DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II

U.T. CHANDIGARH

Consumer Complaint No.	:	257/2020
Date of Institution	:	30.06.2020
Date of Decision	:	09.04.2024

Anjna Sharma w/o Sh. Hari Krishan Sharma R/o House No. 92, Extension-2, Amancity Near Dashmesh Nagar, SAS Nagar Mohali 140301.

…..Complainant

Versus

1. TATA AIG General Insurance Company Limited through its Managing Director/Director/Manager/Authorized Signatory, SCO-232-234, 2nd Floor, Sector 34-A, Chandigarh 160022.

Regd. Office:- 15th Floor, Tower A, Peninsula Business Park, G. K. Marg, Lower Parel, Mumbai 400013.

Regd. Office: Suite #101, 102, 109 & 110, Ground Floor, Road No. 2, Banjara Hills, Hyderabad 500034.

...Opposite Party

2. Max Super Speciality Hospital, Mohali, through its Managing Director/ Director/ Manager/ Authorized Signatory/ Senior Medical Officer/ Medical Officer, Near Civil Hospital Phase-6, Mohali, Punjab-160055.….

….Proforma Opposite Party.

BEFORE:

SHRI AMRINDER SINGH SIDHU, PRESIDENT
SHRI S.K.SARDANA MEMBER

Present:-

Sh.Sunit Kumarr Chauhann, Counsel for complainant

Sh.Sahil Abhi, Counsel for OP No.1

OP No.2 exparte.

ORDER BY AMRINDER SINGH SIDHU, M.A.(Eng.),LLM,PRESIDENT

1. The complainant has filed the present complaint alleging therein that she took Medical Insurance Policy No.023820040500 commencing from 04.11.2019 to 03.11.2022 (Annexure C-1) and also paid Rs.1129/- extra premium being an asthmatic patient to OP No.1 at the time of issuance of the policy. She felt sick on 30.12.2019 and admitted in the OP No.2-Hospital for a period of 8 days and the hospital sent pre-authorization request to OP No.1 but the same was rejected vide letter dated 31.12.2019 on the ground that the complainant had disclosed the cough symptoms. She was discharged from the hospital on 06.01.2020 (Annexure C-4) and she had to pay the bill raised by the hospital to the tune of Rs.3.00 lakhs. The daughter of the complainant again requested OP No.1 to reconsider the mediclaim but they again repudiated the same by giving frivolous remarks "cashless cannot be extended at this juncture, please ask member to come for reimbursement vide repudiation letter dated 31.01.2020 (Annexure C-5). It has been alleged that the insurance company has wrongly repudiated the claim. Alleging that the aforesaid acts of omission and commission on the part of the OPs amount to deficiency in service and unfair trade practice, the complainant has filed the instant complaint seeking directions to the OPs to reimburse the mediclaim of Rs.3.00 lakhs along with interest, compensation for mental agony and physical harassment as well as litigation expenses.
2. After service of notice, OP No.1 appeared before this Commission and filed their written version admitting the factual matrix of the case regarding the issuance of the policy and admission of the complainant in the hospital on 30.12.2019 with the complaint of productive cough x 3 months, fever x 15 days shortness of breath x 5 days, nausea and vomiting x 1 week and inability to take orally and was diagnosed with ABPA and DM-II. After scrutinizing the documents/indoor case papers, the pre-authorization request was rejected on the ground that the disease/symptoms of cough since 3 months is prior to policy inception as policy which is 11.11.2019 because as per terms and conditions of the policy any pre-existing condition will not covered until 48 months of the continuous coverage with OP No.1. It has further been stated that the request for reconsideration of the cashless authorization was also considered and the same was also rejected vide letter dated 31.01.2020 on the ground that the cashless cannot be extended at this juncture and OP No.1 requested the complainant to come for reimbursement. It has further been stated that they received the original claim documents on 17.01.2020 and the same was rejected vide letter dated 01.02.2020. The remaining allegations have been denied, being false. Pleading that there is no deficiency in service or unfair trade practice on their part, OP No.1 prayed for dismissal of the complaint.
3. Despite due service through registered post, OP No.2 failed to put in appearance and as a result thereof it was ordered to be proceeded against exparte vide order dated 12.10.2021.
4. The complainant filed replication to the written reply of OP No.1 and controverted its stand and reiterating her own.
5. The parties filed their respective affidavits and documents in support of their case.
6. We have heard the Counsel for the contesting parties and have gone through the documents on record, including written submissions.
7. From the submissions of the parties and the documentary evidence on record, it is observed that the claim of the complainant was repudiated by the Insurance Company on the ground that the disease/symptoms of cough, fever and diabetes are prior to the inception of the policy and any pre-existing conditions will not be covered until 48 months of continuous coverage as per Section 3-General Exclusions of the terms and conditions of the insurance policy. However, the submission of the OP-Company deserves to be rejected because symptoms of cough, fever and diabetes cannot be termed to be pre-existing diseases for repudiation of the claim and rather the same are result of normal wear and tear of modern day life which is full of tension at the place of work, in and out of the house and are controllable on day to day basis by standard medication. Besides this, prior to obtaining the Insurance Policy, the complainant had disclosed to the Insurance Company that she is asthmatic patient and she had also paid extra premium of Rs.1129/- on this count to the OP No.1-Company.
8. Here, reliance is also placed upon the judgment of ***Life Insurance Corporation of India Vs. Sudha Jain II (2007) CPJ 452*** *wherein Hon'ble* Delhi State Commission has held as under:-

"(i)&(ii) xxxxx

> *(iii) Malaise of hypertension, diabetes occasional pain, cold, headache, arthrit is and the like in the body are normal wear and tear of modern day life which is full of tension at the place of work, in and out of the house and are controlable on day-to-day basis by standard medication*

and cannot be used as concealment of pre-existing disease for repudiation of the insurance claim unless an insured in the near proximity of taking of the policy is hospitalised or operated upon for the treatment of these diseases or any other disease.

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

(v) Disease that can be easily detected by subjecting the insured to basic tests like blood test, ECG, etc., the insured is not supposed to disclose such disease because of otherwise leading a normal and healthy life and cannot be branded as diseased person.

(vi) Insurance Company cannot take advantage of its act of omission and commission as it is under obligation to ensure before issuing medi-claim policy whether a person is fit to be insured or not. It appears that Insurance Companies don't discharge this obligation as half of the population is suffering from such malaises and they would be left with no or very little business. Thus any attempt on the part of the insurer to repudiate the claim for such non-disclosure is not permissible nor is 'exclusion clause' invoceable.

(vii) Claim of any insured should not be and cannot be repudiated by taking a clue or remote reference to any so-called disease from the discharge summary of the insured by invoking the 'exclusion clause' or non-disclosure of pre-existing disease' unless the insured had concealed his hospitalisation or operation for the said disease undertaken in the reasonable near proximity as referred above."

9. It is usual with the insurance company to show all types of green pasters to the customer at the time of selling insurance policies, and when it comes to payment of the insurance claim, they invent all sort of excuses to deny the claim. In the facts of this case, ratio of the decision of Hon'ble Apex Court in case of ***Dharmendra Goel Vs. Oriental Insurance Co. Ltd., III (2008) CPJ 63 (SC) is fully attracted,*** wherein it was held that, Insurance Company being in a dominant position, often acts in an unreasonable manner and after having accepted the value of a particular insured goods, disowns that very figure on one pretext or the other, when they are called upon to pay compensation. This 'take it or leave it', attitude is clearly unwarranted not only as being bad in law, but ethically indefensible. It is generally seen that the insurance companies are only interested in earning the premiums and find ways and means to decline claims. In similar set of facts the Hon'ble Punjab & Haryana High Court in case titled as ***New India Assurance Company Limited Vs. Smt.Usha Yadav & Others 2008(3) RCR (Civil) Page 111*** went on to hold as under:-

"It seems that the insurance companies are only interested in earning the premiums and find ways and means to decline claims. All conditions which generally are hidden, need to be simplified so that these are easily understood by a person at the time of buying any policy. The Insurance Companies in such cases rely upon clauses of the agreement, which a person is generally made to sign on dotted lines at the time of obtaining policy. Insurance Company also directed to pay costs of Rs.5000/- for luxury litigation, being rich.

10. Thus, the repudiation of the genuine claim of the complainant by OP No.1 is held to be illegal and unjustified.
11. In view of the above discussion, the present complaint deserves to be partly allowed and the same is accordingly partly allowed qua OP No.1. OP No.1-Insurance company is directed to reimburse the claim of Rs.3,00,000/- to the complainant along with interest @ 9% p.a. from the date of repudiation of the claim i.e. 31.01.2020 till its actual realization to the complainant.
12. The complaint qua OP No.2 stands dismissed.
13. This order be complied with by the Insurance Company, within ninety days from the date of receipt of its certified copy.
14. The pending application(s) if any, stands disposed of accordingly.

15. Certified copy of this order be communicated to the parties, as per rules. After compliance file be consigned to record room.

Announced in open Commission

09.04.2024

Sd/-

(AMRINDER SINGH SIDHU)

PRESIDENT

Sd/-

(S.K.SARDANA)

MEMBER