DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-III: WEST
GOVT. OF NCT OF DELHI
C-BLOCK, COMMUNITY CENTRE, PANKHA ROAD, JANAK PURI
NEW DELHI
COMPLAINT CASE NO. 157/2018

IN THE MATTER OF:

Sunil Jain
S/o Lt Sh. Atma Ram Jain
R/o WZ-238 B, Gali No. 6,
Sadh Nagar, Palam Colony
New Delhi – 110045. ...COMPLAINANT

VERSUS

National Insurance Company Ltd.
B-1, Community Centre, Janakpuri
Delhi – 110058. **..OPPOSITE PARTY**

DATE OF INSTITUTION: 20.04.2018
JUDGMENT RESERVED ON: 23.11.2023
DATE OF DECISION: 14.12.2023

CORAM
Ms. Sonica Mehrotra, President
Ms. Richa Jindal, Member
Mr. Anil Kumar Koushal, Member

Present: Ms. Pooja Jain, wife of complainant
None for OP/ex parte.

ORDER

Per: Anil Kumar Koushal, Member

Facts of the present complaint in brief are as under:

1. According to complainant, he had got his family, comprising his wife and 3 children insured with the OP vide National ParivarMediclaimPolicy No. 361801/48/16/8500008792 effective from 10.01.2017 to 09.01.2018 for a

total sum insured of Rs.1 lakh. He was admitted in Maharaja Agrasen Hospital, Punjabi Baghfrom 20.12.2017 to 22.12.2017 as per advice of Ahimsa Dham Jan Charitable Trust (MadhuVihar, Delhi). After admission of the complainant, his wife Mrs. Pooja Jain informed the Hospital TPA Panel about the insurance policy in favour of the complainant and submitted the required Documents. After two days,OP sent a Query mail dated 22.12.2017 to the Hospital TPA Panel and after two more days when the complainant was discharged from the said Hospital, his family was not sure about the cashless approval by the OP and were unable to bear the hospital charges. However, the OP denied the Cashless Facility vide letter dated 24.12.2017. Before the cashless denial, Hospital was pressurising complainant's wife to pay the charges to the hospital. To pay the charges of Hospital his wife had to pledge her jewellery. Complainant is the sole bread earner of his family. After the denial of cashless claim by the OP, the complainant filed for reimbursement claim on 10 January 2018 for a total sum of Rs. 47,971/-. On 17th January, 2018complainant again received a Query letter from the OP and the very next day i.e. 18 January 2018 the complainant gave all the required Documents to his insurance Agent to submit before the OP, as the complainant and his family were not in a condition financially or physically to travel to OP office. The complainant received a reply dated 14.2.2018 from the OP in which they stated "The Claim is treated as NO CLAIM. Hence the complainant was constrained to file the present complaint. The following relief is claimed by the complainant:

1) to direct the OP to get his reimbursement approved as soon as possible so that he can pay fees of his children and get the ornaments of his wife back and also to save his family from paying interest every month.

2. Complainant attached with his complaint copies of insurance policy, discharge summary and other treatment records of MaharajAgrasen Hospital, cashless denial letter dated 24.12.2017, Query letter dated 17.1.2018, repudiation letter dated 06.10.2018, Certificate of Doctor that Hospitalisation was necessary to assess the disease, treatment records of AIIMS and other hospitals.

3. On admission of the complaint, notice was issued to the OP who upon service, filed its written statement. It is submitted that the complaint does not disclose any cause of action against the answering OP. The OP denied each and every allegation/claim of the complainant.

4. OP stated that as per the report of their TPA, East West Assist TPA Pvt. Ltd, the claim is denied under clause no. 4.3 & 4.9 and as per claim documents, it seems to be hospitalization only for diagnostic & evaluation purpose and hypertension & its related complication paid in third year running policy and this claim is taken in first year policy. Therefore, claim is not payable as per policy terms and conditions. It is submitted that it was mentioned in the history report/Discharge summary of the doctorsof Maharaja Agrasen Hospital that the complainant was admitted with complaints of‟Giddiness since morning, loss of consciousness today morning at 9:45 am with generalized weakness. History of vomiting one episode and slurring of

speech". OP further stated that in the said report diagnosisof complainant by the Doctors was given as "Principle Diagnosis: TIA". It is further mentioned therein that complainant is discharged on his own request. Doctors' findings and investigations were done as stated in letter dated 22/12/2017. "MRI brain was done, which revealed no focal cerebral lesion and no evidence of acute ischemia was seen. 2D Echo was done, which showed all chambers normal with LVEF-60%. Carotid Doppler study normal flow and thyroid profile was normal. Neurology reference was given and advice followed. Patient was managed conservatively and treated symptomatically. Now patient's condition is stable and patient's attendant insist for taking patient home. So complainant is being discharged on request".OP, therefore, prayed for dismissalof the complaint with heavy costs.

5. In rebuttal to the averments of OP, complainant filed replication and denied all their allegations in toto. It is also denied that the complaint did not disclose the cause of action against the OP. It is submitted that the cause of action arose against the OP firstly on 24.12.2017 when the OP denied the cashless claim of the complainant and it further arose on 14.02.2018 when the OP denied the claim of thecomplainant and the cause of action is still subsisting and the claim is genuine and payable as per the terms and conditions of policy.

6. Complainant submitted that he is suffering from ATAXIA and his treatment is still continuing. Complainant submitted that since the OP had denied his cashless claim, hence he had no other option left to seek discharge from the hospital because the financial condition of the complainant

is not good. It is submitted that the complainant is taking his treatment from AIIMS, Delhi because the OP had denied his legitimate claim and the Maharaja Agrasen Hospital was pressurising the complainant for their medical expenses. Complainant denied that his claim was rejected as he did not fulfill the conditions of the insurance policy. Complainant therefore, reiterated and reaffirmed the prayer made in the complaint.

7. Complainant attached copies of prescription and bills of hospitals such as AIIMs etc. visited after seeking discharge from Maharaja Agrasen Hospital.

8. Evidence by way of affidavit was filed by the complainant and he exhibited the documents filed on record. OP also filed its affidavit of evidence and exhibited the documents but no such documents were filed on record.

9. Written arguments were filed by the complainant. However, despite grant of opportunities, OP did not file its written arguments and accordingly the right of OP in this regard was closed vide order dated 28.7.2019. Infact in the said order, it was also noted that the OP had stopped appearing in this case after May, 2019. Accordingly oral arguments addressed by Ms. Pooja Jain, wife of the complainant were heard on 23.11.2023 and orders reserved.

10. On careful analysis of the facts we find that the discharge summary records that the complainant was suffering from "Giddiness since morning, loss of consciousness today morning at 9.45am with generalised weakness. History of vomiting one episode and slurring of speech". We pose a question to ourselves, as to what better course of action was at the disposal of complainant except to approach the Hospital for assessment of the disease

and to take proper treatment to avoid risk to his life. What else was required by the OP to come to the conclusion that in fact the admission of complainant was necessitated todiagnose the disease from which he was suffering before it was too late. Keeping in view the slurring of speech, the hospital conducted all sorts of tests including MRI brain, 2D echo to rule out Ishemic heart attack. In our opinion, the treating Doctor is the best judge to assess what course of treatment is required for the patient to save his life, thereby negating the role of the insurer whose role is limited to indemnifying the insured against all medical risks by collecting hefty amount in the form of premium. Complainant has also placed on record the Certificate of treating Doctor of Maharaja Agrasen Hospital dated 23.12.2017 justifying the admission of the complainant and further follow up keeping in mind the "giddiness, loss of consciousness, slurring of speech and numbness B/L lower limbs" . We are of the firm view that the insurer, in the absence of opinion of an expert in the field to the contrary, is not supposed to decide or determine justification for hospitalisation and treatment given by the treating Doctor. The OP has relied on the opinion of its TPA without any medical opinion to come to the conclusion that the hospitalization of complainant was only for "diagnosis & evaluation purpose, hypertension & its related complications are paid in third year running policy and this is first year policy". We may note that Hypertention has been ruled by various judgments of Honble Apex Court and other higher Courts as a life style disease. Surprisingly, the said report dated 06.2.2018 of TPA has not been filed on record by the OP.

11. In the case of **New India Assurance Company Limited Versus Smt. Usha Yadav & others** 2008(3) R.C.R. (Civil) 111, the Hon'ble Punjab & Haryana High Court expressed its anguish and observed as follows:-

> "It seems that the **Insurance Companies are only interested in earning the premiums, which are rather too stiff now a days, but are not keen and are found to be evasive to discharge their liability.** In large number of cases, the Insurance Companies make the effected people to fight for getting their genuine claims. The insurance Companies in such cases rely upon clauses of the agreements, which a person is generally made to sign on dotted lines at the time of obtaining policy. This is, thus, pressed into service to either repudiate the claim or to reject the same. **The Insurance Companies normally build their case on such clauses of the policy, but would adopt methods which would not be governed by the strict conditions contained in the policy."**
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> (emphasis supplied)

12. For the foregoing conclusions arrived at by us and keeping in view the observations of Hon'ble SCDRC, we hold that the rejection of legitimate and genuine claim of complainant by the based on flimsy and non-cogent grounds was arbitrary and against the principles of natural justice.

13. Our aforesaid discussion results into allowing the complainant, holding the OP guilty of deficiency in service and following unfair trade practice in rejecting the genuine claim based on the advice of its TPA. Accordingly, OP is directed to reimburse to the complainant, the medical expenses incurred by him amounting to Rs.47,971/- along with interest @ 6% p.a. from the date of filing of the claim till final realisation. For the harassment and mental agony faced by the complainant in pursuing this complaint, OP shall pay a sum of Rs.15,000/- as compensation and Rs.10,000/- as litigation expenses to the

complainant. Let this order be complied with by the OP within thirty days of receipt of copy of this order.

A copy of this order shall be supplied free of cost to parties to the dispute in the present complaint, upon a written request being made in writing in the name of President of the Commission in terms of Regulation 21 of the Consumer Protection Regulations, 2020. File be consigned to record room after pronouncement of order.

(Richa Jindal)	(Anil Kumar Koushal)	(Sonica Mehrotra)
Member	Member	President