

**SUPREME COURT OF INDIA**

Sandeep Kumar Chourasia

Vs.

Divisional Manager, the New India Insurance Company Ltd.

C.A.No.2759 of 2013

(G.S.Singhvi and H.L.Gokhale JJ.)

02.04.2013

**JUDGMENT**

**G. S. SINGHVI, J.**

1. Leave granted.

2. This appeal is directed against order dated 14.1.2008 of the National Consumer Disputes Redressal Commission (for short, 'the National Commission') whereby rejection of the appellant's claim for compensation by the Chhattisgarh State Consumer Disputes Redressal Commission (for short, 'the State Commission') was upheld.

3. In July, 1997, Shri P.D. Chourasia (the appellant's father) took insurance cover under 'Janta Gramin Vyaktigat Durghatna Policy' for Rs.7,00,000/- in the name of the appellant. The policy covered death, permanent total disablement, loss of two limbs or two eyes, one limb and one eye directly caused by accident.

4. While he was playing outside his house on 22.10.1999, the appellant fell down and sustained injuries in the right portion of his head and the right eye. He was initially treated in the Government hospital and then in the private hospital. Dr. Jaishri Gopinath, Assistant Surgeon, Government Hospital at Supela, Bhilai issued medical certificate dated 22.11.1999 mentioning therein that on account of injury caused to his right eye, the appellant suffered total loss of vision in the right eye and severe loss of hearing in both ears. Similar certificates were issued by Dr. K.K. Mishra and Dr. A.K. Verma with little variation in the degree of disability. In October and November, 2004, the appellant underwent further medical tests and a

surgery was performed to check further deterioration of his eyes. The District Medical Board, Durg issued certificate dated 27.10.2005, perusal of which shows that the appellant had suffered 100% disability in the right eye.

5. The appellant's father lodged a claim for compensation by asserting that his son had suffered loss of vision due to accidental fall. After long correspondence, the respondents rejected the claim on the ground that the same was not covered by the policy. The appellant then filed a complaint through his father for award of compensation of Rs.7,00,000/- with interest at the rate of 18% to 25% and cost. In the complaint it was pleaded that the appellant had suffered injury to the right eye and consequential loss of vision and hearing in both ears on account of accidental fall.

6. The respondents filed separate written statements to contest the complaint. They pleaded that the loss of vision and hearing was not caused due to the accident. According to the respondents, the right eye of the appellant was inflicted with Phthisis Bulbi and he was hard of hearing since birth.

7. The appellant's father Shri P.D. Chourasia filed his affidavit in support of the claim. On behalf of respondent No.1, Shri Ajit Kumar (Branch Manager) filed his affidavit. After considering the pleadings of the parties and affidavits filed on their behalf, the State Commission decided to call for an expert opinion. Accordingly, a request was sent to the management of Dr. Bhimrao Ambedkar Memorial Hospital, Raipur to constitute a Medical Board to examine the appellant. The Medical Board headed by Dr. A.K.Chandrakar, Professor and Head, Department of Ophthalmology examined the appellant on 5.8.2005 and submitted a report, the relevant portion of which is extracted below:

“After examining the complainant and pursuing his document, the opinion of the Medical Board is as follows-

1. Phthisis Bulbi RE is the course of loss vision.
2. The is total loss of vision in RE.
3. The patient had pathological myopia for which Radial Kanatotomy surgery had been earlier. The loss of vision could have been caused by fall while playing.
4. The loss of vision in RE is irreversible.”

8. After receiving the report of the Medical Board, the State Commission passed order dated 18.5.2006 and dismissed the complaint. The findings recorded by the State Commission are contained in paragraphs 14 to 16 of that order, which are reproduced below:

“14. The Commission has referred the complainant to the Medical Board, the report dated 5.8.05 of which has been received. The said report discloses that there is no total loss of vision in the right eye and it has further been stated that there was Pathological Myopia for which Radial Keratotomy Surgery had been done earlier and that the loss of vision could have been caused by fall while playing. However, no definite opinion regarding loss of vision has been given in the report of the Medical Board.

15. As reported by Dr. Dani, Phthisis Bulbi is a progressive disease and was found present on 28.10.99 i.e. almost after a week of the accident. No material has been produced before us as to whether the loss of vision was on account of, Phthisis Bulbi or was a result of the fall. As noted earlier the complainant has not produced any other documents to show that the injury to the eye directly resulted due to fall.

16. In the circumstances it is not possible to record a finding that the loss of vision in the right eye of the complainant was direct result of fall as alleged by the complainant. Therefore in our opinion the complainant is not entitled to the benefit under the policy. Complaint is dismissed.”

9. Feeling aggrieved by the order of the State Commission, the appellant filed an appeal under Section 21 of the Consumer Protection Act, 1986 but could not convince the National Commission to entertain his plea for award of compensation. The National Commission discarded the certificate of Dr. Jaishri Gopinath by observing that she is neither an eye or ENT specialist nor she had filed an affidavit to prove the contents of the certificate. The National Commission also opined that the statement made by the appellant about the loss of hearing was falsified by the record of the maternity hospital, which revealed that the child was hard of hearing since birth.

10. We have heard learned counsel for the parties and carefully perused the record.

11. The State Commission heavily relied upon report dated 28.10.1999 prepared by Dani Hospital wherein it was mentioned that the loss of vision could be attributed

to Phthisis Bulbi in the right eye of the appellant. The State Commission also referred to the report sent by the Medical Board, which had examined the appellant in August, 2005 and concluded that the loss of vision has not resulted due to the accidental fall. The National Commission virtually copied the reasons recorded by the State Commission and dismissed the appeal filed by the appellant.

12. Unfortunately, both the consumer fora did not bother to carefully go through the report of the Medical Board constituted in furtherance of the direction given by the State Commission. In that report, the concerned doctors opined that the loss of vision could have been caused by fall while playing. In their pleadings, respondents had not contested the statement contained in the complaint, which was duly supported by the affidavit of Shri P.D. Chourasia, that while playing outside the residence his child had an accidental fall and the consequential injury to the right eye led to the loss of vision.

13. The available medical literature shows that Phthisis Bulbi is the end- stage anatomic condition of the eye in response to severe ocular disease, infection, inflammation, or trauma. Clinically, it is categorized by a soft strophic eye with disorganization of intraocular structures. Phthisis Bulbi can be caused due to ocular injury, radiation, infection, or diffusion disease. Initial damage to intraocular structures either from penetrating trauma or inflammation can eventually lead to widespread atrophy and disorganization of the eye – Dictionary of Cell and Molecular Biology and Radiology of the Orbit and Visual Pathways, by Jonathan J. Dutton, Prof. of Ophthalmology, University of North Carolina at Chapel Hill, USA.

14. From what has been mentioned above, it is clear that the State Commission and the National Commission committed serious error by dismissing the complaint of the appellant by assuming that his right eye was afflicted with the disease of Phthisis Bulbi and the same was the cause of loss of vision. They completely ignored the report of the Medical Board which had opined that Phthisis Bulbi can be caused due to injury caused due to fall. Before the State Commission, sufficient evidence was produced by the appellant to prove that he had an accidental fall on 22.10.1999 and as a result of that, right side of his head and the right eye were injured. Therefore, there is no escape from the conclusion that the appellant's case was covered by the policy issued by respondent No.1 and the State Commission and the National Commission committed serious error by rejecting his claim.

15. In the result, the appeal is allowed, the impugned order as also the one passed by the State Commission dismissing the complaint filed by the appellant are set

aside and the respondents are directed to pay compensation of Rs.7,00,000/- to the appellant with interest at the rate of 6% per annum from the date of filing the complaint.

16. The respondents are directed to pay the aforesaid amount to the appellant within a period of eight months from the date of receipt/production of copy of this judgment.