(2015) 06 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Case No : 1794 of 2011

NATIONAL INSURANCE CO. LTD. — APPELLANT

Vs

RAMESH KUMAR GUPTA — RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 06 NCDRC CK 0063

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Pradeep Gaur, Nikhil Jain

Judgement

1. This revision is directed against the order of the Haryana State Consumer Disputes Redressal Commission, Panchkula in first appeal No.2417/2006 whereby the State Commission dismissed the appeal preferred by the petitioner Insurance Company and confirmed the following directions of the District Forum: - "In view of the above said discussion, we are of the considered view that the complainant is entitled to get all the benefits of the policy. Hence, we direct the OP to make the payment of Rs.85,540/- as medical treatment, Rs.26,079/- of medicine and Rs.4500/- as transportation and special diet, total sum of Rs.1,16,919/- to the complainant within one month form the date of order. Order be complied within one month. The present complaint is hereby disposed of accordingly."

2. Undisputed facts relevant for the disposal of the revision petition are that respondent No.1 insured his Maruti Van No.DL-4CD-5320 with the petitioner Insurance Company. The insurance policy extended personal accident cover of Rs.2 Lakh to owner/driver. During the subsistence of the insurance policy the van met with an accident while being driven by the respondent/complainant. The complainant sustained multiple injuries including the multiple fractures of his left leg in the accident. Complainant took treatment at Rao Tula Ram Hospital and Sant Parmanand Hospital. As a consequence of the injuries suffered in the

accident, petitioner suffered 20% permanent disability of his left leg. According to the complainant he spent a sum of Rs.1,16,919/- on his treatment for which he submitted claim to the insurance company. The claim, however, was repudiated on the ground that as per the policy condition the complainant was not entitled for compensation as he has suffered disability only to the extent of 20%. Being aggrieved of the repudiation of the claim the complainant raised a consumer dispute in District Forum Jhajjar.

3. The District Forum on consideration of the pleadings and the evidence allowed the complaint and directed as above. Being aggrieved of the order of the District forum, the petitioner/insurance company preferred an appeal and the State Commission vide impugned order dismissed the appeal.

4. Learned Shri Pradeep Gaur, Advocate for the petitioner has contended that the impugned orders of the Foras below have been passed in utter disregard of the terms and conditions of the insurance contract. It is argued that as per the disability certificate produced by the respondent/complainant he suffered 20% permanent disability of his left leg for which no compensation is permissible under the insurance contract. Thus, he has urged for setting aside of the impugned orders.

5. Learned Shri Nikhil Jain, Advocate on the contrary has argued in support of the impugned orders.

6. In order to appreciate the contention of learned counsel for the parties, it is necessary to have a look on the terms and conditions of the insurance contract pertaining to the personal accident cover for the driver/owner which are reproduced as under: - "SECTION-III PERSONAL ACCIDENT COVER FOR OWNER-DRIVER

The company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured or whilst driving or mounting into/ dismounting from the vehicle insured or whilst traveling in it as a co-driver, cause by violent accidental external and visible means which independent of any other cause shall within six calendar months such injury result inNature of injury

i. Death 100%

ii. Loss of two limbs or sight of two eyes or one limb and sight of one eye 100%

iii. Loss of one limb or sight of one eye 50% Permanent total disablement from injuries other than named above 100%."

7. On reading of the above, it is clear that the petitioner insurance company had agreed to indemnify the owner/driver of the insured vehicle only in case of death, loss of two limbs or sight of two eyes or one limb and sight of one eye, loss of one limb or sight of one eye or permanent total disablement from injuries other than named above. Undisputedly, as per the certificate issued by the

medical board the complainant has suffered 20% permanent disability which cannot be termed as permanent total disablement. Therefore, in our view, the insurance company was right in repudiating the claim. It is pertinent to note that on perusal of record we find that the complainant has sought compensation not for permanent disability but for the expenses incurred on his treatment which is not covered under the insurance contract. Therefore also, the repudiation of claim is justified.

8. In view of the discussion above, we find that the impugned orders suffer from material irregularity. We accordingly allow the revision petition, set aside the impugned orders and dismiss the complaint.

9. The petitioner pursuant to the conditional stay order has deposited 50% of the awarded amount with interest with the State Commission. The said amount be refunded to the petitioner.

