(2006) 09 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Namdeo Ramachandra Kadu Patil APPELLANT

Vs

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Citation : 2006 2 CPC 723 : 2006 3 CPR 147 : 2006 4 CPJ 35 : 2007 1 UC 486

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Final Decision : Revision Petitions dismissed

Judgement

1. PRESIDENT-Admittedly, the Complainant has taken a policy under Personal Accident Scheme for a period from 12.2.2003 to 11.2.2004. On 15.8.2003 a quarrel/fight took place between him and others and the Complainant was injured. It is his contention that he has lost his palm. He filed a claim with the Insurance Company on 29.9.2003. He also furnished a medical certificate dated 5.11.2003 issued by the Civil Surgeon, Ahmednagar, wherein it was mentioned that disability of the insured is to the extent of 60%. After some harassment and visiting the office of the Insurance Company again and again the Complainant was paid an amount of Rs. 3,30,750 towards the settlement of his claim which according to the Complainant was grossly inadequate but the same was accepted by him due to delay in settling the claim. Thereafter, Consumer Complaint No. PDF-282/2004 was filed before the District Forum, Pune, Maharashtra.

2. THE District Forum considered the facts that the sum assured was Rs. 7,35,000 and the Insurance Company paid Rs. 3,30,750 on the basis that the disability was to the extent to 45% in terms of the break up that was given in the written version to the effect that 10% for the loss of index finger, 20% for the loss of thumb and 15% for the loss of other three fingers. This was on the basis of partial permanent disability clause provided in the policy. THE District Forum, however, considered that there was total amputation of hand from the level of wrist and it should be held that loss of hand at the wrist as a whole. THEreafter, the District Forum relying on a disability table held that the Insurance Company is required to pay 55% of the sum assured, thereby arriving at the conclusion

that the Complainant was entitled to Rs. 4,04,250 instead of Rs. 3,30,750. Hence, the District Forum directed the Insurance Company to pay the remaining amount of Rs.73,500 with interest thereon @ 9% per annum from the date of filing of the complaint i.e. 7th August, 2004 till realization of the amount and costs of Rs. 500. Against that order, the Complainant preferred Appeal No. 2000/2005 and the Insurance Co. also preferred First Appeal No. 103/2006. Both the appeals were dismissed by the State Commission by order dated 21st March, 2006.

Against that order the Complainant has filed Revision Petition No. 267/2006 and the Insurance Company-opposite party has filed Revision Petition No.1016/2006.

3. FOR deciding the question in dispute, we would refer to the terms of the policy issued by the Insurance Company. The relevant clause 2.3.1 is reproduced hereunder: "In the event of Accidental Bodily Injury causing the Insured''s Permanent Partial Disability as mentioned in the PPD Table below within 12 months of the Accidental Bodily Injury being sustained, the Company will pay the percentage of the Sum Assured specified for each and every form of impairment mentioned in the PPD Table:

It is true that if we consider it on the basis of loss of thumb, index finger and other fingers, the calculation made by the Insurance Company is justified. However, in the present case, it is apparent that the Complainant has lost his entire palm including fingers and thumb. It is just above the wrist. Taking this aspect into consideration, the District Forum and the State Commission arrived at the conclusion that the Complainant is entitled to 55% as per the Table'' quoted above.

4. IN our view, the said findings cannot be said to be in any way erroneous as Complainant has lost ''A hand at the wrist''. INjury is slightly above the wrist, but at the same time it is upto wrist and, therefore, it cannot be said that simpliciter fingers and thumb are cut. Beyond fingers entire palm upto wrist was cut. It is not necessary that his entire wrist have been removed for getting the benefit as per the PPD table given by the INsurance Company. However, the Complainant relied upon the certificate given by the Hospital to the effect that the disability was 60%. In view of the specific provision made in the insurance policy with regard to loss of bodily injury by giving specific table, Medical Certificate cannot be the basis for reimbursement. Hence, the State Commission has rightly not relied upon the said certificate. Mr. Seth, learned Counsel appearing on behalf of the Insurance Company submitted that in the present case the complainant has taken various policies from different Insurance Companies and that this was not a fit case for making any observations by the State Commission against the Insurance Company. We agree with the said submission that the insured/ complainant is neither illiterate, ignorant nor innocent.

5. IN the result, both the revision petitions are dismissed. There shall be no order as to costs. Revision Petitions dismissed.