(2011) 09 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd — APPELLANT

Vs

Guntaka Subba Reddy — RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 596 : 2011 4 CPJ 176 : 2011 4 CPR 347

Hon'ble Judges : R.C.Jain , S.K.Naik J.

Final Decision : Appeal dismissed

Judgement

1. THIS revision petition arises under the following circumstance. One Guntaka Subba Reddy, respondent no. 1/complainant, enrolled himself as a member of M/s Road Safety Club, respondent no.2/opposite party no.1 and by virtue thereof a Group Personal Accident Master Policy covering the period from 29th of August, 2004 to 28th of August, 2005 for a sum of Rs.3,00,000/- was issued by the petitioner/opposite party no.2/Insurance Company. During the currency of the insurance policy respondent no.1/complainant met with an accident on 5th of January, 2005, resulting in injury to his right eye, resulting in total blindness, but the overall physical permanent disability was assessed to be only 30%. The complainant thereafter submitted his claim before M/s Road Safety Club, respondent no.2/opposite party no.1, but his claim was not settled. A complaint thereafter was filed before the District Consumer Disputes Redressal Forum-II, Krishna at Vijaywada (District Forum for short), alleging deficiency in service on part of M/s Road Safety Club, respondent no.2/opposite party no.1 as well as the present petitioner/opposite party no.2/Insurance Company, seeking a direction for the payment of Rs.1,50,000/-. The complaint was resisted by the opposite parties. The petitioner/opposite party no.2/Insurance Company advanced the plea that they had not received any claim from the complainant, whereupon the District Forum directed the complainant to forward a fresh set of claim to the petitioner/opposite party no.2/Insurance Company.

2. ON consideration of the claim, the petitioner/opposite party no.2/Insurance Company settled the claim at Rs.45,000/- on the basis of 30% disability. The

complainant contested the averment made by the petitioner/opposite party no.2/ Insurance Company that the offer of Rs.45,000/- on the basis of 30% disability was as per the terms of the policy. The District Forum thereafter examined the matter and held that on the basis of the affidavit given by Dr. A. Bala Subrahmanyam stating that the complainant had lost complete sight of right eye was entitled to 50% of the sum assured and directed both the opposite parties to pay a sum of Rs.1,50,000/- towards the claim with interest @ 9% per annum from the date of filing of the complaint till its payment and in addition imposed a cost of Rs.2000/-. The award of the District Forum was challenged in appeal before the A.P. State Consumer Disputes Redressal Commission, Hyderabad (State Commission for short) by the petitioner/opposite party no.2/Insurance Company as well as M/s Road Safety Club, respondent no.2/opposite party no.1. The State Commission vide the order impugned has accepted the appeal of M/s Road Safety Club, respondent no.2/opposite party no.1 and absolved them of any liability but has upheld the order of the District Forum for the payment of Rs.1,50,000/- with interest @ 7.5% per annum to be paid by the Insurance Company, the present petitioner.

Aggrieved against this order of the State Commission that the Insurance Company has filed this revision petition seeking setting aside of the order passed by the State Commission.

3. DESPITE due service of notice, respondent no.1/complainant has neither appeared nor been represented before us. However, we have heard the learned counsel for the petitioner/opposite party no.2/Insurance Company and M/s Road Safety Club, respondent no.2/opposite party no.1. We have also perused the records of the case and given our thoughtful consideration to the matter. Admittedly, the respondent no.1/complainant obtained the Group Personal Accident Master Policy, which was issued by the petitioner/opposite party no.2/ Insurance Company. The factum of the complainant having met with an accident causing injury to his right eye is not in dispute. The only dispute is whether he would be entitled to a compensation of 30% of the sum assured or 50% thereof, as the Medical Certificate for the Blind states that the disability is 30%. This certificate has been issued and signed by Dr. A. Bala Subrahmanyam. The said doctor in his affidavit, however, has clearly stated that the complainant has lost vision of his right eye completely but the disability is 30%. The policy document has two clauses i.e. Clauses 3(b)(i) and 4(xii), which are relevant and applicable to the facts in question. Clause 3(b)(i) states as under:- "3(b) If such injury shall within twelve (12) 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 of the actual loss by physical separation of one entire hand or of one entire foot, fifty percent (50%) of the Capital Sum Insured stated in the " (sic.)"." It may be noted that this clause is very specific. The other clause is Clause 4(xii). It reads as under :- "4. If such injury shall within twelve calendar months of its occurrence be the sole and direct cause of the total and/or partial irrecoverable loss of use or of the actual loss by physical separation of the following, then the percentage of the

Capital Sum Insured stated in the Schedule under Item No. 4 applicable to such insured member in the manner indicated below : (xii) Any other permanent partial Percentage as disablement assessed by the Doctor."

The plain reading of this provision refers to "any other permanent/partial disablement", for which percentage as assessed by the doctor would be relevant. This clause is general in nature. Both the above mentioned clauses seem to apply to the facts of the case but the real and harmonious construction in interpretation of the statutes always gives way to a specific clause over a general one. Thus, clause 3(b)(i) specifically referring to total and irrecoverable loss of one eye would be applicable to the facts of this case rather than the general clause 4(xii) referring to any other partial disablement. Moreover, the words "any other" refer to only those cases which have not been mentioned in the preceding clauses but as the present case comes clearly in the ambit of clause 3(b)(i), the complainant would be entitled to 50% of the capital sum assured i.e. Rs.1,50,000/-.

4. THE other contention of the learned counsel for the petitioner/opposite party no.2/Insurance Company is that the award of interest @ 7.5% per annum from the date of filing of the complaint is uncalled for when the claim has not been submitted to them immediately after the incident but has been filed after a direction from the District Forum. We find no merit on this plea of the learned counsel for the simple reason that the direction issued by the District Forum was aimed at dispensation of substantial justice and the petitioner/opposite party no.2/Insurance Company cannot advance this as an argument in its favour. In any case, the complainant had filed his claim in time albeit before M/s Road Safety Club, respondent no.2/opposite party no.1, through whom he had obtained the policy. In the totality of the facts and circumstances, therefore, we do not find any merit in this revision petition and the same, accordingly, is dismissed with no order as to cost.