
(2009) 05 RAJ CK 0026
In the Rajasthan High Court

Ex. Constable, Anang Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Citation : (2009) 2 WLN 569

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—The petitioner Ex. Constable No. 90171724 was on duty on 18.09.2001 at Jammu & Kashmir. He was driving one BP tractor from BOP Nikowal to BOP Jamunabela on Government duty and at about 10.20 hours, because of blast done by the militants, the petitioner sustained injuries. The petitioner was hospitalised and his both legs were operated. The operation of left leg was successful but as per the petitioner, operation of the right leg was not successful and, thereafter, petitioner was referred to AIIMS, New Delhi, where two major operations were conducted on 07.06.2002 and 06.01.2003. The petitioner was further operated once more on 12.07.2004. Because of this accident, in spite of the treatment, the petitioner became disabled soldier and was placed in low medical category with 54.93% disability. The medical board was constituted on 02.06.2004 and the proceedings of medical board was approved by the DIG, BSF SHQ BSF, Kupwara vide order dt. 21.10.2004, and the petitioner's placing under low medical category stands approved.

2. The petitioner was the member under Seema Prahari Beema Yojana Insurance Scheme and is entitled for the compensation from the Insurance Company in view of the coverage of his risk by the said insurance policy. The BSF had Grouped Personnel Accident Policy with United India Insurance Co. Ltd., since petitioner was entitled for compensation obviously from the employer and in view of the coverage of his risk of the Insurance Company from the respondents Insurance Company who has not been given any benefit then petitioner was

approached by filing this writ petition. The petitioner's other contention is that the petitioner is also entitled for Ex Gratia payment which is to be granted by the State Government of Jammu & Kashmir and by the State Government of Rajasthan. The said Ex Gratia payment has not been paid to the petitioner by the respondents.

3. Reply has been filed by the Union of India as well as by the respondents Insurance Company separately. So far as Union of India is concerned, and the contention is that Union of India referred the matter to respondents Insurance Company but the Insurance Company has not paid the compensation to the petitioner. So far as Ex Gratia payment is concerned, the respondents Union of India admitted that whenever it will receive Ex Gratia payment from the State Government of Jammu & Kashmir and State of Rajasthan, the same will be paid to the petitioner immediately.

4. The respondents Insurance Company in reply submitted that in view of the specific condition in the Insurance Policy the claim should have been submitted within 30 days from the date of accident and in this case the claim of the petitioner has been submitted after more than 4 years as accident occurred on 18.09.2001 and claim has been submitted to the respondents Insurance Company in the Year 2005.

5. I considered the submissions of learned Counsel for the parties and perused the facts of the case and the Insurance Policy as well as the judgment cited by the counsel for the petitioner delivered in S.B. Civil Writ Petition No. 1769/2006 (Dev Prakash v. Union of India and Ors.) wherein the respondents Union of India took the plea that the claim of the petitioner in that case was not allowed because of the delay in processing the case and this Court held that could not have been denied by the respondents and the respondents were directed to pay the compensation amount to the claimants with liberty to get its reimbursement from the Insurance Company.

6. In the facts referred above, it is clear that it is not in dispute that the petitioner was in employment of the Union of India and met with accident and while on duty, suffered disability and his risk was covered by the policy taken by the Union of India for the benefit of the employees like the petitioner. The only ground for denial by respondents Insurance Company for the claim in question is that the matter was referred to the Insurance Company belatedly. From the facts, it is clear that in the Year 2001, the respondents Union of India could have informed the Insurance Company about the fact of accident but without there being any plausible claim for the petitioner, the petitioner remained under treatment up to January, 2003 and last operation was performed on 12.07.2004. He was placed under low medical category with 54.93% disability obviously in the year 2004.

7. This case was approved by the Competent Authority that is DIG concerned on 21.10.2004. Unless respondents could have reached the definite conclusion

about the disability of the petitioner they could not have forwarded the claim of the petitioner to the respondents Insurance Company. Admittedly the claim was sent to the respondents Insurance Company in the year 2005 and that is within few months, from the final decision taken by the Competent Authority of the Union of India who could have declared the petitioner under low medical category. In view of the above time taken by the respondents Union of India obviously in taking a decision for sending the case of the petitioner for reimbursement of the compensation, is not delayed in any manner.

8. The condition No. 1 under Clause 8 of the Insurance Policy in (Annexure. 2) is merely a clause providing that certain information is required to be given to the Insurance Company within stipulation time. That condition in the facts and circumstances of the case, cannot be said to be mandatory so as to non-fulfilment of it, may result into refusal of the claim by the respondent Insurance Company particularly when according to the respondents Insurance Company themselves, Insurance Company itself already extended the period for giving information by one year which clearly suggests that this time taken under Clause 8 (1) of the Insurance Policy was not the essence of the contract. Otherwise also merely because of the delay in sending information, the claim of the insurer cannot be rejected if the claim is genuine. Providing a fixed time for sending information to the Insurance Company about the accident is because of the risk that the claimants may not concocted story for lodging false case. Therefore, if the facts speak themselves about their truthness then the claim of the claimants cannot be denied by the Insurance Company merely on the ground that there was delay in sending the information to the Insurance Company about the accident or delay in lodging the claim with the Insurance Company.

9. Further more, in this case the employer is Union of India. The employee petitioner remained under treatment obviously with permission and knowledge of Union of India and his case was processed by the Competent Authority which could have been done only when the doctors could have certified about the disability of the petitioner and that has been done in present case and the petitioner who met with accident in the year, 2001, remained under treatment and operations were performed in the year 2001, 2002, 2003 and 2004 then in that situation there cannot be any reason to presume that a false claim has been submitted.

10. In view of the above reasons, the respondent Insurance Company cannot deny the claim of the petitioner and bound to pay compensation forthwith with interest @ 9% per annum from the date when claim was submitted to the respondent Insurance Company till the claim amount is paid to the union of India which shall be paid to the petitioner forthwith.

11. So far as Ex Gratia payment is concerned, the respondent Union of India is directed to take up the matter with both the State Governments and see that claim of the petitioner for the Ex Gratia payment is finalised within the period of three months from today and whatever amount is paid by both the State

Governments or either of the State Government, be paid to the petitioner forthwith.

12. The writ petition is allowed accordingly.