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KANWALJIT SINGH

v.

NATIONAL INSURANCE COMPANY LTD

(Civil Appeal No. 6255 of 2019)

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AUGUST 14, 2019

[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

- Insurance: Extent of liability of Insurance Company with regard to individual claim under “Parivar-Mediclaim for Family Policy” – In the instant case, appellant was taking individual mediclaim policies since 2007-2008 for his individual family members and in the year 2014-15, he took family mediclaim policy for Rs.5 lacs – During validity of the family mediclaim policy, appellant’s son fell sick and was hospitalized for which medical bill was raised – Appellant filed claim – Insurance company initially repudiated the claim without assigning any reason – However, later considering that the appellant’s son had an individual mediclaim policy in the year 2009-2010 for Rs. 55000, deposited Rs. 27,550/- towards final payment of the claim – Complaint before District Forum – Plea of insurance company was that since appellant’s son was having pre-existing disease, his claim was not payable under the terms of the policy – District Forum, however, held that since the sum insured under the individual Mediclaim Policy of appellant’s son for the year 2010-2011 (four years prior to his hospitalisation) was Rs.1,07,500/-, the amount payable would be 50% of such sum insured for the year 2010–2011, and not 50% of the sum insured in the year 2009-2010, according to which Insurance Company had paid Rs.27,550/- – On appeal, State Commission allowed the claim of appellant in toto – Appeal before National Commission – National Commission while observing that the appellant’s son had pre-existing disease which was symptomatic in the year 2009, held that the appellant would be entitled to 50% of the sum insured under the individual Mediclaim Policy of appellant’s son for the year 2010-2011 – Challenge against – Held: The claim could not have been repudiated by the Insurance Company as there was no pre-existing disease when the initial individual Mediclaim Policy of appellant’s son was taken in the year 2007-2008 – Since then the policy was*

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regularly renewed upto year 2014-2015 – The total medical expense or claim for any one illness for any individual member of the family would be limited to 50% of the sum insured for the family – The sum insured for the family under the Family Mediclaim Policy was Rs.5 lacs – Thus, the amount payable against the medical claim of appellant's son under the policy, would be limited to the extent of Rs.2,50,000/-.

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Allowing the appeal, the Court

HELD : 1. The fact that Mediclaim Policy of son of the appellant was continuously taken by the appellant for varying sum insured since 2007-2008 till 2014-2015 is admitted by the insurance company. It is also not disputed that at the time of taking the initial Mediclaim Policy for the year 2007-2008, the son of the appellant did not have any pre-existing disease. In fact, it is admitted that prior to the year 2014-2015, the appellant had been taking individual Mediclaim Policies for his family members and it was only in the year 2014-2015, at the time of renewal of the individual Mediclaim Policies, that the appellant had taken the Family Mediclaim Policy, which was effective from 07.02.2014 to 06.02.2015. The sum insured under the Family Mediclaim Policy, was Rs.5,00,000/-. The total medical claim for all the four members of the family during the period of commencement of the Insurance Policy (i.e. 07.02.2014 to 06.02.2015) would be Rs.5,00,000/- and for any individual claim or illness for any one member of the family, the limit would be 50% of the sum insured, which in the instant case would come to Rs.2,50,000/-. Thus, at best the maximum claim which could be payable in this case would be 50% of the sum insured under the Family Mediclaim Policy for the medical treatment of one member of the family, which was appellant's son. [Paras 10, 11] [235-B-H]

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2. The claim could not have been repudiated by the Insurance Company as there was no pre-existing disease when the initial individual Mediclaim Policy of appellant's son was taken in the year 2007-2008. Since then the policy was regularly renewed up to the year 2014-2015. Even otherwise, after having initially repudiated the claim of the appellant, the Insurance Company had itself allowed the claim to the extent of Rs.27,550/-, which

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- A **amount was deposited in the account of the appellant, meaning thereby that the question of pre-existing disease in the case of the claimant was not considered to be material by the Insurance Company. [Para 12] [236-A-C]**
 - 3. The total medical expense or claim for any one illness
- B **for any individual member of the family would be limited to 50% of the sum insured for the family. In the instant case, the sum insured for the family under the Family Mediclaim Policy was Rs.5,00,000/-.** Thus, the amount payable against the medical claim of appellant's son under the policy, would be limited to the extent of **Rs.2,50,000/-.** Undisputedly, the medical expense incurred and claimed by the appellant for the treatment of his son within the effective period of the policy was over **Rs.8,00,000/-.** As such the appellant would be entitled to a sum of **Rs.2,50,000/-** minus the amount already paid by the Insurance Company under the orders of the District Forum. The respondent-Insurance Company
- C **shall pay to the appellant a sum of Rs.2,50,000/- minus the amount already paid, towards final settlement of the medical insurance claim of the appellant. The appellant would also be entitled to an amount of Rs.50,000/- towards mental agony and harassment, plus Rs.30,000/- towards costs of litigation. [Paras 13, 14] [236-D-G]**
- E **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6255 of 2019.**

From the Judgment and Order dated 09.07.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2295 of 2017.

F **Surender Deswal, Sahil A. Garg, Manish Tanwar, Satish Kumar, Advs. for the Appellant.**

Ms. Mridula Ray Bharadwaj, Dr. Sushil Kumar Gupta, Manan Verma, Atishay K. Prasad, Advs. for the Respondent.

G **The Judgment of the Court was delivered by**
VINEET SARAN, J.

1. The question involved in this appeal is with regard to the extent of the liability of the Insurance Company with regard to individual claim under "Parivar - Mediclaim for Family Policy" (for short "Family

H **Mediclaim Policy").**

2. The admitted facts of this case are that since 2007-2008, the appellant had been taking individual Mediclaim Policies for his individual family members. The dispute in the present appeal pertains to the medical claim for the year 2014-15, with regard to son of the appellant, namely Master Jasnoor Singh. The individual Mediclaim Policies of the said Master Jasnoor Singh from 2007-2008 to 2013-2014 was for different sum insured, varying from Rs.50,000 in 2007-2008 to Rs.2,54,000/- in 2013-2014. In the year 2014-2015, the appellant took Family Mediclaim Policy for a sum insured of Rs.5,00,000/- for the period 07.02.2014 to 06.02.2015, which was for the appellant himself and his family members, namely, his wife, son Master Jasnoor Singh and daughter.

3. It was during the validity of the Family Mediclaim Policy 2014-15, that in the year 2014 Master Jasnoor Singh fell sick and had to undergo treatment in Post Graduate Institute (PGI), Chandigarh. He was initially hospitalized from 24.05.2014 to 19.07.2014 for which the medical bill was for an amount of Rs.5,40,741/-. He was again hospitalized from 31.08.2014 to 17.10.2014, for which the medical bill was for Rs.3,14,485/-. The total amount of medical bill thus came to Rs.8,55,226/-. The appellant lodged a claim for the said amount with the respondent-National Insurance Company Ltd (for short “Insurance Company”), which was initially repudiated by the Insurance Company without assigning any reason. However, later considering that the said Master Jasnoor Singh had an individual medical claim policy in the year 2009-2010 for Rs.55,000/-, the respondent - Insurance Company deposited a sum of Rs.27,550/- in the account of the appellant towards final payment of the claim.

4. Since the remaining claim was not paid, the appellant filed a complaint before the District Consumer Disputes Redressal Forum (for short “District Forum”) claiming an amount of Rs.5,00,000/-, which was the sum insured under the Family Mediclaim Policy for the relevant year 2014-2015. Before the District Forum, the respondent – Insurance Company raised various preliminary objections but had mainly claimed that since the said Master Jasnoor Singh was having pre-existing disease, hence the claim was not payable under the terms of the Policy. The District Forum, however, held that since the sum insured under the individual Mediclaim Policy of Master Jasnoor Singh for the year 2010-2011 (four years prior to his hospitalisation) was Rs.1,07,500/-, the amount payable would be 50% of such sum insured for the year 2010-2011,

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- A which comes to Rs.53,750/- and not 50% of the sum insured in the year 2009-2010, according to which Insurance Company had paid Rs.27,550/-. Thus, District Forum directed that the balance amount of Rs.26,200/- would be payable to the appellant, along with Rs.5000/- towards harassment and mental agony, plus Rs.2000/- on account of litigation expenses, along with interest @ 9% p.a.
- B 5. Challenging the said order, the appellant herein filed an appeal before the State Consumer Disputes Redressal Commission (for short “State Commission”), which allowed the appeal of the claimant in toto, and directed payment of the entire sum insured i.e. Rs.5,00,000/-, minus the amount already paid by the Insurance Company. Besides this, the Insurance Company was also directed to pay Rs.30,000/- as compensation for mental agony and harassment, plus Rs.10,000/- as litigation cost.
- C 6. Aggrieved by the said order of the State Commission, the respondent—Insurance Company filed a Revision Petition No. 2295 of 2017 before the National Consumer Disputes Redressal Commission (for short “National Commission”). By its order dated 20.07.2017, the National Commission upheld the order of the District Forum. After holding that the said Master Jasnoor Singh had pre-existing disease which was symptomatic in the year 2009, the National Commission held that the appellant herein would be entitled to 50% of the sum insured under the individual Mediclaim Policy of Master Jasnoor Singh for the year 2010-2011. Challenging the said order of the National Commission, this appeal has been filed by way of Special Leave Petition.
- D 7. The submission of learned counsel for the appellant is that since the individual Mediclaim Policy of Master Jasnoor Singh was continuously held since 2007-2008 till the year 2014-2015 and it not being the case of the Insurance Company that at the time of taking initial individual Mediclaim Policy in the year 2007, the said Master Jasnoor Singh had any such disease, hence, the repudiation or scaling down of the claim of the appellant could not be justified. It was contended that the entire amount, as awarded by the State Commission, should be restored and this appeal be allowed.
- E 8. Per contra, learned counsel for the respondent – Insurance Company has justified the order of the National Commission in awarding the compensation of 50% of the sum insured for the year 2010-2011, as
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had been awarded by the District Forum and has prayed that the present A appeal be dismissed.

9. We have heard learned counsel for the parties at length and have perused the record.

10. The fact that Mediclaim Policy of Master Jasnoor Singh was continuously taken by the appellant for varying sum insured since 2007-2008 till 2014-2015 is admitted by the insurance company. It is also not disputed that at the time of taking the initial Mediclaim Policy for the year 2007-2008, the said Master Jasnoor Singh did not have any pre-existing disease. In fact, it is admitted that prior to the year 2014-2015, the appellant had been taking individual Mediclaim Policies for his family members and it was only in the year 2014-2015, at the time of renewal of the individual Mediclaim Policies, that the appellant had taken the Family Mediclaim Policy, which was effective from 07.02.2014 to 06.02.2015. It is also admitted that the said Family Mediclaim Policy was for a total sum insured amount of Rs.5,00,000/-. Under the terms of the Policy, the total expenses incurred for any one illness would be limited to 50% of the sum insured for the family. The relevant Clause under the Policy is re-produced hereunder:

“Company’s liability would, arise if the treatment of disease or injury contracted/suffered is incepted during the policy period. Total expenses incurred for any one illness is limited to 50% of Sum Insured per family. Company’s liability in respect of all claims admitted during the period of insurance shall not exceed the Sum Insured mentioned in the Schedule”.

(emphasis supplied)

11. It is not disputed that the sum insured under the Family Mediclaim Policy, was Rs.5,00,000/-. From the above, it would be clear that the total medical claim for all the four members of the family during the period of commencement of the Insurance Policy (i.e. 07.02.2014 to 06.02.2015) would be Rs.5,00,000/- and for any individual claim or illness for any one member of the family, the limit would be 50% of the sum insured, which in the present case would come to Rs.2,50,000/-. Thus, at best the maximum claim which could be payable in the present case would be 50% of the sum insured under the Family Mediclaim Policy for the medical treatment of one member of the family, which was Master Jasnoor Singh.

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- A 12. It may be noticed that the claim could not have been repudiated by the Insurance Company as there was no pre-existing disease when the initial individual Mediclaim Policy of Master Jasnoor Singh was taken in the year 2007-2008. Since then the policy was regularly renewed up to the year 2014-2015. Thus in the facts of the present case, the respondent – Insurance Company cannot take the plea of any pre-existing disease of Master Jasnoor Singh. Even otherwise, after having initially repudiated the claim of the appellant, the Insurance Company had itself allowed the claim to the extent of Rs.27,550/-, which amount was deposited in the account of the appellant, meaning thereby that the question of pre-existing disease in the case of the claimant was not considered to be material by the Insurance Company.

- B 13. As we have already observed herein above, the total medical expense or claim for any one illness for any individual member of the family would be limited to 50% of the sum insured for the family. In the present case, the sum insured for the family under the Family Mediclaim Policy was Rs.5,00,000/-. Thus, in our considered view, the amount payable against the medical claim of Master Jasnoor Singh, under the policy, would be limited to the extent of Rs.2,50,000/-. Undisputedly, the medical expense incurred and claimed by the appellant for the treatment of Master Jasnoor Singh within the effective period of the policy was over Rs.8,00,000/-. As such the appellant would be entitled to a sum of Rs.2,50,000/- minus the amount already paid by the Insurance Company under the orders of the District Forum.
- C 14. Accordingly, we allow this appeal to the extent that the respondent – Insurance Company shall pay to the appellant a sum of Rs.2,50,000/- (two lakh fifty thousand) minus the amount already paid, towards final settlement of the medical insurance claim of the appellant. The appellant would also be entitled to an amount of Rs.50,000/- towards mental agony and harassment, plus Rs.30,000/- towards costs of litigation. The Insurance Company would also be liable to pay interest @ 7.5% p.a. on the balance amount payable, from the date of the complaint filed before the District Forum, till the date of actual payment of the balance amount.