(2009) 02 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

ORIENTAL INSURANCE COMPANY LTD. APPELLANT

Vs

Suresh Singh And Anr. RESPONDENT

Date of Decision : 23-02-2009

Acts Referred:

Citation : 2009 2 CPJ 216

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Advocate : MANJUSHA WADHWA

Judgement

1. ACCORDING to the Registry, this revision petition has been filed with a delay of 85 days. The revision petitioner is not in a position to explain the exact number of days of delay and the column has been left blank. In the application for condonation of delay the reasons given are that this has been caused due to movement of file at the divisional office and various levels of officers at Indore and ultimately at the legal department of the Head Office. Though, the reasons given are not at all convincing, we do not want to dismiss this revision petition on the grounds of delay, accordingly, we are looking into the merits of the same.

2. IN this case, the complainant had obtained personal accident policy for the period 28.10.1998 to 27.10.2000. When he was going to Gwalior from Chindwara on 29.8.2000, at the Chindwara Railway Station he was hit by one scooter from behind, due to which he fell down on the road and suffered injuries. The scooter driver fled away from the scene of the incident. Assuming that the injuries were simple, he applied soframycin ointment and boarded the train for Gwalior and reached Morena on the next day. As he was having pain in the left eye on 31.8.2000, he went to the District Hospital, Morena and consulted an eye specialist Dr. H.S. Sharma who found traumatic Cataract fungus in his eye. Subsequently, he was examined at Chaurai Government Hospital by Dr. (Smt.) R.K. Gohiya, on 6.9.2000. Later on, he got his eye examined at J.A. Hospital, Gwalior on 9.11.2000, also and by various eye specialists. As he has lost his left vision fully, he claimed Rs. 5.00 lakh from the Insurance Company which was contested by the Insurance Company stating that, no FIR was lodged in this case

and if he had raised an alarm the culprit could have been arrested.

3. THE Insurance Company investigated the claim and believing the investigator''s report they repudiated the claim. Therefore, the complainant approached the District Forum. The District Forum dismissed the complaint stating that there is no proof of accident. The State Commission observed that there is prima facie evidence available on record stating that the complainant had sustained injuries in the left eye on 29.8.2000, when he was first examined at the District Government Hospital, Morena, and it was diagnosed to be a case of haemorrhage and traumatic cataract in the left eye with fungus not visible. Subsequently, this was confirmed by the eye specialist Dr. (Smt.) R. Gohia at J.A. Hospital, Gwalior, where he was treated on 9.11.2000, where it was found that a clear -cut loss of vision of his left eye following injury to that eye. His B Scan of left eye was performed on 9.11.2000, which confirmed the above diagnosis. Subsequently on 21.11.2000 another ophthalmologist at Ratanjyoti Netralaya, Gwalior, reaffirmed this diagnosis stating that it was a case injury of left eye by fall.

4. THE complainant was re -examined at J.A. Hospital, Gwalior on 26.2.2001, wherein it was observed that "he was having traumatic cataract with retina detachment. It was further stated that the visual prognosis was explained to the patient and that he was told that nothing can be done here". A disability certificate was issued to the complainant certifying clearly that there is no vision in his left eye. Dr. R. Sharma and Dr. M. Madhavani after examining the complainant have observed that th complainant had permanently lost his vision of his left eye due to the accident. Dr. Sharma has filed an affidavit in support of his opinion that there are no chances of his regaining the visual sight by any surgery or medical treatment. As against this, the Insurance Company obtained two opinions of eye surgeons who had not examined the patient personally. In fact Dr. Gurdeep Singh has stated that the correct opinion could only be given by the treating doctor.

5. THE State Commission after analysing the facts and circumstances of the case and evidence before it came to the conclusion that the complainant has lost the vision in the left eye due to an accident. Accordingly, the Commission directed the Insurance Company to pay Rs. 5.00 lakh (being 50% of the sum assured) with interest @ 6% per annum from the date of the complaint till payment along with Rs. 5,000 as cost.

6. AGGRIEVED by the order of the State Commission, the Insurance Company has filed this revision petition before us.

7. THE learned Counsel for the revision petitioner submits that there is not enough evidence to prove that the complainant had suffered an accident. In fact he has not filed any FIR or approached the police station to give a report that he fell down because he was hit by a scooter and the driver ran away with the scooter.

8. IN our view, it is not compulsorily that in such cases of accident the insurer should file an FIR, to claim compensation under the policy. In fact a copy of the policy does not indicate that the complainant has to file an FIR in the police station to obtain relief. Benefit, indicated in the policy document particularly on the cover note indicates that 50% of the capital sum insured is payable for loss of one limb or one eye due to an accident.

9. ACCORDINGL Y , we do not see any merit in this revision petition. Therefore, this revision petition is dismissed. There shall be no order as to cost. R.P. dismissed.

