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(2001) 05 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

O.A. VARADADESIGAN — APPELLANT

Vs

Branch Manager, National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Citation : 2001 3 CPJ 386 : 2002 2 CPR 175

Hon'ble Judges : M.S.Janarthanam , Banumathi Baskaran , Kayal Dinakaran J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated 4.2.1998 in O.P. No. 111/1997 on the file of the District Consumer Disputes Redressal Forum, Chennai (South). The appellant is the complainant while the respondent is the opposite party.

2. THE short facts may be related in order to understand the crux of the issue arising for consideration in this action. The complainant one O.A. Varadadesigan, took a Janatha Personal Accident Policy from the National Insurance Company Ltd., Madras-4, the opposite party on 13.4.1994 effective till 12.4.1995. On 22.11.1994, while going on his two wheeler, he met with an accident and sustained an injury on his leg. For the injury so sustained, the complainant made a claim of Rs. 12,500/- with the opposite party. Along with the claim application, it is said, he also sent the disability certificate to the opposite party. The claim so made was however repudiated by the opposite party.

The repudiation of the claim by the opposite party, the complainant would say, would tantamount to deficiency in service, on the facts and in the circumstances of the case.

3. THE opposite party Insurance Company, in pith and substance would contend that there was no deficiency in service on their part. What they would contend is that Clause (c) of the policy excludes their liability on the facts in the circumstances of the case in the sense of the injury suffered by the complainant insured is not total loss of usage of one limb, that is to say, hand. THE complaint, as such, is liable to be dismissed. The Forum below, after taking into

consideration the materials placed on record, recorded a finding that there was no deficiency in service on the part of the opposite party in repudiating the claim as made by the complainant. It is on such a finding, the Forum below dismissed the complaint with costs.

4. AGGRIEVED by the order as above, the complainant resorted to the present action. He did not engage a Counsel of his choice. As a matter of fact, he filed the appeal in person. On service of process, the respondent/opposite party Insurance Company also entered appearance through a Counsel of their choice namely learned Counsel Mr. F.B. Benjamin George. When the matter came up for arguments before us today, the appellant/complainant O.A. Varadadesigan, is absent and no representation is made on his behalf. The fact that he is absent does not mean that we cannot dispose of the appeal on merits, of course, after hearing the arguments of learned Counsel Mr. F.B. Benjamin George, appearing for the respondent/opposite party and on perusal of the materials placed on record. That is exactly what we have done in this case.

5. THERE is no pale of controversy that the complainant, while riding his two wheeler met with an accident on 22.11.1994. It is also not disputed that the accident took place during the coverture of the policy which was effective from 13.4.1994 till 12.4.1995. The policy of insurance had been marked as Ex. A2. Clause (c) of the policy is relevant for our purpose. When we perused Clause (c) of the policy under Ex. A2, we are able to perceive that unless there is a total and irrevocable loss of sight of one eye or total and irrevocable loss of use of one hand or a foot, the claim is not tenable under the policy. It is on the face of such a clause, the opposite party Insurance Company repudiated the claim as made by the complainant in their letter dated 27.10.1995 marked as Ex. A8. The repudiation, as such, is made bona fide acting upon Clause (c) of the policy. Such repudiation, can by no stretch of imagination be stated to be is an act which could be described as deficiency in service on the part of the opposite party Insurance Company. This is the sort of a finding the Forum below had recorded. THEREfore, such a finding cannot at all be titled. The appeal, as such, deserves to be dismissed.

6. IN fine, the appeal fails and the same is dismissed. We however make no order as to costs on the facts and in the circumstances of the case. Appeal dismissed.

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