(2002) 07 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED — APPELLANT

Vs

Abdul Jabbar — RESPONDENT

Date of Decision : 16-07-2002

Acts Referred:

Citation : 2003 2 CLT 311 : 2003 2 CPJ 47

Hon'ble Judges : D.D.Bahuguna , Rachna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 22.8.2001 passed by District Consumer Forum, Bareilly II in Complaint Case No. 64 of 2000.

2. BRIEFLY stated the facts of the case are that the complainant, Abdul Jabbar, resident of Banjara Inayatganj, Bareilly, had taken a Janta Personal Accident Insurance Policy No. 4216010007314 on 30.4.1996. The capital sum assured was Rs. 2,00,000/- and the period of insurance covered under the policy was in force from 30.4.1996 to 29.4.2006. The risk covered under the policy was to indemnify the complainant upto Rs. 2,00,000/- in case of permanent disability. At the time of the insurance the complainant had normal eye sight and normal hearing capacity. On 20.12.1998 at Bareilly Bye-pass Road when the complainant was getting his truck repaired, he was all of a sudden hit by a speeding Army vehicle which was driven rashly and negligently. This caused injury to the eyes, ears, face, mouth and feet of the complainant. The injuries were so serious that the complainant became unconscious for quite some time. After becoming conscious the complainant lodged an F.I.R. with the Police Station, Baradari at Bareilly and also intimated the fact of accident to the opposite party. He was given a claim form by opposite party which was filled up and submitted. He spent an amount of Rs. 20,000/- for the treatment of the eyes, fee etc. and remained under treatment of qualified doctors. As a result of the above injury the eye sight of the complainant was diminished permanently and his hearing capacity was also dismished permanently to the extent of 50%. The result is that the complainant is unable to lead a normal life and cannot drive scooter, motor cycle, car etc. nor

can he hear until and unless spoken loudly. The claim for compensation of Rs. 2 lacs was lodged with the opposite party which was not accepted although enquiry and investigation in the case had been made and the Investigator had come to the conclusion that the complainant suffers from disability. The claim was not sanctioned on the ground that disability is not 100%. The opposite party committed deficiency in service as the complainant is a consumer. The repudiation was made on 14.4.1997 and, therefore, the complaint was lodged before the District Consumer Forum for recovery of a sum of Rs. 2,00,000/- as compensation alongwith damages of Rs. 10,000/-. Cost of treatment amounting to Rs. 20,000/- was also claimed. In the written statement before the District Consumer Forum, the opposite party, New India Assurance Company Limited, admitted the insurance but stated that the claim made was false and the complaint is barred by the provisions of Sections 2(o) and 2(d) of the Consumer Protection Act. The complainant had failed to establish his losses and the expenditure he has alleged to have incurred. The claim is exaggerated and has been on concoeted and fictitious grounds. It is wrong to say that the complainant had become permanently disabled due to the alleged accident and his eye sight and hearing power has been diminished permanently to the extent of 50%. The complainant could not produce positive medical evidence to show that a genuine claim has been made as per terms and conditions of the policy. The company is liable to pay the compensation in case any injury is suffered within one calendar year of the occurrence which is the direct cause of the total and irrecoverable loss of sight of both the eyes. In that case the payment of Rs. 2 lacs was payable and in case any injury occurs within one calendar year resulting into irrecoverable loss of sight of one eye, 50% of the capital sum of the insurance amount was payable, subject to terms and conditions of the policy. There is no total and irrecoverable loss of sight and, therefore, no claim under the policy is payable. The mandatory notice as required under the terms and conditions of the policy was not given to the opposite party by the complainant. The claim was, therefore, fraudulent and was not payable. Letters and reminders to the complainant were sent to produce the related medical reports and bills etc. of treatment which were not furnished. In the F.I.R. lodged by the complainant details of the number or make of the vehicle have also not been furnished. After considering all the facts and circumstances and the investigation report, the Insurance Company repudiated the claim of the complainant. The disability certificate produced by the complainant is not conclusive proof of his disability of blindness and deafness. The claim was, therefore, not sustainable.

The parties led evidence before the District Consumer Forum in support of their respective contentions. The complainant filed an affidavit alongwith policy documents, the police report and the letters addressed to him by the Surveyor of the Insurance Company. The policy certificate and papers in regard to treatment were also filed by the complainant. On behalf of the opposite party an affidavit of the Divisional Manager of the company was filed. After examining the records and evidence, the Forum came to the conclusion that the eye sight of the left eye

of the complainant has been permanently lost because of the accident and there is no scope for any improvement. Similarly the Forum observed that 50% damage has been caused to the hearing capacity of the complainant and the hearing capacity of the left ear has been completely lost and the complainant comes in the category of "disabled" persons. The Forum, therefore, decreed the complaint and directed the opposite parties to pay to the complainant an amount of Rs. 50,000/- as permanent loss occured to the sight of the left eye and another amount of Rs. 50,000/- on account of permanent loss occurred to the hearing capacity of the left ear of the complainant. The Forum also directed for payment of interest at the rate of 9% on these amounts with effect from the date of filing of the claim. An amount of Rs. 5,000/- was also awarded towards cost of the treatment and Rs. 500/- as cost of litigation. Compliance was to be made within a period of one month from the date of the order.

3. AGGRIEVED against the order of the learned District Forum, the opposite party New India Assurance Company Limited, has come in this appeal. We have heard the learned Counsel for the parties. Learned Counsel for the appellant has argued that the evidence produced by the complainant before the District Consumer Forum does not bring the claim within the purview of the Janta Personal Accident Insurance Policy and, therefore, the finding arrived at by the Forum is against record. The complainant had not become permanently disabled as per terms and conditions of the policy. He had failed to prove complete and irrecoverable loss of sight or hearing power of any ear. The Forum did not afford opportunity to the appellant to get the examination of the eyes etc. of the respondent by experts in the respective disciplines. Under the terms and conditions of the insurance policy the insurance was for permanent loss of the eye sight and hearing capacity and the complainant could not prove the disability. On the other hand, the learned Counsel for the respondent has argued that the complainant had filed copies of F.I.R., letters sent to the appellant, disability certificate and all other relevant documents in regard to medical treatment before the Forum to prove disability of the complainant while the appellant did not file the report of the Investigator before the Forum. The opposite party was insisting that the complainant be got medically examined from Dr. Amit Tarafdar, but the said doctor was not any Eye Specialist and, therefore, the Forum rightly called for report from the Sitapur Eye Hospital and from Dr. S.N. Pandey of District Hospital, Bareilly. The Forum even examined Dr. S.N. Pandey in the witness box and the opposite party was afforded opportunity to cross-examine the doctor. Disability certificate of the Chief Medical Officer, Bareilly signed by the Eye Specialist, ENT Specialist and others and was counter-signed by the Chief Medical Officer and these documents clearly prove that the left eye of the respondent has completely gone and he had become deaf from one ear. On the basis of these evidences the Forum allowed the complaint. The report of the Investigator/Surveyor appointed by the opposite party was not produced before the Forum and has been concealed. Therefore, the Forum rightly decreed the complaint.

4. WE have gone through the record of the appeal which also includes the copies of the documents filed before the District Consumer Forum. The controversy involved in the case is that as per version of the opposite party, the complainant had not sustained the disability as a result of the accident to enable him to seek the claim as per terms and conditions of the Janta Personal Accident Insurance Policy. On the contrary the contention of the complainant is that there has been complete and irrecoverable loss of sight of one eye and irrecoverable loss of hearing capacity of one ear and this loss is covered under the policy. It will be appropriate to examine the contents of the terms of Janta Personal Accident Insurance Policy. Clause A reads as follows : (a) If such injury was during one calendar year of its occurrence be the sole and direct cause of the death of the insured the capital sum insured stated in the Schedule, the amount payable under this clause shall be paid to the nominee shown in the Schedule. (b) If such injury shall within one calendar year of its occurrence be the sole and direct cause of the total and irrecoverable loss of sight of both eyes or total and irrecoverable loss of use of two hands or two feet or one hand, one foot or for such loss of sight of one eye and such loss of use of one hand or one foot the capital sum insured stated in the Schedule hereto. (c) If such injury shall within one calendar year 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 the capital sum insured in the Schedule hereto. (d) If such injury shall within one calendar year of its occurrence be the sole and direct cause of permanently, totally and absolutely disabling the insured from engaging is being occupied with or giving attention to any employment of occupation of any description whatsoever, the capital sum insured stated in the Schedule.

A perusal of the above will go to show that even if there has been a loss of one eye, there has been a loss of sight of one eye or hearing capacity of one ear the complainant is entitled to the compensation as provided under the policy. Therefore, in the event of loss of one eye, and loss of one ear will cover the terms and conditions of the policy. The contention raised by the opposite party is, therefore, not tenable. Now we have to see whether the complainant had been able to establish that there was a complete and irrecoverable loss of eye sight of one eye and the hearing capacity of one ear. On record there is a certificate issued by the Eye Hospital, Bareilly, branch of Eye Hospital, Sitapur which clearly states that the sight of the left eye is irrecoverable. This is also evident from the statement made by Dr. S.N. Pandey, Eye Surgeon of the District Hospital. The Surgeon has clearly stated that even retina implantation is a very far-fetched possibility. This fact is also proved from the certificate issued by the Eye Specialist of the District Hospital, Barielly. These facts are further corroborated from the disability certificate issued in favour of the complainant. The certificate is signed by the Eye Specialists, ENT Specialists and the Chief Medical Officer of Bareilly. The certificate refers to the permanent loss caused to the left eye and to the left ear of the complainant. A record of the copies of the order sheets of the

complaint case dated 24.7.2001 and 7.8.2001 goes to show that the opposite party Insurance Company, was insistent before the Forum that the complainant be got examined by one Dr. Amit Tarafdar. The District Forum did not agree with this suggestion and instead called for the independent report of Sitapur Eye Hospital and the District Hospital. In our opinion the Forum was perfectly justified in not calling for the tests to be carried by Dr. Amit Tarafdar who was named by the opposite party. The independent doctors had given certificates and one of them had even been examined and cross-examined before the Forum. It has clearly emerged from the evidence that the complainant had sustained complete loss of hearing power of one ear and complete loss of sight of one eye. The opposite party should have filed the report of the Investigator/Surveyor before the District Consumer Forum and it failed to do so which causes a very serious doubt and, therefore, the contentions raised by the Insurance Company cannot be accepted.

5. IN the circumstances, we find no reason to interfere with the judgment and order passed by the District Consumer Forum and the same is liable to be confirmed and the appeal is liable to be dismissed. ORDER

6. THE appeal is dismissed and the judgment and order of the learned District Forum are confirmed. THE appellant shall pay a sum of Rs. 2,000/- as cost of appeal to the respondent/ complainant. Compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal dismissed.

