(2010) 07 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

MAHENDRA AGARWAL — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : 2010 0 NCDRC 70 : 2010 3 CPJ 291

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Advocate : Ashu Bhatia , Atul Aggarwal , R.B.Shami

Judgement

1. PETITIONER Mahendra Agarwal had obtained a Personal Accident Insurance Policy for a sum of Rs.1.00 Lakh from the respondent-Oriental Insurance Company Limited, which was valid from 05.05.1992 to 04.05.1993. During the currency of the period of insurance, he met with an accident on 8th of June, 1992 and sustained severe injury to his right eye. Alleging total loss of vision despite best medical treatment, he lodged a claim with the respondent-Insurance Company for Rs.55,000/- as per the terms of the policy for having lost the total vision in one eye. The respondent-Insurance Company, however, admitted the claim only for a sum of Rs.30,000/- and paid this amount towards the full and final settlement of the claim. Contending that he had received the amount of Rs.30,000/- under protest, he filed a consumer complaint before the District Consumer Disputes Redressal Forum, Bulandshahar (District Forum for short) seeking direction to the respondent-Insurance Company to pay him the balance amount of Rs.25,000/- with interest and damages of Rs.30,000/- and in addition a sum of Rs.5000/- towards the litigation expenses. The complaint was resisted by the respondent-Insurance Company on the ground that the petitioner-complainant having received the amount of Rs.30,000/- towards the full and final settlement of the claim was debarred from agitating the matter before the consumer fora. It was explained in the written statement that the claim had been settled in terms of the policy and on the basis of medical report of Dr. R.P. Centre, All India Institute of Medical Sciences, New Delhi. The District Forum, however, was not convinced with the defence advanced by the respondent-opposite party-Insurance Company and allowed the complaint directing them to

pay a sum of Rs.25,000/- with 12% interest per annum w.e.f. 10th of July, 1993 till the date of payment within a month. It also awarded a sum of Rs.2500/- towards cost and compensation. Aggrieved with the order of District Forum, that the respondent-Insurance Company filed an appeal before the U.P. State Consumer Disputes Redressal Commission, Lucknow (State Commission for short), who vide the order impugned accepted their appeal and set aside the order of the District Forum resulting in the dismissal of the complaint of the petitioner. It is in this background that the complainant is before us in this revision petition seeking restoration of the order of District Forum.

2. WE have heard the learned counsel for the parties and perused the records of the case. The short point for consideration is as to whether the petitioner-complainant who claims to have suffered total and permanent loss of vision in his right eye would be entitled to only 30% of the sum assured? In this case, the respondent-Insurance Company has relied upon the medical report of the petitioner-complainant issued by Dr. R.C. Anand, Additional Medical Superintendent of Dr. R.P. Centre of the AIIMS, New Delhi. Paras 7 & 8 of the said report, which are relevant for the proper adjudication of the matter are reproduced below:- 7. Nature and Extent of Injuries in detail : Scleral perforation with total hyphemia. 8. Is the disablement for work :- (a) Total or Partial PARTIAL (b) If the worker has suffered permanent partial disablement, please state the percentage of loss of earning capacity : Visual handicap of 30% (c) Solely the result of the accident, or partly due to some previous accident or illness : Solely the result of accident.

As per entry (b) of para 8 above, the petitioner-complainant had suffered a visual handicap of 30%. This entry, however, has been made against the question on the point of percentage of loss of earning capacity, which may arise as a result of permanent partial disablement. Learned counsel for the petitioner-complainant would urge before us, that this entry having been made against percentage of disablement with regard to work, has been misinterpreted by the State Commission to be only 30% loss of vision while the fact is that the petitioner-complainant had lost total vision in the right eye on permanent basis. In support of his contention, he submits that entry against para 7 of the report testifies to the effect that the complainant had suffered from total hyphemia, which means there was total hemorrhage within the anterior chamber of the eye.

3. PER contra, learned counsel for the respondent-Insurance Company has justified the order of the State Commission stating that the medical report has been correctly interpreted that the complainant had suffered a visual handicap of 30% and, therefore, the payment of Rs.30,000/- in proportion to the percentage of handicap suffered is absolutely correct and needs no interference. We are, however, not convinced with this argument of the learned counsel for the respondent-Insurance Company. Sub-para (c) of para 1 of the Personal Accident Insurance Policy states as under :- 1. If at any time during the currency of this Policy, the Insured shall sustain any bodily injury resulting solely and directly

from accident caused by external violent and visible means, then the Company shall pay to the Insured or his legal personal representative(s), the sum or sums hereinafter set forth, that is to say : a) . b) . c) If such injury shall within twelve calendar months of its occurrence be the sole and direct cause of the total and irrecoverable loss of i) the sight of one eye, or the actual loss by physical separation of one entire hand or one entire foot, fifty per cent (50%) of the Capital Sum Insured stated in the Schedule hereto. ii) . (emphasis added)

4. IN this case, as has been pointed out by the learned counsel for the petitioner-complainant, the medical report against column 7 clearly states that the complainant had suffered from total hyphemia and the same medical report under column 9 clearly states that the disablement is permanent. The reference to the entry against column (b) of para 8 of the medical report should be read in the context of the disablement for work, which obviously would be partial as a person can continue to work with one eye, and the entry stating visual handicap of 30% has to be read in the context of whether the complainant has suffered permanent partial disablement insofar as his work and earning capacity is concerned. It would, therefore, be wrong to interpret the said entry to be the loss of vision only by 30%. The continuing treatment and medical reports from other hospitals, such as Sunder Lal Jain Hospital, Delhi and Dr. Mohan Lal Memorial Gandhi Eye Hospital, Aligarh also testify to that effect. Further, learned counsel for the respondent-Insurance Company has not been able to convince us that there is any provision in the policy with regard to payment of compensation in proportion to the percentage of injury/disablement. According to our understanding, either the Insurance Company will pay 50% of the sum assured in case it is convinced that there has been total and permanent loss of sight by one eye or it would pay nothing if the loss of eyesight is not total. In the present case, the respondent-Insurance Company itself has paid a sum of Rs.30,000/- on the basis of the proportionate disability of 30% loss of vision. Indirectly, they admit that there has been total loss of vision but have offered the petitioner-complainant only Rs.30,000/-. Since it has been clearly stated that the complainant has suffered total and permanent loss of vision in his right eye due to the accident, he would be fully entitled to 50% of the capital sum assured as per the policy of the respondent-Insurance Company.

5. LEARNED counsel for the respondent-Insurance Company has relied upon order of this Commission in the case of Kanti Lal Rathore Vs. National Insurance Company Ltd. [II (2006) CPJ 137 (NC)] as also on the case of Ajay Kumar Vs. Life Insurance Corporation of India [I (2007) CPJ 230 (NC)]. The issues under consideration in those cases were not similar to the facts of present case inasmuch as in the first case the Insurance Company had repudiated the claim of the complainant as the disability was only to the extent of 23% and 18% and in the latter case the dispute pertained to admissibility of double accident benefit whereas in the case in hand the respondent-Insurance Company themselves paid a sum of Rs.30,000/- even though according to them the disability is only to the extent of 30%.

6. IN view of the discussion above, we allow the revision petition and set aside the order of State Commission. The respondent-INsurance Company is directed to pay the balance amount with interest @ 6% per annum from the date of the complaint to the petitioner-complainant. The amount calculated be paid within a period of two months, failing which it will carry interest @ 9% per annum till the date of payment.

