(1993) 06 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

SATISH CHANDER SAINI — APPELLANT

Vs

CHAIRMAN, NATIONAL INSURANCE CO.LTD — RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Citation : 1994 1 CPJ 322

Hon'ble Judges : S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Complaint partly allowed with costs

Judgement

1. THE complainant, Satish Chander Saini now working as an Assistant in the office of the Chandigarh Housing Board, Chandigarh has filed this complaint under Section 12 read with Section 17 of the Consumer Protection Act, 1986 (for short the ''Act'') against the opposite-parties on July 9, 1992 before the State Commission.

2. THE issue herein lies in a narrow compass and the relevant facts are not in serious dispute. THE complainant whilst working as a contractor at Pathankot took out a Personal Accident Policy No. 863/9100059/84 for a sum of Rs. 50,000/- from the National Insurance Company, Pathankot (for short the ''Insurance Company'') for the period commencing from 17.9.1984 and valid upto 17.9.1985. On 28.10.1984 that is to say during the subsistence of the policy, the complainant met with a motor accident and as a result thereof he sustained pott''s fracture and dislocation of left ankle. It transpires that the Insurance Company was informed of the accident by the complainant on 5.11.1984 alongwith the report of the doctor. THE case of the complainant is that after a period of about four years he received an intimation from the Insurance Company that his claim for Rs. 6875/- had been approved. THE complainant did not accept the amount offered by the Insurance Company and represented that his case be reconsidered. It is alleged that the Insurance Company vide its letter dated 26.10.1990 informed the complainant that his claim was approved for Rs. 12,659/- and he should send the enclosed loss voucher in duplicate duly signed by him so as to enable them to release the claim cheque. THE complainant was

not satisfied with the claim amount offered by the Insurance Company and again requested them to reconsider his claim and then the Insurance Company informed him that in fact the amount payable to him under the policy was Rs. 11,460/- and not Rs. 12,659/- as intimated earlier. THE complainant then made representation to the Insurance Company intimating them that his claim should be considered under Clause (D) of the policy under which he was entitled to 100% of the Capital Sum Insured. He also requested the Insurance Company that his claim for Rs. 2190/- on account of medical expenses should not have been reduced to Rs. 1,000/- . Having failed to receive any relief on making representations, the present complaint as preferred before this Commission claiming Rs. 2,17,500/- as detailed in Para No.20 of the complaint alongwith interest @ 18% p.a. from the date of filing of the complaint till payment. On notice being issued, the Insurance Company (opposite-party No. 3. controverted the allegations of the complainant and contended that the earlier claim was wrongly assessed at Rs. 12,659/- and that on receipt of clarification from the Head Office of the Insurance Company, the complainant was informed that he was entitled to a sum of Rs. 11,460/- . It was pleaded that the complainant was not entitled to the benefit under either Clause (C) of Clause (D) of the policy as he had not suffered permanent disability within a period of six months of the alleged accident. Regarding the medical expenses, it was pleaded by the Insurance Company that the amount of Rs. 1,000/- was correctly assessed on that account. In the rejoinder, the original stand of the complainant was reiterated and the averments in the written statement were sought to be controverted.

In support of his case, the complainant rested himself content by filing documents Annexures P-1 to P-8. The learned Counsel for the complainant had stated before us that these documents should be treated as evidence to be adduced on behalf of the complainant. On the request of the learned Counsel for the parties, their evidence was closed by the order of the Commission.

3. FROM the aforesaid resume of the facts and close perusal of the pleadings and the evidence adduced by the complainant, it is somewhat manifest that herein the controversy ultimately boils down to a narrow compass. It is the admitted position that the complainant had taken a Personal Accident Policy on 17.9.1984 and on 28.10.1984, the complainant met with a motor accident as a result thereof he sustained pott''s fracture and dislocation of his left ankle. Nor is it in dispute that the complainant was admitted in Dr. Karam Singh Grewal Nursing Home, Amritsar on the same day and he remained under the treatment of Dr. Santokh Singh upto 26.1.985. The complainant''s case is that his claim should be considered either under Clause (C) or Clause (D) of the policy under which he is entitled to 100% of the Capital Sum Insured. That being so, the twin question that falls for consideration is whether such a risk stood covered under the aforementioned Clauses of the policy (Annexure P-1). Clauses (C) and (D) read as under:- "(C) If such injury shall within six calendar month of its occurrence be the sole and direct cause of the total and irrecoverable loss of: (i) .. .. (ii) total

and irrecoverable loss of use of a hand or a foot without physical separation, fifty percent (50%) of the Capital Sum Insured in the schedule hereto. Note: For the purpose of Clauses (b) and (c) above, physical separation of a hand or foot means separation at or above the wrist and /or of the foot at or above the ankle respectively.

(d) If such injury shall as a direct consequences thereof, immediately, permanently, totally and absolutely, disable the insured from engaging in any employment or occupation of any description whatsoever then a lump sum equal to hundred percent (100%) of the Capital Sum Insured."

It seems unnecessary to labour the point any further because there is no escape from the conclusion that even on the complainant''s own case and evidence, his case does not fall either under Clause (C) or Clause (D) of the policy. In support of his case, the complainant has brought on record the medical certificates Annexures P3, P-7A, P-7B, P-7C and P-7D issued by Dr. Santokh Singh of the said Nursing Home on various dates. In the certificate Annexure P-3, it is stated that the complainant was operated on 28.10.1984 and discharged on 30.10.1984. In Annexure P-7A, it is mentioned that he was confined to bed from 28.10.1984 to 26.1.1985 with partial disability. In Annexure P-7B and 7C, it is stated that his temporary partial disability was for three months. In Annexure P-7D, it is mentioned that he is still unable to have painless walking. In column No. 5 of the medical certificate, Annexure P-8 issued by the said Nursing Home, it is stated that he will not be fit to attend to his normal work because of permanent disability and in the column of General Remarks it is mentioned that the loss is occurred to the extent of 10% to 20%. A plain look at the aforementioned medical certificates would totally dislodge the case now sought to be set-up on behalf of the complainant. It is prominently mentioned in these certificates that it was a case of partial disability and the complainant remained confined to bed for three months and thereafter, he remained under the treatment of Dr. Santokh Singh as an out-door patient. For these reasons, we must hold that the complainant has disentitled himself to the relief either under Clause (C) of Clause (D) of the policy and the loss or damage caused to the complainant is covered under Clauses (F) and (G) of the policy on the basis of which the Insurance Company has assessed the compensation payable to the complainant. The Insurance Company vide its letter dated 2.6.1992 (Annexure P-7) assessed the compensation of Rs. 11,460/- which is detailed as under :- "(1) Compensation under TTD 1% of CS insured i.e. @ Rs. 500/- per week for 13 weeks Rs. 6500/- (2) Compensation under TRDC @ 3% of sum insured i.e. Rs. 150/- per week for 26.4 weeks Rs. 3,960/- (3) Medical expenses 25% of the admissible claim of 2% of C.S.I. Rs. 1000/- Total Rs. 11,460/-

The learned Counsel for the complainant could not explain as to how the Insurance Company assessed the complainant''s claim wrongly. Having considered the material on record produced by the complainant, we are of the opinion that the compensation amount was correctly assessed by the Insurance

Company. The Insurance Company had awarded Rs. 1,000/- to the complainant on account of medical expenses incurred by the complainant. The complainant has claimed Rs. 2190/- on that count but he has not attached the bills of medical charges etc., if any. He is, therefore, entitled to Rs. 1,000/- as assessed by the Insurance Company towards medical expenses.

4. THE complainant has claimed Rs. 20,000/- on account of the expenses incurred by hith on the correspondence he had with the Insurance Company regarding the finalisation of his claim and Rs. 15,000/- for mental agony, inconvenience and hardship suffered by him. Though, no material has been brought on the record by the complainant to substantiate his claim on these counts but still seeing the gross negligence of the Insurance Company in taking about eight years in finalising the claim of the complainant, we hold on guess work that the latter is entitled to be compensated to the tune of Rs. 4,000/- on these items and hold so accordingly. As such this amount of Rs. 4,000/- is to be added to the interest to which the complainant is now entitled to recover from the Insurance Company. Herein the complainant promptly intimated the Insurance Company about his claim within a few days of the accident. Far from promptly dealing with his claim, the Insurance Company had first procrastinated in finalising his claim and ultimately agreed to pay Rs. 11,460 / on 2.6.1992 i.e. after about eight years of his intimation to the Insurance Company on 5.11.1984. The claimant has clearly entitled to have his claim settled within a reasonable period of lodging the same which we would compute in the present case at six months at the very maximum. He was, therefore, entitled to the finalisation of the same by April 28, 1985 and is thus, clearly entitled to interest on the amount withheld from him. In the light of the above, this complaint is partly allowed with costs which are assessed at a modest figure of Rs. 1,000/- only. It is directed that the Insurance Company shall within two months from today pay to the complainant the assessed amount of Rs. 11,460/- alongwith Rs. 4,000/- on account of inconvenience and hardship suffered by him. The aforesaid amounts shall carry interest @ 12% p.a. w.e.f. 28.4.1985 alongwith costs aforementioned, failing which the compliance would be enforced under Section 27 of the Act.

5. BEFORE parting, we would like to express that the Insurance Company in such like cases should expedite settlement of the claim of unfortunate persons who suffer losses because of unforeseen accidents whether these may be pertaining to death or injury of a person. In the instant case, we have taken a liberal view in the light of peculiar circumstances surrounding the instant case while holding that the Insurer Company should have decided the claim of the insured within six months from the date of claim of the alleged accident. It is made clear that this may not be considered a precedent for other cases which require determination of the Insurance claims.

6. AS none of the parties are present. They be intimated of the aforesaid order either personally or through their learned Counsels by sending intimation under

registered post or against due receipt. Complaint partly allowed with costs.

