(2000) 12 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

New India Assurance Co. Ltd.	APPELLANT
Vs	
CHANDULAL DHULABHAIPANCHAL	RESPONDENT

Date of Decision: Dec. 19, 2000

Citation: 2001 2 CPJ 295 : 2001 3 CPR 338

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

Final Decision: Appeal dismissed

Judgement

1. THE New India Assurance Company Limited being the opposite party in Complaint No. 1111/92 has subjected to challenge in this appeal order dated 24.12.1996 rendered by the learned City Consumer Disputes Redressal Forum, Ahmedabad. THE respondent being the complainant filed complaint against the opposite party on the ground that he was a joint policy holder alongwith his wife Prabhavatiben Chandulal under Policy No. 42-06914 for the period from 24.3.1990 to 23.3.1991. As per the terms and conditions of the policy, in case the insured or either of them suffers disability or death as a result of accident, opposite party would be liable to pay compensation for the sum insured. It was the case of the complainant that on 8.8.1990, the complainant''s wife Prabhavatiben met with an accident when one autorickshaw dashed against her on her way to Kalupur Swaminarayan Temple. As a result, she sustained serious injuries and was removed to the hospital. After her treatment in the hospital, she was discharged. Once again, on account of development of some complication in her heath, she was admitted to the hospital [Shardaben Hospital] and on 18.8.1990, she died due to tetanus. Consequently the complainant being the insured''s husband lodged claim as per the policy. On 16.11.1990, all the necessary documents were supplied by the complainant to the opposite party but the opposite party failed to pay the insured amount. Instead, it demanded post mortem report from the complainant. It was not possible the complainant to supply said document as no post mortem was carried out on the dead body of the complainant''s deceased wife Prabhavatiben. Since the opposite

party did not settle the claim, the complainant filed aforesaid complaint praying for insured amount of Rs. 50,000/- and further sum of Rs. 50,000/- for mental pain and agony, coupled with interest.

2. THE opposite party resisted the claim on the ground that the complainant was informed to obtain the post mortem report, that the complainant failed to supply such report, that the opposite party had, therefore, no option but to repudiate the claim, that the cause of death was not established to be accident for which insurance was accorded in favour of the complainant and his wife and that there was no deficiency in service accordingly on the part of the opposite party. It was also contended by the opposite party at a later point of time during the proceedings before the City Forum that the complaint was time barred as it was filed after one year of the repudiation of the claim by the opposite party.

The learned City Forum after considering the evidence and the submissions made on behalf of the rival parties, held that it was possible that tetanus might have been caused due to injuries sustained in the accident in which the deceased sustained injuries including fracture of clavicle, that, according to Dr. Deasi who was examined before the City Forum, it was not necessary to carry out the post mortem of the dead body of Prabhavatiben, that the opposite party failed to settle the claim of the complainant and that there was deficiency in service on the part of the opposite party. With regard to the subsequently raised plea of limitation as aforesaid, the City Forum held that the condition with regard to such limitation in the policy would not help the cause of the opposite party inasmuch as such restriction in the policy will not bar the complaint which was within the period of limitation under the relevant provisions of the Consumer Protection Act, 1986. The City Forum has made reference to the decision of the Honourable Supreme Court in Food Corporation of India v. New India Assurance Company Limited, 1994 (3) SCC P. 324. The City Forum, therefore, allowed the complaint to the extent of the amount of insurance viz. Rs. 50,000/- claimed by the complainant and interest @ 18% p.a. from 1.1.1991 till payment and also cost quantified at Rs. 2,000/-. The City Forum did not allow the claim of compensation in the sum of Rs. 50,000/- for mental pain and agony. As stated above, the opposite party Insurance Company being the appellant herein has brought under challenge the said order in this appeal.

At the final hearing, Mr. Sandip Shah, learned Advocate appearing for the Insurance Company had two fold submissions to be made before this Commission. According to him, firstly nexus between the accident [which fact has not been in dispute] and death of Prabhavatiben has not been established. Secondly, admittedly there is a

forfeiture clause, according to which the complaint admittedly filed after 12 months from the date of repudiation of the claim could not have been entertained by the City Forum. In reply Mr. Trivedi pointed out from the evidence that the nexus between the accident and death of Prabhavatiben was established by the complainant more particularly from the evidence of Dr. Sunil Desai. Mr. Trivedi also submitted that there was no other ailment as a result of which Prabhavatiben was required to be admitted once again soon after the accident. It was obviously the complication of the accidental injuries that resulted into Prabhavatiben being admitted to the hospital once again. In respect of the second contention he also submitted that repudiation in question was not final and even in reply to the complaint, the Insurance Company in no uncertain terms expressed to consider the claim of the complainant. It was at a very belated stage the opposite party came out with the forfeiture clause while once again reverting to the repudiation letter.

3. WE will first consider the nexus between the accident in question and the cause of death both of which facts have been placed on record of the complaint. It is not in dispute that during the subsistence of the policy, complainant''s wife Prabhavatiben met with an accident on 8.8.1990. It is also not in dispute that she was admitted to the hospital immediately for treatment of serious injuries which she sustained as a result of the accident. One of the injuries was head injury and the other one of the injuries was fracture of clavicle. It is also not in dispute that after treatment she was discharged from the hospital. It is finally not in dispute that she was re-admitted to the hospital on 16.8.1990 with deterioration in her health on account of the injuries she sustained. During the course of treatment it could be noticed that she had tetanus and ultimately she succumbed to tetanus at around 9.50 O''clock on 18.8.1990. It was the stand of the opposite party as per the affidavit in reply filed by one Mr. M.N. Shah, Dy. Manager of the Insurance Company that on 18.8.1990 itself the complainant informed telephonically the Branch Manager about death of complainant''s wife Smt. Prabhavatiben. It has been recited in the affidavit in reply that the Branch Manager called upon the complainant to have post mortem of the dead body of Prabhavatiben being performed. However, it is not clear from the affidavit in reply as to who was the Branch Manager at the relevant point of time. There is no affidavit of concerned Branch Manager on the record of the complaint. It has been recited in the affidavit in reply that on 19.9.1990 complainant informed the opposite party that Smt. Prabhavatiben was admitted to the hospital and died during treatment. He then submitted claim form on 13.11.1990. By letter dated 11.12.1990 the complainant was required to submit necessary papers viz. completed claim form, post mortem report, police papers, death certificate and case papers of

the treatment. The complainant failed to supply the documents as per letter dated 11.12.1990 and did not co-operate with the opposite party. He was also asked to obtain post mortem report on the same day i.e. 18.8.1990 when Smt. Prabhavatiben died. The opposite party had no option but to close the file and repudiate the claim of the complainant. However, without prejudice to this contention the opposite party has asserted that even at the stage of the first affidavit in reply the opposite party was ready and willing to process the claim provided necessary papers and details were furnished in support of the claim. It is not disputed that except the post mortem report, all the papers and details were furnished by the complainant. As stated above, allegation with regard to requisition of post mortem report on the same day falls to doubt inasmuch as the complainant has all throughout referred to the requirement of post mortem report at a later point of time. It prima facie sounds to be unusual on the part of Branch Manager having requisitioned on telephone performance of post mortem on the complainant''s wife''s dead body. Be that it may, in so far as present complaint is concerned, the complainant has placed on record medical evidence to show that his wife died of tetanus. It may be reiterated that the fact that she met with accident soon before the death is not in dispute as aforesaid. The learned City Forum has considered the medical evidence and the same may be referred to for the purpose of completion of this order. The case papers of Shardaben Municipal General Hospital have been placed on record and they have been referred to by both the learned Advocates. The same refers to accident before 7-8 days and injuries resulting therefrom. The patient was discharged on the first occasion after treatment and on account of complication she was again admitted to the hospital and the case papers of second admission indicate history of accident accordingly. It also indicates complication of tetanus including respiratory failure. Dr. Sunilbhai has been examined and according to his evidence, tetanus could have been caused on account of the injuries sustained by Smt. Prabhavatiben. The doctor has in terms deposed that there was no necessity of post mortem at all as the cause of death was undoubtedly certain. Mr. Shah however referred to the cross-examination of the witness that the medical witness agreed with the suggestion that if the case was medico legal case and death occurred during treatment, post mortem was required to be performed but in the present case the patient was discharged on the first occasion when she was admitted. The witness also agreed with the suggestion that the death was due to toxic and it could not be ascertained as to what was the nature of toxicity unless autopsy was performed. The witness asserted that post mortem was not necessary as decided by all the medical persons of the Unit and the decision was not of only himself. In the background of such facts, it may be noted that the opposite party has not placed on record any other medical evidence to show that the cause of death would be other than the cause of accidental injuries. Therefore, it can hardly be disputed that when there are accidental injuries, tetanus in all probabilities would be a complication in the injured patient. In that view of the matter and in the absence of any other expert evidence adduced by opposite party being the

appellant herein, it is difficult to agree with the submission of Mr. Shah that nexus between the accident and the cause of death has not been established by the complainant.

Mr. Shah referred to certain clauses in the policy in respect of the aforesaid point. He first drew our attention to the opening recital in the policy indicating that if the injury or death is directly the result of the accident, the injured would be entitled to the payment of the insured sum. In the present case, it is difficult to agree with the submission of Mr. Shah that the death of Smt. Prabhavatiben was not the direct result of the accidental injuries. Reference has also been made to the proviso to exceptions indicating that there will be observance and fulfilment of the terms and conditions of the policy so far as they relate to anything to be done or not to be done by the insured. Reference has been made to this condition for supporting the repudiation on the ground that post mortem report has not been furnished. As a matter of fact, it is clear that the complainant was vigilant right from the inception as stated above and has furnished all the documents. It is also evident from the record that this case was not registered as a medico legal case by the attending doctor/s in the Shardaben Hospital. It may be noted that where the cause of death is undoubtedly stated by the medical authority/attending doctor/s the case may not be treated as medico legal case. Under the circumstances, it -may neither be necessary nor possible, especially when history of the accident correlates with the clinical findings. In the present case, no post mortem could ever have been performed after the cremation of the dead body. When the cause of death is certain without any ambiguity, subsequent requisition of post mortem report was apparently not proper on the part of the opposite party. It is true that in the repudiation letter, reference has been made to non-supply of post mortem report. But in the circumstances noted above, such a requisition was neither here nor there. The repudiation letter is dated 19.7.1991 and it is the case of the complainant that there was repeated compliance of submission of the medical treatment papers. The opposite party has not adverted to the action taken by the complainant who supplied all the medical treatment papers to the opposite party. No further investigation has been carried out by the opposite party with regard to the cause of death. Under such circumstances, the stand of the opposite party about the repudiation of the claim both on the ground of non-supply of post mortem report and nexus between the accident and the death having not been established is neither acceptable nor tenable. It is here that the deficiency in service on the part of the opposite party clearly surfaces.

4. IT is not in dispute that during the pendency of the complaint proceedings the opposite party filed further reply and raised the plea of limitation as per the second submission made by Mr. Shah. However, prior to that, in the affidavit in reply, the opposite party has clearly given a go-by to an absolute repudiation on the part of the opposite party. This is what the opposite party has asserted in the said affidavit in reply. "Without prejudice to which is stated above and without admitting any liability this opponent humbly submits that even at this stage this opponent is ready and willing to process the claim provided necessary details and documents are furnished in support of claim". Needless to say, except the post mortem report all other details and documents were made available to the opposite party. Under such circumstances, filing of the complaint a couple of months after the expiry of 12 months from the date of letter of repudiation cannot be said to have effect of giving rise to the forfeiture clause. For the sake of completion of this order, we note that the claim was repudiated by letter dated 19.7.1992 and the complaint was filed on 30.10.1992. The clause on which reliance has been placed would read as under :

"IT is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a Court of Law, then the claim shall for all purpose be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

Now, in the present case, the disclaimer could not be said to be an absolute disclaimer inasmuch as even in the affidavit in reply the opposite party expressed its readiness and willingness to process the claim if necessary details and documents were furnished in support of the claim. Therefore, the process of finalising the claim did not end even at that stage. Under such circumstance, the opposite party can hardly claim benefit of the aforesaid forfeiture clause.

In view of such peculiar facts and circumstances of the present case, decisions in the case of Puriben Ramjibhai Patel v. New India Assurance Company Limited, II (1994) CPJ 453; M/s. Paras Textile v. The New India Assurance Co. Ltd., I (1993) CPJ 126 (NC); Saheen Screen Prints v. The United India Ins. Co. Ltd., II (1992) CPJ 582; National Insurance Co. Ltd. v. Sujir Ganesh Nayak and Co. & Anr., AIR 1997 SC 2049, will hardly have any application. In the last mentioned decision the Apex Court had observed that condition like the aforesaid condition in the insurance policy would be valid inasmuch as extinction of the right itself unless exercised within a specified time is permissible to be agreed between the parties. In the present case as stated above the condition has not started operating at all in view of what is recited in the affidavit in reply itself as the opposite party itself has apparently treated its repudiation to be not complete by virtue of the aforesaid recital.

5. IN the result and in view of the aforesaid facts and circumstances, we do not see any reason to interfere with the order of the City Forum. The appeal is accordingly dismissed with cost, quantified at Rs. 2,000/- to be paid by the appellant (opposite party) to the respondent (complainant) within six weeks from today. If the amount as per the impugned order or any part thereof has been deposited by the opposite party being the appellant herein either in this Commission or in the City Forum, the same shall be paid over by A/c Payee cheque to the complainant after due verification. Appeal dismissed.