SUPREME COURT OF INDIA

Before: Justice Mohan M. Shantanagoudar and Justice Vineet Saran.

NARBADA DEVI And Ors. – Appellants,

Versus

H.P. STATE FOREST CORPORATION & Anr. – Respondents.

CIVIL APPEAL NO. 6379 OF 2010

Insurance – Accident – Janta Personal Accident Insurance Policy – Insurance Policy only covers "bodily injury resulting solely and directly from accident caused by outward, violent and visible means (including sterilization risks)" – Provisos of policy specifically disclose that compensation will not be paid in respect of injury of the injured if he is under the influence of intoxicating liquor – Night before his death, the deceased was heavily drunk, and had gone and slept outside on a cold, rainy October night in Chopal – In case of excessive drinking and cold weather, asphyxia is the final medical complication – Only if the insured sustains any bodily injury resulting solely and directly from accident caused by outward, violent and visible means, the Insurance Company would be liable to indemnify the insured – Therefore, only accidental death of the insured shall be indemnified – Post-Mortem Report clearly indicates that there were no injuries found on the body of the deceased – Probable cause of death as per the Final Opinion in the Post-Mortem Report is asphyxiation caused by alcohol consumption and regurgitation of food into larynx – Expert opinions also show that the cause of death was due to consumption of alcohol – Injured is not entitled to compensation since it is proved that he was intoxicated and that death was due to intoxication.

Cases referred to:

1. (2002) 3 CPJ 64 (NC), *New India Assurance Co. Ltd. v. Smt. Jamuna Devi.*

JUDGMENT

Mohan m. Shantanagoudar, J. – *(22.03.2021)* – This appeal arises out of order and judgement of the National Consumer Disputes Redressal Commission, New Delhi (hereinafter 'National Commission') dated 24.04.2009 (hereinafter 'Impugned Order'), allowing Revision Petition No. 331 of 2007 filed by the Respondent No.1 herein, Himachal Pradesh State Forest Corporation (hereinafter 'HPSFC'), against the order dated 09.10.2006 passed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (hereinafter 'State Commission') in Appeal No. 281/2004.

2. The facts leading to this appeal are as follows: Om Prakash (hereinafter 'deceased') was an employee of Respondent No.1 HPSFC posted as a Chowkidar (daily wages) at their Divisional Office, Chopal. On the night of 7.10.1997, the deceased was coming from Banal Depot to Thundal along with one Chandermohan, the forest guard. On the said night, there

was heavy rain and storm, therefore, the deceased might have been trapped in it. On the morning of 8.10.1997, on the way to Village Thundal, the deceased was found in a hapless condition around 9:00 AM, smelling of alcohol. When the Chowkidar, Mohan Singh, saw the deceased, he called the Forest Sub Inspector, and the deceased was removed to the quarter of Chandermohan. Over there, he was given hot water bath and massaged. However, he subsequently died at about 1:00 PM on 8.10.1997. Thereafter, the forest guard, Chandermohan reached Chopal and lodged FIR on 9.10.1997 at about 2:30 P.M. The Assistant Manager of Respondent No.1HPSFC issued a certificate to the effect that the deceased had died on duty while he was working as a daily rated Chowkidar.

3. The Post Mortem Report dated 10.10.1997 stated that no injury was seen on any part of the body of the deceased. Further, that the cause of death was probably asphyxia resulting from regurgitation of food articles into larynx and trachea after consumption of alcohol amounting to about 34.5 mg per 100 ml of urine, which was calculated as per the chemical examiner's report. Expert opinion dated 6.07.1998 was obtained from one Dr. D.J. Das Gupta, M.D. & Former Professor & Head of Department of Medicine and Principal, Indira Gandhi Medical College, Shimla, which stated that the cause of death is due to alcohol ingestion and regurgitation of food into larynx. Medical opinion was also obtained from one Dr. D.S. Puri, M.D. & former Professor & Head of Department of Medicine, Indira Gandhi Medical College, Shimla. As per his opinion dated 17.08.2002, "this level of alcohol in blood and urine is sufficient to cause deep sleep".

4. Under the Janta Personal Accident Insurance Scheme (hereinafter 'Insurance Scheme'), Respondent No.1HPSFC had taken the Janta Personal Accident Insurance Policy dated 24.05.1996 (hereinafter 'Insurance Policy') for its 3008 employees from Respondent No.2-The New India Assurance Company Limited (hereinafter 'Insurance Company'). Under the Insurance Scheme, there was an insurance coverage of Rs. 1 lakh for all employees who were willing to opt for the said Scheme. Respondent No.1HPSFC had been depositing premium for its employees, including the deceased, under the Insurance Policy, which was effective during the period from 22.01.1997 to 21.01.1998. Consequently, the legal heirs of the deceased, i.e., the Appellants herein laid a claim before the Respondent No.2 Insurance Company under the Insurance Policy; however, the Insurance Company repudiated the claim vide letter dated 17.07.1998 and hence, the claim was not settled.

5. Aggrieved by the Insurance Company's repudiation of their claim, the Appellants herein filed a consumer complaint under Section 12 of the Consumer Protection Act, 1986 ('Consumer Protection Act') before the District Consumer Disputes Redressal Forum, Shimla ('District Forum'), alleging deficiency in service on part of the Insurance Company and claiming insurance amount of Rs. 2 lakhs along with interest and cost. By order dated 13.09.2004, the District Forum held that the Insurance Company had wrongly repudiated the claim and was liable to make payment and indemnification of the insured amount of Rs. 2 lakhs to the Appellants.

5.1 The reasoning given by the District Forum was as follows: The Forum observed that the only issue to be considered is whether the death is natural or accidental. In case of the former, Respondent No.1HPSFC would be liable for compensating the Appellants, and in

case of the latter, the Insurance Company would be liable. The District Forum then considered the definition of asphyxia in the Medicolegal Manual by Dr. K.S. Narayan Reddy which states that “Asphyxia is a condition caused by interference with respiration, or due to lack of oxygen in respired due to which the organs and tissues are deprived of oxygen (together with failure to eliminate CO2), causing unconsciousness or death.” The District Forum therefore concluded that death by asphyxia could not be termed natural and concluded that the death of the deceased was not natural but accidental. The District Forum further observed that the quantity of alcohol found in the deceased’s body was not sufficient to cause death in the normal course and that the opinion dated 6.07.1998 given by Dr. D.J. Das Gupta (supra) could not be relied on as he had not examined the body of the deceased.

6. Thereafter, the Respondent No.2Insurance Company filed an appeal before the State Commission, which was listed as Appeal No. 281/2004. The State Commission in its order dated 9.10.2006 observed that the body of the deceased did not have any external injury or mark of violence, and therefore opined that the death was not accidental. Hence, the State Commission concluded that the Insurance Company could not be held liable under the Insurance Policy. However, the State Commission modified the District Forum’s order to the extent that the liability set out in the District Forum’s order would be that of Respondent No.1HPSFC and not of the Insurance Company, relying upon the decision of the National Commission in The *New India Assurance Co. Ltd. v. Smt. Jamuna Devi & Ors*., (2002) 3 CPJ 64 (NC).

7. Aggrieved, the Respondent No.1HPSFC approached the National Commission by way of Revision Petition No. 331 of 2007, which was allowed vide the Impugned Order dated 24.04.2009. The National Commission observed that the State Commission had rightly held that the deceased’s death was not accidental and therefore, the Insurance Company had no statutory liability to compensate the loss of life of the deceased as per the terms of the Insurance Policy. Further, that Respondent No.1HPSFC cannot be held liable under the Insurance Policy since it was only acting as a mediator for depositing the premium of employees with the Insurance Company. However, the National Commission observed that Respondent No.1HPSFC could not avoid liability under the Workmen’s Compensation Act, 1923 (hereinafter, ‘1923 Act’). The Appellants herein had already presented a claim before the Commissioner, Workmen’s Compensation, Chopal (hereinafter ‘Commissioner’), seeking compensation under the 1923 Act, and the Commissioner had passed award dated 28.08.2003 directing Respondent No.1 HPSFC to pay a sum of Rs. 1,52,887.50/ along with interest @12% p.a. to the Appellants herein. HPSFC had appealed against the said award before the Hon’ble High Court of Himachal Pradesh, Shimla and the Hon’ble Court had passed an interim order on 6.11.2003 directing stay of operation and execution of the Commissioner’s order dated 28.08.2003. Hence the National Commission held that the matter was already subjudice before the Commissioner and it would not be proper for it to record its finding. The Revision Petition was accordingly allowed. Aggrieved, the Appellant has come before this Court.

8. Learned counsel for the Appellants has argued that that the terms and conditions of the Insurance Policy were never communicated to the insured persons nor were they supplied

with a copy of the Insurance Policy. The deceased was not told that the Insurance Policy was applicable only in the case of accidental death and therefore, the Respondent No.1-HPSFC is liable to pay compensation to the Appellants for the death of the deceased.

8.1 The learned counsel for the Appellants further contended that the Insurance Scheme is in addition to the Appellants' entitlement to compensation under the 1923 Act and while all employees of Respondent No.1HPSFC are entitled to compensation under the 1923 Act, compensation under the Insurance Policy is available only to those who pay the premium. Therefore, a claim before the Commissioner under the 1923 Act cannot preclude a claim under the Insurance Policy.

8.2 Lastly, the Appellants have contended that as per the law laid down in Jamuna Devi (supra), even if the Insurance Policy is not applicable, Respondent No.1HPSFC may be held liable for paying compensation to the Appellants herein. Further, that Respondent No.1-HPSFC was acting as a mediator between the insured/deceased and the Insurance Company and hence there was a tripartite agreement which entitles the Appellants to file a case against the Respondent No.1HPSFC.

9. Per contra, the learned counsel for Respondent No.1HPSFC argued that under the Insurance Policy, if the insured died an accidental death, regardless of whether such death takes place within the course of employment or not, the Insurance Company would be liable. However, the Respondent No.1HPSFC had no liability under the Insurance Policy whatsoever. If the death does not arise out of accident, neither the Insurance Company nor HPSFC would be liable. The State Commission and the National Commission rightly recorded concurrent findings that the death was not accidental, however, the State Commission and the District Forum considered the issue on the wrong premise that in case the death was accidental, the Insurance Company would be liable and otherwise, Respondent No.1-HPSFC would be liable. Further, that the deceased was an employee of Respondent No.1 HPSFC and not a consumer since the definition of "service" under the Consumer Protection Act excludes from its ambit services rendered under the contract of employment between employer and employee and hence the complaint was not maintainable under the Consumer Protection Act qua the Respondent No.1 HPSFC. Lastly, that HPSFC could be held liable only under the provisions of the 1923 Act and not under the Insurance Scheme as it was only a mediator for depositing the premium of employees with the Insurance Company.

10. Learned counsel for the Respondent No. 2-Insurance Company contended that the deceased died a natural death, which is not covered under the Insurance Policy. The Insurance Policy only covers "bodily injury resulting solely and directly from accident caused by outward, violent and visible means (including sterilization risks)". Since there is no evidence to show that the deceased met with any accident and the Post Mortem Report also shows that no bodily injury was caused to the deceased, the claim is not payable under the said Policy.

10.1 It was additionally pointed out that Proviso 4 to the Insurance Policy contains an exclusion clause, whereby it is clearly provided that if the insured dies whilst under the

influence of intoxicating liquor or drug, claim under the Policy will not be payable.

10.2 The facts of the present case show that on the night before his death, the deceased was heavily drunk, and had gone and slept outside on a cold, rainy October night in Chopal. In case of excessive drinking and cold weather, asphyxia is the final medical complication. Therefore, the learned counsel for the Insurance Company submitted that the Appellants' claim is not maintainable under the Insurance Policy conditions, particularly Proviso 4. It was further pointed out that there is neither any direct evidence nor any bodily injury to prove the Appellants' claim that the deceased died due to having suffered a fall during the storm at night. The learned counsel also placed reliance on the expert opinions of Dr. D.J. Das Gupta dated 6.07.1998 (supra) and Dr. D.S. Puri dated 17.08.2002 (supra) to show that the deceased was in an intoxicated state at the time of death. Hence, the learned counsel for the Insurance Company submitted that the present appeal is liable to be dismissed.

11. We have heard the learned counsel for the parties at length and have considered the materials placed on record as well as the findings of the three consumer forums. In the facts and circumstances of the case, we do not find any reason to interfere with the impugned order dated 24.04.2009 passed by the National Commission for the reasons mentioned below.

12. From a bare perusal of the Insurance Policy, as quoted supra, it is clear that only if the insured sustains any bodily injury resulting solely and directly from accident caused by outward, violent and visible means, the Insurance Company would be liable to indemnify the insured. Therefore, as per the Insurance Policy, only accidental death of the insured shall be indemnified. As noted above, the PostMortem Report clearly indicates that there were no injuries found on the body of the deceased. The probable cause of death as per the Final Opinion in the Post-Mortem Report is asphyxiation caused by alcohol consumption and regurgitation of food into larynx. As such, we find it difficult to conclude that the deceased's death was accidental. Further, the expert opinions of Dr. D.S. Puri and Dr. D.J. Das Gupta (supra) also show that the cause of death was due to consumption of alcohol. In light of the explicit terms of the Insurance Policy, we find that the National Commission and the State Commission have rightly held that the deceased's death was not accidental, and that the Insurance Company would not be liable to settle the Appellants' claim.

13. As for the liability of the Respondent No.1HPSFC, we are of the opinion that the Respondent No.1HPSFC was only acting as a mediator for depositing the premium of employees with the Insurance Company and had no liability as such under the Insurance Policy. The liability of Respondent No.1HPSFC, if any, would be under the 1923 Act, proceedings under which have already been settled by the Commissioner, as recorded in the Impugned Order.

14. At this stage, we consider it pertinent to deal with the contention raised by the Appellants that Respondent No.1HPSFC ought to be directed to pay compensation in place of the Insurance Company on the basis of the judgment in Jamuna Devi (supra). In the facts of Jamuna Devi, the deceased employee in that case was also insured under the same Insurance Scheme. Upon his death, a claim was raised which was

repudiated by the Insurance Company. When the matter came before the National Commission by way of revision petition, the National Commission held that the death was not accidental and therefore, repudiation of the claim by the Insurance Company was correct. However, the National Commission observed from the records that the deceased therein was given to believe that the policy covered natural death as well. The National Commission also considered the fact that before the introduction of the Scheme, a communication dated 23.01.1996 was addressed by the Financial Commissioner-cum--Secretary (PW) to all Heads of Departments under the Government of Himachal Pradesh giving details of the Insurance Scheme and the benefits arising therefrom. The said letter mentioned “death” as one of the events covered by the insurance scheme, however, it did not specify only accidental death. Therefore, the National Commission held that the employer in that case was liable to make payment of compensation.

15. In our considered opinion, the judgment passed by the National Commission in Jamuna Devi (supra) is peculiar to the facts and circumstances of that case. There is nothing on record to show that the deceased in the present case was given to believe that the Insurance Policy covered natural death as well. Therefore, the directions issued in Jamuna Devi would not be applicable to the present case.

16. At this juncture, we may also observe that in the communication dated 23.01.1996 addressed by the Financial Commissioner-cum-Secretary (PW) (mentioned supra), it was stated that the Insurance Scheme would cover death due to any type of accident including road, natural calamities like landslides, floods, drowning, treefalling, avalanches, etc. However, the Appellants have not adduced any evidence to prove their contention that there was indeed a storm on the night of 7.10.1997 and that the deceased fell to his death as a result, so as to lend support to their argument that the present case may be covered in the broader terms of the Insurance Scheme as envisaged in the letter dated 23.01.1996.

17. Be that as it may, the Provisos of insurance policy specifically disclose that compensation will not be paid in respect of injury of the injured if he is under the influence of intoxicating liquor. The relevant Proviso 4 of the insurance policy reads thus:

“PROVISOS

Provided always that the company shall not be liable under this policy to:

4) Payment of compensation in respect of death, injury or disablement of the insured from (a) intentional (illegible) suicide or attempted suicide,

(b) whilst under the influence of intoxicating liquor or drug (c) or (illegible) by insanity, (d) arising or resulting from the insured committing any breach of the law with criminal intent.”

The aforesaid Proviso 4 makes it amply clear that the injured is not entitled to compensation since on facts it is proved that he was intoxicated and that was due to intoxication.

18. In light of the aforementioned observations, we decline to interfere with the Impugned

Order passed by the National Commission. Accordingly, the Appeal stands dismissed. No order as to costs.

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