(1998) 02 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

BRANCH MANAGER, L.I.C.OF INDIA — APPELLANT

Vs

P.V.VARGHESE — RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : 1999 1 CPJ 160

Hon'ble Judges : P.K.Shamsuddin , K.M.Latha J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Kottayam in O.P. No. 719/ 1996. The opposite party is the appellant.

2. SHORTLY stated, the allegations in the complaint are as follows. The complainant met with an accident on 18.9.1992 while travelling on a bicycle. The doctor, who treated the complainant certified disability of 50%. The complainant had taken a policy under Money Back policy of LIC of India with double accident benefit scheme. The claim was made on the basis that there is a permanent total disability as provided in the policy. Claim was rejected by the opposite party. Hence the complaint. In the version opposite party contended that only in the case of total permanent disability the complainant will be entitled to get the double accident benefit. Ext. A3 is the wound certificate. It is seen that at the time of accident the complainant sustained fracture of the right femur. Open reduction and internal function of the fracture with plate are seen done. In post operation period he developed infection. As a consequence several treatments were given. The District Forum took the view this would come within the purview of the policy and passed an order directing the opposite party to the pay an amount of Rs. 1 lakh as disability benefit.

Aggrieved by the said order this appeal has been preferred.

3. CLAUSE 10 of the policy deals with accident benefit. The relevant portion of the clause is extracted below "The disability above referred must be disability which is the result of an accident and must be total and permanent and such that

there is neither then nor at any time thereafter any work, occupation or profession that the life assured can ever sufficiently to or follow to earn or obtain any wages, compensation or profit. Accidental injuries which independently of all other causes and within 120 days from the happening of such accident result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists or in the amputation of feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above ankle shall also be deemed to constitute such disability."

Thus it can be seen that the disability must be total and permanent and such that there is neither then nor at any time thereafter any work, occupation or profession that the life assured can ever sufficiently do or follow to earn or obtain any wages, compensation or profit. It is also stated accidental injuries which independently of all other causes and within 120 days from the happening of such accident result in their recoverable loss of the entire sight of both eyes or in the amputation of feet at or above ankles, or in the amputation of one hand at or above the wrist and one foot at or above the ankle shall also be deemed to constitute such disability.

4. THE National Commission had occasion to consider the effect of a similar provision in the decision in Life Insurance Corporation of India v. Ramesh Chandra, II (1997) CPJ 45 (NC). In that case the accident related to right hand. Adverting to Clause 10(a) of the policy which is identical the National Commission held that amputation of only one hand did not fall within deeming definition of permanent disability. Even according to the certificate issued by the doctor there is only 50% permanent disability not total permanent disability. This case does not fall within the category of injuries which are treated as permanent and total disability in the policy. In the circumstances we are unable to sustain the order passed by the District Forum. We allow the appeal, set aside the order of the District Forum and dismiss the complaint. Appeal allowed.

