(2013) 11 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LTD — APPELLANT

Vs

Gopanaboina Sathyam — RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : 2013 0 NCDRC 795 : 2014 1 CPJ 198

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Final Decision : Revision petition stands dismissed

Judgement

1. THIS revision petition has been filed by the petitioner Insurance Co. which was opposite party at Sl. Nos.2 & 3 in the consumer complaint filed by respondent No.1/complainant before the District Forum, Nalgonda against the petitioner Insurance Co. and the Golden Multi Services Club Ltd., Kolkata included in the complaint as opposite party at Sl. Nos. 1 & 4. Challenge in the revision petition is to the impugned order passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad (''State Commission '' for short) on 9.8.2012 in F.A. No.402 of 2011 whereby the State Commission partly allowed the appeal filed by the petitioner co. against order dated 19.4.2011 passed by the District Consumer Forum, Nalgonda in consumer complaint No.61 of 2010. By its order, the District Forum had partly accepted the complaint filed by R -1 in terms of the following order:- ''''In the result, the complaint is partly allowed. The Opposite Party No.2 is directed to pay to the Complainant Rs.78,000/ - (Rupees Seventy eight thousand only) along with interest @ 9% p.a. from the date of the complaint till realization. Costs of this complaint quantified at Rs.2,000/ -. Time for compliance one month from the date of communication of this order. Rest of the claim of the Complainant is dismissed.''''

2. THE State Commission vide its impugned order slightly modified the order of the District Forum by setting aside the award of compensation of Rs.3,000/ - for deficiency in service and maintained the rest of the award passed by the District Forum as reproduced above. Briefly stated, the facts relevant for disposal of this revision petition are that the complainant/respondent obtained a Group Jantha

Personal Accident Policy from the OP Insurance Co. for a sum of Rs.5 lakhs and the said policy was in force from 31.3.2004 to 31.3.2019. The complainant paid premium to the Insurance Co. through OPs 1 and 4. On 19.8.2007, the complainant while travelling on his motorcycle to his village was involved in an accident in which he sustained grievous injuries to both the upper and lower limbs and a major injury to the head near his right eye. After the first aid, the complainant was shifted to a super specialty hospital at Hyderabad where he was treated for 10 days. Police case was also registered and charge sheet was submitted against the driver of the tractor which allegedly caused the accident. The complainant filed his insurance claim in November 2007 with the OP No.4 along with necessary documents which was forwarded to the OP Insurance Co. In spite of furnishing further documents as required by the OP Insurance Co., the claim of the complainant was allegedly not settled and nor there was any response in spite of a no. of visits by the complainant to the OP Insurance Co. Eventually, the complainant lodged a consumer complaint with the District Forum praying for direction to the OPs to pay Rs.2,50,000/ - towards 50% of the assured sum together with interest and Rs.1 lakh by way of damages and cost.

3. OPS filed their written statements opposing the claim and denying the allegations made in the complaint. OPs 1 and 4 admitted issuance of the policy to the complainant by the OP Insurance Co. and also acknowledged that they had received the claim in respect of the accident from the complainant and the same had been forwarded by them to OP Insurance Co. However, they denied their liability to pay the claim made by the complainant and hence prayed for dismissal of the complaint against them. The OPs 2 and 3, i.e, the Insurance Co. filed a combined written version admitting issuance of the policy subject to certain terms and conditions. It was contended by the OP Insurance Co. that as per policy Clause ""'C "" , the complainant is not entitled to any compensation because there is no permanent disability. It was also stated by the Insurance Co. that in spite of several letters to the complainant requiring certain documents, the complainant did not comply with the requirements and as such they could not settle the claim. Both the sides filed their evidence affidavits reiterating their respective pleadings and after hearing the parties and considering the evidence on record, the District Forum accepted the complaint in terms of the aforesaid order. Aggrieved by that order, the OP Insurance Co. filed an appeal on several grounds before the State Commission challenging the order of the District Forum and denying any deficiency in service on their part and praying for setting aside of the order of the District Forum and dismissal of the complaint. As stated above, the State Commission vide its impugned order partly allowed the appeal by giving some relief to the extent of Rs.3,000/ - in the matter of payment of compensation and upheld the rest of the award passed by the District Forum. Under these circumstances, the OP Insurance Co. has now filed the present revision petition.

4. WE have heard Shri Abhishek Kumar, Advocate for the petitioners and Sh. R. Santhnan Krishnan, Advocate for respondent/complainant. Learned counsel Shri

Kunal Chatterjee, Advocate has been heard for respondent Nos. 2 and 3. Learned counsel for the petitioners submitted that the State Commission has failed to consider that the claim in question is not covered under the scope of the cover provided by the policy inasmuch as the policy covers only the accidental death, permanent total disablement, actual loss of one eye/eyes, hand/hands, foot/feet but does not cover the partial blindness, i.e., 30% as in the present case. He also submitted that the coverage by the policy is limited to complete and actual loss of one eye or both the eyes in terms of the conditions provided at Sl. No.1 to 1.1 and 2 to 2.9 in the table/chart provided under the conditions. Learned counsel further argued that since admittedly no complete and actual loss of one eye is caused to the complainant/respondent, the complainant would not be entitled for any compensation strictly in terms of the conditions of the policy. Learned counsel vehemently pleaded that in terms of the condition of the policy, the loss of sight has to be full loss and keeping in view this specific condition, he said that both the Fora below committed grave mistake in accepting the claim albeit proportionately even though as per the certificate of the doctor the loss of sight was only 30%. He, therefore, submitted that the impugned order cannot be sustained in the eye of law and is liable to be set aside being in violation of specific conditions of the policy. On the other hand, learned counsel for the complainant/respondent submitted that 30% loss of sight suffered by the complainant/respondent during the accident is of permanent and irrecoverable in nature and the same fact has not been denied. He argued that condition Nn.2.7 which is relevant to consider the present claim does not talk of total or full loss of sight of one eye but merely mentions payment of 50% of the sum insured in case of ''''loss of sight of one eye ''''. He further submitted that if the condition at 2.7 is read with the wordings used in the main condition at Sl. No.2, it would be clear that the only thing which is required to be established is that the loss suffered should be permanent and of irrecoverable nature. He submitted that admittedly the loss of sight of one eye was to the extent of 30%, but it is nobody ''s case that it was not of permanent and recoverable in nature. In this view of the matter, he submitted that the Fora below were right in admitting the claim in proportion to the extent of loss suffered and as such the impugned order needs to be upheld and the revision petition dismissed.

5. WE have carefully considered the rival contentions. The only legal issue which has emerged from the arguments is as to whether in terms of the scope of cover provided for in the terms and conditions of the policy, proportionate compensation is permissible. Learned counsel for the petitioners has placed reliance on three judgements of the Apex Court in the cases of Oriental Insurance Co. Vs. Sony Cheriyan [(1999) 6 SCC 451], National Insurance Co. Ltd. Vs. Laxmi Narain Dhut [2007 - 258 (02 -03 -2007) (SC)] and United India Vs. Harchandrai Chandan Lal [(2005) ACJ 570 (SC)]. We have considered the observations of the Apex Court in these three cases referred to by the counsel. The essence of the observations of Hon ''ble Supreme Court is that the insurance policy between the insured and the insurer represents contract between these

parties and the terms of the policy govern this contract. This being the position, it has been laid down that we have to abide by the words used in the policy and there is no scope for adding or subtracting the wordings of the policy as agreed to and accepted by the parties. Applying the aforesaid principles laid down by the Apex Court to the present case, we find that as per scope of the cover provided under the terms and conditions attached to the policy, the case of the complainant is covered by para 2.7 read with the main para 2 which governs the sub -paras included under the main para. For the sake of better appreciation, we may reproduce the chart of benefits available under the scope of cover as under:- ""1) Death 100% of sum insured 1.1) Permanent total disablement 100% of sum insured 2) Total and irrecoverable loss of : 100% of sum insured 2.1) Sight of both Eye 100% of sum insured 2.2) Actual loss by physical separation of two entire hands 100% of sum insured 2.3) Actual loss by physical separation of two entire feet 100% of sum insured 2.4) Actual loss by physical separation of hand and one entire foot 100% of sum insured 2.5) Actual loss of sight of one Eye and actual loss by physical separation of one entire hand 100% of sum insured 2.6) Actual loss of sight of one Eye and actual loss by physical separation of one entire foot. 100% of sum insured 2.7) Loss of sight of one Eye 50% of sum insured 2.8) Actual loss by physical separation of one entire hand 50% of sum insured 2.9) Actual loss by physical separation of one entire foot 50% of sum insured ""

6. WE may note from the above that so far as loss of sight of one eye is concerned, 50% of the sum insured is payable. Since the complainant suffered only 30% loss of sight of one eye, the Fora below have considered award of 30% of 50% of the sum insured which comes to Rs.75,000/ -. It is important to note that although there is further elaboration of the nature and extent of loss under each of the sub-paras by adding prefixes / adjectives like ""actual "", ""entire"", ""physical"", etc. there is no further adjectives or prefixes added before the words ""loss of sight of one eye"". The contention of the learned counsel for the petitioners is that the main clause which contains the words ""total and irrecoverable loss of "" governs all the sub -clauses and hence it would exclude the present claim which pertains to only 30% loss of sight. On the other hand, the contention of learned counsel for respondent/complainant is that absence of the word ""full"" or ""total"" in the beginning of the entry at Sl. No. 2.7 indicates that the claim under this entry which cannot exceed 50% of the sum insured in cases of full loss of sight of one eye has to be considered on proportionate basis in case of such loss which is of total and irrecoverable in nature as contained in para 2. Learned counsel for the complainant/respondent further said that if there was an intention to exclude consideration of claims in case of partial loss, the entry would certainly have clarified it by adding the prefix ""full"" and/or ""total"" before the word loss in this entry. In this view of the matter, he has submitted that the Fora below were right in accepting the claim on proportionate basis in terms of the limits laid down by the terms and conditions. Having considered the respective pleas of the parties in the light of

the words used in the terms and conditions as mentioned in the policy and after looking at entry at sub-para 2.7 along with entries in other sub-paras, we are of the view that the claim can be considered in terms of this sub -para even for proportionate loss of sight as long as the loss is of irrecoverable and permanent nature. Admittedly it is not the case of the petitioner Insurance Co. that 30% loss of sight suffered by the complainant in his right eye is not of irrecoverable or permanent nature. In view of this, no fault could be found with the impugned order because the claim awarded is strictly in proportion to the loss of sight. While on the subject, we have no hesitation in observing that that the arguments put forth by the learned counsel do indicate that there is certain amount of lack of clarity or ambiguity in respect of the real purport of the benefits available under para 2.7 under reference. If that be so, even then in all fairness, the benefit of doubt must go to the insured. We have considered the present case from both the angles and are of the opinion that going by the words used in the scope of cover under the terms and conditions attached to the policy, the impugned order does not call for any interference from us. Revision petition, therefore, stands dismissed with the parties bearing their own costs.

