(1993) 08 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

ILABEN KIRITBHAI SHETH APPELLANT

Vs

Oriental Insurance Co RESPONDENT

Date of Decision : 30-08-1993

Acts Referred:

Citation : 1994 3 CPJ 296

Hon'ble Judges : P.M.Chauhan , R.K.Shah J.

Final Decision : Complaint partly allowed

Judgement

1. THE complainant No. 1, Mrs. Ilaben K. Sheth, widow of deceased Kiritbhai R. Sheth in her personal capacity as well as guardian of two minor children Ronak and Ripal and the complainant No. 2, M/s. Cadila Laboratories Limited, employer of Kiritbhai Sheth have claimed the amount of Rs. 3,71,000/- which include the insurance amount of Rs. 1,50,000/- under Table I of the policy and Rs. 1,50,000/- under table III of the insurance policy and Rs. 36,000/- for the interest and Rs. 30,000/- for mental shock and Rs. 5,000/- cost of the litigation. Deceased Kiritbhai Sheth was employee of the complainant No. 2 M/s. Cadila Laboratories Limited which had taken group personal accident insurance policy for 1050 employees including Kiritbhai Sheth. According to the complainants Kiritbhai Sheth had to attend duty till late evening as he had to contact the medical practitioners, stockists etc. and on February 16, 1991 when he was returning from duty on his scooter he met with the accident and serious injuries were caused to him. Some strangers took Kiritbhai Sheth to his residence in rikshaw and family Doctor Amlani was called and then was taken to the nursing home of Dr. Prakash Shah and Dr. Prakash Shah was called. Before Dr. Shah could examine Kiritbhai Sheth he succumbed to the injuries. THE No. 2 vide letter dated February 19,1991 informed the opposite party Insurance Company of the death of Kiritbhai due to the accident. Vide letter dated 14.3.91, the complainant No. 2 forwarded several documents regarding the death and submitted the claim form. THE Insurance Company insisted for the post mortem note and the police report but the post mortem was not carried out and police complaint was not filed and, therefore, the complainants could not furnish those

documents and, therefore, the opposite party vide letter dated January 2,1992 informed the complainant No. 2 that in the absence of FIR and post mortem report, the claim was repudiated and the file was closed at the end of the Insurance Company. THE complainants have therefore filed this complaint for the above referred amount.

2. THE opposite party vide written reply (Exh. 7) denied the various contentions in the complaint and also denied the death of Kiritbhali Sheth by accident and asserted that in absence of the post mortem note and police complaint it was not possible for the opposite party to accept the fact that the death occurred due to the accident and accordingly asserted the right to repudiate the claim. It is alleged that the claim is false and frivolous and the complainants are not entitled to the amount claimed. The fact that Kiritbhai Sheth was an employee of the complainant No. 2 and was getting the monthly basic pay of Rs. 4,425/- and HRA Rs. 700/- and accordingly was getting Rs. 5,175/- as remuneration and was in employment at the time of the accident is established by documentary evidence and there is no dispute to that fact. As such complainant No. 2 which is a business concern has no reason to state false facts in favour of the complainant No. 1. Immediately the letter was written by complainant No. 2 to the opposite party stating the facts regarding accidental death of Kiritbhai Sheth. The establishes the anxiety of the company for getting the compensation to the employee who was covered under the group insurance. Shri Shekhar, the witness examined by the opposite party has admitted that Kiritbhai was covered under the policy as employee of Cadila Laboratories. In view of that it should be accepted that the deceased Kiritbhai was the employee of the complainant No. 2 and was covered under the group insurance which was in force at the time of the accident.

The opposite party has denied that Kiritbhai Sheth met with the accident and succumbed to the injuries caused by the accident. The main reason for not accepting that fact is that the police complaint was not filed or post mortem was not carried out and cremation was done without informing the police or without post mortem. The fact that the post mortem was not done and complaint was not filed is admitted but Ilaben has clearly stated that due to the accidental death of Kiritbhai Sheth at the very young age of 31 years, herself and the family members were in shock and, therefor, they could not get it done and the dead body was removed to the home village Vejalpur where cremation was done. We have, however, to consider the evidence on record to ascertain as to whether Kiritbhai Sheth died in the accident. The fact that Kiritbhai attended work on 16.2.91 and was returning from the duty on scooter and met with the accident is clearly established from the evidence of Ilaben and the statement of Kiritbhai before Dr. Amlani. In the late evening Ilaben was waiting for Kiritbhai Sheth to return home but he was taken in injured condition by strangers in rickshaw and Kiritbhai had scratches on the body. As the condition was taking serious turn, the family Doctor U.M. Amlani was immediately called. Dr. Amlani has filed the affidavit and in cross examination by the opposite party Dr. Amlani has stated that as there was fluctuation in blood pressure and the condition of Kiritbhai was serious, he decided to take him to the hospital of Dr. Prakash M. Shah and Kiritbhai was taken to the hospital of Dr. Shah. In cross examination he stated that as per his opinion there was internal abdominal haemorrhage and that may be because of the external violence. When he examined Kirtibhai Sheth, he was in semi unconscious condition and was not in position to speak properly but he stated that he had fallen down from the scooter. On examination he had found lacerations on the left side ribs of Kiritbhai Sheth. He admitted that normally in case of accidental death post mortem is done and he had suggested for post mortem but it was all for the relatives to get it done or not. Dr. Amlani has clearly stated that Kiritbhai Sheth had told him that he had fallen down from the scooter and that must have caused the injuries and abdominal haemorrhage had resulted in the death. He has stated that Dr. Prakash Shah was called but before he could reach the nursing home Kiritbhai Sheth had succumbed to the injuries. The evidence of Ilaben Sheth, widow of Kiritbhai Sheth is that Kiritbhai had gone to attend duty and when he was returning he met with the accident and some strangers brought him in the rickshaw to their home. Dr. Amlani was immediately called and then Kiritbhai Sheth was removed to the nursing home of Dr. Prakash Shah. She stated in the cross examination that the autorikshaw-walla who took Kiritbhai Sheth told that some vehicle had dashed and the accident had occurred because of that. She had accompained Dr. Amlani to the nursing home of Dr. Prakash Shah and when they were returning from the nursing home she saw the scooter lying at the place of the accident on the road and subsequently that scooter was brought in the cart to their home. Photos of the scooter were taken and they were supplied to the Insurance Company. The detective of the Insurance Company had also enquired in the matter and had interrogated her and she had given photos to the detective also. She admitted that Dr. Amlani had suggested for post mortem. She also admitted that the police was not informed of the accident.

3. MR. Shekhar, the officer of the opposite party has categorically stated that the claim was repudiated as there was no proof like post mortem report, police complaint and police report etc. to establish the death of Kiritbhai Sheth. He admitted that if documents like police report, panchnama, photographs were there the opposite party would not have demanded the post mortem examination report but said documents were not available and, therefore, they had demanded the post mortem report. He also admitted that conditions do not mention that the police report or panchnama should be produced. According to him if the insured dies in the accident then under the present scheme the heirs of the insured employee would get Rs. 1,50,000/-. He also agreed that the real test is whether the assured met with natural death or by accident. He admitted that the accident can be proved by any convenient legal evidence and post mortem is one of such evidences. He also admitted that the condition on which the Insurance Company were relying and which were pointed out were not incorporated in the proposal form and those conditions are made by the Insurance Company unit

laterally without prior consent of the insured but the insured can cancel the policy and the premium may be returned. From the evidence of Ilaben and Dr. Amlani it is clearly established that Kiritbhai Sheth met with the accident and succumbed to the injuries due to the accident. Apart from their evidence, the circumstances in the case are very clear to come to that conclusion. It is clear that Kiritbhai Sheth had gone out for attending the duty and was brought home by some strangers when he was lying on the road in injured condition. Within short time after that he died. Circumstances speak by themselves and lead to the only unassailable conclusion that the accident occurred and he died of the accidental injuries. The fact that the scooter was lying on the road at the place of accident and was subsequently taken home is also eloquent to establish the fact regarding the accident. The opposite party has no other personal knowledge and have denied the accidental death only because the police report was not produced or the post mortem was not got done. It is true that neither the police was informed nor post mortem was got done but that is not the only way to establish the accidental death. We have to consider the circumstances and sentiments of the family when young bread winner of the family aged 31 years meets with such accidental sudden death the family members would be aghast and shocked and in such circumstances would not think of recovering insurance amount and think of creating evidence for that purpose. In such circumstances in all the cases the evidence of the complaint to the police or police report or post mortem may not be available. In the instant case no sensible purpose would have served by filing police complaint as there was no eye witness to the incident and Kiritbhai Sheth was already removed from the scene of the accident. As no culprit to the accident was known or it may also be possible that the scooter of Kiritbhai might have fallen down or he might have fallen down from the scooter and met with a the accidental injury and in such circumstances they would not have thought to file the police complaint and when the police complaint was not filed the question of sending the body for post mortem also would not arise. As stated above even though such evidence may not be available it can be ascertained by other reliable evidence and the cause of the death can be ascertained. Considering the oral evidence as discussed above, we hold that the death occurred because of accidental injuries.

4. CERTAIN conditions of the insurance policy relied upon by the opposite party should also be considered to ascertain as to whether the conditions are such which would disentitle the insurance claim in absence of filing of police complaint or getting the post mortem of the dead body done. The group personal accident policy provides that in consideration of the payment made and subject to the terms, provisions, exceptions and conditions expressed or contained in the terms and conditions, the company shall pay to the insured to the extent and manner provided thereunder that: ''If any of the Insured Persons shall sustain any bodily injury resulting solely and directly from accident caused by external violent and visible means, the sum hereinafter set forth in respect of any of the Insured Persons specified in the schedule:- (a) If such injury shall within twelve calendar

months of its occurrence be the sole and direct cause of the death of the Insured Person, the Capital Sum Insured stated in the Schedule hereto applicable to such Insured Person. Condition Nos. 1 and 2 are as under: 1. Upon the happening of any event which may give rise to a claim under this Policy, written notice with full particulars must be given to the Company immediately. In case the death, written notice also of the death must unless reasonable cause is shown be given before interment/cremation and in any case within one calendar month after the death, and in the event of loss of sight or amputation of limbs, written notice thereof must also be given within one calendar months after such loss of sight or amputation.

2. Proof satisfactory to the Company shall be furnished of all matters upon which a claim is based. Any medical or other agents of the Company shall be allowed to examine the Insured Person(s) on the occasion of any alleged injury or disablement when and so often as the same may reasonably be required on behalf of the Company and in the event of death to make a post mortem examination of the body of the Insured Person(s). Such evidence as the Company, may from time to time require shall be furnished and a post mortem examination report if necessary, be furnished within the space of fourteen days after demand in writing and in the event of claim in respect of loss of sight, the Insured Person(s) shall undergo at the Insured''s expense such operation of treatment as the Company may reasonably desire. No sum payable under this Policy shall carry interest."

The notice as required in condition No. 1 was immediately served within 4 days of the death. In view of the circumstances as discussed above, it was not possible and reasonable to serve the notice of the death before the cremation. Such notice is also not obligatory under the conditions. So far as condition No. 2 is concerned it only lays down that satisfactory proof to the company should be furnished of all matters upon which claim is based. In the case of injury the medical or other agents of the Company may be allowed to examine the injured or disabled person and in the event of death to make the post mortem examination of the body of the insured person. That provision is an enabling provision for the examination of the injured persons or forgetting post mortem examination of the body of the insured person. That by itself does not impose an obligation to get the post mortem of the dead body done. About the post mortem report condition No. 2 provides that such evidence as the company may from time to time require should be furnished and the post mortem examination report, if necessary be furnished within a space of 14 days after the demand in writing. That provision is for the production of the evidence to establish the cause of death. The very provision that "if necessary" The post mortem report be furnished make it clear that it is always not obligatory to produce the post mortem report or it is not a condition precedent for claiming the Insurance amount. When post mortem examination is not done, such report can never be produced but that does not mean that heirs of the deceased insured cannot claim the insurance amount if the post mortem examination is not done at all. What is important is to establish the fact as to whether the insured died the accidental death and if at all it can be established by other cogent and convincing evidence the Insurance Company cannot repudiate the insurance claim only on the ground that the police report was not filed or that the post mortem was" not done and consequently the post mortem report was not produced. The provisions in condition No. 2 is only the enabling provisions to ascertain the cause of the death but are not mandatory condition precedent without which the insurance amount cannot be paid or can be repudiated by the Insurance Company. The death of Kiritbhai Sheth does not fall within the provisions of exception and, therefore, not required to be discussed. In view of our discussion above, we hold that the claim is wrongly repudiated by the Insurance Company. The Insurance Policy is admitted and it is also admitted that Kiritbhai Sheth was insured. Rs. 1,50,000/- are claimed under Table-I and Rs. 1,50,000/- are claimed under Table-Ill. But complainants are entitled to Rs. 1,50,000/- under the Table-I. Unfortunately, the full copy of the policy is not produced by either of sides inspite of calling upon them to produce and, therefore, we could not consider the terms and conditions. Shri H.J. Thakkar produced booklet issued by Insurance Company entitled "scope of miscellaneous Accident Insurance". In that booklet it is stated that Table-I is for death only, Table-II is for death and permanent disability (total or partial), Table III is for death, permanent disability (total or partial) and also temporary total disablement. Three different categories are clearly specified. Death simple and death with disablement are different categories of insurance. For death, claim cannot be made under two different tables. In our view Table-I only will be applicable in this case. Claimants have claimed Rs. 1,50,000/- under Table-I and, therefore, entitled to Rs. 1,50,000/-.

5. THE claim was repudiated on 2.1.92. It is quite natural that the circumstances were such that the Insurance Company would have taken considerable time to investigate and come to the conclusion about the death of Kiritbhai Sheth. In such circumstances interest should be awarded from the date of the repudiation of the claim i.e. 2.1.92. THE complaint is filed on 28.2.92. Interest @ 12%, which is the normal banking rate should be awarded. Interest from 2.1.92 to 2.8.93 @ 12% crimes to Rs. 28,500/-. That amount should be awarded to the complainants. THE complainants have claimed Rs. 30,000/- for mental shock and suffering but considering the circumstances, no such compensation should be awarded. THE cost of Rs. 5,000/- which is reasonable is awarded to the complainants. We, therefore, pass the following order. ORDER THE opposite party - Oriental Insurance Co. Ltd. shall pay Rs. 1,50,000/- to the complainants as the insurance amount for the death of Kiritbhai Sheth and Rs. 28,500/-for the interest @ 12% from 2.1.92 to 2.8.93 with 12% interest on the principal amount of Rs. 1,50,000/-from 3.8.93 till the date of realisation and cost of Rs. 5000/- within one month from the date of receipt of this order. Rest of the claims in the complaint is dismissed. THE opposite party to bear its own cost. Complaint partly allowed.

