

(2016) 10 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Case No : 3154 of 2015

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

APPELLANT

Vs

RAJ KISHORE PRASAD S/O LATE BUDHAN PRASAD

RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Citation : 2016 4 CPR 445

Hon'ble Judges : V.K. Jain

Advocate : Suman Bagga

Final Decision : Petition Disposed

Judgement

1. Late Sh. Budhan Prasad, father of the complainant had taken a personal accident insurance policy from the petitioner company for a sum assured of Rs.1,00,000/-. The said policy was valid from 31.03.2005 to 30.03.2010. Late Sh. Budhan Prasad having been killed on 01.06.2008, a claim under the policy was lodged by the claimant with the petitioner company. The claim having not been paid, he approached the concerned District Forum by way of a consumer complaint.

2. The complaint was resisted by the petitioner company primarily on the ground that the deceased insured had not died in an accident, he having been murdered and therefore, no benefit under the policy was payable.

3. The District Forum vide its order dated 22.10.2011, dismissed the complaint. Being aggrieved from the dismissal of the complaint, the respondent/complainant approached the concerned State Commission by way of an appeal. Vide impugned order dated 14.08.2015, the State Commission allowed the appeal and directed the petitioner company to pay Rs.1,00,000/- to the complainant alongwith interest @ 6% per annum from the date of filing of the complaint, compensation quantified at Rs.10,000/- and cost of litigation quantified at Rs.5,000/-. Being aggrieved from the order passed by the State Commission, the petitioner company is before this Commission by way of this revision petition.

4. The only question which arises for consideration in this petition is as to whether the death of deceased Late Sh. Budhan Prasad was accident or not. A perusal of the FIR lodged by Smt. Asha Devi, granddaughter of the deceased would show that deceased Budhan Prasad was present in the house of his daughter Smt. Sushila Devi, mother of the informant in the night intervening 1 st /2 nd June, 2008 and was killed in that house. The FIR however shows that the accused persons had climbed on the roof and fired at Smt. Sushila Devi and Late Sh. Budhan Prasad who were sleeping on the roof of the house. It further shows that Smt. Sushila Devi, one Satyender Yadav and some other persons were facing trial in a murder case and Rs.50,000/- agreed to be paid to Suresh Chauhan and Mahesh Chauhan, witnesses in the aforesaid criminal case for backing out from their evidence. However, their evidence having not been recorded in the said criminal case, Smt. Sushila Devi and Satyender Yadav demanded back the amount of Rs.50,000/- and when they went to the house of Chauhans to collect the money, both of them were injured. Thereafter, Chauhans wanted to kill Smt. Sushila Devi and Satyender Yadav. In the night intervening 1 st /2 nd June, 2008, Suresh Chauhan and Mahesh Chauhan climbed on the roof of the house of Sushila Devi and fired on her as well as on her father deceased Budhan Prasad. It is thus, evident that the intention of Suresh Chauhan and Mahesh Chauhan, the alleged killers of deceased Budhan Prasad and Sushila Devi were to commit murder of Smt. Sushila Devi and they had no intention or plan to commit murder of late Sh. Budhan Prasad. Obviously, he came to be murdered because he was found sleeping on the roof of the house of Smt. Sushila Devi along her side. Presumably, the alleged culprits did not want anyone to witness the murder of Smt. Sushila Devi at their hands and that is why they fired at both, Smt. Sushila Devi and Sh. Budhan Prasad. However, the primary objective of their going to the house was to murder Sushila Devi and had Budhan Prasad not been sleeping on the roof of her house, he would not have been killed.

5. The question as to when a killing can be said to be accidental and when it would be a murder came up for consideration before the Hon''ble Supreme Court in Rita Devi & Ors. Vs. New India Assurance Co. Ltd. & Anr. Civil Appeal No. 3021 of 2000 decided on 27.04.2000 and the following view was taken:

10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.

Applying the legal preposition approved by the Hon"ble Supreme Court in the above referred case, I have no hesitation in holding that the death of Late Sh. Budhan Prasad was accidental and had happened only on account of his being present in the house of Smt. Sushila Devi, the alleged culprits wanted to murder. Therefore, the claim under the insurance policy taken by the deceased is payable to the complainant. The order passed by the State Commission therefore, does not call for any interference by this Commission in exercise of its revisional jurisdiction. However, if the principal amount awarded by the State Commission is paid to the complainant alongwith interest @ 6% per annum from the date of filing of the complaint, within four weeks from today, a higher interest would not be payable in terms of the order of the State Commission. If the petitioner company is unable to locate the complainant, the aforesaid amount can be deposited with the concerned District Forum including interest @ 6% per annum from the date of filing of the complaint till the date of deposit. The revision petition stands disposed of.