

(2024) 02 NCDRC CK 0007

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 444 Of 2020

Shiv Kumar Mishra

APPELLANT

Vs

Tata AIG General Insurance
Company Ltd

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Umesh Dubey, Anupam Dwivedi, Manoj Kumar

Final Decision: Dismissed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. The present Revision Petition has been filed by the Petitioner under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 10.10.2019, passed by the learned State Consumer Disputes Redressal Commission, Rajasthan ('State Commission') in FA No. 703 of 2014, wherein the Appeal filed by the OP (Respondent herein) was allowed and the Order dated 06.03.2014, passed by the District Consumer Disputes Redressal Forum, Sikar ("District Forum") in CC No. 690 of 2011 was set aside.

2. There was a delay of 37 days in filing the present Revision Petition. For the reasons stated in the Application of Condonation of delay bearing no. IA/3597/2020, the delay is condoned.

3. For ease of reference, the parties are referred to as stated in the original Complaint filed before the District Forum. Shiv Kumar Mishra is referred to as the Complainant.

Tata AIG General Insurance Company Ltd. is referred to as the Opposite Party (OP).

4. Brief facts of the case, as per the Complainant, are that he obtained a Personal Accident Plan Policy No. BTM01000075426 for sum assured of Rs.22,50,000/- for one-year from 01.07.2009 from the OP, facilitated by his HSDC Bank, during his stay in Mumbai. The premium was consistently paid through his credit card. The issue of policy was contingent upon complete satisfaction of OP with his medical condition and fitness. Regrettably, on 27.09.2009, the Complainant was involved in an accident, where he hit by an unidentified vehicle or animal from behind and suffered severe injuries to his head, left knee, left-hand elbow, and right knee. Initially he was taken to Kalyan Hospital on 28.09.2009. There, he received treatment from 03.10.2009 to 09.10.2009 at HN Hospital, Churu. While he recovered from the bodily injuries, his eyesight in both eyes did not recover. Further consultation at JMB Hospital, Churu revealed that, restoration of eyesight was not feasible. Subsequently, on 14.10.2019, after constituting a medical board, the Govt of Rajasthan issued a permanent disability certificate declaring the Complainant 100% blind/ disabled. He accordingly notified the OP and submitted a claim. OP rejected the claim, asserting falsity, vide letter dated 20.05.2011. The legal notice on 02.11.2011 also was of no avail. Distressed by the denial of a legitimate claim and citing deficiencies in service by the OP, he filed a CC No. 690/2011 before the District Forum seeking settlement of the Claim of Rs.7,50,00/- along with interest @ 12% per annum from the date of accident (27.09.2009) and compensation of Rs.50,000/- for mental harassment and litigation costs.

5. In reply, the OP contended that this forum lacks jurisdiction due to the absence of any depiction of deficiency or negligence in service within the submissions. It is not maintainable as none of the offices of Tata AIG General Insurance are situated within the jurisdiction of the forum. He did not approach the forum with clean hands. OP asserted that he violated policy conditions by informing the Insurer after a delay of six months. Despite OP's request for the submission of necessary medical and treatment documents, he failed to provide evidence of head injuries and, instead produced medical papers related to injuries from a different incident in 2008. OP engaged M/S CRP Technology Pvt. Service to conduct an inquiry, which revealed that no such incident had occurred. Notably, during the inquiry, no records were discovered regarding his admission to HN Hospital, Churu from 03.10.2009 to 09.10.2009 and he failed to furnish documents with details of doctors who treated him. The disability certificate dated 14.10.2009 from DB Hospital, Churu purportedly showed no evidence of disability. His assertions were based on false and misleading facts. Particularly his doubt regarding the claimed incident involving an unknown vehicle or animal raises serious question. The Complainant's failure to file an FIR and the absence of any initial report by a doctor further undermine the credibility of the injury and claim. The OP sought rejection of the Complaint on the basis of misleading information.

6. The learned District Forum vide Order dated 06.03.2014, partly allowed the complaint with the following findings:

"11- Non Applicant Insurance Company has not produced before us any such condition under which it is necessary to lodge First Information Report or get injury report from the Government Hospital after sustaining injuries under this policy. It is proved by the evidence produced by the complainant and disability certificate issued by government D.B. Hospital Churu that the Complainant lost eye sight of both his eyes due to the injuries sustained in the road accident and because of which he became victim of 100% disability. A part from this the giving of claim of Rs. 6,000.00 by S.B.I. Life Insurance Company Policy No. 83001000105 to the Complainant gives force to the fact that 100% disability was caused to the Complainant due to the injuries sustained in the accident.

12 Preliminary objection which was raised by the Non Applicant Insurance Company, it was produced before us. Since the branch of the Non Applicant Insurance Company is situated at Sikar thus this has got jurisdiction to hear this case. No other objection has been raised before us. Consequently Complaint of the Complainant is liable to be accepted.

ORDER

Resultantly Complaint filed by the Complainant against the Non Applicant is accepted. Non Applicant Insurance Company is directed that to pay the Complainant within one month Rs.7.50000 under the Insurance Policy No. BTM01000075426 and for mental harassment Rs. 10,000 and Rs. 5000 as cost of litigation failing which Complainant will be entitled to get 9% annual interest on the entire amount from the date of the order." (Extracted from True Translated Copy)

7. Aggrieved by the District forum order, the OP Insurer filed Appeal No. 703 of 2014 before the State Commission. The State Commission vide order dated 10.10.2019 allowed the Appeal and set aside the Order of the District Forum with the following findings:-

"Arguments of both sides were heard and records were perused and pondered.

Complainant got his Mediclaim Policy in Mumbai. On 27-09-2009 accident took place due to the hitting from the back by some unknown vehicle or animal. As per the Complainant in the above accident he lost his eye sight. By this commission Complaint was examined by Medical Board in which MRI BRAIN are as under-

FINDINGS:

Dilated VR spaces in bilateral cerebral hemispheres. Ischemic demyelination of bilateral periventricular deep white matter is seen with multiple small chronic lacunar infarcts involving pons, bilateral corona radiate and centrum semiovale.

No evidence of acute infarct seen.

Age related diffuse cerebral and cerebellar atrophy.

The report of Medical Board is following:-

We the Board members have examined Mr. Shiv Kumar Mishra S/o Mr. Dwarika Prasad Mishra, Age 65 Years, R/o Churu (Raj)

We are of the opinion that: -

- OCT shows that candidate has macular edema in left eye and near normal fovea In right eye.**
- VEP shows Normal P100 Wave peak latencies in both eyes.**
- Anterior segment examination shows minimal lenticular changes, otherwise is normal. Pupillary reaction in both eye are brisk (normal). Optic nerve head on funds examination appears to be normal. (Both eyes)**
- MRI Brain does NOT show any lesion which may account for profound vision loss In both eyes.**
- Candidate says that "he can see (perceive) light in both eyes and can also tell the direction from which torch light is coming. But he cannot see anything else".**

Impression; -

- Candidate's subjective profound loss of vision in both eyes is NOT correlating with our clinical findings.**
- Candidate's subjective profound loss of vision in both eyes cannot be attributed to any head trauma that he might have sustained in past.**

From this it appears that the deficiency in the eye sight which has occurred, firstly Complainant has not completely blind and secondly the deficiency which has occurred in the eye sight of the Complainant is not result of the injury sustained on the head instead it is result of ageing, eye sight became weak according to age.

Complaint which was allowed by the Ld. District Forum is not correct. After allowing Appeal of the OP Order of the District Forum is liable to be set aside. It is set aside."

(Extracted from True Translated Copy)

8. Dissatisfied by the Order dated 10.10.2019, the Complainant filed the instant Revision Petition mainly on the following grounds:

- a. The State Commission overlooked correct evidence evaluated by the District Forum. He asserted that loss of eyesight occurred only after the accident and being insured, he is entitled to the claimed benefits, a stance upheld by the Ld. District Forum.
- b. The State Commission neglected to note distinct circumstances where the personal accident policy obtained from the OP is identical to SBI Life Insurance Company Ltd policy. Despite the same, the OP denied the claim based on the same set of facts.
- c. The State Commission failed to consider the significance of the disability certificate issued by Govt DB Hospital Churu, which clearly establishes that loss of eyesight was solely due to injuries sustained in the road accident, resulting in 100% disability.
- d. The State Commission accepted the opinion of medical board, suggesting that his blindness might have been due to ageing. It is not final and conclusive, as other evidence indicated that he was in good health before accident and lost eyesight afterwards.

9. Upon notice of the Revision Petition, the OP filed written submissions in support of their version and State Commission order.

10. In his arguments, the learned Counsel for the Complainant/ Petitioner reiterated the facts and grounds previously presented in the Revision Petition. He placed significant emphasis on the contention that the disability certificate issued by the Medical Board at the District Level, specifically JBM Hospital Churu, supported his claim and led to a favorable decision by the learned District Forum. He pointed that a new board constituted by the State Commission expressed a different opinion at a very late stage. In light of this, the Counsel argued that the State Commission should have considered other compelling evidence, as the District Forum did, and reached a conclusion in favor of the Petitioner. The key argument revolves around the assertion that he lost eyesight solely as a result of the accident and not due to aging. Consequently, the learned Counsel urged that the petition of the petitioner be allowed, and the impugned order passed by the State Commission be set aside.

11. In his arguments, the learned Counsel for the OP reiterated the facts and strongly contended that the Petitioner failed to substantiate that his loss of vision resulted from accidental injuries, as claimed. Referring to investigation by M/s Upma Risks Management Services Pvt. Ltd., he asserted that the Petitioner misrepresented facts to obtain the claim fraudulently, which characterized as dishonest and deceitful, led to the repudiation of his claim on 20.05.2011 citing a violation of Policy uniform provision No.

7. Further, the Petitioner failed to produce credible proof concerning the alleged accident or injuries sustained. Regarding the Medical Certificate dated 14.10.2009, it was pointed out that it mentioned the Petitioner's history of "Maculopathy both eyes," a condition affecting the macula, which is the central part of the retina responsible for accurate vision. He explained that this degeneration is a common ailment and is often associated with aging. The Petitioner, being around 55 years old at the time of the alleged incident, did not provide any evidence linking the macular degeneration to trauma. The first prescription after the incident, dated 28.09.2009, from Shree Kalyan Hospital in Sikar, did not indicate any injury or trauma to the eye. The Petitioner raised the incident as an afterthought to claim benefits under the policy for vision loss caused by age-related macular degeneration, which is untenable and should be rejected. Highlighting the Medical Board report commissioned by the State Commission, he argued that the Petitioner did not lose complete vision, and the deficiency was attributed to age rather than an accident. The Petitioner reported the claim with significant delay, violating the policy provisions and thus absolving the OP of any negligence or delay in service.

12. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties. The central issue is whether the loss of eyesight suffered by the petitioner is a covered under the insurance policy and, if so, whether the denial of the claim by the insurance company is tenable.

13. It is matter of record that the Petitioner had obtained the subject insurance policy with the respondent on 01.07.2009, the same was effective from 03.07.2009 to 31.10.2010. During the course of the policy, as per the Complainant, on 27.09.2009 an incident occurred wherein he sustained certain body injuries and head injury which, as per him, resulted in loss of eyesight and thus 100% disability. After his treatment he recovered from bodily injuries. However, his eyesight was not restored. Consequently, he was issued with a 100% disability vide certificate dated 14.10.2009. The individual had reported the matter to the insurer on 27.04.2010 with respect to the incidents/accident on 27.09.2009.

14. The respondent undertook necessary investigation to ascertain the facts pertaining to the incident/accident resulting in the injuries allegedly sustained by the Complainant. The investigation revealed number of contradictions as well as non-authentication of the claims and medical disposal. Thus, the Opposite Party repudiated the claim vide letter dated 20.5.2011 stating: -

1. Intentionally and recklessly or otherwise concealed or misrepresented what we consider to be any material fact or circumstance.

2. Engaged in what we consider to be fraudulent, dishonest or deceitful conduct, or;

3. Made false statement.

15. In this case, the learned District Forum partly allowed the complaint and directed for payment of Rs.7,50,000/-; Rs.20,000/- for mental harassment and Rs.5,000/- towards litigation costs, within a period of one month. It also ordered that payment of annual interest on the entire amount from the date of the order in the event of delay. However, on the matter being appealed by the OPs before the learned State Commission, the State Commission, considering the facts and circumstances of the case, called for examination of the records and rendering of opinion by a Medical Board. The Medical Board examined the records of treatment as well as condition of the complainants. The MRI of the brain of the complainant had revealed the following:

Findings:

Dilated VR spaces in bilateral cerebral hemispheres.

Ischemic demyelination of bilateral periventricular deep white matter is seen with multiple small chronic lacunar infarcts involving pons bilateral corona radiate and centrum semiovale.

No evidence of acute infarct seen.

Age related diffuse cerebral and cerebellar atrophy.

The report of Medical Board is following:

We the Board members have examined Mr. Shiv Kumar Mishra S/o. Mr. Dwarika Prasad Mishra, Age 65 years, R/o. Churu (Raj)

We are of the opinion that:-

- OCT shows that candidate has macular edema in left eye and near normal fovea in right eye.**
- VEP shows NORMAL P100 Wave Peak latencies in both eyes.**
- Anterior segment examination shows minimal lenticular changes, otherwise is normal. Pupillary reaction in both eye are brisk (normal). Optic nerve head on funds examination appears to be normal. (Both eyes)**
- MRI Brain does not show any lesion which may account for profound vision loss in both eyes.**

- Candidate says that "he can see (perceive) light in both eyes and can also tell the direction from which torch light is coming. But he cannot see anything else".

Impression:-

- Candidate's subjective profound loss of vision in both eyes is not correlating with our clinical findings.
- Candidate's subjective profound loss of vision in both eyes cannot be attributed to any head trauma that he might have sustained in past.

From this it appears that the deficiency in eye sight which has occurred, firstly Complainant has not completely blind and secondly the deficiency which has occurred in the eye sight of the Complainant is not result of the injury sustained on the head instead it is result of ageing, eye sight became weak according to age.

16. On due consideration of the material on record, including the specialist opinion, the learned State Commission has set aside the order of learned District Forum and dismissed the complaint.

17. This is a case wherein the Complainant is unaware of how the incident/incident happened wherein the complainant is stated to have sustained injuries. While the incident/accident claimed to have occasioned on 27.09.2009, the Complainant reported the matter to the insurer only on 27.04.2010. Thereafter, while he claimed to have received medical treatment, it was found in the scrutiny that the facts are variance and contradictions also emerged. Further, when the insurer had sought further details into the accident, the Complainant had submitted certain injury details which are disconnected to the incident on 27.09.2009 and well outside the scope of the insurance policy in question. Thereafter, the opinion of the Medical Board revealed that 'From this it appears that the deficiency in the eyesight which has occurred, firstly Complainant has not completely blind and secondly the deficiency which has occurred in the eyesight of the Complainant is not the result of the injury sustained on the head instead it is result of aging, eyesight became weak according to age.

18. In this regard attention is drawn in the recent judgement by Hon'ble Supreme Court in **Bajaj Allianz Life Insurance Company Ltd. v. Dalbir Kaur, 2020 SCC OnLine SC 848** decided on 09.10.2020 wherein it was observed as under:

"A contract of insurance is one of utmost good faith. A proposer who seeks to obtain a policy of life insurance is duty bound to disclose all material facts bearing upon the issue as to whether the insurer would consider it appropriate to assume the risk which is proposed. It is with this principle in view that the proposal form

requires a specific disclosure of pre-existing ailments, so as to enable the insurer to arrive at a considered decision based on the actuarial risk."

19. Considering the deliberations above, nothing new has been brought by the Complainant. I am of the considered view, that there is no reason to interfere with the well reasoned order of the learned State Commission in Appeal No.703 of 2014 dated 10.10.2019.

20. The Revision Petition Nos.444 of 2020 is, therefore, dismissed.

21. There shall be no orders as to costs.

22. All pending Applications, if any, also stand disposed of accordingly.