

(2012) 04 NCDRC CK 0050

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

V.Bhaskar Reddy

APPELLANT

Vs

National Insurance Co. Ltd.

Represented by its Divisional
Manager Divisional Office

RESPONDENT

Date of Decision: April 26, 2012

Citation: 2012 0 NCDRC 128

Hon'ble Judges: Anupam Dasgupta , Suresh Chandra J.

Advocate: G.S.Mani

Judgement

1. THIS revision petition challenges the order dated 12.01.2011 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (in short, ?the State Commission?) in First Appeal no. 1368 of 2008 against the order dated 08.02.2008 of the District Consumer Disputes Redressal Forum II, Tirupati (in short, ?the District Forum?) in consumer complaint no. 101 of 2007.

2. THE delay of 92 days in filing the revision petition is condoned for the reasons recorded in the application seeking condonation.

The petitioner was the complainant before the District Forum. He alleged deficiency in service on the part of opposite parties (OPs), namely, the Road Safety Club Pvt. Ltd., Tirupati ? OP 1, the National Insurance Company Ltd., Chennai - OP 2 and Branch Office, Tirupati of the said Insurance Company ? OP 3 insofar as they failed to settle his insurance claim which he had filed on account of the injuries that he, as the driver of a truck, suffered in a road accident, leading to his permanent disability. He, therefore, claimed Rs. 3 lakh (the amount insured), in addition to Rs.1,000/- per

week for 104 weeks for loss of current income with interest @ 24% per annum from the date of the claim till realisation and compensation of Rs. 1 lakh for causing mental agony as well as cost of litigation.

Op 1 contended in its written version that it was not at all liable to pay because it had forwarded the insurance claim of the complainant to Op 3 as soon as it received the communication from the complainant and the claim had not yet been repudiated. Therefore, the complaint was premature. Moreover, the membership certificate issued by Op 1 to all its members, including the complainant, specifically stipulated that Op 1 would not be liable in any manner in respect of the insurance cover provided to a member.

3. WHILE OP 2 resisted the complaint on the ground that there was no contract of insurance between it and the complainant, OP 3 (the underwriting office) pointed out that though the accident took place on 23.06.2005, OP 3 received the intimation as late as on 31.03.2006. According to the conditions of the insurance policy, the complainant (or, OP 1) was required to inform OP 3 about the accident within one month. Moreover, the claim was for reimbursement of medical expenses incurred by the complainant on his treatment following the injury suffered during the accident and the policy did not cover reimbursement of medical expenses. The certificate issued by the Christian Medical College and Hospital (CMCH), Vellore (where the complainant received the treatment) was on a piece of plain paper and did not indicate the nature of disability. Further, OP 1 had written to OP 3 on 23.02.2007 stating that the insured had sought return of all the original documents like the prescriptions, pharmacy bills and other relevant records. OP 3, therefore, returned these original documents to OP 1 by its letter dated 07.05.2007 and as such the claim was treated as ?no claim?.

On consideration of the pleadings, evidence and documents of the parties, the District Forum partly allowed the complaint and directed OP 3 to pay the insured amount of Rs.3 lakh with interest @ 9% per annum from 01.06.2006 till the date of payment, Rs.30,000/- towards weekly compensation following the accident and Rs.3,000/- towards the cost within six weeks from the date of receipt of this order.

7(i) Aggrieved by this order, the National Insurance Company Ltd. (OP 3) filed an appeal before the State Commission. (ii) After hearing the parties and considering the evidence produced by them before the District Forum, the State Commission noticed that OP 3 had issued a Group Personal Accident Master Policy to OP 1 covering certain specified risks to its members for the period 23.05.2005 to 22.05.2006. OP 1 issued a membership certificate to the complainant entitling him

to the insurance coverage of Rs. 3 lakh on account of death due to accident or permanent total/permanent partial disablement as a result of the specified injuries sustained in any accident. After the accident on 23.06.2005, the complainant underwent prolonged treatment at the CMCH, Vellore for fracture and lacerations in both the legs and right wrist. He filed his insurance claim through OP 1 on 22.02.2006. Subsequently, he also filed a certificate dated 08.11.2006 from the Medical Board for Orthopedically Handicapped Persons at the SVRRGG Hospital, Tirupati to the effect that he had suffered 55% disability as a result of the accident.

(iii) The State Commission further noticed that the insurance claim was filed after over nine months from the date of the accident though Condition no. 3 of the insurance policy required that intimation had to be given within one month from the date of the accident so as to enable the insurance company to examine the insured in accordance with Condition no. 4. The State Commission further noticed that the petitioner had taken back all the documents that he submitted along with his insurance claim and held that it was not possible for OP 3 to process the insurance claim in the absence of the relevant documents. The State Commission further observed that the complainant had apparently taken back the documents for seeking reimbursement of the medical expenditure from his employer. (iv) Finally, noting that the complainant had not explained the delay in filing the intimation about the accident suffered that he met with or the insurance claim within 30 days from the date of the accident as stipulated in the insurance policy, the State Commission held that in these circumstances, OP 3 could not be held guilty of deficiency in service. As a result, the State Commission set aside the order of the District Forum and dismissed the complaint.

8 (i) We have heard Mr. G.S. Mani, learned counsel for the petitioner and carefully considered the documents brought on record. Mr. Mani has also filed his written submissions along with a copy of the Supreme Court's order dated 18.10.2010 in the case of Raj Kumar vs Ajay Kumar and Another [(2011) 1 Supreme Court Cases 343] in support of his contentions.

(ii) The main point urged by Mr. Mani is that the State Commission erred in holding that the insurance company was justified in not accepting the petitioner's claim for the insured sum only on the ground of delay in filing the intimation/claim papers. In this context, Mr. Mani has submitted that the delay was on account of the petitioner's prolonged treatment at the CMCH, Vellore - first as an in-patient from 25.06.2005 to 26.07.2005 and then as out-patient from 01.08.2005 to 06.02.2006. Thus, according to Mr. Mani, the petitioner/complainant had shown reasonable cause for the delay beyond one month in intimating OP 3 about his accident.

(iii) The second limb of Mr. Mani's argument is that the petitioner/complainant had suffered permanent total disability because the certified disability of 55% would amount to 100% loss of earning capacity. The medical certificate issued by the CMCH, Vellore had already shown that the petitioner was unfit to drive a four-wheeler which was the only profession he was trained to engage in. Relying on the ratio of the Supreme Court's judgment mentioned above, Mr. Mani has argued that the petitioner/complainant thus should be allowed the insurance claim and other reliefs as awarded by the

District Forum. 9. In this context, we may first read the relevant parts of the insurance policy: ?(I) Permanent Total Disability: If such accident injury shall, within 12 calendar month of its occurrence, be the sole and direct cause of the total and irrecoverable loss of sight of both eyes/two hands/two feet/one hand and one foot/sight of one eye and one hand or one foot Rs.3,00,000/- sight of one eye or one hand or one foot Rs.1,50,000/- (II) Permanent Partial Disability: If accidental injury shall, within 12 calendar months of its occurrence, be the sole and direct cause of the total and irrecoverable loss of use or the actual loss by physical separation of the following, the percentage of the capital sum insured of Rs.2,00,000/- as indicated shall be payable. Percentage of Capital Sum Insured (i) Loss of toes ? all 20 great ? both phalanges 5 great ? both phalanx 2 other than great, if more than one toe lost, each 1 (ii) Loss of hearing ? both ears 50 (iii) Loss of hearing - one ear 15 (iv) Loss of four fingers and thumb of one hand 40 (v) Loss of four fingers 35 (vi) Loss of thumb ? both phalanges one phalanx 25 10 (vii) Loss of index finger ? three phalanges two phalanges one phalanx 10 8 4 (viii) Loss of middle finger ? three phalanges two phalanges one phalanx 6 4 2 (ix) Loss of ring finger ? three phalanges two phalanges one phalanx 5 4 2 (x) Loss of little finger ? three phalanges two phalanges one phalanx 4 3 2 (xi) Loss of metacarpal first or second (additions) third, fourth or fifth (additions) 3 2 (xii) Any other permanent partial disablement Percentage as assessed by the doctor Exclusions: Important exclusions including Suicide, Intentional self-injury, military service or operations, war, terrorism, illegal act, bacterial infections, disease, AIDS, dangerous sports, aviation travel as a pilot or crew member other than as a passenger as detailed in the master policy?. 1. It will be clear from the foregoing description that according to the insurance policy ?permanent total disability? has only two variants, whereas, ?permanent partial disability? has 12 types. In other words, to be eligible to claim the amount insured, it is necessary for the insured to produce acceptable proof of the nature (permanent total or permanent partial) and type (one or more of those listed under each of the two categories mentioned above). 11. The medical certificate issued by SVRRGG Hospital, Tirupati records, inter alia, the following in respect of nature of disability:

xxx 1.
xxx 2.
xxx 3.
xxx 4.
xxx 5.
xxx 6. Nature of Disability (Tick relevant from following list) 1. Post-polio paralysis, Hemiplegia, Quadraplegia, Malunited Fracture, Nerve Paralysis - Upper Extremity, Lower Extremity, Limp, Painful shortening, Deformity, Congenital/Acquired above Knee, below Knee, Hip, Hemipelvectomy, Symes Cheoparts, Wrist, Fingers, Below Elbow, Above Elbow, Shoulders, Forequarter, Unilateral/Bilateral Old Fracture both Buttress (R) L Tibia, Old Fractures dislocation (L) Acetabulum L Fracture Femur # Lateral condyle Tibia L Shaft of Tibia 1. Extent of disability ? Estimate in percentage

(ME-Bride scale) on Anatomical, Functional or Economical basis Patient Assessment, Examiner?s assessment mention percentage (specific percentage has to be mentioned) 55% - fifty five percent 1. Use of appliances (Tick relevant from following list) Calliper, Crutch above knee, below knee Prosthesis, Cane unilateral, bilateral, shoulder disarticulation 1. Any operation done/indicated 1. Photographs (Attested)

4. ANY other particulars to clarify the nature and extent of disability that the surgeon might like to point out: ?

12. From a reading of the disability certificate it is unclear whether the disability suffered by the petitioner/complainant is permanent. Secondly, though ?55%? mentioned as the extent of disability there is no comment at all as to whether this percentage is in terms of anatomical, functional or economical disability. There is no observation at all if the fractures suffered by the petitioner/complainant were malunited even after the surgeries that he underwent, rendering his leg/s and/or wrist dysfunctional or painful. There are also no comments on either the need for or actual/existing use of prosthetic appliances and whether use of prosthetics can reduce the degree of disability. In fact, even from a close reading of this certificate, it is difficult to decipher the extent of disability, even if it is assumed that its nature is ?permanent partial?. 12. In view of the foregoing discussion, we are unable to differ from the main finding of the State Commission in its impugned order that given the facts and circumstances of the case, the respondent insurance company cannot be held guilty of deficiency in service in returning the petitioner?s claim as ?no claim?.

13. However, the fact that the petitioner, a young person in his thirties has suffered considerable disability as a result of an accident otherwise covered within the ambit of the insurance policy cannot be ignored and hence he should not be made to suffer because the disability certificate issued by the SVRRGG Hospital is not clear in terms of the requirements of the insurance policy. 14 (i) In our view, therefore, the interest of equity and justice would be better served, without any prejudice to the respondent insurance company, if we direct that the petitioner appear once again before the Medical Board concerned at the SVRRGG Hospital for revalidation and/or appropriate amplification of the disability certificate, keeping in view the classification of disabilities under the insurance policy and the certificate be reissued or amplified by the Medical Board after examining the petitioner in the presence of the local Branch Manager of the respondent insurance company for which written notice in advance be given by the Medical Board to the said Branch Manager. (ii) We would then expect the respondent insurance company to re-examine the claim of the petitioner in accordance with the terms and conditions of the policy, without a hyper-technical insistence on compliance of the condition regarding intimation

within the stipulated time limit. After all, it cannot be the case of the insurance company that the petitioner was not eligible at the relevant time to claim indemnification under the policy had he simply informed the insurance company soon after his discharge from the CMCH, Vellore and followed it up with appropriate documentation. (iii) The petitioner shall appear before the Medical Board of the SVRRGG Hospital within 15 days of receipt of this order and the Medical Board shall complete further action as per sub-paragraph (i) above, within the next 15 days. We also hope that the insurance company shall complete the process of re-examination of the petitioner's insurance claim on merits and in accordance with the terms of the policy within 30 days of the SVRRGG Hospital issuing a fresh disability certificate or amplification of that issued on 08.11.2006. 15. The revision petition is disposed of in the foregoing terms, with the clarification that the petitioner, if dissatisfied with the ultimate decision of the insurance company, will be at liberty to file a fresh complaint with the District Forum within 30 days of the date of receipt of the final communication from the insurance company.