
(2014) 07 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD

APPELLANT

Vs

Jayantibhai Nathanbhai Monpara

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Citation : 2014 0 NCDRC 465 : 2014 4 CPJ 42

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : K.L.NANDWANI , Sudhir Bisla

Judgement

1. THIS revision petition has been filed by Bajaj Allianz General Insurance Co. Ltd which was opposite party No.1 before the District Forum in the complaint filed by respondent Nos. 1 & 2 who are the legal heirs of the deceased insured Smt. Manishaben Jayantilal Monpara. Respondent Nos. 4 & 5 were opposite party Nos.3 and 4 respectively before the District Forum.

2. BRIEFLY stated, the facts leading to filing of the present revision petition are that the petitioner issued a Group Personal Accident Insurance Policy, namely, Kisan Credit Card Group Personal Accident Policy for a period of one year commencing from 4.8.2002 to 3.8.2003 to respondent No.4, viz., Rajkot District Cooperative Bank Ltd. for the benefit of its members. Each member was insured for a sum of Rs.1 lakh. A similar insurance cover was provided for by respondent No.3 insurance co., namely, New India Assurance Co. Ltd. for a sum of Rs.50,000/ -. The deceased Smt. Manishaben Jayantilal Monpara was having farm land in her own name and was a member of respondent No.5 society, namely, Shri Jamvadi Juth Seva Sahakari Mandali Ltd.which in turn was a member of respondent No.4 bank. Thus the deceased Manishaben Jayantilal Monpara was beneficiary of the Group Personal Accident Insurance Policy for two different sums of Rs.1 lakh and Rs.50,000/ - under the policy covers provided by the petitioner insurance co./OP -1 and respondent No.3/OP -2 insurance co. respectively. As per the allegation, the deceased Manishaben Jayantilal Monpara fell into the well while working on 24.2.2003. She sustained head injury and succumbed to the injuries. The incident was reported to the police station and

post-mortem was carried out. Respondent Nos. 1 & 2 being the legal heirs of the deceased Manishaben Jayantilal Monpara lodged a claim under the aforesaid group accident personal policy before the petitioner and OP No.2 through respondent No.4 bank. While the petitioner insurance co. repudiated the claim stating that it was a case of suicide, respondent No.3 insurance co./OP -2 repudiated the claim stating that they were not liable to pay. This led the two legal heirs of the deceased insured/respondent Nos.1 & 2 to file the consumer complaint in question bearing No.380 of 2003 before the Rajkot District Consumer Disputes Commission (Additional). Both the insurance companies contested the claim under the complaint by filing their written statements. It was submitted that as per the investigator 's report, the insured beneficiary was mentally retarded and that it was not a case of accidental death but the cause of death was suicide which was covered under the policy Exclusion Clause. The certificate of the psychiatrist and the report of Dr. P.S. Pithadia were also filed in support of the submissions made by the opposite parties. It was also stated that the police had concluded that the deceased had committed suicide due to her mental instability. OP -3 Bank filed its written statement in which regular payment of premium was confirmed but it was stated that the dispute was mainly between the complainants on one hand and the two insurance companies/ OPs -1 & 2 on the other.

3. ON consideration of the documents produced and the submissions made by the parties, the District Forum accepted the defence put forth by the OP insurance companies and dismissed the complaint vide its order dated 23.7.2007. Aggrieved of this order of the District Forum, the two complainants filed an appeal No.773 of 2009 against this order before the Consumer Disputes Redressal Forum, Gujarat State, Ahmedabad. The State Commission accepted the appeal of the complainants/respondents -1 & 2 vide its impugned order dated 10.4.2012 which is reproduced thus: - ""1. The Appeal No.773/2009 is partly allowed. 2. The Judgement and Order of the Learned Consumer Disputes Redressal Forum Rajkot is hereby quashed and set aside. 3. The Opponent No.1 and 2 do pay Rs.1,00,000 and Rs.50,000 respectively to the Complainant together with interest @ 9% p.a. from the date of Complaint till realization. The Opponent No.1 and 2 do pay Rs.5,000/- for the mental agony to the 2. The Opponent No.1 and 2 do pay individually Rs.1,500 to the Complainant being the cost of the Appeal. ""

4. IT is against the aforesaid impugned order that the present revision petition has been filed by OP -1 insurance co. As per the submission made by the parties in their written arguments filed before us, it is pointed out that the other insurance co./OP -2 has already paid the amount as per the impugned order. We have heard learned counsel Shri K.L. Nandwani, Advocate for the petitioner insurance co. and learned Shri Sudhir Bisla, Advocate for respondent No.3 insurance co. None has appeared for respondent Nos. 4 & 5 but there is no claim against them. Respondent Nos.1 & 2/Complainant Nos.1 & 2 have filed their written arguments. Learned counsel for the petitioner has contended that the

impugned order is against the facts and law in that the State Commission has failed to appreciate that there was enough evidence produced on record which proves that the deceased was of a retarded mind and had committed suicide as she was suffering from schizophrenia. He submitted that the State Commission also failed to appreciate that the police station had treated the case as one of suicide after investigation and on the basis of the post-mortem report. He contended that the certificate of Dr. Pithadia, the investigation report and other evidence filed by the petitioner would clearly prove that the deceased had committed suicide and it was not a case of accident and as such it was absolutely wrong on the part of the State Commission to have allowed the claim of the complainants by reversing the well-reasoned order of the District Forum. He pleaded that filing of the affidavit of the treating doctor was not necessary to prove his report. According to him, it was not necessary to file the affidavit of the investigator appointed petitioner insurance co. to prove the contents of the investigation report. Keeping this aspect in view, learned counsel submitted that the impugned order cannot be sustained in the eye of law and is liable to be set aside. Learned counsel for the other insurance company, respondent No.3 herein confirmed that the respondent No.3 insurance co. has already made the payments to the complainants in terms of the impugned order and that the insurance co. has not challenged it before the National Commission. Respondent Nos.1 & 2/Complainants have supported the impugned order in their written arguments and have prayed for dismissal of the revision petition. They have submitted that the other insurance company had already complied with their part of the impugned order by making payments in terms of the directions given by the State Commission.

5. WE have gone through the record and considered the submissions made by the parties. We do not find force in the contentions raised by learned counsel for the petitioner. We may note that the main ground on which the petitioner co. has supported its decision to repudiate the claim is the report of the investigator appointed by it. The State Commission while rejecting the defence of the petitioner insurance co. has recorded detailed reasons for doing so in its impugned order particularly the reasons given in paras 11 to 18 which are reproduced thus: - ""11. The main defence of the Opponent No.1 is the Investigation report. They stated that the investigator Ketan Thakkar had carried out thorough investigation. The statement of the Complainant and that of the doctor was recorded. The report of Dr. P.S. Pithadia was produced at Mark 31/5. The report indicated that the Deceased (patient) was treated by him as OPD on 31.12.2002 for schizophrenia. She had gone for the follow up on 17.2.2003. The doctor has certified that such patient can injure him/herself. Thus, the claim was by the Opponent No.1 and 2 relying on the report of Investigator. As per the clause 4.1 if the death is caused due to suicide or attempt to commit suicide, the exclusion clause is applicable and the claim is not payable. The Applicant 's Advocate has admitted in the oral submission that the Decased was mentally retarded.

12. Upon perusal of the submission of the parties and the documents, it transpires that the Opponent No. 1 and 2 has filed the written statement on oath, but the affidavit of Investigator is not filed. Neither is the affidavit of Dr. P.S. Pithadia. The treatment papers of Dr. Pithadia are also not produced. The only statement is there that the Deceased (patient) was treated by him as OPD on 31/12/2002 for schizophrenia. The doctor has not stated as to what is and what treatment of the disease.

13. The police papers indicate the reason as suicide but the documents of conclusion is not produced. If we see the definition of SUICIDE, in normal parlance it be interpreted as causing death with full knowledge. The statement of Dr. Pithadia when perused, the patient can injure him/herself. But, it is not true and not admitted that clear as to the patient can injure self with or without knowledge. There is no evidence to show that the Deceased had jumped into the well. As against the Complainant 's version is that the Deceased fell in to the well when she tried to switch off the electric motor. The water level was 5 " and the well was 65 " deep. The Deceased succumbed to grievous head injury.

14. The Complainant submitted that the Deceased was under the treatment of Dr. Pithadia but no CT scan was got done. He had never opined that the Deceased would commit suicide. The complainant has produced the CT scan but no affidavit, either of the doctor or of the Investigator was filed to controvert the scan report. The scan report dated 24.2.2003 shows the structure of hemisphere reveal no evident abnormality. There is a fracture of the occipital bone. 15. The Opponent No.1 and 2 has failed to prove statement before the police, investigator 's report and the doctor 's report by independent evidence. The statement recorded by the police u/s 162 of Cr. P.C. is not a substantive piece of evidence. The report of Dr. Pithadia does not show as to the act of the Deceased was with her knowledge. The Deceased was working in the field. There is no evidence as to she was under the treatment and that she was required to be tied down. There is no evidence that she tried to commit suicide on any occasion prior to the incident. The judgement of the Learned Forum is on the basis of presumption. The deceased held the Card of being a member with her full signature. That shows she was educated. She was doing agricultural activity. She had availed a loan from the co -operative society and Rajkot District Co -operative bank also. She held the share of bank too. The cause of her death is haemorrhage. The Insurance Company when repudiates the claim merely on the statement of investigator that she had committed suicide due to mental instability without any evidence amounts to deficiency in service. The judgement of Learned Forum is without any concrete evidence. The judgement on the basis of report of Ketan Takkar and certificate of Dr. Pithadia is not tenable.

16. The police authority has observed the death appears to be of suicidal in station diary entry no.12./2003, Cr. P.C. 174 on the basis of papers, but they have not specifically mentioned the case to of suicidal. 17. There are certain relevant observations in the report of Ketan Thakkar. (1) The Secretary of

Jamvadi Group cooperative society stated that the Deceased was a regular member of the society. She used to take finance regularly. She had availed a loan of Rs.8,000 on 10.5.2002.

(2) The statement of Jayantibhai reveal that the Deceased was physically and mentally fit and that she used to carry out agricultural activity regularly. She was 38 years of age. (3) He (Jayantibhai) had gone to his sister 's house on 24.2.2003 at about 3.00 p.m. He received a phone call at about 8.00 p.m. that Manishaben had fallen in to the well and that she had sustained head injury. She was taken to Maduram Hospital at Rajkot for the treatment. His son in law Rasikbhai stated that Rasikbhai was informed by one labor of the deceased having fall in to the well while starting the electric motor. She was taken to Dr. Jogi at Gondal and later she was shifted to Rajkot. Her CT scan was got done.

18. The above discussion clearly goes to show Manishaben used to carry out agricultural activity regularly. She used to take finance regularly. She fell in to the well while starting the electric motor. There is no concrete evidence produced of the Deceased having been mentally unfit. If she were mentally unfit, her relatives would not have left her alone. Thus, the certificate of the society, CT scan report, the statement of labor before Rasibhai clearly suggest the deceased having fallen in to the well while starting the electric motor. The defence of the Opponent is in the form of allegation. The defence of the Deceased having committed suicide is not supported by any concrete evidence. The Learned Forum has passed the judgement without perusing the documents properly. The complaint is dismissed without evidence and therefore deserves to be interfered.
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6. WE agree with the view taken by the State Commission while reversing the order of the District Forum. It would be seen that even though the deceased insured was suffering from schizophrenia, there was no evidence to prove that she actually committed suicide by jumping into the well. At best it could be said that there was a doubt that keeping in view her ailment she might have jumped into the well. However, such a presumption would be wrong keeping in view the fact that the deceased insured used to carry out agricultural activity regularly on her own and was also a regular member of the society and used to avail of finance for the agricultural operations from the co -operative society. In order to repudiate the claim lodged by the complainants, the petitioner company was required to prove by independent evidence that the deceased insured had actually committed suicide which, in our considered opinion and as rightly concluded by the State Commission in its impugned order, the petitioner insurance co. failed to do. The District Forum obviously committed grave mistake in dismissing the complaint merely on presumption drawn on the basis of the reports produced before it. In the circumstances, we do not find any merit in this revision petition which would call for our interference under section 21(b) which confers rather limited powers on this Commission while exercising its revisional jurisdiction. However, we agree with the submission of learned counsel for the

petitioner company that there is no case for imposing costs on the petitioner company keeping in view the facts of this case and as such the prayer of the respondent Nos. 1 & 2/complainants in this regard be rejected outright. In view of the above, we dismiss the revision petition with the parties bearing their own costs.