(2015) 04 NCDRC CK 0221

In the National Consumer Disputes Redressal Commission

Case No : NO 722 of 2010

GANGA RAM RAI — APPELLANT

Vs

LIC OF INDIA & ANR. — RESPONDENT

Date of Decision : 13-04-2015

Acts Referred:

Indian Penal Code, 1860, Section 364 - Kidnapping or abducting in order to inurder

Citation : 2015 3 CPJ 313

Hon'ble Judges : K.S. Chaudhari

Advocate : Pankaj Kumar, Buddy A. Ranganadhan, D.V. Raghuvamsy

Judgement

1. This revision petition has been filed by the petitioner against the order dated 21.12.2009 passed by the Bihar State Consumer Disputes Redressal Commission, Patna (in short, ''the State Commission'') in Appeal No. 112/2006 - The Branch Manager, LIC of India & Anr. Vs. Sri Ganga Ram & Anr. by which, while allowing appeal, order of District Forum allowing complaint was set aside.

2. Brief facts of the case are that Complainant''s/Petitioner''s son Rajiv Kr. Rai obtained three insurance policies with double accident benefit from OP/ Respondent. Insured Rajiv Kr. Rai was kidnapped and later on murdered on 17.5.2000 and case was registered with the Police. Complainant''s blood stained clothes were recovered and after investigation, Police submitted charge sheet only under Section 364 IPC as body of deceased was not recovered. It was further submitted that complainants were paid Rs.1,83,422/-, value of the policy by OP, but double accident benefit was not paid. Complainant''s application was disallowed by insurance ombudsman. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. Learned District Forum after hearing both the parties allowed complaint and directed OP to pay additional amount equal to sum assured and further directed to pay Rs.2,000/- as cost of the proceedings. Appeal filed by OP was allowed by learned State Commission by impugned order against which, this revision petition has been filed.

3. Heard learned Counsel for the parties and perused record.

4. Learned Counsel for the petitioner submitted that as assured was murdered, leaned District forum rightly allowed complaint, but learned State Commission committed error in allowing appeal on the ground that murder does not fall within the purview of death by accident; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. It is not disputed that OP has already made payment of sum assured to the complainant on account of death of insured. Perusal of record further reveals that charge sheet under Section 364 IPC was filed as dead body was not recovered.

6. The core question to be decided in this case is whether death caused by murder falls within the purview of accidental death for receiving additional sum or not. Learned Counsel for the petitioner has placed reliance on judgment of this Commission in III (2008) CPJ 120 (NC) - Maya Devi Vs. Life Insurance Corporation of India in which it was held as under: "9. Further, in England law on the subject is settled. In Halsbury''s Laws of England Vol. 25 Pg.307 Para 569, 4 th Edition (2003 reissue), as to the meaning of the word ''accident'', it is stated as under :

"569. Meaning of ''accident''. The event insured against may be indicated in the policy solely by reference to the phrase ''injury by accident'' or the equivalent phrase ''accidental injury'', or it may be indicated as ''injury caused by or resulting from an accident''. The word ''accident'', or its adjective ''accidental'', is no doubt used with the intention of excluding the operation of natural causes such as old age , congenital or insidious disease or the natural progression of some constitutional physical or mental defect ; but the ambit of what is included by the word is not entirely clear. It has been said that what is postulated is the intervention of some cause which is brought into operation by chance so as to be fairly describable as fortuitous . The idea of something haphazard is not necessarily inherent in the word; it covers any unlooked for mishap or an untoward event which is not expected or designed, or any unexpected personal injury resulting from any unlooked for mishap or occurrence . The test of what is unexpected is whether the ordinary reasonable man would not have expected the occurrence , it being relevant that a person with expert knowledge, for example of medicine, would have regarded it as inevitable. The stand point is that of the victim, so that even willful murder may be accidental as far as the victim is concerned ."

10. From the above quotation, it is clear that ''even the willful murder'' of the assured is accidental as far as insured is concerned and such murder is to be described as ''by chance'' or ''fortuitous''.

11. Now, the question is, under which circumstances the ''willful act'' of the third party can be held to be ''accidental''?

12. This is discussed in Halsbury''s Laws of England Vol. 25 Pg.311 Para 575, 4 th Edition (2003 reissue), as under:

"575. Injury caused by a willful act. An injury caused by the willful or even criminal act of a third person, provided the insured is not a party or privy to it, is to be regarded as accidental for the purpose of the policy , since from the insured''s point of view it is not expected or designed. Injuries sustained by gamekeeper in a criminal attack upon him by poachers, by a chashier who was murdered by a robber, and by a master at an industrial school who was murdered by the boys, have been held to be accidental. However, if the immediate cause of the injury is the deliberate and willful act of the insured himself, there would seem to be no accident, and no claim will lie under the policy, at any rate if the insured is not mentally disordered at the time of his act."

13. In the present case :

(i) As per the postmortem report, the insured was shot dead by the assailant who appeared from nowhere;

(ii) the insured is not party to the ''murder'', i.e. he did not give rise to provocation. After appearing before a Panchayat, he was going somewhere, when this attack was made at him. Hence, he is not a party or privy to the event of murder.

(iii) the immediate cause of injury (bullet injury) is not the result of the deliberate or willful act of the insured.

(iv) this event is an unlooked for mishap or an untoward event which was not expected or designed by the insured nor the insured had expected the occurrence.

14. Hence, it is to be held that death of the insured was accidental".

7. Learned Counsel for the respondent placed reliance on judgment of Hon''ble Apex Court in (2000) 5 SCC 113 - Rita Devi (Smt.) and Ors. Vs. New India Assurance Co. Ltd. & Anr. in which it was observed as under: " 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.

I agree with the proposition of law laid down by the Hon''ble Apex Court, but aforesaid case is not applicable to the facts and circumstances of the present case. Learned Counsel for the respondent could not draw my attention to any evidence by which it can be inferred that insured took up the quarrel and the cause of his death was deliberate and willful act of the insured himself. In such circumstances, when insured was kidnapped and later on murdered, it is to be held that death of insured was accidental and he was entitled to additional sum equal to the sum assured as per terms and conditions of the policy and learned District Forum rightly allowed complaint and learned State Commission committed error in allowing appeal and dismissing complaint and revision petition is to be allowed.

8. Consequently, revision petition filed by the petitioner is allowed and order dated 21.12.2009 passed by the learned State Commission in Appeal No. 112/2006 - The Branch Manager, LIC of India & Anr. Vs. Sri Ganga Ram & Anr. is set aside and order of District Forum dated 30.12.2005 passed in Complaint Case No. 115/2004 Sri Ganga Ram & Anr. Vs. The Branch Manager, LIC of India & Anr. is affirmed. Parties to bear their own cost.

