(2008) 09 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD — APPELLANT

Vs

DEWANTI DEVI — RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : 2008 4 CPJ 220

Hon'ble Judges : Gurusharan Sharma , Kalyani Kar Roy , Satyendra Kumar Gupta J.

Advocate : Anupam Sanyal , Basav Chatterji

Judgement

1. -THIS appeal is directed against order dated 23. 11. 2006, passed by District Consumer Disputes Redressal Forum, Garhwa, in Consumer Complaint No. 11 of 2006, whereby the appellants were directed to pay entire insurance amount of Rs. five lacs with interest @ 8% per annum and Rs. ten thousand as compensation to the complainant-respondent No. 1.

2. THE complainant had taken a Janta Personal Accident Claims Policy for Rs. five lacs from National Insurance Company Limited, through the Golden Trust Financial Services, on 15. 3. 2004, for the period from 15. 3. 2004 to 14. 3. 2019. Unfortunately, on 29. 9. 2004 she met with an accident and sustained injury in her spinal cord causing paralysis of her upper and lower limbs rendering her permanently disabled and physically handicapped. With regard to the said accident, information was given to Garhwa Police Station and the same was entered as S. D. E. No. 813 of 2004 dated 29. 9. 2004. The Insurance Company was also informed on 7. 10. 2004 and thereafter claim was submitted in prescribed format along with required papers/documents within the stipulated time, according to the complainant-respondent.

The complainant claimed that she received spinal cord injuries and as a result thereof her upper and lower limbs/extremities were paralysed and which rendered her permanently physically disabled/handi-capped.

3. WHEN complainant''s claim was not considered and settled she sent legal

notice to the Insurance Company on 20. 10. 2005 and thereafter filed complaint seeking Rs. five lacs being Insurance amount, Rs. 6,569. 00 being cost of treatment, Rs. 69,000. 00 being the interest @ 12% till 29. 1. 2006, Rs. 5,000. 00 for travelling and Rs. 50,000. 00 for mental agony and loss i. e. total Rs. 6,25,569. 00. In the complaint, the National Insurance Company-appellant herein did not appear. However, the Golden Trust Financial Services appeared and supported the complainant''s case and claim and thereafter the District Forum passed the impugned ex parte order against the appellants.

4. IN the present case, basically two questions are involved: (i) whether the disablement was caused to the complainant as a result of the accident dated 29. 9. 2004? and (ii) whether it was permanent disablement within the terms and conditions of the Insurance Policy?

According to the doctor, who had treated the complainant after accident in his Certificate dated 3. 9. 2007 said that Dewanti Devi was discharged from nursing home on 8. 10. 2004 and was advised to continue outdoor medical treatment for curing paralysis. According to him she had developed total permanent disability in her right upper arm and lower extremities. In the opinion of the said doctor it must have developed due to persistant and resistent traumatized neurodegenerative process due to trauma. The said doctor supported his certificate in his evidence before District Forum. The complainant also appeared on 1. 11. 2004 before the Medical Board for Handicaps and the office of Civil Surgeon-cum-Medical Officer, Garhwa issued a certificate to her, wherein nature of handicapness was mentioned as ''''paralysis of Upper and Lower limb'''' of moderate category i. e. 50%.

5. IN the present case, the policy benefit of 100% of the sum assured is available in case of ''''permanent total disablement''''. The parties are governed by the terms of the contract of the policy and accident benefit would only be available in case the disability comes strictly under the definition as provided in the terms of the policy.

6. FROM the aforesaid medical evidence, we find that if at all the disablement caused to the complainant as a result of the accident dated 29. 9. 2004 effected only her right upper arm as well as right leg, which according to Dr. R. L. Agrawal was called in medical terms ''''unpredictable paralytic status''''. Further as per the Medical Board the paralysis in question was of moderate category i. e. 50%. Hence by no stretch of imagination it could be said to be ''''permanent total disablement'''' in terms of the policy. Hence, in our opinion, the complainant-respondent was not entitled to get the insurance amount. The disablement suffered by her did not come within the scope of cover provided under the policy. As we have already held that the complainant was not entitled to get the insurance amount, we need not go into the question of delay, if any, in terms of the policy in giving information of the accident and/or filing claim on prescribed format with necessary papers/documents through the G. T. F. S. , which according to the Insurance Company was received in their office after a long

time, and decide it in the present appeal.

We have, therefore, no option, but to set aside the impugned order and allow the appeal. Accordingly, the order dated 23. 11. 2006 is set aside and Consumer Complaint No. 11 of 2006 is dismissed.

7. IN the result, this appeal is allowed, but without costs. Appeal allowed.

