

(2012) 08 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

Dinkar Babasaheb Tandale

APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD , Divisional Manager, M/S
New India Assurance Company Limited Adalat Road Ajay
Engg. Compound Aurangabad - 431005 , Regional Manager,
M/S New India Assurance Company Limited Gopalkrishna

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 457 : 2012 3 CPJ 656 : 2012 3 CPR 498

Hon'ble Judges : Vinay Kumar , J.M.Malik J.

Advocate : Mahling Panadarge

Judgement

1. THE present revision petition has been filed by Dinkar Babasaheb Tandale, who lost the appeal before the State Commission. THE petitioner-complainant obtained Janta Personal Accident Insurance Policy on 23.02.1998 for a sum of Rs.10 lakh covering a period of 15 years. On 2.6.2011, the complainant was going on motorcycle alongwith one Harishchandra Bodakhe. THE scooter met with an accident as it dashed against one another motorcycle. THE complainant suffered severe injuries and got his left leg fractured. THE case of the complainant is that he suffered permanent disability.

2. HE made a claim before the New India Assurance Company Limited, the respondent on 12.1.2002. The insurance company repudiated the claim on 30.8.2002. Legal notice was sent which evoked no response.

3. THE complaint was filed before the District Consumer Forum and demand was made to the extent of 50% of policy amount. The District Forum directed the insurance company to pay Rs. 5 lakh as compensation and Rs.21,000/- for mental agony and costs.

4. THE insurance company approached the State Commission. The learned State Commission placed reliance in the case titled as Ajay Kumar vs. Life Insurance Corporation of India 2007(1) CPR (NC) 315 and made the following observations:

"It is an admitted fact that complainant suffered injuries occurred due to accident. The disability certificate issued by Civil Surgeon, Beed is on record. According to said certificate respondent suffered 25% disability. In our view terms and condition of the policy are to be construed strictly and once terms is defined in the policy and the policy is agreed to a particular definition parties are bound by it. In our view as per policy terms and condition for claiming the compensation for disability there must be total and irrevocable loss suffered by the claimant. In the present case, there is no total and permanent disability as alleged by the respondent. The citations relied on by respondent are not applicable to present case. In our view, Dist. Forum did not consider the facts and record in the right perspective while allowing the complaint. As per terms and condition of the policy the disability suffered by respondent is not coming within the purview of policy of National Commission in Ajay Kumar (cited supra) findings are squarely applicable to present case."

The State Commission allowed the appeal and dismissed the complaint.

5. IT must be borne in mind that as per certificate issued by R.M.O., Member of Orthopaedic Board District Hospital Beed, the complainant suffered only 25% of disability. Therefore, as per terms and conditions of policy, the complainant is not entitled to claim any policy amount. Clause "B" and "C" of the policy are reproduced as hereunder:- "b. If such injury shall within one Calendra yearof its occurrence be the sole and direct cause of the total and irrecoverable loss of both eyes, or total and irrevocable loss of use of two hands or two feet or one hand and one foot, or for such loss of sight of one eye and such loss of use of one hand, one foot the Capital Sum Insured stated in the schedule hereto. c. If such injury shall within one Calendra year of its occurrence be the sole and direct cause of the total and irrevocable loss of sight of one eye, or total and irrevocable loss of use of a hand or foot, fifty per cent (50%) of the Capital Sum Insured in the Schedule hereto."

6. CONSEQUENTLY, the present case of the complainant does not stand covered within the purview of the above said policy. The revision petition is meritless and the same is dismissed.