(2011) 01 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

National Insurance Co.Ltd. — APPELLANT

Vs

Raja Tukaram Shinde — RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Citation : 2011 0 NCDRC 65 : 2011 1 CPJ 262

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

Advocate : Kishore Rawat , Raja Tukaram Shinde

Judgement

1. THE present revision petition has been filed by National Insurance Co.Ltd. (hereinafter referred to as the ''Petitioner'') against the order of the State Consumer Disputes Redressal Commission, Maharashtra (hereinafter referred to as the ''State Commission'') in favour of one Raja Tukaram Shinde (hereinafter referred to as the ''Respondent'') who was the original complainant before the District Forum.

2. THE brief facts of the case are that the Respondent was a Member of the Maharashtra State Electricity Board Staff Welfare Committee which had obtained a Janta Personal Insurance Policy to cover their member/employees for a total sum of Rs.2 lakhs for a period of 12 years w.e.f. 26.02.1998. As per the provisions of this policy, if an injury occurred to an insuree within one calendar year of its occurrence which was the sole and direct cause of total and irrecoverable loss of sight of one eye, or total or irrecoverable loss of use of hand or a foot, 50% of the capital sum insured would be given to the insuree. In the instant case the Respondent on 14.07.1998 during the course of his duties while working on an electricity pole, fainted and fell down sustaining serious head injuries and was hospitalized from 14.07.1998 to 03.08.1998. As a result of this accident, Respondent lost vision of his left eye and a certificate to this effect was issued by the medical officer of General Hospital, Latur. In terms of the insurance policy the Welfare Committee forwarded the necessary papers to the Petitioner-Insurance Company on 08.09.2000 and requested that the insurance claim due to the Respondent because of loss to his eye be paid directly to him. However,

the claim was contested by the Petitioner-Insurance Company on the grounds that the claim was filed beyond the period of limitation of one calendar year and further as per one of the two medical certificates issued by the same hospital the loss of vision of the left eye was not complete but stated to be only 30%. Aggrieved by this, Petitioner filed a complaint before the District Forum which accepted the complaint on the grounds that there was adequate evidence on record that the Respondent had lost vision in his left eye rendering it completely useless and that even second medical certificate which stated that the loss of vision in the left eye was upto 30% has certified that there is permanent privation of sight of the left eye. The District Forum, therefore, directed the Petitioner to pay the Respondent Rs.1 lakh as insurance benefit together with interest @ 9% per annum within 30 days from the date of receipt of the order.

Aggrieved by this, the Petitioner-Insurance Company filed an appeal before the State Commission. The State Commission while taking note of the two differing medical certificates regarding the extent of loss of vision in the left eye of the Respondent, concluded that there was credible evidence that the Respondent had lost vision totally in the left eye and therefore, was entitled to the insurance claim. The relevant part of the order of the State Commission reads as follows: "Two documents are prepared by the same doctor. So far as discharge card prepared by Dr.Warad is concerned, it is clearly seen that complainant was examined by Ophthalmologist on 14.07.1998. The doctor noted at the foot of the discharge card that it is case of loss of vision of left eye. Certificate dated 26.12.2000 issued by very doctor however shows that loss of vision of left eye was to the extent of 30%. Nothing is placed on record to show that Dr.Warad is an Ophthalmologist. Certificate dated 26.12.2000 would go to show that on examination loss of vision of left eye was noticed upto 30%. There is no reference in this certificate as to whether Ophthalmologist had examined the left eye of the complainant. On the other hand discharge card dated 03.08.1998 would clearly go to show that the complainant was examined by Ophthalmologist on 14.07.1998 and thereafter finding was recorded to the effect that there was a loss of vision of left eye. This discharge card is more reliable than the certificate issued on 26.12.2000. It is tried to be argued on behalf of the appellant that the word totally is missing from the discharge slip. It is true that it is not noted in the discharge card that complainant lost his vision of left eye totally. Fact remains on record that there was a loss of vision of left eye on examination by Ophthalmologist. For any ambiguity complainant cannot be penalized. Case of the complainant therefore squarely falls within clause C of the policy. Forum below therefore has passed correct order."

3. THE State Commission while upholding the order of the District Forum regarding the compensation to be paid, however, reduced the interest amount from 9% to 7%. Hence the revision petition. The Petitioner-Insurance Company was represented by its counsel, Shri Kishore Rawat. Respondent was personally present along with an authorized representative Shri Pradeeep R.Shivane to assist him in oral submissions. Counsel for Petitioner submitted that the

Petitioner-Insurance Company rightly repudiated the claim of the Respondent since it could not be established conclusively from the medical certificates that Respondent had actually lost total vision of his left eye. This ambiguity had arisen because of the subsequent medical certificate from the same hospital which clearly stated that the loss of vision in the left eye was upto 30%. Apart from this, there was delay in filing the claim which was also against the provisions of the concerned insurance policy. The authorized representative of the Respondent while admitting that there was some delay in filing the claim requested that this may be overlooked because it took some time to collect the necessary papers and get these forwarded by the Respondent''s Welfare Committee which had taken the insurance on behalf of the Respondent. Besides, it was clear from the medical certificates attached with the claim papers that the accident had occurred within one calendar year of the insurance policy and was, therefore, within the validity period as per the provisions of the insurance policy. Respondent confirmed verbally that he was totally sightless in his left eye.

4. WE have considered the oral submissions and have gone through the evidence on record. While it was a fact that there is a difference in the two medical certificates issued by the same hospital regarding the actual loss of vision, we feel that the first medical certificate is a more credible and reliable document because the total loss of vision has been confirmed by an Ophthalmologist who is a specialist in this field. The second certificate stating that the loss of vision was upto 30% has been signed by one Dr.Sanjay Warad, who is not an Ophthalmologist but a general surgeon. It is also relevant to note that the Petitioner did not challenge the findings of the first medical certificate either through raising a specific question regarding its veracity or seeking permission from the fora below to cross-examine the concerned doctor. Apart from this, during the court proceedings, Respondent was asked to cover his right eye and when a hand was waived before his left eye, there was absolutely no response or reaction, indicating that he was unable to see anything from his left eye. We, therefore, see no merit in the present revision petition and uphold the order of the State Commission in toto. The Petitioner should pay to the Respondent the insurance amount of Rs.1 lakh along with interest @ 7% per annum as directed by the State Commission within a period of 30 days.

