(2008) 03 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Krishan Gopal APPELLANT

Vs

LAHMEYAR INTERNATIONAL GMBH BAGLIAR HYDRO ELECTRIC PROJECT RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Citation : 2008 3 CPJ 206

Hon'ble Judges : G.D.Sharma , Khalid Hussain J.

Advocate : Ajay Singh Manhas , Rajesh Kumar

Judgement

1. -THE complainant herein namely, Sh. Krishan Gopal was the father of the deceased Sanjeev Kumar Sharma. On 23. 3. 2004, said Sh. Krishan Gopal made complaint herein against the OPs making inter alia averments that his son Mr. Sanjeev Kumar Sharma was employed as Assistant Civil Engineer/site Inspector with OP No. 1 which was an associate Company of the principal contractor i. e. OP No. 2. Deceased Sanjeev Kumar Sharma had the duty to maintain the quality control of the materials which were being used by OP No. 1 for the construction of the project. OP No. 2 had taken the contract from the State-owned Corporation known as Jandk Power Development Corporation for the construction of a dam on river Chenab known as "baglihar Hydro Electric Project, Chanderkot" hereinafter known as Project. The special tests for maintaining high standards of material used in the project in normal routine works were being carried out by the other agencies like SICOP and RRL from their Jammu wings and CSMRS laboratory which was situated in New Delhi. OP No. 1 was the agency engaged by OP No. 2 to get the works done. It is alleged that on 29. 9. 2002, the deceased Sanjeev Kumar Sharma was on official duty relating to the project works but unfortunately while coming back met with a road accident near Gangyal on the National Highway and died on the spot. In compliance to the relevant laws made applicable to the State of Jammu and Kashmir, the employees of the construction company (OP No. 1) were got insured by the contractor namely, OP No. 2 from OP No. 4 under Group Insurance Policy Scheme. It is pleaded that at the event of death of any permanent employee

engaged in project work, his legal representative or nominee as the case may be was entitled to claim the whole amount of the Insurance Cover. The deceased Sanjeev Kumar was engaged on permanent basis by OP No. 1 and was being paid Rs. 7,500 per month. Under the above said insurance policy, he stood insured for a sum of Rs. 10. 00 lakh for the risk of his life. The complainant after the death of Mr. Sanjeev Kumar Sharma approached OP Nos. 1 and 2 for the disbursement of the insured amount and in response they recommended the case for the payment of the insured risk to OP No. 4. The request had gone haywire as there was no response. The complainant had alleged in the complaint that when he was at an advance stage of his life he unfortunately lost his only bread earning member of the family. He had to meet the expenses of marrying his young daughter and constantly bear the medical expenses of his ailing wife as well as to secure two time meals for his family. He claimed full amount in the sum of Rs. 10. 00 lakh which was the assured amount under the policy along with interest and Rs. 20,000 for inconvenience and harassment as well as Rs. 15,000 towards litigation charges. It is also pleaded that the cause of action had arisen in the month of December 2002 when the complainant had approached the OPs for the payment of insured amount and the same was denied.

2. ON 30. 11. 2004, Mr. M. A. Bhat, Advocate filed the objections on behalf of OP Nos. 1, 2 and 3. OP No. 1 in its objections had stated that it is a consulting agency of the principal employer i. e. Jandk Power Development Corporation. Respondent No. 2 got the contract of construction of Baglihar Hydro Electric Project Dam from the Jandk Power Development Corporation and entered into a contract of insurance with OP No. 4. under legal obligation, OP No. 2 got insured its own employees employed in the works of Baglihar Hydro Electric Project as well as the employees of OP No. 1 on the terms and conditions laid down in the agreement of insurance. OP No. 2 had given the premium of the insurance policy which was a group insurance scheme. In terms of the said policy, an employee with a pay of more than Rs. 7,500 per month had to get the insurance cover of Rs. 10. 00 lakh in case of his death but the accident should have occurred within the project area as defined in the agreement of insurance or even extended project area as defined during the employment of the concerned employee. The deceased Mr. Sanjeev Kumar Sharma had been working with OP No. 1 as a Field Engineer (Civil)/site Inspector and had been sent on official tour to Jammu on some official work with effect from 28. 9. 2002 to 30. 9. 2002. OP No. 1 received the information that on 29. 9. 2002, Mr. Sanjeev Kumar met with an accident on the National Highway while coming from Kathua to Jammu along with his wife on a motor cycle. The case of the deceased was sent to OP Nos. 2 and 4 for settlement of the claim. OP No. 4 made various inquiries which were replied but even then the claim was turned down on the ground that the incident was not covered under the terms of the scheme as it has not occurred within the project area and within the course of employment. In the objections filed on behalf of OP Nos. 2 and 3 almost the same pleas were taken. OP No. 4 in its objection had stated that though OP No. 2 had taken the "group Personal Accident Policy" for

their employees yet the capital sum assured was upto Rs. 5. 00 lakh only. The insurance cover of the deceased has been admitted but the policy was confined under the spheres of special conditions specifically entered between the parties. It was also pleaded that the policy was restricted to the project area of Baglihar Hydro Electric Project. The Project Area in the contract of insurance was defined, "the area where the permanent and temporary works will be located in the vicinity of the works in Doda District of Jandk State. " Since the alleged accident took place outside the project area, so insurer (OP No. 4) was not liable to reimburse the loss. The death of Mr. Sanjeev Kumar Sharma had been admitted in the road accident but liability to reimburse the insurance claim was denied on the plea that claim was covered under the provisions of "workmen''s Compensation Act". In support of the complaint, Mr. Krishan Gopal, complainant appeared as his own witness and deposed in his affidavit that on 29. 9. 2002, his son namely, Mr. Sanjeev Kumar Sharma had died in the road accident during the course of his employment while returning from SICOP complex Bari Brahmana where he had gone for obtaining the report of testing/quality control of construction material to be used in the construction of above mentioned dam. That his son had been drawing more than Rs. 7,500 per month and under the terms of the insurance policy, the risk of his death stood assured for a sum of Rs. 10. 00 lakh. That when claim was raised it was turned down. During the course of proceedings complainant Krishan Gopal died and his LRs Smt. Geeta Devi as being widow and Mr. Dheeraj Sharma being son were brought on the record. Smt. Geeta Devi in her affidavit has deposed that on 29. 9. 2002, his son died in a road accident and at that time, he was performing his official duty because he had been returning from SICOP Complex, Bari Brahmana, Jammu where he had gone for obtaining report of testing/quality control of construction material used in the construction of above stated Dam. Deceased Mr. Sanjeev Kumar Sharma was unmarried at the time of his death. In the insurance policy, late Shri Krishan Gopal stood declared as nominee of the deceased insured. Mr. Dheeraj Sharma has deposed in his affidavit that he is the real brother of the deceased who died during the course of his employment while performing the official duty as he was coming from SICOP Complex, Bari Brahmana, Jammu where he had gone for obtaining the report of testing/quality control report of the construction material of the Dam. He had died unmarried. OP No. 4 had failed to make the payment of the insured amount to his father (Sh. Krishan Gopal) during his lifetime who stood declared as a "nominee" under the said insurance policy. OP No. 4 has filed the affidavit of Mrs. Raj Dhar, Administrative Officer who in her deposition has admitted the liability of the Insurance Company to the extent of Rs. 5. 00 lakh only. She has also stated that according to the terms and conditions of the policy; the risk was covered within the Project Area of Baglihar Hydro Electric Project and the Project Area as per the contract meant the area where the permanent and temporary works in the vicinity of the works area in Doda District in Jammu and Kashmir State. Since the deceased had died in a road accident in Jammu while he was going on a scooter and was hit by the bus, so the accident had occurred outside the Project Area of District Doda and the repudiation of the claim had been validly made.

Heard the arguments.

3. THE case of the complainants in brief is that Mr. Sanjeev Kumar Sharma who was an employee of OP No. 1 died in a road accident on 29. 9. 2002 on Jammu-Pathankot National Highway near Gangyal when he was on official duty for getting the construction material tested in the recognized agencies like SICOP and RRL, Jammu. He was drawing Rs. 7,500 per month along with other perks which totalled Rs. 15,000 and additional facilities free of charges such as furnished Project Type of accommodation at Tourist Complex, Dak Bungalow, Batote and conveyance facility as delineated in the attached certificate at page 18 of the record of the case. This was "group Janta Personal Accident Matter Policy" obtained by OP No. 2 (principal contractor) for its employees as well as for the employees of OP No. 1 also from OP No. 4. The risk for Sanjeev''s death stood covered to the extent of Rs. 10. 00 lakh. The policy number was 350700/9600002/2/98 and valid upto to 31. 5. 1998. OP No. 1 (being employer) in its objections had taken the stand that being a consulting agency of the principal employer i. e. Jandk Power Development Corporation, OP No. 2 had entered into contract of insurance with OP No. 4 and had got insured the employees of OP No. 1 on the terms and conditions laid in the agreement of insurance. The policy covered the risk for the area as defined in the agreement of insurance of contract or even extended project area as defined during the employment of the concerned employee. OP No. 1 had admitted that deceased Mr. Sanjeev Kumar Sharma had been working with them as Field Engineer (Civil)/ site Inspector and had been sent on official tour to Jammu on some official work with effect from 28. 9. 2002 to 30. 9. 2002. On 29. 9. 2002, he met with an accident on National Highway while plying a motor-cycle on its direction from Kathua side to Jammu. His wife who was a pillion rider also died there. OP No. 1 had recommended the case of the deceased for the payment of the insured amount to OP No. 2 and OP No. 4 but it was turned down on the plea that the accident was not covered under the terms and conditions of the insurance policy as it did not occur within the project area. The other ground which was taken for rejecting the claim was that accident had taken place on Sunday which was not a working day and it could not be said to have occurred during the course of employment. OP Nos. 2 and 3 while admitting the fact that the insurance risk stood covered upto Rs. 10. 00 lakh have pleaded that the extended project area as defined could even extend upto the site of accident in Jammu. However, it justified the rejection of the claim on the plea that accident had occurred on a Sunday which was not a working day and the deceased was coming from Kathua to Jammu on a motor-cycle along with his wife. OP No. 4 is the only contesting party as it has contested the liability even by leading the evidence. After admitting the existence of "group Personal Accident Policy" obtained by OP No. 2 it denied the risk amount assured to the extent of Rs. 10. 00 lakh. It was stated that the risk amount assured was only to the extent of Rs. 5. 00 lakh. It was also stated that policy was confined under the limits of special conditions especially

entered between the parties. The operation of the policy was restricted to the project area and the project area in the contract of insurance was defined: "the area where the permanent and temporary works will be located in the vicinity of the works in Doda District of Jandk State. " According to it, the death of Mr. Sanjeev Kumar Sharma had taken place in a road accident on the Jammu-Pathankot National Highway near Gangyal which area fell outside the project area. At the most, the accident fell within the purview of the provisions of "workmen''s Compensation Act". In order to lend credence to the averments made in the complaint, Shri Krishan Gopal (deceased complainant) had deposed in his affidavit that his son Sh. Sanjeev Kumar Sharma had died in a road accident during the course of his employment while returning from SICOP Complex, Bari Brahmana where he had gone for obtaining the report of the testing/quality control of construction material used in the Dam in question. He has also stated that his son was drawing Rs. 7,500 per month and additional perks attached to this pay and in this way stood insured against the risk of his life for a sum of Rs. 10. 00 lakh. To the same effect is the evidence of Smt. Geeta Devi, mother of the deceased Sanjeev Kumar who has been substituted as LR at the event of the death of Shri Krishan Gopal. Mr. Dheeraj Kumar Sharma who is the real brother of the deceased has also corroborated the depositions of his parents. OP No. 4 has produced affidavit of Mrs. Raj Dhar, Administrative Officer who has admitted the liability of the Insurance Company to the extent of Rs. 5. 00 lakh only. But she is categorical in stating that under the terms and conditions of the insurance policy in question, the risk was covered within the project area of Baglihar Hydro Electric Project and project area as per the contract meant "the area where the permanent and temporary works will be located in the vicinity of the works in Doda District of Jandk State. " She has defended the action of OP No. 4 in rejecting the claim on the plea that death had taken place "outside the risk covered area of the Project" as well as outside the spheres of performing the official duties. The law on the subject is settled by the Apex Court in Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors. , I (1987) ACC 413 (SC)= (1987) 2 SCC 654; Shashi Gupta v. Life Insurance Corporation of India and Anr. , II (1995) CPJ 15 (SC)=1995 (1) SCC (Suppl.) 754; B. V. Nagaraju v. Oriental Insurance Co. Ltd. , II (1996) CPJ 28 (SC)=i (1997) ACC 123 (SC)= (1996) 4 SCC 647; and LIC v. Raj Kumar Rajgarhia and Anr. , II (1999) SLT 362= (1999) 3 SCC 465, that when two reasonable interpretations of the terms of the policy are possible, the interpretation which favours the insured has to be accepted and not the interpretation which favours the insurer for the terms of the insurance policy are drafted one sided by the Insurance Company. The complainant along with the complaint had produced a photocopy of policy No. 350700/9600002/98 which was valid upto 31. 5. 1999. This was a Group Personal Accident Policy obtained by OP No. 2 from OP No. 4 and was valid for the period commencing from 1. 6. 1998 to 31. 5. 1999. Under the said policy, all project sites including the offices, camps, godowns of the insured (Jai Parkash Industries Ltd.) within India were insured and under head ''c'' "insurance cover in the sum of Rs. 10. 00 lakh had been provided to each of the employees in regular cadre in the pay scale of over Rs. 7500 per month. " There is a certificate issued by Boris Lazaric, Chief Resident Engineer for Engineer-in-Charge at page 18 with the paperbook which states that deceased Mr. Sanjeev Kumar Sharma at the time of his accident was drawing a consolidated salary of Rs. 15000 in addition to the facilities which have been mentioned there such as furnished project type free accommodation and conveyance facility, etc. With the written version, the contesting OP No. 4 has produced copy of the insurance policy No. 350700/42/81/8200620 (page No. 4 with the attached record) which says, "endorsement effected from 24. 3. 2002". The names of insured employees have been mentioned therein. The deceased has been shown along with other seven employees each insured for a sum of Rs. 5. 00 lakh. Now the question arises whether the said policy is authentic or not. In the complaint it is averred that deceased''s death was covered for a sum of Rs. 10. 00 lakh. In order to prove this allegation, complainant Sh. Krishan Gopal (now dead) and after his death substituted complainants namely, Smt. Geeta Devi and Dheeraj Kumar have stated in one voice that as per the terms of the insurance policy, the risk covered was upto Rs. 10. 00 lakh. This assertion made by the complainants had found support from the employer of the deceased namely, OP No. 1 as well as from the principal contractor namely, OP No. 2 who had obtained the insurance policy. OP Nos. 1 and 2 have admitted the extended area of work upto Jammu. OP No. 4 (insurer) has produced record of the alleged recent insurance policy No. 350700/42181/8200620 as has been located from the loose sheets attached with written version marked from page 1 to 21. Marked page 7 indicates that policy No. 350700/8200620 covered the period of risk for the period 24. 3. 2002 to midnight of 23. 2. 2003 and it pertains to medical expenses and sum assured is 1,85,00,000 sheet marked No. 4 shows the inclusion of the name of deceased Sanjeev Kumar Sharma at serial No. 2 and the sum insured for him is Rs. 5. 00 lakh. There are other 7 employees also in that list insured for a sum of Rs. 5. 00 lakh each. Sheet No. 5 has a list of 37 such insured employees and deceased Sanjeev Kumar had figured at serial No. 31. Page No. 18 records endorsement attaching to policy No. 350700/8200115 to cover Medical Expenses (individual policies). At page 20 of the above stated attached record Item No. 1. 28 defines the "project Area" as "the area where the permanent and temporary works will be located in the vicinity of the works in Doda District of Jandk State". At the bottom of the page (No. 20), there is Item No. 1. 37 which say: "works shall mean and include all permanent and temporary works to be executed, all items and things to be supplied/done and services and activities to be performed by the contractor within or outside the project area, in pursuance and in accordance with the contract but shall not include the contractor''s construction equipment, its related spheres and wearing parts. " A conjoint reading to Item Nos. 1. 27 and 1. 37 reveals that they are self-contradictory to each other. Item 1. 27 restricts the "project area" located in the vicinity of the works in Doda District; whereas, item 1. 37 extends the definition of "works" amongst other things stated therein such as "services" and "activities" to be performed by the contractor within or outside the project area in pursuance of and in accordance with the contract but shall not include the contractor''s construction equipment, its related spheres and wearing parts. " It is alleged by OP No. 1 that their employee deceased Mr. Sanjeev Kumar had been sent on official duty from 28. 9. 2002 to 30. 9. 2002 to Jammu. The case of the complainants from the very beginning which was being projected was that on the date of accident i. e. on 29. 9. 2002, he had gone on official work to SICOP Complex, Bari Brahmana, for obtaining the report of testing/quality control of construction material to be used in the construction of the project in question and while on his way to home he met with a fatal accident at Gangyal. This allegation made in the complaint has been corroborated in the depositions made on oath by all the complainants and their testimony goes un-rebutted from the side of the OPs even to the extent that they were not cross-examined by any of the OPs including OP No. 4. In case of Shashi Gupta v. Life Insurance Corporation of India and Anr. , II (1995) CPJ 15 (SC)=1995 (1) SCC (Suppl.) 754, the Apex Court has held that "as both the aforesaid interpretations are reasonably possible, we would accept the one which favours the policy holder, as the same defines the purpose for which the policy is taken and would be in accordance with the object to be achieved for getting lives assured. " Adverting to the facts of the present case we find that the terms of the insurance policy in this case are found to have been drafted one sided by the Insurance Company because it was neither in the knowledge of principal contractor (OP No. 2) nor the employer of the deceased Mr. Sanjeev Kumar Sharma namely, OP No. 1 to have the least knowledge about the attachment of so-called "endorsement attaching to the new policy". Not only that, the deceased Mr. Sanjeev Kumar must also be not knowing that the risk of his life for carrying out the execution works of a risky project like Hydro Electric Project Dam had been slashed down for a sum of Rs. 5. 00 lakh only. In order to give a harmonious construction to both the above stated clauses under the benevolent provisions of the Jandk Consumer Protection Act it can be said that the project area stood extended outside the limits of the vicinity of the works of the Doda District and it included where the insured employee deceased Mr. Sanjeev Kumar had been performing the duty having a relation with the construction works of the dam in question. From the evidence brought on the record as well as the admissions made by OP Nos. 1 and 2 the deceased had been sent from 28. 9. 2002 to 30. 9. 2002 to Jammu in connection with his official duty and he met with an accident on 29. 9. 2002 near Gangyal while coming back from Kathua side to Jammu. The complainants have stated on oath that deceased Mr. Sanjeev Kumar was neither married nor on a pleasure trip with his wife as had been contended by the OPs. Admitting for the sake of arguments, even if some male or female had taken the ride with the deceased on his motor-cycle because of some old acquaintance while returning from official duty that would not disqualify him to be on official duty. Admittedly, it was Sunday when the accident took place but nowhere it has been stated that on Sunday the employees of the project could not be deputed on duty and no opinion or consultation could be obtained from SICOP Complex situated at Bari Brahmana. Also, there is no evidence to establish the fact that Sanjeev Kumar on that day had not attended the office of SICOP at Bari Brahmana but had gone somewhere on a pleasure trip with his so-called wife. The burden was on OP No. 4 to be discharged in order to rebut the claim of the complainants which has not been discharged. In rebuttal the best credible evidence was available to the OPs to examine the concerned official from SICOP or in the alternative they could produce official documentary evidence. Since this has not been done so it is found that best evidence of convincing nature has been wilfully withheld and in these circumstances adverse inference has to be drawn against the OPs. On the contrary, OP Nos. 1 and 2 have supported the case of the complainants that deceased had been sent on official duty to Jammu from 28. 9. 2002 to 30. 9. 2002 while on the intervening Sunday falling on 29. 9. 2002 the fatal accident took place.

4. FOR the discussion made above, we find that the deceased Sh. Sanjeev Kumar Sharma had died in a road accident on the Jammu-Pathankot National Highway near Gangyal on 29. 9. 2002 while performing his official duty and he was covered under the terms of the insurance policy to the extent of Rs. 10. 00 lakh. The repudiation of the claim by OP No. 4 was unjustified and amounted to deficiency in service under the terms and conditions of the insurance policy. OP No. 4 has failed to place on record an authentic renewed insurance policy which can inspire the confidence to slash down the insured risk from Rs. 10. 00 lakh to Rs. 5. 00 lakh. Mere production of loose sheets which are not in chronicle order as well as speak of different policy numbers such as 8200115 (page 18), make its case unbelievable more particularly when OP Nos. 1 and 2 had supported the case of the complainants that risk of life of deceased Mr. Sanjeev Kumar was secured under the insurance upto the limit of Rs. 10. 00 lakh. Being an insured party OP No. 2 could be the best witness for OP No. 4 to prove that insurance policy No. 8200620 with all its so-called additional conditions was applicable at the time when accident took place. This has also not been done. The omission further weakens the case of the OPs. In the backdrop of the discussion made above, we find no hesitation in accepting the complaint. Hence, the complaint is admitted and OP No. 4 is directed to reimburse the complainants herein namely, Smt. Geeta Devi and Mr. Dheeraj Kumar Sharma by making the payment of Rs. 10. 00 lakh along with interest @ 6% per annum from the date of accident till the final payment is made. OP No. 4 is also ordered to pay litigation charges to the complainants in the sum of Rs. 5,000. The complaint be consigned to the records. Complaint allowed.

