

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, JIND.

Complaint Case No. : 542 of 2021
Date of Institution : 20.09.2021
Date of Decision : 01.01.2024

Neeraj Kumar S/o Sh. Sohan Lal Mittal, R/o House No. 1122-A, Housing Board Colony, Jind, District Jind.

.....Complainant

Versus

1. Life Insurance Corporation of India, Branch Office, Jind, through its Authorized Signatory.
2. Life Insurance Corporation of India, Jeevan Parkash, 489, Model Town, Karnal, through its Divisional Manager/Authorized Signatory.

.....Opposite Parties

Complaint under Section 35 of the Consumer Protection Act, 2019.

**CORAM: SH. A.K. SARDANA, PRESIDENT.
SMT. NEERU AGARWAL, MEMBER.**

Present: Complainant in person.
Sh. Rampal Singh, Adv. counsel for OPs No. 1 & 2.

ORDER:-

Shorn off unnecessary details, facts giving rise to the present complaint are that the complainant purchased a LIC's Jeevan Arogya Policy vide Proposal dated 04.02.2015 from OPs against payment of premium which has already been paid to OPs by him. Complainant has averred that in the month of February-2017, he sustained injuries in bike accident and remained admitted for his treatment in Medanta Hospital, Gurugram w.e.f. 05.02.2017 to

09.02.2017 vide IPD No. 13838319 having complaint of pain & swelling in his left shoulder where he undergone for a surgical operation and incurred an amount of Rs.1,96,249.20Ps as medical charges paid to Medanta Hospital alongwith Rs.4,320.95Ps for medicines i.e. total amount of Rs.2,00,569/- on his treatment. Complainant has further contended that when he approached to OPs to avail Policy Benefits, OPs assured the complainant that they will pay the suitable compensation, but OPs paid only an amount of Rs.46,200/- through NEFT on 25.03.2017 and thus, an amount of Rs.1,54,369/- is still outstanding towards OPs and therefore, complainant moved an application dated 07.09.2019 to OPs for redressal of his genuine grievance by reimbursing the remaining amount but OPs refused vide letter dated 17.09.2019 by saying that the benefits paid under health insurance are fixed and bear no relation to the actual medical expenses incurred. As such, the complainant has submitted that OPs are deficient by not disbursing his genuine remaining mediclaim and prayed that complaint may kindly be accepted and OPs be directed to pay/reimburse the remaining mediclaim amount of Rs.1,54,369/- alongwith a sum of Rs.25,000/- for mental pain & agonies and Rs.22,000/- as litigation expenses as mentioned in prayer para of the complaint.

2. In pursuance to notice of complaint, OP-Corporation appeared through counsel and tendered its reply raising preliminary objections that the

present complaint is not maintainable and complainant has not come before this Hon'ble Commission with clean hands and also he has intentionally & deliberately concealed true and material facts from the Hon'ble Commission. On merits, it is admitted that complainant purchased Health Insurance LIC Policy No. 479047930 having date of commencement 19.02.2015 under LIC's Jeevan Arogya (without profit) (Plan No. 904) for himself & his wife with initial daily benefit of Rs.4,000/- each and for three children with initial daily benefit of Rs.3,000/- each for a term of 39 years with combined yearly premium of Rs.22,941/- to be paid upto 19.02.2053 and the said policy was never lapsed for non-payment of premium amount rather the premium for 02/2017 has not been paid and the status of policy in question is "foreclosed". It is further submitted that the policy in question is a fixed benefit policy and unlike mediclaim policies, payment is made according to the benefits purchased which will be fixed for a particular treatment and not for linked to the expenditure incurred by the policyholder. It is further submitted that claim submitted by complainant was duly considered by answering OPs and eligible claim amount of Rs.46,200/- has already been paid to the complainant on 25.03.2017 as per terms & conditions of the policy, however, the remaining claimed amount demanded by the complainant is not payable as the surgery undergone by the complainant is not covered under the "list of surgeries"

mentioned in the policy bond. As such, OP urged that there is no deficiency in service on their part and prayed for dismissal of complaint with special costs.

3. To prove his contentions, complainant himself placed on record his own affidavit as Annexure CW1/A alongwith documents as Annexures C-1 to C-19 and closed his evidence whereas learned counsel for OPs placed on record affidavit of one Puneet Kumar, the then Manager, (L & HPF) Life Insurance Corporation of India, Karnal as Annexure OPW1/A alongwith documents as Annexures OP-1 to OP-11 into evidence of OPs and closed the evidence on behalf of OP-Corporation.

4. We have heard the arguments advanced by both the parties and evaluated the documents placed on file by parties to complaint.

Complainant appearing in person before the Commission contended that he initially purchased a Jeevan Arogya Policy vide proposal dated 04.02.2015 (Annexure C-1) from OPs-Corporation covering risk of himself & his family members by paying a sum of Rs.25,777/- to OPs-Corporation which was further renewed in the year of 2016 vide renewal premium receipt (Annexure C-3) by paying a sum of Rs.26,267/-. Complainant further contended that during period of Policy, he sustained injuries in a bike accident and he was admitted to Medanta Hospital, Gurugram on. 05.02.2017 where he underwent surgery of open reduction and internal fixation of left

humerus on 07.02.2017 by Dr. Attique Vasdev MS (Orthopedics) Director – Knee Division, Medanta Bone & Joint Institute as evident from a certificate (Annexure C-9) issued by aforesaid treating doctor and discharged on 09.02.2017. Complainant further urged that he paid all treatment expenses/medical bills of hospital etc. (Annexures C-12 to C-19) amounting to Rs.2,00,569/- (Rupees Two Lac Five Hundred Sixty Nine Only) at the time of discharge under the compelling circumstances and after discharge from the Hospital, he submitted his claim to OPs-Corporation alongwith all relevant documents, but OPs paid only an amount of Rs.46,200/- through NEFT on 25.03.2017 whereas denied to reimburse the remaining mediclaim to the tune of Rs.1,54,369/- on false & flimsy grounds vide letter dated 17.09.2019 (Annexure C-6) mentioning therein that *‘the surgery performed was not included in enlisted surgeries for the plan’* though such list of surgeries as alleged was never supplied to complainant by OPs while issuing said LIC Jeevan Arogya Mediclaim Policy which is admittedly a deficiency in service and adoption of unfair trade practice on the part of OPs-Corporation and requested for allowing the complaint as prayed in prayer para of the complaint.

In support of his contention, complainant placed reliance on a case law titled as **‘Manmohan Nanda Vs. United India Insurance Co. Ltd.**

rendered in Civil Appeal No. 8386/2015 decided on 06.12.2021’ by Hon’ble Supreme Court of India wherein it has been held that:-

“The object of seeking a mediclaim policy is to seek indemnification in respect of a sudden illness or sickness which is not expected or imminent and which may occur overseas. If the insured suffers a sudden sickness or ailment which is not expressly excluded under the policy, a duty is cast on the insurer to indemnify the appellant for the expenses incurred thereunder”.

Apart from above, complainant further relied upon case laws reported in *1 (2000) CPJ Page 1 (Supreme Court) titled as ‘M/s Modern Insulators Ltd. Vs. OIC’; 2013 (1) CLT Page 589 (National Commission) titled as ‘NIA Vs. Pabbati Sridevi & others’; and 2014 (2) CLT Page 305 (National Commission) titled as ‘The Oriental Insurance Company Ltd., Vs. Satpal Singh & others’* wherein it has been held that *“When the terms & conditions have not been supplied/communicated to the consumer, it can’t be invoked against the consumer. When the exclusion clause never disclosed to*

the insured, insurance company cannot take the benefit of the said clause. Insured/Consumer cannot be effected by such exclusionary clause.”

Besides it, complainant also placed reliance on the case law rendered by **Hon’ble Punjab & Haryana High Court in CWP No. 26178 of 2016 reported in 2017 (1) RCR (Civil) Page 621** wherein it has been held that *“Insurance Companies give lucrative offers to attract customers-However, the moment any insured puts even the most genuine claim, seldom said claim would be accepted by any insurance company”* and prayed for acceptance of the complaint.

On the other hand, during the course of arguments, learned counsel for OPs-Corporation admitted that complainant purchased Health Insurance LIC Policy No. 479047930 (Annexure OP-1) from OP-Corporation for a period of 39 years effective w.e.f. 19.02.2015 to 19.02.2054. Learned counsel further urged that during the scrutiny of treatment documents submitted by complainant alongwith his claim form, it was found that surgery performed *‘Fracture Left Proximal Humerus’* is not covered under Major Surgical Benefit as per terms & conditions of the policy as mentioned in the policy bond itself (Annexure OP-2) whereas, an amount of Rs.46,200/- has already been disbursed to the complainant by OPs-Corporation as per terms & conditions of the policy in question and complainant is not entitled for any

further claim amount from OPs-Corporation and thus, there is no any deficiency in services on the part of OPs and complainant is not entitled for further mediclaim as sought and requested for dismissal of complaint with costs.

Further in support of his contention, learned counsel for OPs placed reliance on the case law titled as '**LIC of India & Ors. Vs. D.H. Shashiknath**' Revision Petition No. 1995 of 2011, decided by Hon'ble National Consumer Disputes Redressal Commission, New Delhi wherein it has been held that *'that the surgery performed on the complainant is not covered under the list of major surgeries given in the policy and therefore, the complainant is not entitled to get the insurance claim in respect of this surgery'* Besides it, learned counsel for OPs also placed reliance on the case law rendered by Hon'ble National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2333 of 2012 titled as '**LIC of India Vs. Niwas Bansal**' and in Revision Petition No. 2640 of 2016 titled as '**Jeet Kamal Vs. Life Insurance Corporation of India & Anr**'.

5. At the very outset, it is an admitted fact on record that the complainant was under Health Insurance Cover with OP-Corporation during the period of his hospitalization vide Policy No. 479047930 (Annexures C-8 & OP-1) routed through Agent of the OP-Corporation Sh. Rajinder Singh Chahal.

It is also undisputed that complainant remained admitted with Medanta Hospital, Gurugram w.e.f. 05.02.2017 to 09.02.2017 owing to severe pain & swelling in left shoulder & underwent surgery of open reduction & internal fixation of left humerus as evident from discharge summary (Annexure C-11) issued by treating Medanta Hospital, Gurugram and said surgery of complainant in hospital has also been certified by treating doctor Dr. Attique Vasdev, MS (Orthopedics) vide certificate (Annexure C-9) placed on file by complainant. So, after discharge from the hospital, complainant submitted his mediclaim to OPs-Cooperation annexing all requisite documents/medical bills etc. but OPs-Corporation disbursed only an amount of Rs.46,200/- and failed to disburse remaining amount of Rs.1,54,369/- vide their letter dated 17.09.2019 (Annexure C-6) mentioning therein that *'In your case for left fracture of shoulder you were hospitalized from 05.02.2017 to 09.02.2017 and the surgery performed was not included in enlisted surgery for the plan, thus, an amount of Rs.46,200/- has been paid to you which is as per terms and conditions of the policy'*, whereas in para No. 2 of the affidavit (Annexure OPW1/A) duly sworn by Sh. Puneet Kumar, Manager (L & HPF) LIC of India, it has been stated that *"on examining/scrutiny of the Claim Form & Medical Documents provided by the complainant/claimant, it was found that Surgery performed "Fracture Left Proximal Humerus" is not covered under Major Surgical*

Benefit as per terms & conditions of the Policy Bond and to prove the Surgery performed/undergone by the complainant at Medanta Hospital does not fall in the category of Major Surgery, OPs placed on record a hand written note alleged to be written/opined by one Dr. Sandeep Chaudhary (MBBS, MD) consulting Physician Karnal on the letter head of LIC (Annexure OP-7) wherein it has been mentioned that *“the surgery undergone by the patient does not fall into the category of Major Surgeries as per list enclosed”* but no any affidavit of said doctor has been placed on record to confirm the authenticity of said writing/opinion and thus the same is not trustworthy. Furthermore, the alleged opinion has been given by M.D.:- Doctor of Medicines and not by a M.S.:- Master of Surgery whereas opinion of M.S. (Master of Surgery) was very much essential for deciding the controversy raised by OPs and thus, to arrive at a fair conclusion, this Commission sought opinion of the treating doctor of complainant vide order dated 30.10.2023 to the effect that *“whether the Surgery as mentioned in the Certificate dated 09.02.2017 (Annexure C-9) issued by him in respect of Sh. Neeraj Kumar-Complainant falls under the category of Major Surgery or not?”* to which treating doctor i.e. Dr. Attique Vasdev, MS (Orthopaedics) Senior Director, Medanta Hospital, Gurugram submitted his opinion which is taken on record as Annexure ‘X’ wherein it has been opined by treating doctor that:-

My Opinion:

*“There is no specific criterion to define Major or Minor Surgery as per Annals of Medicine and Surgery 66 (2021) however a publication by New York University as available online **mentioned any procedure in orthopedics to be a major surgery**”.*

In his opinion (Annexure ‘X’), treating doctor further opined that:-

What is meant by Major Surgery?

“Any surgical intervention that penetrates and exposes a body cavity; any procedure that has the potential for inducing permanent anatomis (physical) or physiologic impairment and/or any procedure associated with orthopedics or extensive tissue dissection or transaction”.

In accordance of the opinion referred above, we are of the view that OP-Corporation has wrongly repudiated the *remaining Health Claim* of complainant on the alleged opinion (Annexure OP-7) of one Dr. Sandeep Chaudhary, MBBS, MD (Doctor of Medicines) that the surgery undergone by the patient does not fall in the category of Major Surgeries as per list enclosed.

Apart from this, it is an admitted fact on record that no such list of surgeries have ever been supplied to complainant since the document (Annexure OP-2) having schedule of alleged surgeries and placed on file by the OP's in their evidence is neither having particulars of the complainant/insured nor having details of insurance cover & proposal number of the said policy of the complainant and thus not binding upon the complainant, hence, the version putforth by OPs-Corporation is not trustworthy. Further, the citation referred above submitted by the complainant is confirming to the facts and circumstances of the present case whereas the citation submitted by learned counsel for the OPs-Corporation are not applicable to the facts and circumstances of the present case and thus are not helpful in deciding in the case in hand.

Keeping, in view of the facts & legal position enunciated above, we have no hesitation in holding that OPs-Corporation is deficient in providing proper services to the complainant & have adopted unfair trade practice by not reimbursing the total medical expenses incurred by complainant on his treatment for which he was legally entitled. Accordingly, the complaint is allowed and OPs-Corporation are directed to comply with the following directions within 45 days from the communication of this order.

- (i) To pay/reimburse the balance amount of Rs.1,54,369/- (Rs. One Lac Fifty

Four Thousand Three Hundred Sixty Nine Only) to complainant alongwith simple interest @ 9% per annum w.e.f. the date of reimbursing the part mediclaim payment of Rs.46,200/- to complainant i.e. 25.03.2017 to till date.

- (ii) And to pay a sum of Rs.20,000/- (Rupees Twenty Thousand Only) to complainant on account of mental agony and physical harassment caused to complainant.
- (iii) Also to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) to complainant on account of litigation expenses etc.

Further the award in question/directions issued above must be complied with by the OPs No. 1 & 2 jointly & severally within the stipulated period failing which all the awarded amounts mentioned at (i) to (iii) above shall further attract simple interest @ 12% per annum for the period of default.

6. *Before parting with this order, it is pertinent to mention here that complaint could not be decided within the stipulated period as per Act. History of the proceedings shows, initially opponents caused delay while not filing the written statement promptly. Apart from this, due to impact of COVID-19 &*

***heavy pendency of cases in the Commission**, long dates of hearing has been given.*

Copy of this order be supplied to the parties concerned, as per rules. File be consigned to the records, after due compliance.

Announced on: 01.01.2024

(A.K. SARDANA)
PRESIDENT

(NEERU AGARWAL)
MEMBER

Vikas,
Stenographer.