(2004) 03 NCDRC CK 0115

In the National Consumer Disputes Redressal Commission

RAJAKBHAI GAFURBHAI MANSURI APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 13-03-2004

Acts Referred:

Citation : 2004 3 CLT 496 : 2004 3 CPR 633 : 2004 4 CPJ 238

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal arises from order dated 30.6.2001 rendered by Consumer Disputes Redressal Forum, Banaskantha District in Consumer Complaint Case No. 14(b) of 2000.

2. IT was the complainant''s case that he availed of Janta Personal Accident Insurance Policy from the opponent Insurance Company covering the period 3.2.1998 to 2.2.1999 as per the particulars set out in the complaint. The policy covered the risk to the extent of Rs. 5,00,000/- against accidental death or disability. On 9.12.1998, the complainant met with accident while he was driving his tanker No. GRO 4345 and passing by Chitrod village. The truck which was proceeding from the opposite direction had dashed with the tanker driven by the complainant resulting into fractures in the right and left legs of the complainant. FIR was lodged at No. 97/98 in Bhimasar Police Station. The complainant was first admitted into Bhuj Hospital and then shifted to Palanpur Civil Hospital. He had taken treatment till 23.2.1999. Both his legs were operated. Steel plates and rods were required to be implanted in the legs yet, the complainant sustained disability on both his legs and they were left of no use. The complainant, therefore, lodged his claim with the opponent Insurance Company on 31.5.1999 in the prescribed form. As he did not receive any reply or settlement of his claim he was required to send notice through his Advocate on 18.1.2000. The opponent Insurance Company contended in reply to the notice that the matter was investigated through Shri Kuntal Rao and opinion with regard to permanent disability was also obtained from Dr. S.K. Mewada. The complainant produced

medical report inter alia stating therein that there was permanent disability to the extent of 70%. As the opponent Insurance Company called for clarification with regard to such permanent disability the complainant obtained medical certificate where the doctor assessed permanent disability at 55%. Ultimately, the opponent Insurance Company disowned the claim inter alia on the ground that the loss and disability were not such as would stand covered under the policy of insurance in question.

With the similar pleadings the matter was heard by the learned Forum who after considering the material placed on record and the submissions made on behalf of the parties came to the conclusion that there was deficiency in service on the part of the opponent Insurance Company in not indemnifying the complainant-insured under the policy of insurance in question. The learned Forum proceeded to consider the medical certificates and the conditions of the policy of insurance in question. It also considered the decisions referred to on behalf of the parties. It came to the conclusion that the complainant was entitled to 50% of the insurance amount as per the relevant conditions of the policy. This resulted into passing of the impugned order.

3. THE opponent Insurance Company filed Appeal No. 308 of 2001 which was decided by this Commission as per order dated 27.2.2002. This Commission had an occasion to consider the terms and conditions of the policy of insurance and construing the same, this Commission rendered its finding in following terms: "It is next submitted that since the disability which the complainant sustained is partial disability it is covered neither under Clause (c) nor Clause (d) of the policy of insurance in question because the relevant clauses indicate that if the injury is the cause of total and irrecoverable loss of sight of one eye or total and irrecoverable loss of use of a hand or a foot the insured would be entitled to 50% of the capital sum insured. It is settled law that the conditions of the insurance policy are to be construed so as to serve the main purpose of the very contract of insurance and not to defeat the same. It is not in dispute that the complainant is a driver by occupation. Partial permanent disability suffered by him as per the certificate issued by the medical expert is such as would deprive him from following his aforesaid occupation throughout his life. It is in this sense that the disability is to be viewed as having resulted in total and irrecoverable loss of use his foot/feet. It is in this sense the learned Forum has construed the relevant conditions of the policy of insurance. Such an intention of the parties, including the Insurance Company who is the party to the contract of insurance, can be gathered while reading Clauses (c) and (d) together. Clause (d) indicates that if the injury is such as causes permanent and total disability to the insured from engaging in being occupied with or giving attention to any employment or occupation of any description whatsoever the capital sum insured stated in the schedule would be awardable to the insured. Thus, the substance of Clauses (c) and (d) read together coupled with the intention of the parties which can be gathered from the conjoint reading of the two clauses would clearly indicate that the complainant would be entitled to the amount awardable under Clause (c) of

the policy of the insurance in question. It may be noted that it is not the percentage of the disability which will be the sole criteria but it is the loss of use of the particular limb which will assume importance while construing the relevant clause in the policy of insurance."

The opponent Insurance Company carried the matter before the Honourable National Commission in Revision Petition No. 819 of 2002. By its order dated 29.5.2002, the National Commission upheld the order passed by this Commission and observed as under: "We are of the opinion that the order of the State Commission does not suffer from infirmity which requires any interference at our end in exercise of our revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. The interpretation of State Commission is in conformity with the law laid down by the Hon''ble Supreme Court on more than one occasion and it advances the cause of justice. The State Commission has kept in mind the principle of contra profrentum while interpreting the terms of the policy".

4. NOW, the original complainant is before this Commission by way of this appeal praying for award of full amount of policy of insurance holding that there was total disablement as a result of which the complainant would be entitled to full amount of policy of insurance. We are unable to countenance the submission so made on behalf of the complainant as the award of compensation which was rendered by this Commission was upon consideration of the terms and conditions of the policy and the principles for ascertainment of compensation either under the relevant provisions of the Motor Vehicles Act in a motor accident claim compensation petition or under the Workmen''s Compensation Act would not be applicable to a case for award of indemnity insurance under the relevant policy of insurance. In that view of the matter, decisions relied upon on behalf of the complainant in Pratap Narain Singh Deo v. Shrinivas Sabata and Another, AIR 1976 SC P. 222; Sadashiv Krishna Adke v. Time Traders, I (1993) ACC 215=1992 ACJ P. 711 (Bom.); United India Insurance Co. Ltd. and Another v. Boregowda, 2000 ACJ P. 1255 (Kar.), and Vinodbhai Shivabhai v. Employees State Insurance Co. Ltd., 2000 (3) GLH P. 87, will not be applicable. In the result, we pass following order. ORDER This appeal is dismissed, with no order as to costs. Appeal dismissed.