

Prabir Kumar Nath Vs Life Insurance Corporation of India and Others

Court: Calcutta High Court

Date of Decision: Feb. 17, 2003

Citation: (2005) 2 ACC 267

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Judgement

Indira Banerjee, J.

This writ petition is directed against the action of respondent No. 1, which is hereinafter referred to as respondent LIC

in disowning its liability to the petitioner on account of disability benefit under policy No. 420717908, taken out by the petitioner, which is

hereinafter referred to as the "said policy". The decision of respondent L.I.C. was communicated to the petitioner by a letter dated 20th August,

1997 which is under challenge in this writ petition.

2. This is a most unfortunate case where the petitioner who had been a bus driver became permanently disabled by reason of amputation of one of

his legs, consequent to an accident.

3. The petitioner claims to have lost his job on account of the amputation of his leg as aforesaid.

4. The petitioner was/is the holder of the said policy No. 420717908 issued by respondent L.I.C. which provides for an accident benefit.

5. The relevant clause is set out herein below for convenience:

10. Accident benefit.--If at any time when this policy is in force for the full sum assured, the life assured, before the expiry of the period for which

the premium is payable or before the policy anniversary on which the age nearer birthday of the life assured is 70 whichever is earlier, is involved in

an accident resulting in either permanent disability as hereinafter defined or death and the same is proved to the satisfaction of the Corporation, the

Corporation agrees in the case of:

(a) Disability of the life assured.--(i) to pay in monthly instalments spread over 10 years an additional sum equal to the sum assured under this

policy. If the policy becomes a claim before the expiry of the said period of 10 years, the disability benefit instalments which have not fallen due will

be paid along with the claim, (ii) to waive the payment of future premiums.

The maximum aggregate limit of assurance under all policies on the same life to which benefits (i) and (ii) above apply shall not in any event exceed

Rs. 5,00,000/-. If there be more policies than one and if the total assurance exceeds Rs. 5,00,000/- assured in order of date of the policies issued.

The waiver of premiums shall extinguish all options under this policy except as to such assurance, if any, as exceeds the maximum aggregate limit of

Rs. 5,00,000/- and which may have been kept in force by continued payment of premiums and the benefits covered by (b) of this clause.

The disability above referred to must be disability which is the result of an accident and must be total and permanent and such that there is neither

then nor at any time thereafter any work, occupation or profession that the life assured can ever sufficiently do or follow to earn or obtain any

wages, compensation or profit. Accidental injuries which independently of all other clauses and within ninety days from the happening of such

accident, result in the irrecoverable loss of the entire sight of both eyes or in the amputation of both hands at or above the wrists, or in the

amputation of both feet at or above ankles or in the amputation of one hand at or above the wrist and one foot at or above the ankle, shall also be

deemed to constitute such disability.

Immediately after the happening of the disability, full particulars thereof must be given in writing to the office of the Corporation where this policy is

served together with the then address and whereabouts of the life assured and within ninety days after the happening of the disability there must

be given to the Branch Office of the Corporation where the policy is serviced, in the manner required by it, proof of disability satisfactory to the

Corporation and without any expense the Corporation, and thereafter similar proof must be given, as and when required by the Corporation, of the

continuance of such disability. Any medical examiner nominated by the Corporation shall be allowed to examine the person of the life assured in

respect of any disability claimed, in such manner and as such times before and/or after the disability is accepted by the Corporation as the

Corporation may require.

In the event of its being discovered at any time that a claim under this clause has been wrongly admitted, all premiums falling due after the date of

the Corporation's intimation to that effect shall be paid and no further instalments of the additional sum assured shall be paid as if no disability had

occurred.

6. The stand purported to be taken by respondent L.I.C. is summarized in a letter dated 16th March, 1999 written to the petitioner, the contents

whereof are extracted herein below for convenience:

In continuation to our previous letter marked even dated 6th November, 1998 regarding above, we give below the findings of our Divisional

Office:

(1) The degree of injuries sustained by the life assured is 60 per cent as per the certificate issued by the Government of West Bengal Regional

Artificial Limb Fitting Centre and not 100 per cent as per policy terms and conditions.

(2) The disability as per policy condition must be a disability which is the result of an accident and must be total and permanent and such that there

is neither then nor at any time thereafter any work, occupation or profession that the life assured can ever sufficiently do or follow to earn or obtain

any wages, compensation or profit. Accidental injuries which independently of all other causes and within ninety days from the happening of such

accident, result in the irrecoverable loss to the entire sight of both eyes or in the amputation of both hands at or above wrists or in the amputation of

both feet at or above ankles or in the amputation of one hand at or above the wrist and one foot at or above the ankle, shall also be deemed to

constitute such disability.

In the instant case only the right leg stands amputated above knee and the degree of disability is only 60 per cent. Hence, as per policy conditions

we have again decided to deny the claims for disability claim.

7. There is no dispute that the petitioner is disabled, one of his legs having been amputated from above knee and that such disability is the result of

an accident.

8. The question, therefore, is whether the disability is required to be 100 per cent for claiming disability benefit as contended by respondent L.I.C.

in its above-mentioned letter. Such contention is in my view wholly misconceived.

9. The sole ground on which the claim of the petitioner has been disallowed is that only one of the legs of the petitioner has been amputated and the

medical certificate submitted by the petitioner shows 60 per cent disability. The disability, according to the petitioner is, therefore, not total but only

partial.

10. There is nothing in the policy to indicate that 100 per cent disability is a condition precedent for attraction of the accident benefit clause in the

policy. On the other hand, compensation becomes payable on proof of death or permanent disability of the assured as a result of an accident while

the policy is in force as will be apparent from the very first para of Clause 10 of the said policy.

11. The use of the word "disability" in the first para of Clause 10 of the said policy has further been explained in the third para of the said clause as

disability which must be the result of an accident and must be total and permanent and such that there is neither then nor any time thereafter any

occupation or profession that the assured can never sufficiently do or follow to earn or obtain any wages, compensation or profit.

12. The expression "disability must be total" must be given a liberal interpretation in favour of the accident victim and in any event not read out of

context.

13. The word "total" was never intended to apply only to hundred per cent disability. Accordingly, blindness of both eyes is deemed to be

disability although a blind person may be in a position to do work and even read with the help of Braille. Similarly, amputation of both hands is

deemed to be total disability, although it is obvious that a person whose hands are amputated can, inter alia, move, read and talk. Amputation of

one hand from the wrist onwards and one leg from the ankle onwards is also deemed to be total disability although the victim might be capable of

some activity with the unaffected hand and leg.

14. The instance of cases in which a person would be deemed to be totally disabled are only illustrative and not exhaustive.

15. In my view, the words "total disability" used in the policy are to be liberally interpreted to mean total and permanent disability of a vital organ

or limb which seriously impairs important human functions such as movement, vision, etc. In fact, respondents have themselves understood the

expression total disability to include amputation of one leg from the knee onwards and had accordingly entertained the claim of the petitioner and

kept the same pending for several years, notwithstanding the certificate submitted by the petitioner indicating 60 per cent disability. On the other

hand, the respondent Life Insurance Corporation knowing fully well that the petitioner had been disabled to the extent of 60 per cent called for

further documents including the final police investigation report which has since duly been submitted.

16. There can be no dispute that the petitioner having lost a vital limb totally has become permanently disabled and is incapable of earning any

livelihood, not to speak of driving a vehicle.

17. In my view, the respondent Life Insurance Corporation is bound to pay the assured amount to the petitioner for the permanent disability

suffered by him.

18. Learned Counsel appearing for Life Insurance Corporation of India relied on a decision of the Hon^{ble} Supreme Court in *LLC of India v.*

Kiran Sinha 1985 A.C.J. 657 (S.C.) in support of his contention that the remedy of the petitioner lies by way of a suit.

19. The aforesaid decision was rendered in the particular facts and circumstances of the case before the Apex Court and does not lay down any

absolute proposition of law to the effect that a writ petition can never be entertained where a statutory Corporation withholds the legitimate dues of

a policyholder in terms of policy issued by it. Moreover, having regard to the unfortunate circumstances of the petitioner in this case, it would not

be proper to relegate the petitioner to the lengthy and expensive process of filing a civil suit.

20. Accordingly, the writ petition is disposed of with a direction upon the respondent Life Insurance Corporation of India to disburse the disability

compensation to the petitioner within eight weeks from the date of communication of this order.

21. There will be no order as to costs.

22. Urgent xerox certified copy of this order, if applied for, be supplied to the parties expeditiously subject to compliance with all the required

formalities.