(2014) 11 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Haribhau Laxman Shinde APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : 2014 4 CPJ 772

Hon'ble Judges : V.K.JAIN J.

Final Decision : Petition dismissed

Judgement

1. THE petitioner/complainant who is running a business of manufacturing bricks obtained two insurance policies, one covering him for Rs. 2 lakh and the other covering him for Rs. 1 lakh. On 23.1.2007, the complainant, while driving a motorcycle, met with an accident when a car hit the motorcycle which he was driving. The petitioner/complainant sustained injuries amounting to 25% permanent disability in the aforesaid accident and he claims that on account of the said injuries, he is unable to work in the brick kiln and has lost 100% of his earning capacity. The complainant lodged a claim with the Insurance Company for payment in terms of the policies he had taken. The claim lodged by him having not been paid, he approached the concerned District Forum, by way of a complaint, seeking compensation amounting to Rs. 2,30,000 along with interest on that amount at the rate of 12% per annum. The Insurance Company resisted the complaint primarily on the ground that since the permanent disability, suffered by the petitioner was only to the extent of 25%, his case was not covered under the Insurance Policy issued to him. The District Forum, vide its order dated 31.10.2008, directed the Insurance Company to pay Rs. 1 lakh as compensation to the complainant along with interest on that amount at the rate of 9% per annum. The Insurance Company was also directed to pay Rs. 3,000 for mental torture and Rs. 2,000 as cost of litigation.

2. BEING aggrieved from the order of the District Forum, the Insurance Company approached the concerned State Commission, by way of an appeal. Vide impugned order dated 6.1.2014, the State Commission set aside the order,

passed by the District Forum on the ground that the permanent disability of the complainant being only 25%, he was not entitled to any claim under the insurance policy take by him. Being aggrieved from dismissal of his complaint, the complainant is before us, by way of this revision petition. The insurance policy, as per the terms and conditions attached thereto, covers the complainant in a case of death, permanent total disablement, loss of two limbs or two eyes, one limb and one eye, loss of one limb or one eye directly caused by accident. The question which arises for our consideration is as to whether the case of the complainant is covered within the scope of the insurance policy taken by him or not. Admittedly, the complainant has not lost two limbs or two eyes or even one limb or one eye. Admittedly, he has not lost one limb or one eye directly from the accident. The next question which comes up for our consideration is as to whether the complainant suffered permanent total disablement or not.

3. THE medical certificate obtained by the complainant from Apex Hospital, Latur would show that as per the doctor, who examined him in the hospital, the percentage of permanent disability suffered by him was to the extent of only 25%. The said permanent disability was on account of shortening of one leg by 1/2 inch and stiffening in the leg. We are in agreement with the learned Counsel for the Insurance Company that neither shortening of leg by 1/2 inch nor stiffness in the leg or even shortening of leg by 1/2 inch combined with stiffness in the leg can be said to be permanent total disablement. A person, whose leg is shortened by 1/2 inch and who simultaneously has stiffness in his leg cannot be said to be total disabled permanently, though it cannot be disputed that he has become partially disabled permanently, on account of the aforesaid shortening of leg and stiffness in it.

4. THE learned Counsel for the complainant/petitioner submits that the stiffness of the leg coupled with its shortening by 1/2 inch would amount to the loss of the leg and therefore would be covered within the scope of the insurance policy. We, however, are unable to accept the contention. In our view, loss of limb refers to a case where the limb is amputated or is unable to function even partially. If the limb functions partially, it cannot amount to loss of the said limb. It is next contended by the learned Counsel for the complainant that since on account of shortening of leg and stiffness in it the complainant is unable to work forever in the brick kiln, it would be a case of permanent total disablement. We find from a perusal of the complaint that it contains no allegation that the complainant, on account of shortening of leg by 1/2 inch and stiffness in it, cannot be engaged in any kind of work or service. Therefore, even if it is presumed that shortening of leg by 1/2 inch coupled with stiffness in it disables the complainant from working in the brick kiln, it cannot be said to be a permanent disablement since he can engage in any other vocation where the said shortening of leg and/or stiffness in it does not come in the way of his discharging the functions assigned to him. There may be a case where the disability may be less than 50%, but it is of such a nature that the person suffering from such a disability is unable to perform any work which he is capable of performing, and in such a case, he may possibly

claim permanent disability on account of permanent disablement of earning capacity. However, in the case before us, there is no averment in the complaint that on account of shortening of leg by 1/2 inch and/or the stiffness in it, the complainant had become incapable of performing any job at all. This is also not the case of the complainant in the complaint that he was incapable of doing any job other than working in a brick kiln. In our view, it cannot be said that he was doing a specialised job and was not capable of undertaking any other job. Moreover, the complainant before us was not employed as a worker in a brick kiln, but was engaged in manufacturing of bricks in the said kiln. Therefore, it is possible for him to engage in his brick kiln even if it is of small scale and he can monitor functioning of the workers while sitting in his brick kiln.

5. FROM whatever angle we may take, we are unable to persuade ourselves to hold that the complainant before us has suffered permanent disablement on account of shortening of leg by 1/2 inch and stiffness in the leg, which the doctor found in his leg at the time of examining him in the hospital.

6. THE learned Counsel for the complainant relies upon the decision of this Commission in LIC of India & Anr. v. Sri Hari, II : (2014) CPJ 276 (NC). On a perusal of the aforesaid case, we find that the terms of insurance policy issued in that case were different from the policy issued in the case before us. The complainant in that case was a tailor by profession and used to work on a foot paddle tailoring machine. It was found that after the accident he was unable to work on the aforesaid foot paddle tailoring machine and he knew no other job. But the ownership of brick kiln and even working in such a kiln cannot be treated at par with the specialised vocation of a tailor, who may not find any other job or profession to engage in. Moreover, as noted earlier by us, the complainant need not have to look for a job since he is not a worker employed by someone else and was engaged in the work of manufacturing of a brick kiln, which cannot be done by a single person. We also note that this is not the case of the complainant in the complaint that he had become totally unemployed after the aforesaid accident and was not earning anything at all. He also did not claim in the complaint that brick kiln had been closed down by him after the accident, in which he was injured. Therefore, the facts of the case before us are entirely different from the facts in Sri Hari (supra). For the reasons stated hereinabove, we find no merit in the revision petition and the same is dismissed. No order as to costs.