

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW.

(RESERVED)

COMPLAINT CASE NO.86 OF 2012

Dr. Binod Kumar, aged about 48 yrs.,

S/o Late Sri Babu Lal Singh,

Working at Sudama Fracture Clinic,

B-1/77C-A, Goyanka Gali,

Ravindrapuri Exit Durga Kund,

Varanasi.

.....Complainant

Vs.

M/s Apex Insurance Consultant Ltd.

Registered Office- 54, Vinobapuri,

Lajpat Nagar-II, New Delhi.

Through its Authorized Signatory,

Ms. Nasera Parveen.

.....Opposite Party

BEFORE:

HON'BLE MR. JUSTICE AKHTAR HUSAIN KHAN, PRESIDENT
HON'BLE MR. JITENDRA NATH SINHA, MEMBER
HON'BLE SMT. BAL KUMARI, MEMBER

For the Complainant : Sri Vikas Agarwal, Advocate,

For the Opposite Party : Sri Pratush Tripathi, Advocate.

Dated: 29-6-2016

JUDGMENT

PER HON'BLE MR. JUSTICE AKHTAR HUSAIN KHAN

Present complaint has been filed by Complainant Dr. Binod Kumar against alleged insurer OP M/s Apex Insurance Consultant Ltd. having registered office at 54, Vinobapuri, Lajpat Nagar-II, New Delhi

 - 2 AMM

through its Authorized Signatory, Ms. Naseria Parveen under Section 17 of the Consumer Protection Act herein after referred as Act with prayer for the following reliefs:-

1. The Hon'ble Commission may graciously be pleased to direct the OP to honour the terms and conditions of the service agreement and act accordingly.
2. The Hon'ble Commission may graciously be pleased to direct the OP to indemnify for all the losses incurred during the validity of the service agreement from its own end.
3. The Hon'ble Commission may graciously be pleased to direct the OP to pay Rs.30.00 lacs as compensation for the mental agony and harassment to the Complainant to meet the ends of justice.
4. To allow the cost of the complaint in favour of the Complainant.

In complaint it has been alleged by Complainant Dr. Binod Khandelwal that the present complaint arises out of the deficient, inept, obsolete and perverse services provided by OP in compliance of agreement dated 18.09.2010 entered into between the parties after payment of consideration for the period of one year extending from 18.09.2010 to 17.10.2011.

It has been further contended in the complaint by Complainant that the said service agreement executed between the parties is a comprehensive document clearly stipulating the terms and conditions. Furthermore, it provides indemnity clause for indemnity by the United India Insurance Company subject to terms and conditions of this agreement. One of the terms of agreement specifically lays that the OP will provide the services free of cost for all the legal helps, experts, legal lawyers which will extend upto the highest authority of the country and also covers the insurance against the professional negligence by United India Insurance Company. Photocopy of service agreement is annexure 1 of the complaint.

In complaint it has been further alleged by Complainant that during the validity of service agreement/policy a complaint case No.16/2011 was filed before State Commission alleging the negligence on part of the Complainant wherein it was the duty of the OP to attend the proceedings for and on behalf of the Complainant and to act diligently on behalf of the









Complainant. Photocopy of complaint of said complaint case is annexure 2 of the complaint.

In complaint it has been alleged by the Complainant that OP was duly informed about the said complaint case in accordance with the service agreement to act accordingly and to defend the case on its merit. The OP sent a letter dated 25.11.2011 informing the Complainant that the complaint has been adjourned to 19.12.2011. OP also assured to move the Higher Court vide its letter dated 26.12.2011. Photocopies of letters dated 25.12.2011 and 26.12.2011 have been annexed as annexure 3 of the complaint.

It has been alleged in the complaint by Complainant that it was incumbent for OP to appear before Commission in above complaint case as per terms of service agreement but the OP did not do his job and the exparte order was passed in the said complaint case whereby Complainant was ordered to pay huge amount to the Complainant of the said complaint case 16 of 2011. Thereafter Complainant approached Hon'ble NCDRC by filing appeal No.118/12 wherein Hon'ble NCDRC stayed the exparte order passed by this Commission subject to the deposition of complete decretal documents but the Complainant failed due to financial constraints and approached Hon'ble Supreme Court. Hon'ble Supreme Court declined to grant any indulgence in the merit of the case and directed to make all submissions before the Hon'ble NCDRC wherein Complainant preferred an impleadment application for impleading above insurer as OP but the application was dismissed by Hon'ble NCDRC.

It has been contended in the complaint by the Complainant that the OP has breached the terms and conditions of the service agreement causing great loss of money and reputation to Complainant without any justified reasons or logics absolutely in contravention of the service agreement.

On the basis of above allegations Complainant has filed present complaint against OP alleged insurer with above prayers.

OP M/s Apex Insurance Consultant Ltd. has filed written statement and has contested the complaint. In written statement OP has stated that the complaint filed against him is wholly misconceived, groundless, frivolous, vexatious and scurrilous and it is unsustainable in the eyes of law. It has been filed without justified reason or cause against OP only to defame and extort illegal sum.

It has been further stated by OP in written statement that the OP Company is basically working as the service provider to its members. The Company is a service provider for legal assistance and is not an insurance Company to indemnify its members.

It has been further alleged by the OP that Complainant opted service membership of OP Company and gave cheque on 18.09.2010 which was credited to Company account after 10 days and the OP Company received payment on 28.09.2010. Even then service is provided to the Complainant by OP since 20.09.2010. The service to be provided by the OP is mentioned in service contract that is for providing a lawyer preparing cases and representing for the member in the Hon'ble Court/Consumer Forum but in present case the lawyer was appointed by doctor himself. The case was to be decided on merits. OP does not have any role in deciding the case.

In written statement it has been stated by OP that OP was supposed to pay bills for the lawyers for which he agreed and still stands by its words. He kept on asking the names of appointed lawyers but was always misguided by the Complainant for reason best known to him and lastly he was informed that the advocate has lost the case. In such situation the appeal is to be filed in Higher Court.

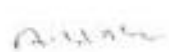
In written statement it has been stated by OP that Complainant has lost case in Consumer Forum due to his own fault and has wrongly blamed OP for his own inefficiency. However, in the business interest and in the interest of morality and honesty OP requested the Complainant to take the case in upper Court and even agreed to pay the legal fees till that date to Complainant lawyer.

In written statement OP has stated that he has nothing to do with insurance of professional indemnity. He does not know as to which professional indemnity Complainant has.

Both the parties have filed affidavits alongwith annexures in support of their contentions. Both the parties have filed written arguments.

We have heard learned Counsel for the parties and have gone through annexures and affidavits filed by the parties.

Annexure 2 of the complaint is the copy of service agreement entered between Complainant and OP. In this service agreement introductory clause reads as follows:-



"The member is having his/her practice at Sudama Fracture, Clinic B1/7B - A Goyanka Gali, Ravindrapuri Exit Durga Kund, Varanasi, is also a visiting surgeon to many hospitals and nursing homes and is on risk for various laws, acts and other medical negligence cases.

The service provider/risk manager is a company, expert in this particular field to deal with various legal problems of doctors. The company is having all the needed expertise and infrastructures to take care of any problem involved in any medical profession and use to sell its service for a stipulated period to medical professional and establishments. The company has tie-up with THE UNITED INDIA INSURANCE COMPANY LTD. and is corporate agent for entire India. The insurance company covers the compensation part for the consumer or civil cases only. The risk management covers all other risks including giving doorstep services for the product of its primary insurer also and takes the guarantee of the payment of compensation by the primary insurer."

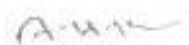
After above introductory clause it has been mentioned in service agreement that the doctor on the specific request and with detail written proposal has applied for the membership of the Company for 1 year and the Company has agreed to give the services on the terms and conditions here under mentioned.

The terms and conditions mentioned in the agreement are as under:-

- That the Company undertakes the indemnity policy of the member for the purpose of service providing. That the Company also agrees to provide all services free of cost which is covered in the above said policy.
- That the Company will arrange all the legal helps, expert and experienced medico, legal lawyer to fight the case of its member.
- Any legality means any legal problems being faced by Company's member during the tenure of hired services or membership.
- Since the insurance companies only covers the professional negligence cases under consumer forum, Apex undertakes all cases may be it is criminal or under any act or law.
- That any pre-membership cases will be duly charged by the company but it will be very concessional depending on the nature of case.







- That the company extend it's expert services and legal experts up to the highest authority of country free of cost and will cover all aspects of a specialization irrespective of the fact that insurance company covers it or not.
- Membership period means the period commencing from the effective date and hour as shown in the policy schedule and terminating at midnight on the expiry date as shown under.

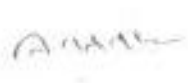
Perusal of service agreement shows that in introductory clause of the agreement OP has stated that he has tied up with United India Insurance Company Ltd. and is corporate agent for entire India. The insurance Company covers the compensation part for the consumer or Civil cases only while the risk management covers all other risks including giving door step services to primary insurer also and takes the guarantee of the payment of compensation by primary insurer. In conditions of agreement mentioned above, there is nothing to show that the OP has undertaken liability of indemnity of insurance Company. He has simply undertaken to provide services of legal experts and legal helps. In conditions of agreement mentioned above, it has been mentioned that since the insurance Company only covers the professional negligence cases under Consumer Forum, As OP undertakes all cases may be it is criminal or under any act or law, Insurance Company is not party to this agreement and OP has not undertaken liability to get insured Complainant.

After having gone through whole service agreement, it is apparent that though the OP has represented himself to be corporate agent of United India Insurance Company Ltd. and has spoken about the extent of liability to be covered by insurance Company but he has not taken liability on him either to get insured Complainant with said insurance Company or to indemnify Complainant for any loss to be suffered by him in medical profession. Thus, we are, of the view that in view of service agreement the OP cannot be held responsible to reimburse or indemnify Complainant for damages or compensation which may be paid by him for the acts done by him in medical profession.

Indisputably exparte judgment and order passed by State Commission in complaint case No.16/2011 against Complainant has been set-aside by







Hon'ble NCDRC and complaint has been remanded to this Commission for passing afresh judgment and order in accordance with law. The Complainant has contested the case upto the stage of Hon'ble Supreme Court on his own expenses without any aid from OP in terms of above service agreement and in his written statement OP has stated that he agreed to pay and is still ready to pay fees Complainant's chosen advocates.

At present said complaint No.16 of 2011 is before State Commission. Again litigation may go upto Hon'ble Supreme Court.

Complainant has not disclosed amount paid by him to lawyers for contesting said complaint upto the stage of Hon'ble Supreme Court. However considering whole facts and circumstances of the case, we are of the view that Rs.5.00 lac should be allowed to Complainant to reimburse amount already paid by Complainant or liable to be paid by him in future for legal services covered with service agreement entered between Complainant and OP. We are of the view that Complainant is not entitled to any further relief.

ORDER

Complaint is allowed partly. OP is ordered to pay Rs.5.00 lacs to Complainant to reimburse him for the amount already paid and liable to be paid by him in future for legal services covered with service agreement.

A.H. Khan 29/6/2016
(JUSTICE AKHTAR HUSAIN KHAN)

PRESIDENT

Jitendra Nath Sinha
(JITENDRA NATH SINHA)

MEMBER

Bjadar
(SMT. BAL KUMARI)

MEMBER