(2004) 03 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

MOHIT BATRA APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Citation : 2005 3 CPJ 729

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Advocate : Paramjit Batta , Ashwani Talwar

Judgement

1. THIS complaint has been filed by Shri Mohit Batra seeking issuance of direction to the Oriental Insurance Company Limited (for short hereinafter referred to as the Insurance Company) both through Regional Manager, Divisional Office-II, SCO No. 48-49, Sector 17-A, Chandigarh and its Branch Manager, SCO No. 40, Sector 7, Panchkula to pay a sum assured under the Janta Personal Accident Policy (for short hereinafter referred to as the Policy) bearing No. 47/1999/23-CH-76114 with interest @ 18% per annum together with a sum of Rs. 50,000/- as compensation for mental agony and harassment etc.

2. THE aforesaid policy was taken on 4.5.1998, which covered the risk of the life of the complainant who paid a sum of Rs. 855/- as the premium. THE risk of the life of the complainant was secured for five years w.e.f. 4.5.1998 to 3.5.2003 vide copy Annexure C-1. THE complainant is a qualified Civil Engineer and was posted in Gujarat. He came to Panchkula in February 2001 from Ahmedabad to attend marriage of his sister-in-law. It has been alleged that on 27.2.2001, he had gone to take certain photographs of the houses constructed in Panchkula, which could be suitable for earthquake prone area in Gujarat and while doing so he slipped from the Bajri and fell inside the railway track and his both legs were crushed by the train coming from the side of Amabala. Due to this accident, he became 100% disable vide Certificate Annexure C-2. A claim was filed by the complainant for payment of sum assured under the policy of insurance with the Insurance Company/O.Ps. who repudiated his claim on the ground that the condition of the policy was not fulfilled inasmuch as he tried to commit suicide

and was not involved in any accident. This led to the filing of the complaint. The O.Ps.-Insurance Company filed joint written statement. In the preliminary objection, it was contended that the complainant had not approached the Commission with clean hands inasmuch as, as per the terms and conditions of the policy, the claim is payable only in case of death or disablement is the result of an accident caused by external violation and visible means i.e., fire, drowning, road fall accident, electrocution, etc. etc.

In the instant case, it was alleged by the O.P. that the complainant attempted to commit suicide by getting himself crushed under the train. The Insurance Company had deputed its Surveyor Shri K.R. Kashyap who vide his report dated 28.4.2001 investigated the claim and recommended that the case admitted to be one of accidental injury with a running train (Annexure R-2). The matter was, however, examined by O.Ps. and it appeared that the Investigator had not critically examined the case whether it was an accident or an attempted suicide. The O.Ps. contended that the Surveyor had not taken into account the facts that, (i) father of the complainant or his other relatives could not even tell as to how they received the intimation regarding the complainant having been involved in an accident; (ii) wife of the complainant Dr. Shallu had telephonically informed the Company that her husband had tried to commit suicide and it was not a case of accident; and (iii) complainant had not submitted the complete intimation that in PGI records it was mentioned to be a case of attempted suicide. In these circumstances, the complainant deputed second Investigator Shri Sudershan Singh Sachar who submitted his report (Annexure R-3) and the Insurance Company repudiated the claim after due consideration and there is no deficiency in service on the part of the Insurance Company.

3. THE complainant as well as the O.Ps. - Insurance Company filed affidavit in evidence and documents referred to above. THE case came up for disposal before this Commission on 19.2.2003. THE Commission, vide order dated 30.4.2003, was of the considered opinion that such a finding relating to the incident being an incident of attempted suicide or being an accident cannot be appropriately gone into and examined in the summary jurisdiction to the Consumer Disputes Redressal Agencies and the complaint case was disposed of by leaving the complainant to avail his remedy before a Civil Court of competent jurisdiction, if so advised. An appeal bearing No. 462 of 2003 was filed by the complainant before the National Consumer Disputes Redressal Commission, New Delhi [for short hereinafter referred to as the National Commission], which was allowed and the order of this Commission was set aside and the case was remanded to this Commission for being decided afresh on merit. After remand of the complaint case, the parties were allowed opportunity to file their evidence, if any, in respect of the merits of the case. The complainant filed his fresh affidavit dated 9.2.2004 enclosing therewith photocopy of Misc. Provisional Cover Note (Annexure C-1); photocopy of the Policy issued in pursuance to the Cover Note; photocopy of the Certificate of the Employer of the complainant dated 25.6.2003 that he worked as Engineer (Structure) on the Ahmedabad Mahesana Toll Road

Project in Gujarat from Septemeber 2000 to February 2001 (Annexure C-2); photocopy of the Medical Certificate for physically handicap person (Annexure C-3) issued by the Medical Board of Panchkula; photocopy of the letter of complainant addressed to Senior Divisional Manager, Insurance Company on the subject "Claim against policy No. 23/1999 of B.O. Panchkula against Janta Personal Accident Policy" (Annexure C-4); photocopy of the Report of the police officer of GRP, Chandigarh addressed to the Insurance, Medical Senior Officer, OPD, PGI, Chandigarh regarding the statement of patient (Annexure P-5) with the report of Senior Medical Officer that the patient not fit to give a statement (Annexure C-); photocopy of the report of GRP, Chandigarh regarding the accident involving a person with the Train No. 2925A coming from Ambala (Annexure C-6); photocopy of the statement of one Som Nath, Driver of the said train (Annexure C-7); photocopy of the statement of Sh. Mohit Batra (Annexure C-8); photocopy of letter dated 19.9.2002 of the Insurance Company repudiating the claim (Annexure C-10); photocopy of the statement of Dr. Shallu wife of Sh. Mohit Batra (Annexure C-12). Complainant also filed affidavit of his father Shri Duni Chand Batra and affidavit of his brother Shri Rajesh Batra.

4. THE O.Ps.-Insurance Company placed on record evidence in the shape of affidavit of Shri Sudershan Singh Sachar who investigated the claim filed by Shri Mohit Batra and depsoed about the investigation done by him. We have heard Mr. P.S. Batta, Advocate, learned Counsel for the complainant and Mr. Ashwani Talwar, Advocate appearing for the O.Ps. We have carefully perused the material placed on record by the complainant as well as by the Insurance Company- O.Ps. The main controversy involved in this case is whether the complainant Sh. Mohit Batra was involved in the accident with the train on 27.2.2001 and suffered disability to 100% of his both legs which were amputated or he suffered these disability while attempting to commit suicide. It is not disputed before us that in case the disability was suffered by the complainant in the accident then his case is covered by the policy but in case he suffered the disability while attempting to commit suicide, the case of the complainant is not covered under the terms and conditions of the policy and his claim under the said policy is not maintainable.

5. THE complainant is the main person who was involved in this occurrence. In his affidavit, he has categorically deposed that he was working as a Civil Engineer in Ahmedabad and he was on the lookout of some photographs of houses newly constructed in Panchkula for the purpose of construction of such houses at his place of posting, which was earthquake prone area. THE complainant deposed that he was taking photographs from his camera and was on a raised level from the railway track where Bajri was lying and accidently, he slipped from the Bajri and fell between the railway tracks but he tried to get up but he could not to do so. In the meantime, a train was coming from the side of Ahmedabad with the speed which crushed his legs. THE father Shri D.C. Batra and the brother Sh. Rajesh Batra have both corroborated the case of Shri Mohit Batra, complainant. THE driver of the said train under which the legs of the complainant got crushed namely Shri Som Nath stated before the Investigating

Agency that he saw a person coming and attempting to cross the train but he came under the wheels of the train and he reported this matter to the A.S.M. on duty at the Railway Station, Chandigarh.

6. THE O.Ps., as would appear from the reply filed to the complaint case, had appointed Shri K.R. Kashyap as the Surveyor who after investigation gave his report dated 28.4.2001 and found it to be a case of accident. THE report of this Surveyor was not accepted by the O.Ps. Insurance Company on the three grounds, which have been mentioned in the earlier part of our order and the Insurance Company decided to appoint another Surveyor namely Shri Sudershan Singh Sachar. THE three points which led the Insurance Company to doubt the theory of incident may be referred to and examined to find out whether there is any material or substance in the same. Here, it may be mentioned that the Hon''ble National Commission has deprecated the practice of appointing successive Surveyor when the report of a particular Surveyor is not to the liking of the Insurance Company. In this regard, reference may be made to the case of National Insurance Company Limited v. New Patiala Trading Company, I (2003) CPJ 33 (NC)=2002 CTJ 516 (CP) (NCDRC). The first point is "Father of the complainant or his other relatives could not even tell as to how they received the intimation regarding the complainant having been involved in an accident". In the affidavit dated 9.2.2004, Shri Duni Chand Batra, father of Shri Mohit Batra deposed in this regard, inter alia, as under : "3. That the deponent and his son Rajesh on receiving the information about the accident of Mohit with Train near Section 19, Panchkula rushed to the spot and brought the injured Mohit Batra to PGI for treatment. Neither the deponent nor his son Rajesh Batra gave any alleged version of attempt to commit suicide. It appears that the alleged version of attempt to commit suicide in the OPD card was written later by some one at the instance of Shallu wife of Mohit Batra or her parents in active connivance with the officials of the PGI as no such alleged report/version of attempt to commit suicide was given by the deponent." This para of the affidavit has been verified to be correct to his personal knowledge. Shri Rajesh Batra, brother of the complainant Shri Mohit Batra deposed in Para 3 of his affidavit, which is a similar version as the one given by Shri Duni Chand Batra. The first ground thus taken by the O.Ps. - Insurance Company has no substance.

Now coming to the second ground "Wife of the complainant Dr. Shallu had telephonically informed the Company that her husband had tried to commit suicide and it was not a case of accident", it may be mentioned that there is no detail given as to which of the officer of the Insurance Company received the telephonic message from the wife of the complainant and how he felt satisfied with the telephone call was from the wife of the complainant, Shri S.S. Bahri, Deputy Manager of the O.Ps. - Insurance Company reproduced these three grounds in Para 1 of his affidavit but again he did not depose that he was the person who had received the call. He has verified the contents of Paras 1 to 10 of his affidavit including Para 1 as correct to his knowledge as well as derived from the office record. It may be pointed out that Mr. Bahri cannot be expected to have the personal knowledge about the receiving of the telephone call from Dr. Shallu wife of Sh. Mohit Batra as no such deposition has been made by him in his affidavit and secondly no extract of official record of the Insurance Company has been placed on record from which it can reasonably be inferred that the said telephone call, which had been mentioned as having been received in this case, was from Dr. Shallu wife of Shri Mohit Batra regarding this case and the policy under reference.

7. IT may be mentioned that Shri Sudershan Singh Sachar, who is the second Investigator of the case, reproduced in his affidavit the various statements and extracts of the records, which cannot be said to be in his personal knowledge. In Para 8 of his affidavit dated 2.3.2004, which refers to Dr. Shallu wife of Shri Mohit Batra, Shri Sudershan Singh Sachar deposed as under : "8. That Dr. Shalu wife of Shri Mohit Batra gave a statement to the deponent whereby she mentioned that she had countersigned the statement of Shri Mohit Batra given to the previous Surveyor/Investigator Shri Kashyap under pressure of Shri D.C. Batra and Shri Mohit Batra and that in fact it was a case of attempted suicide by Shri Mohit Batra. The statement of Dr. Shallu as recorded in my presence is attached as Annexure-20 Pages 134 to 137 of the written statement." So far as Para 8 of the affidavit is concerned, it is hearsay statement of Shri Sudershan Singh Sachar. The statement of Dr. Shallu has not been proved by producing Dr. Shallu or by getting her affidavit regarding the statement made by her to Shri Sudershan Singh Sachar. Moreover, in her statement, Dr. Shallu wife of Shri Mohit Batra as Exhibit C-12 at page 2, had deposed inter alia that in the noon her husband had gone in connection with some work to Section 19 and he was crossing the line when he was involved in an accident. This is the statement, which was initially made on 6.1.2002 by Dr. Shallu with whom Shri Mohit Batra had matrimonial dispute and Dr. Shallu was residing with her parents separately from him.

8. APART from it, Dr. Shallu was not an eye-witness of occurrence nor she had stated about any such intention of Shri Mohit Batra having been declared to her that he was going to commit suicide because of matrimonial dispute nor he left behind any suicidal note. Considering the matrimonial dispute between Dr. Shallu and the complainant Shri Mohit Batra, not much significance can be given to Dr. Shallu who as a matter of fact was the nominee under the policy taken by the complainant Shri Mohit Batra. The second ground for appointing second Surveyor is also thus without any merit. The third and the last ground is that " complainant had not submitted the complete intimation that in PGI records it was mentioned to be a case of attempted suicide". The second Surveyor Shri Sudershan Singh Sachar had visited PGI and consulted the records. The Insurance Company thus made the efforts to verify from the records of the PGI and in Para 3 of his affidavit, Shri Sudershan Singh Sachar deposed that "..... at page 100 of the paper book of the written statement, on the claim form submitted to the Insurance Company by the complainant, it was mentioned by the Senior Resident of the Department of Orthopaedics, PGI, Chandigarh under

his signatures on 4.4.2002 that: "As per the file record of PGI given to me, it is a reported case of attempt to commit suicide.'' The Senior Resident, Dr. Satpati Anand, gave the Certificate in the presence of the deponent after consulting the record."

This para does not say that the Senior Resident made the entry about the case being one of an attempt to commit suicide. It is not clear as to who mentioned in the record of PGI that it was a case of an attempt to commit suicide. It is not the case of the O.Ps. that it was Shri Mohit Batra who gave this report. If Dr. Shallu wife of Shri Mohit Batra was the person who gave such a report, then she had strain relation with her husband and no reliance could be placed on such a certificate. The third and the last ground has also no merit.

9. IT may be mentioned that the father and the brother of the complainant have denied about making any such statement that the complainant Shri Mohit Batra was attempting to commit suicide. The appointment of the second Surveyor is thus not justified and in view of the law laid down by the Hon''ble National Commission in the case of National Insurance Company Limited v. New Patiala Trading Company (supra), the second Surveyor cannot be appointed just because the Insurance Company does not want to act upon the report of the first Surveyor. IT has been categorically held by the Hon''ble National Commission that in case there is some deficiency in the report of the first Surveyor, the first Surveyor should be asked to re-investigate after removing deficiency and submit his report. We are of the considered opinion that the report of the second Surveyor cannot be legally and validly accepted and no reliance can be placed on it.

10. AFTER carefully considering the material placed on record, we find that the complainant was involved in an accident and he suffered disability as a result of the accident and his case is well covered by the provisions of the Janta Personal Accident Policy referred to above. The O.Ps.-Insurance Company were deficient in repudiating the claim of the complainant under the said policy. The complaint is allowed. The O.Ps. are directed to pay a sum of Rs. 5,00,000/- (Rupees five lacs only) i.e., the sum assured under the Insurance policy with interest @ 9% per annum w.e.f. 19.9.2002, the date when the claim was repudiated till payment. Since interest has been allowed by way of compensation, no separate compensation is required to be awarded as it would amount to conferment of double benefit on the complainant, as has been held by the Hon''ble National Commission in the case of Laxmi Vilas Bank Ltd. & Anr. v. P.K. Krishnan & Anr., I (1995) CPJ 43 (NC). The complainant will get from O.Ps., the costs of litigation, which we quantify at Rs. 1,100/-. The O.Ps. are directed to pay the amounts of policy aforesaid within two months from the date of receipt of certified copy of this order. Copies of this order be sent to the parties free of charge. Complaint allowed.

