(2005) 03 CAL CK 0024

In the Calcutta High Court

Case No : Writ Petition No. 17808 (W) of 2004

Bimal Chandra APPELLANT

Vs

Regional Manager, the New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Citation : (2005) 3 CHN 154

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Abha Roy and Alarup Banerjee, C.S. Bag and Madhusudan Mondal, for the Appellant; Animesh Das, for the Respondent No. 1 and Arunava Ghsoh, Dwaipayan Sen Gupta and Anindya Lahiri for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner herein has challenged the actions of the respondent Insurance Company regarding non-payment of the insurance claim in connection with the accident policy of a bona fide policy holder viz. the son of the petitioner.

2. From the records it appears that the son of the petitioner, namely, the victim Bapi Chandra, made a policy on 15th October, 1999 under Janata Personal Accident Insurance Policy of the New India Assurance Company Limited, Howrah Branch, through the respondent Golden Trust Financial Services.

3. The policy holder unfortunately met with a motor accident and died on 22nd April, 2002. The writ petitioner herein, who is the father of the policy holder, made a representation before the Divisional Manager. The New India Assurance Company Limited, Howrah Branch, for immediate settlement of the claim. It has been alleged on behalf of the petitioner that in spite of complying with all the necessary formalities, respondent authorities herein did not settle the insurance

claim of the petitioner arising out of the insurance policy.

4. It has been submitted on behalf of the respondent, the New India Assurance Company Limited that in terms of the Memorandum of Understanding dated 30th December, 1998, the New India Assurance Company agreed to allow Golden Trust Financial Services to extend the benefits of Janata Personal Accident Insurance Policy over to their investors and their family members and the field workers and their family members under Group Insurance Scheme.

5. It has been specifically submitted on behalf of the respondent, the New India Assurance Company that neither any intimation has yet been given nor any records have been produced claiming the deceased victim, Bapi Chandra as investor or field worker of the said Golden Trust Financial Services and as such the respondent, the New India Assurance Company Limited could not settle the claim of the policy holder till date. It has also been alleged on behalf of the respondent Insurance Company that the notice regarding the incident was submitted on behalf of the policy holder after the prescribed period of 30 days.

6. The respondent, Golden Trust Financial Services filed an affidavit in the matter wherein it has been specifically mentioned that the deceased, Bapi Chandra, was a field worker of the said Golden Trust Financial Services. It has also been admitted on behalf of the respondent, Golden Trust Financial Services that the victim was insured under the policy as mentioned by the petitioner herein.

7. It has further been submitted on behalf of the respondent, Golden Trust Financial Services that the appropriate authority of the New India Assurance Company Limited has the exclusive power to settle the claim on account of the insurance coverages granted to the victim, Bapi Chandra, namely, the son of the petitioner herein. It has also been specifically mentioned in the affidavit-in-opposition filed on behalf of the Golden Trust Financial Services that the petitioner was the nominee of the victim in respect of the insurance policy.

8. The learned Counsel of the respondent, Golden Trust Financial Services submits that for any claim liability under the insurance coverages, the New India Assurance Company Limited as the insurer would be responsible and liable and the respondent Golden Trust Financial Services has no liability in this regard.

9. From the records it appears that the victim, Bapi Chandra died on account of the road accident on 22nd April, 2002 and the same was intimated to the Branch Manager, the New India Assurance Company Limited by the written communication dated 10th June, 2002 i. e. within 45 days (approx).

10. The sudden shocking death of the son must have shattered the family of the victim and to overcome such shock, a reasonable time is necessary.

11. The respondents should have appreciated the fact that a reasonable time is necessary to overcome the sudden shock arising out of the accidental death of the nearest relation and in the present case, only 15 days delay, therefore, cannot be treated as fatal.

12. Furthermore, in the conditions of the policy it has been specifically mentioned to the following effect:

"Unless reasonable cause is shown, the insured should within one calendar month after the event which may give rise to a claim under this policy give written notice...."

13. Accordingly, in the present case, it cannot be said that there was no sufficient and reasonable cause for the delay in sending the written notice to the Insurance Company when the victim is the son of the petitioner and suddenly died in a road accident causing sudden shock and/or trauma. Therefore, the aforesaid delay cannot be regarded as valid ground for refusing and/or denying the claim of the petitioner in connection with the insurance policy.

14. The objection regarding coverage of the insurance policy in respect of the victim on the ground of non-furnishing the documents disclosing the status of the victim by the respondent, Golden Trust Financial Services also cannot be sustained as the said Golden Trust Financial Services by filing affidavit and annexing relevant documents has specifically submitted that the victim Bapi Chandra was a field worker of the Golden Trust Financial Services. Furthermore, the respondent Golden Trust Financial Services has specifically mentioned in the affidavit that the son of the petitioner was covered "under the Certificate of Insurance" issued to him and it has also been mentioned in the said affidavit that the factum of death of the insured person as well as the reason behind such death has been established after proper examination of the documents.

15. The issuance of the insurance policy in favour of the victim has also not been disputed by the respondent, the New India Assurance Company Limited. As a matter of fact, the insurance policy certificate issued in the name of the victim Bapi Chandra, the son of the petitioner has been annexed with the affidavit-in-opposition filed on behalf of the respondent Insurance Company.

16. Having heard the learned Counsel appearing for the parties and scrutinising the averments made in the affidavits filed on behalf of the respective parties and further scrutinising the available records produced before this Court in connection with this proceeding, I am satisfied that the victim is undisputedly covered under the policy and furthermore, the petitioner herein has fulfilled all the conditions for settlement of the claim and payment of the insured money in terms of the Insurance Policy Certificate.

17. Unfortunately, the respondent, the New India Assurance Company Limited wrongly and illegally refused to settle the claim of the petitioner without any valid reason. I strongly deprecate the stand taken by the respondent, the New India Assurance Company Limited in this regard.

18. For the aforementioned reasons, the authorities of the New India Assurance Company Limited, particularly the respondent No. 1 herein, should take immediate appropriate steps for settlement of the insurance claim in connection

with the Policy No. 4751220001607/E. No. 47-30462 and disbursement of the payment of the necessary amount to the petitioner without any further delay but positively within a period of two weeks from the date of communication of this order.

18. This writ petition thus stands allowed with costs assessed at 300 GMs to be paid by the respondent No. 1 to the petitioner herein within two weeks from the date of communication of this order.

19. Urgent xerox certified copy of this judgment, if applied for, may be handed over to the learned Advocates of the parties upon compliance with usual formalities in this regard.