

(1999) 05 NCDRC CK 0092

In the National Consumer Disputes Redressal Commission

SHAVINDER KAUR

APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY Limited

RESPONDENT

Date of Decision : 07-05-1999

Acts Referred:

Citation : 1999 2 CLT 564 : 1999 2 CPJ 645

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

Final Decision : Appeal allowed

Judgement

1. THE complainant, Shavinder Kaur challenges order of District Forum, Bathinda dated May 22,1998 in this appeal whereby her complaint filed against United India Insurance Company was dismissed. Sukhwinder Singh, husband of Shavinder Kaur, complainant suffered injuries in a road accident on October 18, 1993. He had taken Accident Claim Policy from United India Insurance Company, the opposite party, for an year commencing from April 28, 1993. He lodged a claim with the Insurance Company. In the meantime, he died on June 19, 1995. THE claim was repudiated on March 26,1996 that the present complaint was filed by Shavinder Kaur, the complainant, claiming compensation under the terms and conditions of the policy. THE Insurance Company took up the plea that the insured at the time of taking the policy had concealed material facts relating to his health that he had or was suffering from "Jaundice". On evidence produced by both the parties on affidavits and documents, the District Forum while accepting the plea of Insurance Company, dismissed the complaint.

2. AFTER hearing Counsel for the parties and going through the written submissions made on behalf of the appellant, we are of the view that the approach of the District Forum in dismissing the complaint in the facts and circumstances of the present case was not legally correct. At the outset, it may be stated that the policy taken by the insured was not Life Insurance Policy; only risk under the accident was covered. Although, there is no cogent evidence produced by the Insurance Company as to whether at the time of taking the policy, the insured knew that he was suffering from "Jaundice", that would not

be a relevant factor as the same had no nexus with the cause of death in the facts of the present case. The relevant question for consideration is as to whether the insured suffered injuries in an accident during the currency of the insurance policy and secondly whether he died on account of such injuries. It was the insured who at the initial stage lodged the claim himself. The Insurance Company promptly appointed a Surveyor who visited him at his house and made the report. Ex. R-10 is the report as produced by the Insurance Company. Dinesh K. Goyal, the Surveyor on visiting the insured at his house reported that he visited the house of the insured on October 29, 1994 and found that he was at bed rest and his left leg was plastered. On enquiring about the accident, he told that he was standing in Dhobi Bazar, Bathinda that a scooter hit the left leg and caused the said injuries. He was under the treatment of G.S. Memorial Hospital, Rampura. Further he stated, concluding his report, that the injuries caused to the insured were accidental in nature and the claim seemed to be genuine. The report of G.S. Memorial Hospital is Annexure R-11. The diagnosis reported there is a Avascular Necrosis Hip (L). Date of admission was October 25, 1993 and date of discharge October 26, 1993. It was also reported that it was a known case of alcoholic chronic liver failure. The patient was referred to A.I.I.M.S., New Delhi for further management. Instead of going to aforesaid Institution, the insured went to Batra Hospital and Ex. R-15 is the X-ray Report of that Hospital of the insured. It reads as under : "There is irregular sclerosis of the medulla of upper shaft of right humerus possibly due to bone infarction. Please correlate clinically and with radio nutleidi scan."

Ex. R-16 is the X-ray Report of that very hospital which is as under : "Evidence of old fracture neck of femur left side with sclerosis of fracture margins. No other bony lesion seen presently."

Ex. R-17 is the treatment chart of Batra Hospital, giving the history, it is recorded 36 years old male, a known case of fracture, neck femur with complaint of Avascular Necrosis of head femus and chronic liver failure (alcoholic) was admitted for surgery. This report mentions date of admission December 16, 1993 and before that Ex. R-18 is the report, date of admission being November 9, 1993. It also notices fracture, N.O.P. with complaint of A.V.N. Left. Ex. R-19 is also from Batra Hospital Surgical Note indicating triple phase bone scintigraphy performed in the following sequence. List of items refers to reduced radionuclide uptake in head of right femur. The Impression recorded reads as under : "Overall scan pattern is suggestive of bilateral avascular necrosis of femur heads, the left side being more severally involved and long standing. High uptake in right humerus could presumably be due to old fracture."

3. ON an enquiry made by the Insurance Company, Dr. Hem Raj Goyal reported that the treatment part was genuine and completely natural and extent of loss suffered by the patient is genuine in ordinary course of nature and artificial. Apart from the above evidence as produced by the opposite party, the complainant's evidence produced on affidavits of Shavinder Kaur, complainant,

Nand Kaur mother of Sukhwinder Singh, Mohinder Singh, tenant, Hakam Singh, a friend, Kharaiti Ram Bansal and Pawan Kumar fully supported the complainant's case that the insured had suffered injuries (fracture) in the accident. No criminal case was registered as it was a case of hit and run. The only conclusion possible on the evidence aforesaid as produced by the parties was that the insured had suffered injuries in the accident and ultimately he died on that account and that in the meantime he had also suffered "Jaundice".

4. THE opposite parties produced evidence of the doctors from where he had taken treatment as referred to above but no specific evidence was collected by the Insurance Company to indicate that at the time of taking the policy, Sukhwinder Singh was suffering from "Jaundice" or had taken treatment for the said disease. THE repudiation of the claim was arbitrary and was not a bona fide decision taken on the material collected. Non-settlement of the claim amounts to deficiency in rendering service and we hold accordingly. THE complainant was entitled to the insured amount under the policy. For the reasons recorded above, this appeal is allowed. The order of the District Forum is set aside. The complaint is allowed. The opposite party, Insurance Company is directed to pay the insured amount of Rs. 1 lac alongwith 12% interest thereon w.e.f. March 13, 1994 (allowing three months from the date of lodging of claim). Costs are assessed at Rs. 2,000/- to be paid by the Insurance Company to the complainant. Let these directions be complied within one month from the receipt of copy of this order. Appeal allowed.