(2006) 06 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

KAILASH PRAJAPATI RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Citation : 2006 4 CPJ 136

Hon'ble Judges : Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (''the Act'') directed against the order passed by the District Consumer Disputes Redressal Forum, Surguja Ambikapur (hereinafter referred to as the ''District Forum'') in Complaint Case No. 226/2005. The District Forum has held the appellant/O.P. 1 deficient in service and directed payment of Rs. 2,50,000 with interest @ 9% per annum from 1.4.2003, and Rs. 1,000 as cost of the complaint to the respondent/complainant.

2. AVERMENT of the complainant is that he is an employee of the O.P. 2 and joined the Group Janta Personal Accident Policy sponsored by O.P. 1 for Rs. 2,50,000. Premium was deducted from complainant''s salary. On 31.10.2001, complainant was hit by a jeep, received head injury and was treated at several places. However, one of his eyes is lost. Complainant lodged claim with O.Ps. 1 and 2 was repudiated despite requests, hence the complaint. Complainant has also filed copy of the Policy No. 47/2K/00257.

O.P. 1 has denied hving insured the complainant under the said policy and stated that the intimation of the accident was given to it belatedly on 8.3.2002 provoking the terms of the policy. It is also stated that there is no cause of action and, therefore, the complaint deserves to be dismissed.

3. O.P. 2 in its reply has stated that no intimation of the accident was ever given to it. Further, all liability for payment of claim by the O.P. 2 has been denied. Questions for consideration are whether the complainant was insured under the

Janta Personal Accident Policy? Whether the complainant is entitled to any claim under the policy?

4. COMPLAINANT has filed a certificate of Insurance Sr. No. 09002588. As per the certificate, the complaiannt Kailash is covered under the Janta Personal Accident Policy No. 47/2000/00257 finalized between the SECL and Oriental Insurance Co. Ltd. for Rs. 5,00,000. This certificate has not been challenged by the O.Ps., therefore, we hold that the complainant was insured under the above policy as per the certificate. Relevant term regarding the extent of risk covered for adjudicating the present matter as per the general guideline insurer''s risk as mentioned in the said certificate is "Loss of 1 limb or 1 eye - Rs. 2.50 Lacs". As stated in the complaint, the complainant received head injury as he was hit by a jeep on 31.10.2001 and was admitted to Bhatgaon Hospital. Police also appear to have been informed. A copy of the Discharge Ticket of the Central Hospital, Bishrampur, showing that the complainant was admitted to the said hospital from 31.10.2001 to 6.10.2001 (?) is also produced. OPD Card dated 22.1.2002 of the Dr Rajendra Prasad Centre for Ophthalmic Sciences, New Delhi is also attached. Prescription by Dr. Daljit Singh, Amritsar dated 4.2.2002 also is filed a certificate regarding 30% visual disability issued by the District Medical Board, Ambikapur is also filed.

5. COMPLAINANT has filed a copy of the certificate of insurnce issued by the O.P. containing general guidelines and insurance benefits wherein Rs. 2.50 lacs are payable in case of loss of one limb or one eye. O.P. has produced a copy of the Group Janta Personal Accident Policy issued in favour of Employees of SECL working in various projects of the SECL covering the risk at Rs. 5 lacs per permanent employee.

6. THE said policy shall be in force for 10 years from 6.10.1999. As per the terms of the said policy only total and irrecoverable loss of vision of one eye as a result of direct and violent injury caused by an accident within 12 months is covered by the policy. It was submitted by the learned Counsel for the appellant-O.P. that as per medical certificate issued by the Medical Board and produced by the complainant himself his loss of vision is certified to be 30%. Therefore, he is not entitled to any claim under the terms of the policy. The decision of Orissa State Consumer Disputes Redressal Commission, Cuttack in United India Insurance Co. Ltd. v. Varayankar Choudhary, IV (2005) CPJ 7, was also referred to. We find ourselves in agreement with the view taken in the above citation.

Learned Counsel for the respondent-1/complainant submitted that the complainant is entitled to claim the assured amount under the terms of the policy laid down in the certificate of insurance. It appears that the appellants under arrangement with the SECL insured all the employees of the SECL under the Janta Personal Accident policy on terms and conditions agreed. Amount of premium was also paid by the SECL. In turn individual employees, the beneficiaries, were issued certificate of insurance containing guidelines regarding coverage and instructions for launching the claim, etc. Terms of insurance are contained in the master policy issued in favour of the SECL. Therefore, the terms of the master policy are required to be referred to for interpretation of the risk.

7. IT is not the complainant''s case and nor is there any medical evidence to show that the complainant suffered total loss of one eye due to the accident. The disability as evident from the medical certificate produced by the complainant himself is only 30% i.e., only partial. As discussed in the preceding para the policy does not envisage coverage of any risk in case of partial loss of vision or injury to one eye. Therefore, in our opinion the appeal succeeds. The impugned order is set aside. Parties shall bear their own costs. Appeal allowed. --------------

