was not suffering from thesediseases. The OP did not consider that and rejected the claim of the complainant on the ground of non - providing of the certificate of the doctor, without considering that there is no clause in the policy that a treating doctor would provide a notarised stamp paper certificate certifying the ailment for clearance of insurance claim nor OP could prove that complainant has been informed about any such at the time of issuance of the policy in her favour. It is the settled principle of law that terms and conditions of the insurance policies are to be brought in the knowledge of the insured before issuing the policy or even prior to taking the premium. Hon'ble Supreme Court in ***New India Assurance Co Ltd versus Paresh Mohan Lal Parmar***, in CA 10398 /2011, vide order dated 04.02.2020 has held that the insurer had to prove that the insured was aware of the policy's terms and conditions when the policy was issued to him. If the insured is not aware of the terms and conditions of the policy, the claim cannot be rejected and directed insurance company to pay the claim. The Commission has not come across any tangible material to infer that the relevant terms and conditions of the Insurance Policy were brought to the knowledge of the complainant. The Commission find that the certificate from the doctor on the stamp paper is unwarranted and uncalled for.
14. In view of the above judgments and considering the facts and circumstances of the case and the entire evidence brought on record by both parties, this commission is of the view that OP is deficient in its service in not allowing the claim of the complainant. Therefore, OP is directed to release the claim of the complainant of Rs. 97,566/- along with interest @6% p.a. from the date of filing of complaint i.e. 24.04.2019 and a compensation of Rs.20,000/- (including the litigation cost) for causing harassment and mental agony to the complainant within 30 days from the date of order, failing which the OP shall be liable to pay an interest on the entire amount i.e. Rs. 1,17,566/- (Rs.97,566/- +20,000/-)@ 9% p.a.

from the date of filing the complaint i.e. 24.04.2019 till the actual realisation by the complainant.

15. The copy of the order be given to the parties as per CPA rules and thereafter filed be consigned to record room.
16. The order contains 09 pages, each beers our signature.

Pronounced on 23.11.2023.

[SUKHVIR SINGH MALHOTRA]
PRESIDENT

[RAVI KUMAR]
MEMBER

[MS. RASHMI BANSAL]
MEMBER