

ESI scheme not covered under CPA

The Employees State Insurance scheme (ESIS) is one of the oldest social welfare legislation enacted with the objective of providing relief to workers in case of sickness, maternity, employment injury etc. It is said that India was the first country to enact such a unique legislation.

However like in the case of all welfare legislations, the working of ESI Act has not been satisfactory. Non-availability of doctors, medicines, inordinate delay in settlement of claims, corruption etc., have been reported frequently.

In fact there is a demand from a section of the employees, to scrap the ESI scheme. Though this is not advisable, there is a need to streamline the working of the ESI scheme.

When members of the ESIS could not get proper service, particularly in settlement of medical claims, they started approaching Consumer For a for relief. Some of the District For a and State Commission gave relief to the complainants.

The assumption was that since employees pay money in the form of contributions for the services they receive from the ESI Corporation, they are consumers as per the provision of the Consumer Protection Act (CPA) and they can file complaints in the consumer for a.

But recently the National Commission has decided that the ESI Act is a complete code by itself and it provides the remedy to enforce the right complained of by the complainant. As such Consumer For a or Commission cannot take up complaints against ESIC. Since the National Commission is the Apex body under the CPA, its decision is to be followed by the other for a and Commission.

In this case (1998/CPR/13/NC) Mr Arun Kumar Gupta had submitted his medical bills amounting to Rs.39,170 to the ESI authorities. When the ESI did not settle the amount in full, he filed a complaint in the District Forum which directed the ESIC to pay the balance amount with interest in addition to Rs.5,000 as compensation.

But the ESIC filed an appeal in the State Commission which decided that the ESI Court could award suitable costs in addition to the amount of reimbursement and the Consumer For a or Commission set up under the CPA cannot entertain such cases. A revision petition was filed by Mr Arun Kumar in the National Commission.

After examining the relevant provision of the ESI Act, and the earlier judgments of the Supreme Court, the National Commission has upheld the decision of the State Commission and has come to the conclusion that complaints against ESIC cannot be brought before it.

According to the provision of the ESI Act an insured person and his family is entitled to receive medical benefit as may be specified by the Corporation. The authority for determining the value shall be the Medical Commissioner of the Corporation. In certain circumstances, claims for reimbursement of expenses can be granted by the ESIC.

In view of the above the National Commission found that there is no need for the member to approach any other body for getting reimbursement. It said that the right to claim reimbursement is conferred by the ESI Act which also provides officious remedy for enforcement of such right.

More particularly, the National Commission has said that the ESI Act is a special Act in relation to claims regarding reimbursement from the Corporation, whereas the CPA is a law dealing with question of extending protection to the consumer in general. The National Commission has also relied on the provision of Subsection (3) of Section 75 of the ESI Act which bars the jurisdiction of the Consumer For a constituted under the CPA. The Section says that no civil court shall have jurisdiction to decide any question of dispute which is to be decided under the ESI Act.

While this decision may be correct in view of the existing provisions, there is a need for amending the CPA so that no law in the country bars the jurisdiction of the CPA. For example the posts and Telegraphs Act, the Railway Claims Tribunal Act, the Motor Vehicle Act and the Co-operative Societies Act have similar provision which bars any court to deal with matters connected to them.

These laws are to be amended to provide a provision through which disputes can also be brought before consumer for a. Unless this is done the CPA will be of little use.
