

(2008) 01 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO LTD

APPELLANT

Vs

MAHAPRASAD PANDEY

RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Citation : 2008 1 CPJ 270

Hon'ble Judges : Irshad Hussain , C.C.Pant J.

Final Decision : Appeal allowed

Judgement

1. -THIS appeal is directed against the order dated 1. 3. 2007 passed by the District Consumer Forum, Dehradun, allowing the Consumer Complaint No. 98 of 2003, Sh. Mahaprasad Pandey v. National Insurance Co. Ltd. and directing the insurer - appellant to pay a sum of Rs. 1,00,000 together with interest @ 8% p. a. from the date of repudiation of the claim till the date of actual payment.

2. THE facts of the case in brief are that the respondent-complainant had taken a Janta Personal Accident Insurance Policy No. 451000/9601174/98 for a risk of Rs. 1,00,000. The policy was effective for the period from 30. 10. 1998 to 29. 10. 2003. Under the scheme, the Insurance Company had undertaken to indemnify the insured if he sustains any bodily injury resulting solely and directly from the accident caused by outward violent and visible means and undertakes to pay the insured the sum stated as hereunder: (a) If such injury shall within six calendar months of its occurrence be the sole and direct cause of the death of the insured, the capital sum insured in the schedule, the amount payable under this clause shall be paid to the nominee shown in the schedule.

(b) If such injury shall within six calendar months of its occurrence be the sole and direct cause of the total and irrecoverable loss of sight of both eyes or of the actual loss by physical separation of two entire hands or two entire feet or of one entire hand and one entire foot or of such loss of sight of one eye and such loss of one entire hand or one entire foot, the capital sum insured stated in the schedule.

(c) If such injury shall within six calendar months of its occurrence be the sole and direct cause of the total and irrecoverable loss of sight of one eye or of the actual loss by physical separation of one entire hand or one entire foot, fifty percent (50%) of the capital sum insured stated in the schedule.

(d) If such injury shall within six calendar months of its occurrence be the sole and direct cause of permanently, totally and absolutely disabling the insured from engaging being occupied with giving attention to any employment or occupation of any description whatsoever the sum insured stated in the schedule.

The respondent - insured, when he was going to his home by a three-wheeler on 12. 1. 2000 for taking his lunch, the vehicle got over turned due to its high speed and the insured sustained severe injuries. Due to these injuries, the respondent's left hand became permanently and totally disabled. The respondent runs a shop of clothes. Before the aforesaid accident, he used to do all the work of his business himself, such as showing the clothes to the prospective buyers; to lift and keep the heavy bales of the clothes from one place to another and measuring the cloth and packing it in a proper manner for the buyer. As the respondent had become totally disabled to do all these works related to his business, he lodged a claim with the appellant-insurer to the effect that he be indemnified as per terms of the policy for the permanent and total disability in running his business. The appellant-insurer repudiated the claim on the ground that the complainant -respondent's hand had lost the working efficiency upto 59% as certified by the Chief Medical Officer, Haridwar. Upon this, the respondent filed a consumer complaint before the District Consumer Forum, Dehradun, which was allowed by the District Forum with the directions to the insurer as stated above. Aggrieved by the said order, this appeal has been filed by the insurer.

We have heard the learned Counsel for the parties and have perused the material placed on record in the light of the legal aspects of the case.

3. LEARNED Counsel for the appellant argued that there was no deficiency in service on the part of the appellant because the respondent - complainant sustained only 59% disability and was not totally disabled. His case falls under Clause (c) of the terms of the policy, which stipulates that 50% of the sum insured, as stated in the schedule, shall be payable if the occurrence of the accident has solely and directly caused the total and irrecoverable loss of sight of one eye or actual loss of one entire hand or one entire foot by physical separation. The case of the respondent is not the case of total loss of the sight of one eye or actual loss of one entire hand or entire foot by physical separation and the District Forum has failed to appreciate these facts and, therefore, the impugned order being erroneous, is liable to be set aside. Learned Counsel for the respondent - complainant has pleaded that though the Chief Medical Officer, Haridwar has certified 59% disability of the complainant, but the left hand of the complainant cannot do any work and, as such, complainant's case falls under Clause (d) of the terms of the policy, wherein it is provided that if the accident

has caused solely and directly total and absolute disablement, due to which the insured cannot do all those works related to his business, which he used to do earlier, then the insurer - appellant is liable to pay the insured sum stated in the schedule, which is Rs. 1,00,000 in the present case. Learned Counsel further pleaded that the respondent cannot even travel without the help of an escort, as is evident from the certificate issued by the doctor of the District Hospital, Haridwar. Learned Counsel pointed out to the affidavits of the neighbours of the respondent, which were submitted before the District Forum and wherein it has been stated that after the said accident, the respondent's son looks after the business and the business has suffered a setback.

4. WE have considered the submissions made by the learned Counsel for the parties. There is no dispute that the respondent's case shall not be covered under Clause (a) or (b) of the terms of the policy as stated above. If it is covered under Clause (c), then the appellant has rightly repudiated the claim and in that case, the impugned order is legally and factually erroneous. Respondent's contention is that his case falls under Clause (d) of the terms of the policy and, therefore, the insurer - appellant is liable to pay him the sum of Rs. 1,00,000, the sum insured. Therefore, it is to be decided whether: (i) the words used in Clause (d), i. e. , "permanently, totally and absolutely disabling the insured" should be interpreted in the context as pleaded by the learned Counsel for the respondent; or (ii) these words should be interpreted in context to the extent of disability as certified by the Chief Medical Officer, Haridwar.

In our opinion, the interpretation should be on the basis of as to how the disablement is quantified by the medical experts. The words, "permanently"; "totally" "and absolutely" have significance in deciding this case. Word "absolutely" is of further significance. "absolutely" means completely, wholly, without qualification, without reference or relation to, or dependence upon any other person, thing or event (Black's Law Dictionary). If we look into the certificate issued by the Chief Medical Officer, Haridwar, we find that the disability has been qualified in terms of the loss of working efficiency, which, in the case of the respondent, is 59%. In Clause (d) of the policy, the insurer is liable to pay the full sum insured only in the case of absolute disablement, which amounts to 100% loss of working efficiency. In the case of respondent, it is not so. He is looking after his business with the help of his son. The assistance of an escort during journey or inability to lift and keep the bales of cloth does not mean that he is "absolutely" disabled. In other words, the disability must be total and permanent to claim disability benefit as has been referred to in above Clause (d) of the policy. We are supported in our view by the decisions of the Hon'ble National Commission rendered in the case of Life Insurance Corporation of India v. D. K. Panchal, II (2003) CPJ 102 (NC) and Ajay Kumar v. Life Insurance Corporation of India, I (2007) CPJ 230 (NC). For the reasons aforesaid, the Clause (d) cannot be interpreted in the manner as urged by the learned Counsel for the complainant - respondent. Moreover, the disability being partial and not total and irrecoverable, the claim of the insured would also not fall under Clause

(c) of the policy. This clause of the Janta Personal Accident Insurance Policy came to be considered by the Hon"ble National Commission in the case of Kanti Lal Rathore v. National Insurance Co. Ltd. , II (2006) CPJ 137 (NC) and wherein, the contention of the insurer was accepted and the injured-insured was not held entitled to even 50% of the sum assured for want of total and irrecoverable loss or in other words, on account of partial disability.

5. IN view of above, it is evident that the District Forum has failed to appreciate the facts of the case in proper prospective and, therefore, the impugned order is not sustainable.

6. FOR the reasons aforesaid, appeal is allowed. Order dated 1. 3. 2007 of the District Forum is set aside and the consumer complaint is dismissed. No order as to cost. Appeal allowed.