(2009) 07 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

S. Anjaneya Rao RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Citation : 2009 4 CPJ 229

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Advocate : S.K.GUPTA , RITU SHARMA

Judgement

1. THE petitioner/OP has come in revision against two concurrent findings of Fora below.

2. LEARNED Counsel for the petitioner has argued before us that there is no proximate link between loss of vision and injury. According to the Doctor from L.V. Prasad Eye Institute, Hyderabad who was asked to examine the complainant vide order dated 27.3.2009 of this Commission, the loss of vision of the right eye is due to total glaucomatous optic atrophy. He therefore contends that the case of the complainant does not fall within the scope and ambit of the Janata Personal Accident Insurance Policy issued in favour of the complainant. He, therefore, prays that the orders of the Fora below be set aside. On the other hand, learned Counsel for the respondent submitted before us that the medical evidence on record has proved beyond doubt that the loss of vision of the right eye of the complainant was on account of injury suffered by him in the accident and the loss is total and irrecoverable as can be seen from the report of Doctor from L.V. Prasad Eye Institute, Hyderabad. He, therefore, contends that there is no reason to interfere with the findings of the Fora below.

3. WE have gone through the record. The relevant clause of Janata Personal Accident Insurance Policy, which is required to be considered is Clause c'' of the policy, which reads as under: "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 total and irrecoverable loss of use of a hand or a foot, fifty percent of capital sum insured in the Schedule hereto."

The complainant had taken two Janata Personal Accident Insurance Policies -one for Rs. 1,00,000 and another for Rs. 25,000.

4. THE complainant had met with an accident on 12.3.2001 while driving motor cycle and due to impact against a stone he fell down and received injury to his right eye ball. He was immediately taken to Government Community Hospital, Bellampalli. The report of the Doctor from the said hospital states "C/o fall on the ground hitting the head on 12.3.2001 while driving motor cycle C/o dimness of vision in Rl referred to Ophthalmologist. The Ophthalmologist Dr. T. Sammi Reddy examined the complainant on 13.3.2001 and recorded finding "Fundus - No vision due to vitreous Haemorrhage - vision PL+". On 20.3.2001, Dr. T. Sammi Reddy had referred the complainant to REH, Warangal for further management. Dr. from REH, Warangal examined the complainant and reported on 30.3.2001 that there was 40% eye loss of the right eye. However, according to the panel Doctor of the Insurance Company who was not an Ophthalmologist expert in the field, disability was only 30%. The Insurance Company had rejected the. complaint of the complainant on the ground that there was no evidence of accidental injury to the eye which led to the loss of vision, and the loss of vision is outside the scope of policy condition. There is ample evidence on record that the loss of vision was directly as a result of the injury suffered by the complainant in the accident. The complainant had complained of total loss of vision in the right eye and as such it was considered necessary to send him for examination to L.V. Prasad Eye Institute, Hyderabad. Dr. from L.V. Prasad Eye Institute, Hyderabad had submitted report dated 29.4.2009 has recorded the following findings: "This is to state that patient Mr. Suchendra Anjaneya Rao a 43 years old male, with a history of road traffic accident in 2001 has vision of 20/20 in the left eye and is denying perception of light in the right eye. He has glaucomatous optic atrophy in the right eye with pressure of 52 mm Hg. His vision loss in the right eye is total and irrecoverable. His vision in the left eye is absolutely normal."

5. THIS exercise should have been carried out by the District Forum in the interest of justice so that it could be determined whether at that stage there was total and irrecoverable loss of sight and whether the case of the petitioner fell within the four corners of Clause (c) of the policy. No such exercise was done and we are inclined to give benefit of the same to the petitioner on the basis of the report of LVPEI -though it is belated in point of time with reference to the provisions of Clause (c) of the policy. However, the same shall not be treated as precedent vis -a -vis provisions of Clause (c) of the policy.

6. FROM the material on record it is clearly established that the daminition of loss injury and permanent loss of the vision of the right eye was on account and directly the result of injury suffered by the complainant in road accident. The Fora below have granted 50% of the claim on the basis of Clause c''. In this view of the matter, we are not inclined to interfere with the findings of the two Fora below. The revision is accordingly dismissed with no order as to cost. The fee

payable to LVPEI be sent by Demand Draft out of Rs. 10,000 deposited by the petitioner and balance be returned to the petitioner. The sum awarded by Fora below be paid by petitioner to respondent in 45 days, if not already paid or deposited. R.P. dismissed.