(2015) 04 NCDRC CK 0166

In the National Consumer Disputes Redressal Commission

LIC OF INDIA APPELLANT

Vs

NEERAJ KUMAR RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Citation : 2015 2 CPR 452

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : ASHOK KASHYAP , J.S.MISHRA

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 11.12.2008 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in Appeal No. FA -08/999 Life Insurance Corpn. of India Vs. Shri Neeraj Kumar by which, while dismissing appeal with cost, order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that Complainant/Respondent obtained two insurance policies covering permanent disability to the tune of Rs.50,000/ - and Rs.55,000/ - from OP/petitioner. Complainant suffered electric shock resulting in amputation of right arm below elbow and doctors assessed 69% permanent disability. Complainant submitted claim with OP which was repudiated on the ground that complainant did not suffer permanent disability as he was still capable of earning and obtaining wages as Constable in Delhi Police. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that claim was rightly repudiated in the light of terms and conditions of policy and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, allowed complaint and directed OP to provide permanent disability benefits under the policy with 9% p.a. interest and further allowed compensation of Rs.10,000/ - and Rs.3,000/ - as cost of litigation. Appeal filed by OP was dismissed by learned State Commission with cost of Rs.25,000/ - by impugned order against which this revision petition has been filed.

3. HEARD learned Counsel for the parties and perused record. Learned Counsel

for the petitioner submitted that inspite of the fact that complainant was still working as Constable in Delhi Police and earning salary and not covered under Clause 10.4 of the terms and conditions of the policy, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that on account of permanent disability respondent is deprived from getting promotion and in such circumstances, order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

4. IT is not disputed that complainant obtained two insurance policies from OP covering permanent disability benefits to the tune of Rs.50,00/ - and Rs.55,000/ -. It is also not disputed that complainant''s right hand below elbow was amputated and as per disability certificate his disability was assessed to the extent of 69%. It is also not disputed that complainant is working as Constable in Delhi Police and still getting salary.

5. NOW , the core question to be decided is whether repudiation by OP was proper in the light of Clause 10.4 of the terms of policy which runs as under: "the disability above referred to must be disability, which is the result of an accident and must be total and permanent and such that there is neither than 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. Accidental injuries which independently of all other causes and within 120 days from the happening of such accident result is in the irrecoverable loss of the entire site of both eyes or the amputation of both hands at or above the wrist or in the amputation of both 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".

First part of aforesaid clause makes it clear that after permanent disability insured should not be capable of doing any work, occupation or propose to earn or obtain any wages, compensation or profit. Admittedly, complainant is still working as Constable in Delhi Police and earning salary and in such circumstances, merely because he cannot get promotion on account of aforesaid permanent disability, it cannot be said that complainant is not earning wages and OP rightly repudiated claim. As far second part of aforesaid clause is concerned, complainant could have been entitled for benefits under the policy only if there would have been amputation of both hands or one hand and one foot. As there is amputation of only one hand above wrist below elbow, complainant''s case is not covered under Clause 10.4 of the policy.

6. LEARNED Counsel for the petitioner has placed reliance on judgment of this Commission in II (1997) CPJ 45 (NC) LIC of India Vs. Ramesh Chandra in which also complainant''s right hand was amputated, but he was not awarded claim as per Clause 10 of the condition of the policy as amputation of only one hand did

not fall within purview of Clause 10A of the policy for grant of compensation.

7. IN the light of above discussion, it becomes clear that complainant was not entitled to claim benefits under aforesaid policy issued by OP and learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal with cost and revision is to be allowed.

8. CONSEQUENTLY , revision petition filed by the petitioner is allowed and order dated 11.12.2008 passed learned State Commission in Appeal No. FA -08/999 Life Insurance Corpn. of India Vs. Shri Neeraj Kumar and order of District Forum dated 17.9.2008 passed in Complaint No.62/2008 Neeraj Kumar Vs. The Branch Manager, Life Insurance Corpn. of India is set aside and complaint stands dismissed with no order as to costs.