(2011) 02 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. APPELLANT

Vs

Premjibhai Laxmanbhai Motka RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 99

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : V.P.Nanavati , Mitesh J.Patel

Judgement

1. THE present revision petition has been filed by the National Insurance Co. Ltd. (hereinafter referred to as the Petitioner) being aggrieved by the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the State Commission) in favour of Shri Premjibhai Laxmanbhai Motka (hereinafter referred to as the Respondent).

2. THE facts of the case according to the Respondent who was the original complainant before the District Forum are that he had taken a Group Janata Personal Accident Insurance Policy from the Petitioner Insurance Company for a sum of Rs.10 lakhs and this policy was valid for the period from 01.04.1999 to 31.03.1999. One of the terms and conditions of the above policy was that in case the policyholder loses one eye or one limb due to an accident then he would be entitled to claim 50% of the sum assured. According to the Respondent on 06.02.2000 at about 7.00 p.m. he fell from a ladder and as a result of the fall he injured his left eye. He informed the police station about the accident and took treatment at M.G.S. Hospital at Surendra Nagar after which he consulted an Ophthalmologist, Dr.K.B.Jhala who gave the opinion that the Respondent had lost the vision in the left eye. He was thereafter referred to Dr.P.M. Nagpal a well known eye specialist in Ahmedabad who also confirmed that the Respondent had lost vision in the left eye. Respondent, therefore, filed a claim seeking 50% of the amount insured from the Petitioner Insurance Company as per the terms and conditions of the Janata Personal Accident Insurance Policy. Since, the Petitioner repudiated his claim, Respondent filed a complaint before the District Forum on

the grounds of deficiency in service and claimed Rs.5 lakhs being 50% of the insurance amount together with 18% interest from the Petitioner.

Petitioner has refuted the above contentions of the Respondent. According to the Petitioner, following the filing of the claim by the Respondent an investigator was appointed by the Petitioner Insurance Company who after detailed investigation reported that it was found that the Respondent was suffering from blindness of the left eye about 7 to 8 years prior to the accident on account of glaucoma. Therefore, the blindness in the left eye was not the result of the accident which had taken place on 06.02.2000 as claimed by the Respondent. These facts were further confirmed by the evidence on file of the two Ophthalmologists, Dr.Jhala and Dr.P.M.Nagpal who had examined the Respondent and who have clearly stated that he was suffering from absolute glaucoma with dislocated lens, micro cornea etc. There was no mention of any injury or trauma to the eye. The medicines prescribed to the Respondent were also not for any eye injury or trauma and were more in the nature of treatment for glaucoma/vitamins. In view of these facts, the Petitioner Insurance Company was justified in repudiating the claim.

3. THE District Forum after hearing both parties accepted the respondents complaint on the grounds that there was no concrete evidence which had been produced by the Petitioner to prove that the Respondent had been suffering from Glaucoma well before the accident due to which he had lost his vision. On the other hand, it is a fact that an accident had taken place and Respondent had suffered an eye injury which was also reported to the police and that he started treatment in the hospital for his left eye on the date following his accident. THE District Forum, therefore, directed the Petitioner to pay the Respondent a sum of Rs.5 lakhs along with simple interest @ 12% from 15.03.2000 upto the date of its order as also Rs.1,000/- as costs. Petitioner being aggrieved by this order filed an appeal before the State Commission which accepted the statement of the Respondent that he slipped from the slope of his house and injured his left eye which resulted in loss of the vision in that eye. The operative part of the order of the State Commission is as follows: Complainant immediately visited that Hospital at Surendra Nagar and thereafter got treatment through eye surgeon Dr.H.B.Jhala, his certificate is enclosed who informs that on 07.02.2000 he treated the complainant, he has lost eye sight in the left eye. The certificate of Dr.Nagpal supports the certificate of Dr.Jhala. It is informed that there is Kulu Vision in the eyes. The certificate issued by Dr.Nagpal and Dr.Jhala prove that complete eye sight of complainant is lost, his left eye vision is completely lost which means eye is lost. Opposite party Advocate states that complainant had 40% visibility according to the certificate of Civil Surgeon dated 12.05.2000. Complainant Opposite Party, i.e. counsel for the appellant counsel also informs that if there is 40% visibility loss then maximum 40% compensation could be given to the complainant for which complainant is entitled. I do not agree with this statement. As per the condition of the Policy in case an eye is lost then policy holder becomes entitled to receive 50% of the policy amount and

regarding physical disability in case surgeon issued 40% disability certificate then in such case it cannot be considered when claim has to be paid as per the condition of the policy. In this case complainant has lost his one eye then as per the condition of the policy he becomes entitled to receive 50% of the insured amount, and Insurance Company by not paying said amount of 50% has committed deficiency in service as per the judgment of the learned forum, and it is not found that learned forum has committed any mistake in passing such orders.

4. THE State Commission thus upheld the order of the District Forum and dismissed the appeal. THE present revision petition has been filed by the Petitioner against the above order of the State Commission. Learned counsel for both parties were present. Learned counsel for Petitioner submitted that learned fora below had erred in not appreciating the fact that there is no clear evidence at all of the Respondent having suffered an eye injury following the accident. All the medical records/evidence establish the fact that the Respondent was suffering from absolute glaucoma and even the medications etc. prescribed by the doctors were for glaucoma and not for any eye injury. Counsel for Petitioner specifically brought to our attention the medical certificates of Dr.Jhala and Dr.Nagpal which clearly stated that the Respondent was blind in the left eye and that the left eye had micro cornea, dislocated lens and absolute glaucoma. Micro cornea is a congenital condition that is present from birth and absolute glaucoma is the result not of an injury but is an ailment of the eye which develops over time. THE medicines Diamox and Glucomol prescribed by the Ophthalmologist are not treatment for any eye injury or trauma. Moreover, Petitioner Insurance Company had sought the advice of Dr.Sanjay Chhabra, an Ophthalmologist who also confirmed that the treatment prescribed to the Respondent did not correspond to the treatment for any eye injury. Dr.Chhabra further opined that absolute glaucoma is an end stage of glaucoma disorder and cannot occur because of any injury or trauma within a couple of days. Even dislocation of lens cannot occur in two days. Micro cornea is a congenital abnormality from which the Respondent suffered can itself be a cause for the glaucoma. Counsel for Petitioner further stated that Dr.Jhala on whose statement the Respondent had relied to prove his case has also given a written statement that he is not sure whether the loss of vision in the left eye was due to the fall from the staircase or due to pre-existing disease. THE detailed inquiry conducted at the instance of the Petitioner by an investigating agency concluded that as per statements of persons known to the Respondent, Respondent had lost vision in the left eye 8 years prior to his obtaining the insurance policy. Thus, there is ample evidence on record to prove that the loss of vision in the Respondents left eye was not caused by an accident. Counsel for Respondent on the other hand brought to our notice a statement of Dr.Jhala dated 08.06.2000 in which he had certified that the Respondent had suffered an accident injury due to a fall from the staircase and that he had treated him on 07.02.2000. According to Dr.Jhala in this certificate, the patient developed glaucoma following injury and there was no

vision in the left eye. Counsel for Respondent further stated that the fact that Respondent had reported the accident to the police and that he started treatment in the hospital the day following his accident are also proof that he had lost his vision as a result of the accident and, therefore, the Petitioner was wrong in repudiating his genuine claim. We have heard learned counsel for both parties at length and have carefully considered the evidence on record. The facts regarding the insurance policy and the Respondent having no vision in the left eye are not in dispute. The main issue is whether there is credible evidence that the Respondent had become blind in the left eye due to the accident which occurred on 06.02.2000 or whether he already had no vision in his left eye due to glaucoma much before the accident. In this connection, we have carefully gone through the medical records on which both parties have relied. It has been consistently recorded in all the medical reports/certificates that Respondent was blind in the left eye and that he has absolute glaucoma with other abnormalities like micro cornea etc. There is also the opinion of an Ophthalmologist that an injury does not cause glaucoma and it takes time for absolute glaucoma to develop. Apart from this, the medication that has been prescribed is for patients suffering from glaucoma and related eye disorders and not for trauma or eye injury. The Respondent has relied on the certificate dated 08.06.2000 of Dr.Jhala in which he has recorded that he had treated the Respondent on 07.02.2000 for an injury due to a fall from the staircase and that he developed glaucoma following the injury and there is no vision in the left eye. Subsequently, the same Dr.Jhala gave a written statement which reads as follows: I am not sure whether this loss of visual acuity in the left eye is due to fall from staircase or due to pre-existing disease. So I have given the certificate according to patients history and present vision in eye. In view of these two contradictory statements of the same doctor it is difficult to rely on the credibility of Dr.Jhalas certificate dated 08.06.2002.

5. ON the other hand, as discussed in the foregoing paragraphs, there is adequate medical evidence as well as the report of the investigating which was appointed by the Petitioner that the Respondent had lost vision in his left eye because of glaucoma and not due to an accident. The Fora below have obviously erred in reaching their conclusions on the basis of the fact that the Respondents statement must be correct because the medical certificates do not specifically state that no injury had taken place, particularly, in view of the fact that there is credible and concrete evidence that clearly indicates that the Respondent suffered from glaucoma which was the cause for loss of vision in the left eye. We, therefore, set aside the order of the State Commission and accept the revision petition with no order as to costs.

