
(2016) 04 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

Case No : 3249 of 2015

LAKSHMI ROHIT AHUJA

APPELLANT

Vs

SBI LIFE INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Citation : 2016 2 CPR 905

Hon'ble Judges : V.K. Jain

Advocate : Mithilesh Kumar

Judgement

1. Late Shri Rohit Ahuja, husband of the petitioner / complainant obtained a cash credit card from the G E Countrywide Consumer Financial Services Ltd., opposite party No.3 in the complaint. As per the scheme of the said card, in the event of the card holder dying before the payment of the arrears outstanding against him, the same were to be paid by the insurer and a further sum of Rs.3,00,000/- was payable to his legal heirs. The deceased died in an accident on 24.4.2009. An amount of Rs.16,821/- being outstanding against him, in the said card. The aforesaid amount was paid by the insurer but the accidental benefit amount of Rs.3,00,000/- was not paid. Being aggrieved, the complainant approached the concerned District Forum by way of a complaint, impleading the insurer as well as the G E Countrywide Consumer Financial Services Ltd. as opposite parties.

2. The complaint was resisted by the insurer, primarily on the ground that the deceased was under intoxication at the time the accident took place, which resulted in breach of Clause 7.1.5 of the Master Policy under which the accidental benefit was payable.

3. The District Forum vide its order dated 16.9.2011 directed to insurer to pay a sum of Rs.3,00,000/- to the complainant along with compensation quantified at Rs.5,000/- and the cost of litigation quantified at Rs.2,000/-.

4. Being aggrieved from the order passed by the District Forum, the insurer preferred an appeal before the concerned State Commission. Vide impugned

order dated, 27.7.2015, the State Commission allowed the appeal and consequently dismissed the complaint. Being aggrieved, the complainant is before this Commission, by way of this revision petition.

5. Clause 7.1.5 of the Master Policy reads as under:

"SBI Life shall not be liable to pay the benefits if the death or as the case may be, the Total and Permanent disability of the Life Assured is caused by any of the following:

I. Intentional self injury, attempted suicide, insanity or immorality or whilst the Life Assured is under the influence of intoxicating liquor, drug or narcotic substance;

II. Injuries resulting from riots, civil commotion, rebellion, war (whether war be declared or not), invasion, hunting, mountaineering, steeple chasing or racing of any kind;

III. Any breach of law by the Life Assure;

IV. Due to Venereal Diseases or AIDS or

V. Suicide of the Life Assured in the first year of his membership of the Scheme.

It would thus be seen that no benefit under the policy was payable if the insured was under the influence of intoxicating liquor at the time the accident take place or if he was found to have breached any law and such breach had resulted in his death or permanent disablement.

6. As per the FIR, the vehicle was being driven by the deceased at the time it met with an accident. As per the chemical analysis report in respect of the viscera of the stomach and intestine of the deceased, there was 120 ml of Ethyl alcohol per 100 gm in the blood of the deceased. Hence the question which arises for consideration is as to whether a person having 120 mg of alcohol per 100 ml of his blood can be said to be under influence of intoxicating liquor. This question came up for consideration of this Commission in Consumer Complaint No. 401 of 2014 Baby Apoorva Rai Vs. New India Assurance Co. Ltd. & Anr. Decided on 03.9.2015 and the following view was taken:

3. There is no direct evidence of the deceased being under influence of intoxicating liquor at the time he got drowned in the swimming pool. The only evidence relied upon the insurance company to substantiate the plea that he was under the influence of intoxicating liquor at the time he died, is the report of the laboratory reporting presence of 103.14 mg of ethyl alcohol per 100 ml of the blood of the deceased.

4. Relying upon Modi's Medical Jurisprudence and Toxicology, 24 th Edition, the learned counsel for the complainants submitted that the presence of 103.14 mg/100 ml of the blood does not lead to the conclusion that the deceased was under the influence of intoxicating liquor. He relied upon the following extract

from the above-referred text book:

"It is generally believed that a person with a concentration of 0.1 per cent alcohol in the blood appears to be gay and vivacious, and those with a concentration of 0.15 per cent alcohol in the blood are regarded as fit to drive a motor vehicle. This concentration of alcohol in the blood is regarded as a presumptive limit of safety, and may result from the rapid consumption of 8 ounces of whisky of 4 to 5 pints of beer.

Alcohol acts differently on different individuals and also on the same individual at different times. The action depends mostly on the environment and temperature of the individuals and upon the degree of dilution of the alcohol consumed. The habitual drinker usually shows fewer effects from the same dose of alcohol. Barbiturates, benzodiazepines, antihistamines, tranquillizers, chlorpromazine and insulin, potentiate the action of alcohol, while epileptics or persons who have suffered from a head injury may show an increased effect to a small quantity of alcohol".

It would thus be seen that in the opinion of the Author, the percentage of alcohol in the blood would be 0.2% in case, the quantity of alcohol per 100 ml of blood is 200 mg. Thus, a person who has 200 mg alcohol per 100 ml. of his blood can be said to be moderate intoxicated, if we go by the above referred opinion. A person with a concentration of 0.15% alcohol in the blood is regarded to be fit to drive a motor vehicle. 0.15% of alcohol in the blood comes only if he has 150 mg of alcohol per 100 ml. of his blood.

5. The learned counsel for the insurance company, however, relied upon an Article titled "While Under the Influence of Intoxicating Liquor" written by W.W. Thornton and published on 11.01.1928 in Indiana Law Journal. The question considered in the above referred Article was as to what condition must a driver of a motor vehicle be in to be "under the influence of intoxicating liquor or narcotic drugs"? The Author extracted the following observations from the judicial pronouncements considered by him: "A person is drunk in legal sense when he is so far under the influence of intoxicating liquors that his nerves are visibly excited or his judgment impaired by the liquor". "Intoxicated condition" means that if the person "were in such a state that he was incapable of giving the attention to what he was doing, which a man of prudent and reasonable intelligence would give".

"When it appears that a person is under the influence of liquor, or when his manner is unusual or abnormal, and his inhibited condition is reflected in his walk or conversation, when his ordinary judgment and common sense are disturbed, or his usual will power is temporarily suspended, when they or similar symptoms result from the use of liquors and are manifest, then the person is "intoxicated". It is not necessary that the person would be so-called "dead-drunk" or hopelessly intoxicated. It is enough that his sense are obviously destroyed or distracted by the use of intoxicating liquors within the meaning of

the statute authorizing recovery of damages against a saloon keeper who sells liquors to an intoxicated person".

"Under the law a man is intoxicated whenever he is so much under the influence of spirituous or intoxicating liquors that it so operates upon him, that it so affects his acts, or conduct or movement, that the public or parties coming in contact with him could readily see and know that it was affecting him in that respect. A man to that extent under the influence of liquor that parties coming in contact with him, or seeing him, would readily know that he was under the influence of liquor, by his conduct or his words or his movements, would be sufficient to show that such party was intoxicated".

Whenever a man is under the influence of liquor so as not to be entirely at himself, he is intoxicated; although he can walk straight" although he may attend to his business, and may not give any outward and visible signs to the casual observer that he is drunk, yet if he is under the influence of liquor so as not to be at himself, so as to be excited from it, and not to possess that clearness of intellect and that control of himself that he otherwise would have, he is intoxicated".

It would thus be seen that the Article relied upon by the learned counsel for the opposite party is not based on the quantity of the alcohol found in the blood of a person. This Article does not go into the question as to how much quantity of the ethyl alcohol in the blood of a person can lead to the inference that he was under influence of intoxicating liquor.

6. The learned counsel for the opposite party has also relied upon the following information in Lyon's Medical Jurisprudence and Toxicology:

"The American Medical Association and the National Safety Council of USA have adopted the following policy statement with regard to intoxication - "Blood alcohol of 0.10% can be accepted as prima facie evidence of alcoholic intoxication, recognizing that many individuals are under the influence in the 0.05 to 0.10% range." The Uniform Vehicle Code of USA 1962 has as its standards: "Blood alcohol of 0.05% or less raises a presumption that the subject was not under the influence of alcoholic beverage; blood alcohol in excess of 0.05% but less than 0.10% raises no presumption of intoxication or soberness; blood alcohol of 0.10% or more raises the presumption that the subject was under the influence of alcoholic beverage".

In different countries the prescribed limit for permissible blood alcohol is as follows:

India - 30 mg%

USA - 100 mg%

Australia - 40 mg%

Terminologies used in medico-legal context: The following terminologies are

employed in medico-legal cases. Their exact meaning should be understood.

Sober - blood alcohol concentration of less than 10 mg%

Drinking - Blood alcohol concentration of 20-70 mg%

Under the influence of alcohol - blood alcohol concentration of 80-100 mg%

Drunk or intoxicated - blood alcohol concentration of 150-300 mg%

Coma and death - blood alcohol concentration in excess of 400 mg%".

As per the above referred text book, a person is under the influence of alcohol when the blood alcohol concentration is 80-100mg/100 ml of the blood. The above referred text book also shows that the USA, which is most liberal, as far as the quantity of alcohol which a person can consume at the time of driving also allows only upto 100 mg alcohol/100 ml of the blood. It further shows that if the alcohol content is .1%, it would be the prima facie evidence of alcoholic intoxication. Blood alcohol percentage of .1% comes when the quantity of ethyl alcohol in the blood is 100 mg/100 ml of the blood. Thus, if we go by the text book of Modi, a person, who has consumed less than 150 mg of alcohol per 100 ml. of his blood, cannot be said to be under influence of intoxication, whereas as per the text book of Lyon's, a person having 100 mg or more per 100 ml of blood will be said to be under influence of alcohol.

7. In a Manual for Physicians in National Drug Dependence Treatment Centre, All India Institute of Medical Sciences, New Delhi the effects of alcohol has been stated as under:

BAC mg/dl Effects

80 Euphoria, feeling of relaxation and talking freely, clumsy movement of hands and legs, reduced alertness but believes himself to be alert.

80

100-200

Noisy, moody, impaired judgement, impaired driving ability
Electroencephalographic changes begin to appear, Blurred vision, unsteady gait, gross motor in-coordination, slurred speech, aggressive, quarrelsome, talking loudly.

200-300 Amnesia for the experience ? blackout.

300-350 Coma

355-600 May cause or contribute to death

It would thus be seen that in terms of the above referred compilation issued by the AIIMS, if the quantity of alcohol in the blood is 100 or more mg. /dl (100 ml), it leads to vision getting blurred, the gait become unsteady and the coordination

gets affected. These changes, in our opinion, can occur only when someone is already under the influence of alcohol by that time. The judgment of the drinker as well as his driving ability gets affected even where the quantity of alcohol in the blood is 80 mg or more per 100 ml of the blood.

8. The learned counsel for the complainant has relied upon the decision of this Commission in LIC of India & Anr. Vs. Ranjit Kaur III (2011) CPJ 232 (NC), where the quantity of alcohol in the blood was found to be 86.2 mg./100 ml of blood. Ruling in favour of the complainant, this Commission inter-alia observed as under: "It has also come in evidence that this by itself is not adequate proof that the deceased was intoxicated at the time of his death. As rightly observed by the learned Fora below, the specific clinical picture of alcohol intoxication also depends on the quantity and frequency of consumption and duration of drinking at that level and, therefore, mere presence of alcohol even above the usually prescribed limits is not a conclusive proof of intoxication. Apart from this, there is also no evidence that there was a nexus between the death caused by electric shock and consumption of liquor".

9. The learned counsel for the opposite party, on the other hand has relied upon the decision of this Commission in LIC of India & Anr. Vs. Priyanka Singh First Appeal No.368 of 2014 decided on 14.10.2005. In the above referred case, 109.92 mg of ethyl alcohol per 100 ml of blood was found in the body of the insured. Dismissing the complaint, this Commission, inter-alia observed and held as under:

"As per the medical literature, "HWV COX "Medical Jurisprudence and Toxicology", Seventh Edition PC Dikshit" brought on record, there are three stages of alcoholic intoxication, which reads as follows:

"Stage of Excitement (50 to 150 mg percent)

Feeling of well-being slight excitement, increased confidence, lack of self-control are usually seen. There is a heightened sexual desire, but performance is reduced. The visual acuity is reduced. It also alters time and space orientation. There is poor judgment and mental concentration is retarded".

The learned counsel for the complainant/respondent in the above referred case relied upon the text book of "Biochemistry" as per which quantity of 50-150 mg was described as Pre-intoxication in which there are signs of instability, decreased neuromuscular coordination and the judgment and control required for quick responses such as car driving are impaired. Whereas in intoxicating stage (150-300 mg/dl) speech is impaired and motor skills are incoordinated.

However, relying upon the Medical Literature produced by the appellant Corporation, this Commission held that the deceased was under intoxication as a result of consumption of alcohol found in his blood sample, making him ineligible to the benefits of double accident policy. It would be pertinent to note that in the above referred case, no amount was payable in case the insured was under

influence of intoxicating liquor drug or narcotics.

10. Considering the opinion expressed in the Manual issued by All India Institute of Medical Sciences, which is the premier most medical Institution in this Country, we are not inclined to accept the opinion expressed in Modi's Medical Jurisprudence and Toxicology, particularly when the opinion of AIIMS also find corroboration from the opinion expressed in Lyon's Medical Jurisprudence and Toxicology. Though, this is not a case of the death while driving after consuming alcohol, the maximum quantity of alcohol permitted by various countries for a person to drive a motor vehicle cannot be said to be an altogether irrelevant since the purpose of prohibiting driving after consuming liquor beyond the prescribed quantity is to ensure that the driver does not commit an accident on account of the effect of liquor on him. The purpose of the insurer behind excluding the cases of accident when the insured is under influence of intoxicating liquor is to ensure that the consumption of the liquor does not lead or contribute to happening of the accident in which the insured dies or injured. Therefore, consumption of liquor beyond a safe limit must necessarily disqualify the insured from getting the benefits of the insurance policy taken by him. The quantity of alcohol allowed to the driver of a motor vehicle is not more than 100 mg/100 ml of the blood in any country, including USA though, in our country it is only 30 mg/100 ml of blood. Therefore, in our opinion, if a person is found to have consumed more than 103.14 mg of alcohol/100 ml of his blood, which is position in the case before us, it would be reasonable to say that he was under the influence of the intoxicating liquor at the time he died or got injured. We are fortified in taking this view from the decision of this Commission in Priyanka Singh (supra). As far as the decision of this Commission in Ranjit Kaur (supra) is concerned, we find that the quantity of alcohol in the blood of the insured in that case was of 86.2 mg, which was much less than quantity of the alcohol found in the blood of the deceased Surya Kiran. Though in Ranjit Kaur (supra), this Commission, inter-alia observed that there was no nexus between the death caused by electric shock in consumption of liquor, the aforesaid observation is only an obiter and does not constitute the ratio decidendi of the case. In fact, the aforesaid obiter is contrary to the express terms of the insurance policy which absolves the insurer of its obligation under the policy, in case the insured was under the influence of the intoxicating liquor at the time of the accident and the policy does not require any nexus to be shown between the case of accident and the consumption of liquor. 7. In view of the above referred pronouncement of this Commission, it can hardly be disputed that the deceased having 120 mg of alcohol per 100 ml of his blood was clearly under the influence of the intoxicated liquor when the accident, in which he died took place. Therefore, the insurer was not liable to make any payment to the complainant in terms of the policy applicable to the cash card taken by her husband. Therefore, no ground for interfering with the impugned order is made out.

The Revision Petition is therefore dismissed with no order as to costs.