

Case No.158/2016

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II
Udyog Sadan, C-22 & 23, Qutub Institutional Area
(Behind Qutub Hotel), New Delhi- 110016

Case No.158/2016

Shri Surender Mohan Khanna (Since deceased)

Through his legal heir,
Shri Mohinder Mohan Khanna
C-57, South Extension II,
New Delhi-110049

....Complainant

Versus

1. **Mool Chand Khairatiram Hospital & Ayurvedic Research Institute**
Lajpat Nagar-III
New Delhi-110024

2. **The Administrative Officer**
Mool Chand Khairatiram Hospital & Ayurvedic Research Institute
Lajpat Nagar-III
New Delhi-110024

3. **Raksha TPA Pvt Ltd.**
15/5 Mathura Road, Faridabad, Haryana-121003.

4. **New India Assurance Co. Ltd**
Registered Office at R-7A, Green Park,
New Delhi-110016

Also at:

Head office at 87, M.G. Road, Fort,
Mumbai 400001

....Opposite Party

Date of Institution : 25.05.2016
Date of Order : 19.10.2023

Coram:

Ms. Monika A Srivastava, President
Ms. Kiran Kaushal, Member
Sh. U.K. Tyagi, Member

ORDER

Member: Ms. Kiran Kaushal

1. On the strength of his complaint, complainant has prayed for direction to OP-1 to pay an amount of Rs.24,329/- (amount difference between the sanctioned amount by OP-3 and the credit given by OP-1); to direct OP-3 to pay the deficit amount as against the amount sanctioned in accordance with policy subscribed by the complainant; direct to OPs to pay jointly and severally Rs.2,00,000/- towards mental agony; direct OPs to pay jointly and severally sum of Rs.75,000/- towards legal expenses.
2. It is stated that complainant was admitted in Moolchand Khairati Ram Hospital and Ayurvedic Research Institute (hereinafter referred to as OP-1) on 20.01.2015 and was discharged from the hospital on 27.01.2015. OP-2 is the administrative officer of OP-1. Pursuance of the treatment the complainant was billed and paid Rs.59,988/-, before he could be discharged from the hospital. Since, sum of Rs.10,000/- had already been deposited with OP-1 at the time of admission, complainant was called upon to pay sum of Rs.49,988/-.
3. It is stated that since the complainant was covered under Mediclaim cashless policy of New India Assurance Company Ltd. (OP-4), copy of the policy document was presented to OP-1 to avail the policy benefit. However, the complainant was informed that amount of Rs.49,988/- has been computed as balance amount after getting the same sanctioned from TPA Suraksha (OP-3). Further it was informed that the claim amount would be directly communicated to the insurance company and would be received directly by the hospital.
4. The Complainant thereafter to cross check the claim made by OP-1 decided to enquire from the office of OP-3, pursuant whereof the complainant was informed that the total claim made by OP-1 vide bill dated 27.01.2015 was Rs.1,27,188/- and OP-3 had

approved/sanctioned the amount of Rs.84,329/-. The complainant failed to understand that when the amount sanctioned by OP-3 was much higher than what constrained OP-1 from providing the appropriate credit to the complainant. The acts and omission of OP-1 manifest the malafide conduct of OP-1.

5. It is stated that OP-1 in a highly unprofessional manner claimed sum of Rs.59,988/- first and subsequently showed the remaining amount as received from the TPA (OP-3) whereas, ideally it should have happened the other way round. This itself proves that OP-1 indulged in unfair trade practice.

6. Further it is stated that complainant is entitled to know as to on what basis OP-3 sanctioned an amount of Rs.84,329/- when the policy cover was of Rs.1,00,000/-. Also that OP-1 has simply informed the complainant that the amount sanctioned by the TPA was Rs.60,083/- including TDS without even mentioning breakup of the gross amount and the TDS amount.

7. To arrive at just and equitable decision New India Assurance Company Ltd was impleaded as OP-4 vide order dated 04.08.2016.

8. OP-4 resisted the complaint stating inter alia that the complainant has not placed on record the true and correct facts relating to this case. It is stated that OP-4 had issued a new Mediclaim 2012 policy for a period of 28.01.2014 to 27.01.2015 with the sum insured of Rs.1,00,000/- and Rs.10,000/- has been added as bonus.

9. It is stated that complainant was admitted with OP-1 from 20.01.2015 to 27.01.2015. The complainant claimed Rs.1,26,992/- whereas the sum insured was Rs.1,00,000/-. As per the policy terms and conditions the total amount that was passed by the TPA (OP-3) was Rs.60,084/- less 10% tax i.e Rs.54,075/- . Total calculation is annexed as Annexure A and Terms & conditions of the policy as

Annexure B. It is stated that claim of the complainant has been settled as per the calculations which were made as per the terms and conditions of the policy. As there is no deficiency of service on behalf of OP-4. It is prayed that complaint may be dismissed with heavy cost.

10. Complainant expired on 26.03.2018, hence Sh. Mohinder Mohan Khanna being his younger brother who is a beneficiary in the will dated 18.12.2010 executed by the deceased complainant was substituted as the legal heir of the complainant in the present complaint vide order dated 18.03.2019

11. Evidence by way of affidavit and written submissions have been filed on behalf of complainant and OP-4. Submissions made on behalf of the parties are heard. Material placed on record is perused.

12. It is not in dispute that complainant was admitted in a hospital from 20.01.2015 till 27.01.2015 and the complainant was covered under Mediclaim cashless policy. It is complainant's case that OP-1 had concealed the fact that Raksha TPA (OP-3) had approved Rs.84,329/- and also breakup of the total amount and TDS deductions.

13. We have gone through the documents placed before us and it is noticed that at the time of discharge OP-1 raised an invoice for Rs.1,27,188/- against the medical services provided to the complainant. Subsequently, OP-3 sent an approval of Rs.84,329/-, the said amount included non-admissible items of Rs.17,129/-. OP-1 has chosen not to appear before the commission hence the averments made qua OP-1 have remained uncontroverted and unchallenged therefore there is no reason to disbelieve the version of the complainant. OP-1 is found to be deficient in service only to the extent of not informing the complainant about the amount sanctioned by OP-

3.

14. OP-4 with its reply has annexed as Annexure A, an audit sheet of OP-3 (Raksha TPA Pvt Ltd claim Audit Sheet) which shows that certain items/expenses were not payable as per the policy terms and conditions and reasons for making the deductions have been categorically assigned. However during the final arguments counsel for OP-4 offered to settle the matter at Rs.84,329/- out of which an amount of Rs.60,084/- has been duly paid to the complainant therefore OP-4 is willing to pay Rs.24,329/- towards full and final payment.

15. Though OPs have resisted the complaint on merit yet OP-4 has off and on been offering to settle. Final offer of settlement of the claimed amount has been made on 21.08.2023 during the final arguments. Hence we hold OP-4 to be indulging in unfair trade practice for withholding the amount to which complainant was entitled since beginning. OP-4 is thus liable to pay the offered amount. Offer of OP-4 at this stage after six years entitles the complainant for the cost of litigation and the harassment caused.

16. In light of the discussion above OP-4 is directed to pay Rs.24,329/- @6% p.a from the date of filing of the complaint till realization failing which OP-4 shall pay Rs.24,329/- @9% till realization. Additionally OP-4 is directed to pay Rs.10,000/- and OP-1 is directed to pay Rs 5000/- towards the cost of litigation ,harassment and mental agony.


17. It is noticed that complainant passed away during the pendency of the complaint and his brother was permitted to be substituted. Photocopy of the Will dated 18.12.2010 purportedly executed by the deceased complainant has been brought on record however the same is neither registered nor probated. Will is also silent as regard the amount claimed in present complaint, therefore we leave

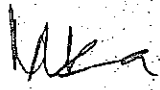
it for the OPs to pay the above stated amount to the LR's of the complainant.

18. Thus the Complaint is disposed of in the above stated terms.

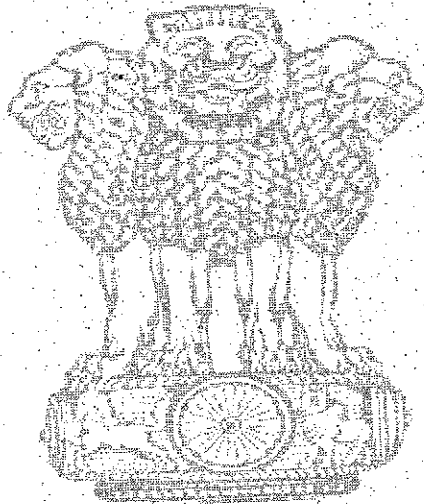
Parties be provided copy of the judgment as per rules. File be consigned to the record room. Order be uploaded on the website.


(Kiran Kaushal)
Member


(U.K. Tyagi)
Member


(Monika A Srivastava)
President

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION



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