
(2016) 05 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1383 of 2014

Bajaz Allianz General Insurance Company Ltd.

APPELLANT

Vs

Shahida Begum

RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Insurance Regulatory and Development Authority Act, 1999 — Section 3(1)

Citation : (2016) AIR(J&K) 132 : (2016) 4 JKJ 276

Hon'ble Judges : N. Paul Vasanthakumar, CJ. and Ali Mohammad Magrey, J.

Bench : Division Bench

Advocate : T.A. Malik, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, C.J.—This writ petition is filed by the petitioner-Insurance Company, questioning the order dated 21.10.2013 passed

by the District Consumer Protection Forum Srinagar as well as order dated 15.05.2014 passed by State Consumer Disputes Redressal

Commission, directing the petitioner to pay the claim amount to the respondents 1 to 4 along with compensation and litigation charges.

2. The case of the respondent Nos. 1 to 4 before the District Consumer Forum was that one Jamal-ud-din Jungale, husband of respondent No.1

and father of respondent Nos. 2 to 4, while working as Laboratory bearer in Government Higher Secondary School Boys, Uri fell from the school

building on 17.02,2009 and sustained critical injuries. He sustained contusions in lungs, head injury, compression fracture D3-D5 with Cord edema

and contusion at D1-D5. His spinal cord was completely edematous and fractured. He also sustained fracture of T4 vertebra and was diagnosed

to have T4 paraplegia (loss of sensation). He also sustained various internal

bodily injuries which rendered him paralysed and he could not move his legs and had been rendered disabled. He was operated at SKIMS, Soura, Srinagar and thereafter was taken to Christian Medical College Hospital, Vellore in Kolkatta for further specialised treatment. He succumbed to his injuries on 05.01.2011.

3. Pursuant to the death of said Jamal-ud-din Jungale, who was a State Government employee, his widow and minor children immediately

intimated regarding the fact of his death to the Government department, Principal of the school as the deceased was a subscriber of Group Junta

Personal Accidental Insurance and the legal heirs, namely, respondent Nos. 1 to 4 submitted a claim before the petitioner and requested to settle

the claim. The petitioner, who was shown as 1st respondent before the District Consumer Forum, requested to furnish certain documents which

were also furnished. In spite of furnishing the required documents the petitioner Insurance Company failed to settle the claim though the deceased

was a subscriber of the Group Janta Personal Accidental Insurance claim w.e.f. 2006 and had also paid up to the financial year 2010-2011 by

paying the requisite premium of Rs. 81/- which came to be deducted at source by his DDO and information whereof came to be furnished to the

Nodal Officer of the petitioner.

4. As the petitioner has failed to pay the claim, the legal heirs of the deceased approached the District Forum for directing the petitioner to pay the

amount of Rs. 2.50 lacs. The petitioner filed objections stating that the accident having taken place on 17.02.2009 and the death of the deceased

employee having taken place on 05.01.2011, the petitioner is not liable to pay the sum assured as the death has taken place beyond 12 months

from the date of accident which decision was conveyed to the petitioner on 17.08.2011.

5. The District Consumer Forum allowed the claim of the respondent Nos. 1 to 4 taking note of various documents produced to show the

accidental fall of the deceased on 17.02.2009, continuous treatment taken in the hospitals, namely, SKIMS, Srinagar, CMC Vellore including the

admission in the hospitals for getting treatment on various dates and the fact that premium was paid by the deceased, and awarded a sum of Rs.

2.50 Lacs to the claimants and Rs. 15000/- on account of physical and mental

agony suffered by them along with Rs. 5000/- as litigation charges.

The amount was directed to be deposited within one month failing which 6% interest per annum was awarded on the assured sum of Rs. 2.50 lacs.

6. The said award was challenged by filing appeal before the State Consumer Disputes Redressal Commission and the appeal was dismissed on

15.05.2014. The State Commission appreciated the Insurance Policy clauses particularly Article 4 stating that the risk coverage under the scheme

shall include Accidental death, total or partial disability caused due to any kind of accident by external violent and visible means that will include

fire, fall from the tree/root, window/house and found that even though the death had occurred after 12 months after the date of accident, medical

records produced reveal that deceased suffered total disability and was not in a state of unambulation and completely bed ridden with a fracture in

his spinal cord and paraplegia which is reflected in the investigation details which reads as follows:

Investigation: On the basis of MRI L/S Spine and other investigatory reports, it was observed that patient suffered from a compression fracture

D3-D5 with cord edema and continuation at D1-D5 cord. The spinal cord was completely edematous and fractured and the subject was

immobile..... .

Report: Based on the above investigations the subject was found to be in a state of unambulation and completely bed ridden. The doctors

concluded that the patient cannot be treated here. The cause of injury was a fall from the height due to which the subject lost his spinal cord and

eventually life.

7. The Commission ultimately modified the award and held that consolidated compensation and litigation charges to the tune of Rs. 30,000/- along

with compensation for the loss of life of Rs. 2.50 lacs be paid totalling Rs. 2,80,000.

8. The said orders are challenged in this writ petition by contending that death having occurred after 22 months of fall from the school building

which is beyond 12 months from the date of accident causing injuries, the District Forum as well as the State Commission were not justified in

awarding the compensation in the light of the clause contained in the policy.

9. The point arises for consideration is as to whether the said clause contained in

the policy is directory or mandatory.

10. The clause relied on by the petitioner in the policy reads thus:

If such injury shall within one calendar year of its occurrence be the sole and direct cause of death of an insured person the capital sum insured in schedule thereto.

11. Article 4, namely risk cover, means not only death but also total or partial disability caused by an accident including fall from the tree/root,

window/house. In this case even though the death has occurred after 22 months i.e. beyond 12 months, that was on 05.01.2011, the deceased

was certified as totally disabled person completely bed ridden with compression fracture D3-D5 with cord edema and contusion at D1-D5. As

rightly observed by the District Forum and affirmed by the State Commission, the insurance cover is made to compensate the person sustaining

injury or to pay compensation to the legal heirs of the deceased and for benefiting the persons who are put to sufferings. Such clause in the policy is

to be construed liberally and if narrow interpretation is given the purpose for which the insurance cover is taken by the Government employees will

be defeated. The Honâ??ble Supreme Court of India in the decision reported in (1994) 1 SCC 2435 : (AIR 1994 SC 787) (Lucknow

Development Authority v. M.K. Gupta), which is relied on by the District Forum, held that the jurisdiction and power of courts to indemnify a

citizen for injury suffered due to abuse of power by Public Authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome,

on the principle that an award of exemplary damages can secure a useful purpose in vindicating strength of law. An ordinary citizen is hardly

equipped to match the might of the State or its instrumentalities.

12. In the decision reported in (2010) 2 SCC 44 : (2009 AIR SCW 7667) (Allahabad Bank and Anr. v. All India Allahabad Bank Retired

Employees Association), Honâ??ble the Supreme Court held thus:-

11.Remedial statutes, in contra distinction to penal statutes, are known as welfare, beneficent or social justice oriented legislation's.

Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the

statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having

due regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare

oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.

13. A Division Bench of this Court in the decision reported in 2015 (3) JKJ (HC) 575 : (AIR 2015 J & K 73) (National Insurance Company

v. Shafiq-ur-Rehman Nengroo and Ors.) considered a similar plea of not submitting claim within the time mentioned in the policy by relying on

the Circular issued by the Insurance Regulator) and Development Authority created under sub-section (1) of Section 3 of the Insurance Regulatory

and Development Authority Act, 1999. The Circular dated 20.09.2011 is extracted hereunder:-

To: All Life Insurers and non-life insurers.

Re: Delay in claim intimation/documents submission with respect to:

i. All life insurance contracts and

ii. All Non-life individual and group insurance contracts.

The Authority has been receiving several complaints that claims are being rejected on the ground of delayed submission of intimation and documents.

The current contractual obligation imposing the condition that the claims shall be intimated to the insurer with prescribed documents within a

specified number of days is necessary for insurers for effecting various post claim activities like investigation, loss assessment, provisioning, claim

settlement etc. However, this condition should not prevent settlement of genuine claims, particularly when there is delay in intimation or in

submission of documents due to unavoidable circumstances.

The insurers decision to reject a claim shall be based on sound logic and valid grounds. It may be noted that such limitation clause does not work in

isolation and is not absolute. One needs to see the merits and good spirit of the clause, without compromising on bad claims. Rejection of claims

on purely technical grounds in a mechanical fashion will result in policyholder's losing confidence in the insurance industry, giving rise to

excessive litigation.

Therefore, it is advised that all insurers need to develop a sound mechanism of

their own to handle such claims with utmost care and caution. It is also advised that the insurers must not repudiate such claims unless and until the reasons of delay are specifically ascertained, recorded and the insurers should satisfy themselves that the delayed claims would have otherwise been rejected even if reported in time.

The insurers are advised to incorporate additional wordings in the policy documents, suitably enunciating insurers's stand to condone delay on merit for delayed claims where the delay is proved to be for reasons beyond the control of the insured.

14. The Insurance Company being registered under the Insurance Act and being controlled by the Insurance Regulatory and Development

Authority, hence directions issued by the said Authority are binding on the Insurance Company. The said Circular mandates the Insurance

Companies not to reject the claims on the ground of delay alone. On the contrary, the Authority directs the Insurance Companies to entertain the

claim, process it and if there is no basis for the claim, it can be rejected. Thus it is evident that no claim of the insured can be rejected only on the

ground of delayed claim.

15. Applying the said judgments to the facts of this case the petitioner-Insurance Company is not justified in hiking such hyper technical plea to

deny the compensation which was awarded by the District Form and affirmed by the State Commission. The writ petition is dismissed. The

petitioner is directed to pay the compensation amount to the respondent Nos. 1 to 4 within one month. No costs.