(1999) 09 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE Company Limited — APPELLANT

Vs

Dev Raj — RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Citation : 1999 2 CLT 291 : 2000 1 CPC 98 : 2000 1 CPJ 173 : 2000 1 CPR 75

Hon'ble Judges : A.L.Bahri , Jasbir Singh J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS appeal is by Oriental Insurance Company. The challenge is to the order of District Forum, Jalandhar dated December 11, 1997 whereby complaint filed by Dev Raj was allowed and direction was given to the Insurance Company to pay a sum of Rs. 50,000/- to the complainant and interest @ 18% p.a. on the amount of Rs. 30,000/- for which the claim was repudiated w.e.f. May 31, 1995 and for Rs. 20,000/- from the date when the aforesaid amount was offered for payment. Apart from above, costs of Rs. 1,000/- were also allowed. A further direction was given for issuing notice to Sh. V.K. Bhatia, Divisional Manager of the Insurance Company as to why action be not taken against him for filing false affidavit.

2. DEV Raj took Personal Accident Policy for Rs. 1 lac from Oriental Insurance Company which was valid for a year from May 14, 1993. He suffered injuries in a road accident which occured on November 10, 1993 at about 7.30 p.m. For the injuries suffered, he took treatment from Anand Hospital. He suffered injury to the eye. He lodged a claim with the Insurance Company to the tune of Rs. 99,000/-. The Insurance Company showed willingness to pay Rs. 20,000/- only and repudiated the claim. Thus, alleging deficiency on the part of the Insurance Company, complaint was filed before the District Forum. The Insurance Company submitted the reply taking up preliminary objections about the maintainability of the complaint and that the matter could be taken up only before the Civil Court. On merits, the complaint was subjected to strict proof of the allegations of the accident as well as the loss suffered. It was denied that any offer of payment of

Rs. 20,000/- was made. The claim was repudiated as alleged. Both the parties produced their evidence on affidavits and documents. The District Forum framed the following questions for consideration : 1. Whether this Forum is not competent to entertain this complaint ? 2. Whether there is ''Deficiency in Service'' on the part of the respondent ? Relief. 3. All the questions referred to above were decided in favour of the complainant and the impugned order was passed.

Vide order dated June 9, 1999, Counsel for the parties present were called upon to produce copy of the insurance policy to determine the legal liability of the Insurance Company in view of the facts alleged. The short question which was formulated while passing the aforesaid order was as to how much compensation for the loss of sight was payable when 40% disability as per Medical Certificate was found whereas terms and conditions of the policy allowed a sum of Rs. 50,000/- on account of total loss of vision of one eye. Today, Counsel for the Insurance Company has produced a copy of the Insurance Policy. We have heard Counsel for the parties. Clause (1)(C)(i) of the Policy reads as under : "1. If at any time during the currency of this Policy, the insured shall sustain any bodily injury resulting solely and directly from accident caused by external violent and visible means, then the Company shall pay to the Insured or his legal personal representative(s), as may be, the sum or sums hereinafter set forth, that is to say (c) If such injury shall within twelve calendar months of its occurrence be the sole and direct cause of the total and irrcoverable loss of (i) the sight of one eye, or of the actual loss by physical separation of one entire hand or of one entire foot, fifty percent (50%) of the capital sum insured stated in the Schedule hereto."

3. THE contention of Mr. D.P. Gupta, Advocate for the Insurance Company is that since 40% of the disability was found by the Civil Surgeon, proportionately 40% of Rs. 50,000/- compensation payable for total loss of one eye could only be allowed under the terms and conditions of the policy as referred to above. Altenatively, it is argued that as a matter of fact on account of partial loss of sight, no compensation at all was payable under the terms and conditions referred to above and that offer, if any, of payment of Rs. 20,000/- by the Insurance Company was ex-gratia. On the other hand, learned Counsel for the complainant has argued that as found by Civil Surgeon, there was total loss of vision in the right eye and as per terms and conditions of the policy as referred to above, the complainant was entitled to a sum of Rs. 50,000/-. THE other arguments addressed by Mr. D.P. Gupta, Advocate have been repudiated. After hearing Counsel for the parties, we find no merit in the appeal. Civil Surgeon in his certificate which is at page 75 of the District Forum record after examining the records and the complainant reported as under : "This is to certify that Sh. Dev Raj, aged 40 years (own statement) s/o Sh. Dariya Ram, resident of Village and P.O. Bilga, Patti Bhooja, Teh Phillaur, Distt. Jalandhar, whose signatures are given below, has been got examined from C.M.O. (Eye) Civil Hospital, Jalandhar. As per report his right eye having optic Atrophy vision Nil and left eye vision 6/18

with glass 3.5 P. As such permanent disability is 40% (Forty)."

Since as per report referred to above, no vision was found in the right eye of Dev Raj, the complainant, as per terms and conditions of the policy referred to above, he was entitled to 50% of the insured amount. The policy was for a sum of Rs. 1 lac and thus the complainant was entitled to Rs. 50,000/- as has rightly been awarded by the District Forum. The repudiation of the claim by the Insurance Company is arbitrary. It is immaterial for the purposes of deciding this complaint as to whether a sum of Rs. 20,000/- was being offered or the same was not acceptable to the complainant or that under the terms and conditions of policy only a sum of Rs. 20,000/- was payable being 40% of the proportionate of Rs. 50,000/-. It is only to be observed as per conditions of the policy if there was a total loss of vision, 50% of the insured amount was payable and if loss was not total, probably nothing was payable. Since finding has been recorded that the loss was total, the complainant is held to be entitled to Rs. 50,000/-.

4. SINCE the complainant was entitled to Rs. 50,000/-, he is entitled to compensattion by way of interest on the aforesaid amount as has been awarded by the District Forum. Finding no merit in the appeal, the same is dismissed with costs of Rs. 1,000/-. The directions be complied within one month from receipt of copy of order. The amount already paid would be adjusted. Appeal dismissed with costs.

