(2002) 09 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

P.Prabhavathi — APPELLANT

Vs

National Insurance Co. Ltd. — RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Citation : 2004 2 CPJ 177

Hon'ble Judges : P.Ramakrishnam Raju , C.P.Suresh J.

Final Decision : Complaint dismissed

Judgement

1. THE case of the complainant, who is the wife of late Kamalakar, a practising Advocate of Narsipatnam Bar, aged about 43 years took out a ''Janatha Personal Accident Insurance'' from the opposite party for Rs. 10,00,000/- commencing from 5.12.1997 lasting for a period of 12 years. While so he accidentally slipped and fell down from the staircase of their house while he was getting down from the upstairs of his house, as a result of which he sustained chest injury and died. When the complainant made a claim for the insurance amount, the opposite party repudiated the said claim on the ground that condition Nos. 2 and 4 of the policy exclude the peril. Hence this complaint claiming a sum of Rs. 10,00,000/- with interest @ 18 per cent per annum from 15.8.2000, the date of death of the insured together with compensation of Rs. 50,000/- and costs of Rs. 10,000/- was filed.

2. WE have gone through the complaint and perused the material papers carefully. Condition No. 2 of the policy is extracted below for ready reference : "Proof satisfactory to the Company shall be furnished of all matters upon which a claim is based. Any medical or other Agent of the Company shall be allowed to examine the person of the Insured on the occasion of any alleged injury or disablement when and so often as the same may reasonably be required on behalf of the Company and in the event of death to make a post-mortem examination of the body of the Insured and such evidence as the Company may from time-to-time require (including a post-mortem examination if necessary) shall be furnished within the space of fourteen days after demand in writing and

in the event of a claim in respect of loss of sight the Insured shall undergo at the Company''s expense such operation or treatment as the Company may reasonably deem desirable. Provided that in the case of a valid claim arising under Sub-clauses (a), (b) or (d) all sums payable hereunder shall be payable only on the delivery of this Policy cancelled and discharged."

A reading of this condition leaves no doubt that- (i) Proof to the satisfaction of the company shall be furnished on all matters upon which claim is based; (ii) Any medical or other agent of the company shall be allowed to examine the insured/ injured/dead; (iii) In the event of death post-mortem examination of the body of the insured shall be done/furnished, the information shall be furnished within a period of 14 days after demand in writing etc.

The whole idea of this condition seems to be that the Company shall have an opportunity to examine the injured/ dead to satisfy itself about the occurrence. The post mortem should be conducted in case of death to arrive at the cause of death and the information must be furnished within 14 days in writing after demand. But in this case though the husband of the complainant died on 15.8.2000, information was furnished to the opposite party on 26.2.2001 after a lapse of more than 6 months. The idea behind the condition quoted is to have first hand information about the cause of death and if claims are allowed to be preferred with unduly long delay without following the fiat of the condition, the evidence would get obliterated. Therefore, we are of the view that the procedure prescribed under the condition is mandatory and not merely directive.

3. THE learned Counsel for the complainant submits that the complainant filed a certificate issued by one Dr. V.V. Subba Rao, a private medical practitioner, who immediately examined the injured and declared him dead. He issued a death certificate dated 16.8.2000. It is further stated that the complainant out of grief and being mentally perturbed could not realise the existence of ''Janata Personal Accident Policy'' but she realised the same after one and half months and approached the police for a copy of the General diary entry regarding the cause of death of the deceased and the police on inquiry informed that the insured died as a result of accident. Even the Insurance Ombudsman before whom the complainant approached did not examine the matter in its proper perspective but dismissed the complaint taking a perfunctory view. Hence the learned Counsel submitted that the letter of repudiation is unjust, arbitrary and illegal. As we have held that the condition referred to above is mandatory, we are of the view that this material cannot degrade the rigors of the said condition. Hence we are of the opinion that the complaint is devoid of merits and is accordingly dismissed. However, it is open to the complainant to approach the Civil Court for appropriate relief and this order does not come in her way, if she so desires. Complaint dismissed.

