(2006) 07 NCDRC CK 0057

In the National Consumer Disputes Redressal Commission

LIC OF INDIA — APPELLANT

Vs

SURESH CHAND SINGHAL — RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Citation : 2007 4 CPJ 143

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta J.

Advocate : Ankur Mathur , Ravindra Kumar Soni

Judgement

1. -THIS appeal has been filed by the appellant under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as ''1986 Act'') against the order dated 3. 3. 1998 passed by the learned District Forum, Dholpur whereby the complaint of the complainant-respondent was allowed.

2. THE brief facts giving rise to this appeal are that the complainant-respondent had taken a 15 years Money Back Policy with Profits (with Accident Benefit) on 15. 12. 1991, for the period 15. 12. 1991 to 15. 12. 2005, for a sum of Rs. 50,000 and had paid annual premia towards it. On 23. 12. 1993, when the insured was moving on a scooter, he met with an accident and after remaining continuously under treatment, he was declared to have 100% permanent disability in regard to his both the limbs. He, therefore, informed the appellants who neither paid the claim nor repudiated it. The complainant then filed a complaint in the Forum below claiming damages. After hearing both the parties, the learned District Forum allowed the complaint in the manner that the appellants shall make payment on his policy with all the benefits as per rules and awarded an amount of Rs. 1,000 as cost of litigation.

Aggrieved by this order of the learned District Forum, the appellants have come up before us in appeal. We have heard the learned Counsel for both the parties, perused the impugned order and considered the materials placed on record. We are in general agreement with the findings of the learned District Forum.

3. THE learned Counsel for the appellants contended that the complaint was time-

barred, it was beyond the jurisdiction of the Forum below and that the respondent had not sustained permanent disability. In this case, it is not in dispute that the appellants have a branch office at Dholpur where the complaint was entertained. It is also not in dispute that the accident took place at Dholpur, and when premium was paid to the appellants, the Jaipur office asked the complainant to contact Branch office for the outstanding instalments and as such cause of action arose at Dholpur. In these circumstances, the complaint was maintainable within the jurisdiction of the District Consumer Forum, Dholpur.

4. IT is also not in dispute that the appellants have not repudiated the claim of the respondent even till today. It is also not in dispute that on receipt of the claim from the complainant, the appellants started processing the claim and had asked the complainant on 20. 9. 1996 that he should send certificate of the Medical Board for consideration of the disability claim. The complainant accordingly submitted the desired certificate dated 7. 12. 1996. It is also not in dispute that the complainant had filed the complaint on 8. 5. 1997 and as such the complaint was clearly within the time prescribed under Section 24a of the Consumer Protection Act, 1986. As regards permanent disability, it is well settled position in law that if there is any ambiguity or a term is capable of two possible interpretations, one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event [see United India Insurance Co. Ltd. v. M/s. Pushpalaya Printers, I (2004) CPJ 22 (SC)=ii (2004) SLT 263= (2004) 3 SCC 694]. As such, an interpretation that would serve the purpose and object of getting insurance coverage has to be accepted. In the present case, Clause 10 (a) of the insurance policy in question has not been happily worded but it is clear that it makes two-fold provisions for accident injuries. In the first part, it provides that if the assured is involved in an accident resulting in either permanent disability or death, he would be entitled to certain accident benefits. The second part of the clause provides definition of ''permanent disability'' in an illustrative manner and enumerates certain injuries which "shall also be deemed to constitute such disability". The use of the words and expression "shall also be" used in this part of the clause makes it abundantly clear that the happening of any of those contingencies would also be deemed to constitute permanent disability and that the definition of "permanent disability" is not exhaustive.

5. THE two-fold classification of Clause 10 was also considered by the Hon''ble National Commission in Life Insurance Corporation of India v. Devidas Sirsode, IV (2005) CPJ 212 (NC) and it was held that the first part of the clause deals with the capacity of the assured to earn livelihood, and the second part deals with the injury to the limbs and that in their view this is the only reasonable interpretation of the reading of this clause of the insurance policy. It was also held by the Hon''ble National Commission that it is to be noted that before the second part it is not provided that in addition to what is provided in the first part is required to be satisfied. On the contrary, the second part is a deeming fiction which provides that injuries to the limb would also be deemed to constitute such disability.

6. IN view of the fact that the injuries to the limbs given in the second part of the definition of ''permanent disability'' is only illustrative and is not exhaustive, it can be safely said that the question whether a person has sustained permanent disability would depend on the facts and circumstances of each case and no hard and fast rule can be laid down. In general, a permanent disability, as opposed to temporary disability, would depend on the nature of the job which the assured is doing, the educational qualifications of the assured, his age, his mental condition and host of other factors which would vary from case to case. In the present case, the Insurance Company has not denied that the complainant has not met with the accident. There is a Medical Certificate dated 7. 12. 1996 from a Medical Board constituted by the P. M. O. , Dholpur which has certified that the respondent had complete Traumatic Paraplegia at Lispine of both the limbs which is not recoverable and he is having 100% permanent disability. Therefore, it is clear from this expert evidence that his disability is total and permanent and that he is not likely to recover from the disability. Therefore, in our considered opinion, the case of the present respondent fully falls within the requirements of the insurance policy and he is entitled to the promised accident benefits.

In this connection, the learned Counsel for the appellants had contended that the complainant is still in service. In our considered opinion, continuing of a permanent disabled employee in employment on any ground whatsoever is not at all relevant and the Insurance Company cannot deprive the insured for the benefits available to him under the policy. The complainant is totally disabled and he cannot be gainfully employed because he is not a normal person. Looking to the injury of the assured resulting into total paraplegia, he requires one person''s attendance 24 hours so much so that while going for nature''s call also he requires somebody to attend. Therefore, his capacity to do any useful commercial work is irreversible and total.

7. THE Gujarat State Commission had also an occasion to consider this aspect in Shankarbhai Maganbhai Prajapati v. The Divl. Manager, L. I. C. and Anr. , II (1994) CPJ 188, wherein the complainant had sustained injury resulting into total paraplegia, as in the present case. It was held by the State Commission that the fact that the appellant was continuing in service and the State Government had given him "desk Work" only in view of his total disablement, even then the appellant is entitled to the benefits under the insurance policy. It was held that the benefits of the policy are not dependent upon the subsequent events which are extraneous to the contract between the parties. Even on principles, if the complainant gets the benefit from outside, the Insurance Company cannot take advantage and deny the payment. Again in Life Insurance Corporation of India v. Devidas Sirsode, (supra), it was held hy the Hon''ble National Commission that if the employer continues the assured in service on compassionate ground or otherwise, it would not mean that the assured has not suffered permanent disability. In any set of circumstances, in such a case, such as ex gratia or on compassionate ground, continuing the assured in service by the employer (may be the Government or other statutory body or private individual) is not for the

benefit of the Insurance Company and it cannot deprive the assured of the benefit under the policy.

8. THEREFORE, in our considered opinion, employment of the complainant even after permanent disablement is not sufficient to deprive him of the benefits accruing under the insurance policy and the complainant is entitled to all the benefits from the day when he met with the accident and the Insurance Company was liable to give all the benefits that are available under the policy. The appellants have failed to do so and are, therefore, liable for damages to the complainant. In this view of the matter, in our considered opinion, the Forum below relying on the opinion of the Medical Board constituted under the Government of Rajasthan, has rightly held that having sustained 100% total permanent disability and that the respondent was entitled to the benefits accruing to him under the insurance policy aforesaid. Therefore, the discretion exercised by the learned District Forum cannot be termed as aribitrary, capricious or perverse and does not call for any interference by us and the appeal deserves to be dismissed. Accordingly, the appeal is dismissed and the impugned order is hereby maintained. No costs. Appeal dismissed.

