IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 06.06.2017
Date of Reserving the order : 09.01.2016
Date of Decision : 28.10.2026

FIRST APPEAL NO.-313/2017

IN THE MATTER OF

M/S ORIENTAL INSURANCE CO. LTD.,
REGIONAL OFFICE 2, 1ST FLOOR, CORE-1,
SCOPE MINAR, LAXMI NAGAR DISTT. CENTRE,
DELHI.

…APPELLANT

(Through: Mr. Rajiv Jaiswal, Advocate
Mob. 9871901997)

VERSUS

MR. DEV DUTT CHAWLA,
R/O A5/B/95 SFS FLATS,
GATE NO. 3, PASCHIM VIHAR
(WEST DELHI), DELHI-110063.

……RESPONDENT

(Through: Mr. Pawan Kumar Sharma, Advocate)

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

Present : Mr. Rajiv Jaiswal, Counsel for theAppellantthrough VC(M: 9871907997)
Mr. Manish Sharma, Counsel for the respondent (M:9560765785)

PER : HON'BLE MS. PINKI, MEMBER (JUDICIAL)

JUDGMENT

1. By this judgment, we shall dispose of the appeal filed by the Appellant against the impugned order dated 31.03.2017, passed by Consumer Disputes Redressal Forum,(East), Saini Enclave, Delhi-110092 (hereinafter referred to as District Forum), in Complaint Case no. CC-421/2014 titled as 'Sh. Dev Dutt Chawla vs. Oriental Insurance Company Ltd.' *inter-alia* praying for setting aside the order passed by the District Forum.
2. While the Appellant was Opposite Party before the District Forum and the Respondent was Complainant before the District Forum.
3. The facts of the case as per the District Forum, record are as under:

> *"1. This complaint has been filed by Sh. Dev Dutt, the complainant against OP, Oriental Insurance Co. Ltd, alongwith allegations of deficiency in services, thus praying for Rs.2,78,616/- as claim amount along with interest 24%, Rs.1,50,000/- as compensation for mental agony & loss of business and Rs.25,000/- as cost of litigation.*
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> *2. Briefly stated the facts of the present complaint are that the complainant was covered under Health Shield Insurance Policy vide Policy No. 272900/48/2014/12481 for a period from 05/12/2013 to 04/12/2014 by paying a premium of Rs. 9,600/- The sum insured was Rs.5,00,000/- each. The complainant was provided with the policywithout Terms & Conditions. On 30/01/2014, the complainant was taken in emergency to Action Medical Institute with complaint of acute pain in chest, where he was shifted to ICU (Heart Command). Further, the complainant was shifted to Sir Ganga Ram Hospital, where he was operated immediately. The complainant was discharged on 13/02/2014 with regular follow up. It is stated that the OP was immediately informed about the hospitalization. The complainant submitted two claims, first*

Rs.2,18,584/- on 18/02/2014 along with the duly completed claim form and other necessary documents like discharge summary, medical bills & reports. The claim of the complainant was repudiated. Despite several reminders, the OP did not settle the claim, hence the present complaint. The complainant has annexed policy documents for 2011,2012, 2013-2014, letter dated 03/02/2014 for cashless denial, E-mails exchanged and medical bills along with discharge summary."

4. The District Forum after taking into consideration the material available on record passed the judgment dated 31.03.2017, whereby it held as follows:

"7. We have heard the Ld. Counsels for the complainant and OP and have perused the material placed on record. The OP has repudiated the claim of the complainant on the ground that the complainant had history of DM for past 10 years & CVA for 3 years. It is settled principle of law that Diabetes and Hypertension are normal wear & tear of modernday life and cannot be used as concealment of pre-existing disease for repudiation of insurance claim unless an insured in the near proximity of taking of policy is hospitalized for treatment of these diseases. In the instant case, the onus was on OP, the insurance company to prove that the complainant was hospitalizedfor DM or CVA before inception of policy, which they have failed to discharge by not bringing on record any document in support of their allegations. Secondly, the complainant has alleged that Terms & Conditions of the policy were not supplied to him, again OP has failed to rebut the allegations of the complainant. Non supply of the Terms & Conditions to the complainant also amounts to deficiency in services. Thus, the repudiation of the complainant's claim cannot be justified. Therefore, we direct the insurance company to pay Rs.2,70,409/- (Rs. 278618- Rs. 8209 (Medical Consumables)) along with 6% interest from the date of

filing of the present complaint. We further award Rs.25,000/- as compensation for mental agony and damages, this shall be inclusive of litigation expenses. The said order be complied within 30 days from the date of receipt of this order. If the said orders are not complied within 30 days of receipt of order, OP has to pay 9% interest on Rs.2,95,409/- from the date of filing of this complaint till realization.

Copy of this order be sent to both the parties as per law."

5. Aggrieved by the aforesaid order of the District Forum, the Appellant/Opposite Party has filed the present appeal, contending that the District Forum has failed to properly consider the terms and conditions of the insurance policy, particularly exclusion clause 4.1, which does not cover pre-existing diseases during the first three years of continuous coverage. It is contended that Mr. Dev Dutt Chawla was suffering from diabetes for 10 years and had a history of CVA for 3 years as mentioned in the hospital records. Therefore, the Appellant submits that the claim was rightly repudiated under the said exclusion clause. It is further contended that the terms and conditions of the policy were available on the websites mentioned in the policy schedule and that the Respondent had not raised any objection regarding their non-supply since the inception of the policy. The Appellant argues that the District Forum has wrongly held that the exclusion clause could not be applied because the policy terms and conditions were not provided to the Respondent. It is also submitted that the District Forum has granted relief without properly considering the pleadings and evidence on record. The Appellant contends that the claim was repudiated in accordance with the policy terms and that there was no deficiency in service on its part. Accordingly, the Appellant seeks setting aside of the impugned order.

6. Reply to the appeal has been filed by the respondent, denying all the allegations made by the Appellant and submitting that there is no error in the impugned order, as the entire material available on record was properly scrutinized before passing the said judgment, hence it is liable to be dismissed.
7. Written arguments have been field by the parties.
8. We have carefully and thoroughly perused the material on record as well as the written submissions filed by the parties.
9. The only question arises for consideration before us is whether the repudiation of the claim by the Appellant on the ground of pre-existing disease was justified and whether the District Forum was correct in allowing the complaint?
10. The facts which are not in dispute are that the Respondent was insured under the Health Shield Insurance Policy issued by the Appellant bearing Policy No. 272900/48/2014/12481 for the period from 05.12.2013 to 04.12.2014, upon payment of a premium of Rs.9,600/-, with a sum insured of Rs.5,00,000/-. It is also not disputed that the Respondent was admitted to Action Medical Institute on 30.01.2014 with acute coronary syndrome and underwent coronary angiography (CAG). Thereafter, he was shifted to Sir Ganga Ram Hospital, where he underwent bypass surgery and was discharged on 13.02.2014. The Respondent submitted an insurance claim for the medical expenses incurred during the treatment, including a claim of Rs.60,034/- & Rs.2,18,584/- submitted on 08.02.2014 & 18.02.2014 respectively, which was repudiated by the Appellant on the ground of pre-existing diseases by invoking exclusion clause 4.1 of the policy.
11. The Appellant has justified the repudiation of the claim on the ground that the insured was suffering from diabetes mellitus (DM)

for the last 10 years and had a history of cerebrovascular accident (CVA) for the last 3 years. It has relied upon exclusion clause 4.1 of the insurance policy, which excludes pre-existing diseases for the first three years of continuous coverage. However, the mere existence of an exclusion clause does not justify repudiation of a claim.

12. The main contention of the Appellant is that the Respondent had suppressed material facts regarding a pre existing disease at the time of obtaining the insurance policy, and therefore, the rejection of the claim was justified. It is a well-settled legal principle that insurance contracts are based on utmost good faith, which means the insured must disclose all important facts known to him. If such facts are not disclosed or are hidden, the insurer has the right to cancel the policy.

13. However, it is equally well settled that the burden to establish such suppression lies upon the insurer. The insurer must prove, by cogent and reliable evidence, that (i) the insured was suffering from a pre-existing disease at the time of taking the policy, (ii) such disease was material to the risk, and (iii) the same was knowingly concealed by the insured.

14. 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 title **Pradeep Kumar Garg vs. National Insurance Co. Ltd., FA-482/2005** decided on 01.08.2008 of this Commission. These are as under:

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

(ii) Such a disease should not only be existing at the time of taking the policy but also should have existed in the near proximity. If the insured had been hospitalized or operated upon for the said disease in the near past, say, six months or a year he is supposed to disclose the said fact to rule out the failure of his claim on the ground of concealment of information as to pre-existing disease.

(iii) Malaise of hypertension, diabetes, occasional pain, cold, headache, arthritis 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 controllable 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 hospitalized 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 hospitalized 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 dont 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, exclusion clause invokable.

(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 hospitalization or operation for the said disease undertaken in the reasonable near proximity as referred above.

(viii) 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.

(ix) For instance, to say that insured has concealed the fact that he was having pain in the chest off and on for years but has never been diagnosed or operated upon for heart disease but suddenly lands up in the hospital for the said purpose and therefore is disentitled for claim bares dubious design of the insurer to defeat the rightful claim of the insured on flimsy ground. Instances are not rare where people suffer a massive attack without having even been hospitalised or operated upon at any age say for 20 years or so.

(x) Non-disclosure of hospitalization/or operation for disease that too in the reasonable proximity of the date of mediclaim policy is the only ground on which insured claim can be repudiated and on no other ground."

15. 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.

16. The issue of pre-existing disease has been dealt with by the Hon'ble NCDRC in the matter of **Tarlok Chand Khanna vs. United India Insurance Co. Ltd.** in RP-686/2007 decided on 16.08.2011 holding as under:

> *"In fact, the onus to prove that she had a pre-existing disease was on the Respondent who failed to file any expert medical or credible evidence in support of its case. Further, the deceased had been taking the mediclaim insurance policy from the Respondent right from 1996 and she had also, as per the practice, been examined by the doctor of the Respondent/Insurance Company who has nowhere recorded that she had any medical problems relating to the knees."*

17. The Hon'ble NCDRC in the matter of **Praveen Damani v. Oriental Insurance Company Ltd.** in RP-1696/2005 has held as under:

> *"….If this interpretation is upheld, the Insurance Company is not liable to pay any claim, whatsoever, because every person suffers from symptoms of any disease without the knowledge of the same. This policy is not a policy at all, as it is just a contract entered only for the purpose of accepting the premium without the bonafide intention of giving any benefit to the insured under the garb of pre-existing disease. Most of the people are totally unaware of the symptoms of the disease that they suffer and hence they cannot be made liable to suffer because the Insurance Company relies on their Clause 4.1 of the policy in a malafide manner to repudiate all the claims. No claim is payable under the mediclaim policy as every human being is born to die and diseases are perhaps pre-existing in the system totally unknown to him which he is genuinely unaware of them. Hindsight everyone relies much later that he should have known from some symptom. If this is so every person should do medical studies and further not take any insurance policy. Even on the facts on record, there is no material to show that the Petitioner had any symptoms like chest pain etc. prior to 11.8.2000."*

18. We also deem it appropriate to refer to the dicta of the Hon'ble National Commission in **Life Insurance Corporation of India Vs. Sunita & Others** reported as 2020 SCC OnLine NCDRC 710, wherein it has been held as under:

> *"7. We have heard the learned counsel of both the parties and perused the material on record.*
> *8. As per the death summary, the death was due to a sudden cardiac arrest and inspite of best resuscitative measures, the patient could not be revived. We note both the fora have arrived at concurrent findings and allowed the complainant.*
> *9. In the present case, the deceased assured was suffering from diabetes mellitus and chronic liver disease when bought to the hospital. But, the death was due to cardiac arrest. In our view the cause of death is nowhere connected to his pre-existing disease. Our view dovetails from the decision of Hon'ble Supreme Court in the Civil Appeal No. 8245 of 2015 titled* ***Sulbha Prakash Motegaoneker v. Life Insurance Corporation of India, decided on 05.10.2015****, wherein it was observed that suppression of information regarding any pre-existing disease, if it has not resulted in death or has no connection to cause of death, would not disentitle the claimant for the claim.*
> *10. We find the Orders of the District Forum and the State Commission to be well appraised and well-reasoned. The State Commission concurred with the findings of the District Forum. We note in particular the extracts of the respective observations made by the two fora, quoted in paras 4 and 5 above. Within the meaning and scope of section 21(b), we find no grave error in appreciating the evidence by the two for a below, as may necessitate re-appreciation of the evidence in revision. We find the award made by the District Forum (quoted in para 4 above), and as affirmed by the State Commission, to be just and appropriate. We find no jurisdictional error, or a legal principle ignored, or miscarriage of justice, as may necessitate interference in the exercise of the revisional jurisdiction of this Commission.*

11. The revision petition, being misconceived and devoid of merit, is dismissed."

19. The fact that the onus to prove that insured was suffering from pre-existing disease is on the Insurance Company as per the view held by the Hon'ble NCDRC in the matter of **LIC of India v. Priya Sharma and Ors.** in RP No.2615 of 2011 decided on 02.11.2012. Secondly, if the policy was issued by the insurance company without proper verification, they cannot claim at 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.
20. It is also to be noted that the Insurance Company had given Insurance to a person without any medical examination which could have definitely revealed whether the proposer was suffering from any disease. If the company is ready to take the risk, without any medical examination, 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.
21. In the present case, the Respondent was admitted to Action Medical Institute on 30.01.2014 with acute coronary syndrome and subsequently underwent bypass surgery at Sir Ganga Ram Hospital. The Appellant has relied upon the medical records mentioning the history of diabetes and CVA. However, the District Forum observed that the Appellant had failed to place sufficient supporting material on record to establish its ground for repudiation. The Appellant has not been able to show that the Respondent was previously hospitalised for the treatment of diabetes or CVA or that the present claim was otherwise inadmissible under the applicable policy terms. The medical history of the insured was required to be considered along with the

nature of the ailment for which the claim was made and the specific terms of the policy.

22. We also find that the Appellant has relied upon exclusion clause 4.1 to justify its decision. However, the Respondent had specifically stated before the District Forum that the terms and conditions of the policy had not been supplied to him. The District Forum observed that the Appellant had failed to rebut this allegation. In the appeal, the Appellant has contended that the policy schedule referred to its website for the terms and conditions. However, merely mentioning a website in the policy schedule does not establish that the complete terms and conditions were actually supplied or otherwise duly communicated to the insured. The Appellant has not placed sufficient material on record to dislodge the finding of the District Forum in this regard.

23. It is true that an insurance claim has to be considered in accordance with the terms and conditions of the policy, and an insurer is entitled to rely upon a valid exclusion clause where its applicability is established. However, the insurer cannot justify repudiation merely by referring to an exclusion clause without establishing its applicability to the claim in question. In the present case, the Appellant has failed to establish sufficient grounds for interfering with the findings recorded by the District Forum.

24. In view of the above discussion, we find no sufficient reason to interfere with the impugned order dated 31.03.2017. The District Forum considered the material available on record and directed the Appellant to pay Rs.2,70,409/- (Rs.2,78,618/- (-) Rs.8,209/- (medical consumables) along with interest @ 6% per annum from the date of filing of the complaint, besides compensation of Rs.25,000/-, inclusive of litigation expenses. The Appellant has

failed to establish that the impugned order suffers from any error warranting interference by this Commission.

25. Accordingly, the appeal is dismissed, and the impugned order dated 31.03.2017 passed by the District Forum is hereby upheld. There shall be no order as to costs.
26. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
27. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
28. File be consigned to record room along with a copy of this Judgment.

JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)

(PINKI)
MEMBER (JUDICIAL)

Pronounced on 28.10.2026