(2014) 09 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

MATBER SINGH APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 618 : 2014 4 CPJ 126

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Advocate : S.M.TRIPATHI , VISHNU MEHRA

Judgement

1. LATE Sh. Narendra Singh, son of the complainant was employed by a company namely Angelique International Limited and sent to the Republic of Sudan, to work on a construction project. The employer of the deceased had obtained an Overseas Medi -claim Business and Holiday policy from the opposite party, Oriental Insurance Co. Ltd. for the period from 07.02.2006 to 06.06.2006. The aforesaid policy covered treatment for illness, treatment for accident, personal accident, loss of checked in baggage, delay in checked in baggage over 12 hours, loss of transport and personal liability. The maximum liability under the said policy was limited to$2,50,000. The liability in respect of personal accident was further limited to $25,000, without any deduction. It was also stipulated in the policy that it covered the air transport expenses incurred in repatriation of mortal remains and emergency medical evacuation of the deceased person from the place of visit to India, by economy class. Late Sh. Narendra Singh died in Sudan on 15.03.2006 when his leg accidentally slipped near river and he got drowned therein. Intimation of death was immediately given to the Insurance Company at their Nehru Place, New Delhi Office. After obtaining death certificate and other requisite documents, the matter was pursued with the Insurance Company, for payment of the claim, in terms of the policy, which the employer of the deceased had taken. Vide letter dated 13.06.2006, Heritage Health Services Pvt. Ltd., agent of the opposite party company referring to the claim under the above referred overseas medi -claim policy sent a cheque of Rs. 49,940/ - to the complainant towards full and final settlement of the claim. It was stated in the said letter that the aforesaid amount had been arrived at after applying

deductible of US $100 under ''Section A '' of the policy. Admittedly, the aforesaid cheque was sent towards re -imbursement of the air transport expenses for repatriation of the mortal remains of the deceased. However no payment was offered to the complainant under the section ''Personal Accident ''. A perusal of an internal e -mail dated 23.06.2006 from HSSPL to Mr. A. K. Mishra of the employer of the deceased would show that the claim under personal accident section was declined on the ground that the death of the insured was not caused by any bodily injury resulting solely and directly from accident caused by external, violent and visible means. However, according to the complainant, the aforesaid communication was never sent to him either by the opposite party or by the employer of the deceased. Being aggrieved from the failure of the Insurance Company to make payment under the policy, the complainant is before us, by way of this complaint. Though, in the complaint as much as US $2,50,000, was claimed by Mr. Tripathi, Advocate on instructions from the complainant restricting the amount to US $ 25,000 and the amount of Rs. 49,940/ -, which was remitted to the complainant for reimbursement of air transport expenses for the mortal remains of the deceased. Mr. Tripathi, on instructions from the complainant restricts the claim to $ 25,000, since there is a limited indemnification of personal accident in the policy. The complaint has been resisted by the Insurance Company primarily on the ground that the deceased had not died on account of any bodily injury resulting solely and directly from accident caused by external, violent and visible means. It has however been admitted that a cheque of Rs. 49,940/ - was sent to the complainant on 13.06.2006.

2. SECTION ''B '' of the Insurance Policy reads as under: - ''''Section -B - PERSONAL ACCIDENT This insurance will pay as hereinafter mentioned: 1.If at any time during the covered trip, the insured person shall sustain any bodily injury resulting solely and directly from accident caused by external violent and visible means, then the insured person or his legal personal representative (s) as the case may be paid, the capital Sum insured mentioned against Personal Accident in the Schedule of this policy, if such injury shall within twelve calendar months of occurrence be the sole and direct cause of: i)death of the insured person ii)permanent Total Disablement (as defined in the policy) of the insured person iii)total and irrecoverable loss of both eye or two limbs or of one eye and one limb ''''

3. THEREFORE , the only question which arises for our consideration in this complaint is as to whether the death of deceased Narendra Singh took place on account of any bodily injury resulting solely and directly from accident caused by external, violent and visible means or not? The contention of the learned counsel for the Insurance Company is that there is no violence involved in the death caused by drowning in a river without being pushed by anyone and therefore, the benefit of the insurance cover is not available to the complainant. He further submits that if a person standing on riverside all of a sudden loses his balance or otherwise slips inside the river, it cannot be said that his death was caused by

way of some violent means. The learned counsel for the complainant on the other hand has drawn our attention to the information available on the website of the Insurance Company under heading Frequently Asked Questions (FAQ) and has also relied upon the decision of this Commission in Revision Petition No. 973 of 2007, Rita Devi @ Rita Gupta vs. National Insurance Co. Ltd. & Ors., decided on 24.10.2007 and the decision dated 29.04.2008 in Original Petition No. 173 of 2000, Mrs. Padma Ramanathan vs. National Insurance Co. Ltd. He has also placed reliance upon the Law Relating to Accident insurance, by A. W. Baker Welford, (Second Edition), published in the year 1932. The information available under the heading FAQ on the website of the Insurance Company reads as under: - ''''What type of events are covered under Personal Accident Insurance? An accident may include events like: ·Rail/Road/Air Accident ·Injury due to any collision/fall ·Injury due to Bursting of gas cylinder ·Snake -bite, Frost bite/Dog bite ·Burn injury, Drowning, Poisoning etc. These are only illustrative and not an exhaustive list of type of accidents. ''''

It would thus be seen that it is opposite party ''s own interpretation presumably based on judicial pronouncement is that a death due to drowning is deemed to be death from an accident caused by external, violent and visible means. Considering the interpretation which the insurance company itself has given to the relevant clause contained in the Insurance Policy, it is not open to it to say that death by drowning was not covered under the heading Personal Accident. A person obtains an insurance cover on the basis of the representation made to it by the insurance company either through an employee/agent or by way of information made available on its website. Therefore, it can be safely presumed that the employer of the deceased, while obtaining the insurance cover for its employees was conscious that a death due to drowning was to be considered as an accidental death covered under the policy offered by the Insurance Company. Therefore, having repudiated to the public at large that death due to drowning would be covered under personal accident insurance, it is not open to the opposite party to later repudiate the claim taking an altogether different definition of the interpretation of the same expressions used in the policy issued by it.

4. IN Mrs. Padma Ramanathan (supra), the only question involved in the case was as to whether the death caused due to drowning in a swimming pool can be considered to be accidental death in terms of the insurance policy. The policy issued in the above referred case, inter -alia, covered the insured ''''if at any time during the currency of the policy, he shall sustain any bodily injury resulting solely and directly from accident caused by external, violent and visible means ''''. The insured in that case went out for swimming alongwith his wife and children on Madras Gymkhana Club on 14.07.1996. He took his children out of the pool and instructed his wife to attend to their shower and change of clothes. After 5 to 7 minutes, when his wife came to the pool, she found that his body had been pulled out by a couple of co -swimmers from the bottom of the pool. It transpired that he had drowned in the swimming pool. The claim for payment in

terms of the policy was declined by the Insurance Company on the ground that the death was not caused due to bodily injury solely and directly caused by external, violent and visible means and therefore did not come within the purview of the policy. Rejecting the plea taken by the Insurance Company, this Commission held that in such cases, death was not due to internal cause and that any cause which is not internal must be external. It was further held that the violent means includes any external, impersonal cause, such as drowning or inhalation of gas or even undue exertion on the part of the assured. It was observed that the death was accidental, since the insured obviously did not intend to die by drowning. In the course of the judgement, this Commission quoted extensively, the extracts from ''The Law of Insurance '' by Raoul Colinvaux, Fourth Edition. It had been noted in the aforesaid book that in most of the cases referred therein, the policies insured against bodily injury caused by violent, accidental, external and visible means only '' but the decision turned mainly on the question whether or not the particular injury was caused by accidental means, meaning thereby, that the words ''''violent '''', ''''external '''' and ''''visible '''' have been given wide meanings, practically co -extensive with ''''accidental ''''. It was further noted that violent means any external, impersonal cause, such as drowning. Reliance was also placed on para 578 of Halsbury ''s Laws of England, where it was stated that ''External means '' is used to point the contrast with something internal; any cause which is not internal must be external, but this does not mean that the injury must be external. It is further stated therein that the effect of the term external and visible means is therefore to underline that disorders arising within the human body, without ascertainable reference at all to anything coming from outside, are not covered. The following statement of law contained in the above referred para is directly relevant for our purpose: - ''''Similarly, if a man falls into a river and is drowned or falls on to a railway line and is hit by a train it is immaterial that he only fell because he had an epileptic fit; it he is alive when the water get into his lungs and leads to suffocation, or when the train cuts off his head thus stopping the motivating power to the heart, the cause of death is drowning or decapitation and not the anterior fit. '''' This Commission also took assistance from the statement of law contained in para 1791 of Insurance Law by MacGillivray & Parkington under the Chapter Personal Accidents Policy, which, inter -alia, reads as under: - ''''1791. Violent means.Often the element of violence in an accident will be as evident as the bodily injury; the insured may, for example, be bitten by a dog or knocked down by a train or merely slip and fall. In other cases it will not be so obvious and it has been held that the phrase violent means is the antithesis of without any violence at all. Thus injury from any extra exertion such as stopping to pick up a marble may be injury by violent means and the phrase seems to include almost any external cause of injury such as drowning or the inhalation of gas. ''''

5. A perusal of the death certificate in respect of deceased Narendra Singh would show that he died due to drowning. Thus, drowning in the river was the sole and direct cause of his death. It is not a case where someone swimming in a pool or

a river suffered heart attack and died while swimming. Here, the death occurred when the deceased accidentally fell into the Nile River and got drowned. Therefore, his death was definitely covered by the policy under the section ''Personal Accident ''. Therefore, the Insurance Company was under a contractual obligation to pay a sum of $ 25,000 to the complainant, he being the assignee under the policy, without any deduction.

6. AS far as the re -imbursement of the expenses incurred in air transport of the mortal remains of the deceased is concerned, the Insurance Company has already admitted its liability and given a cheque of Rs. 49,940/ - to the complainant which has not been encashed till date. A reference in this regard may be made to the e -mail dated 06.1.2007, which clearly shows that the cheque in question was with the ICICI Bank and had not been encashed. Even otherwise, this was not the case of the Insurance Company that the aforesaid cheque of Rs. 49,940/ - has been got encashed by the complainant. 10. In view of our discussion, the complaint is disposed of with the following directions: - 1) The opposite party, Oriental Insurance Company shall pay a sum equivalent to $ 25,000, as on the date of filing of this complaint, to the complainant, alongwith interest on that amount at the rate of 9% p.a. from the date of filing of the complaint till the date of the payment. In case, payment is not made within eight weeks from today, it shall carry interest at the rate of 12% per annum, commencing from today.

2) The Insurance Company shall also pay Rs. 49,940/ - , that being the amount of the cheque, which the complainant did not get encashed. No interest would be payable on the aforesaid amount if it is paid within 8 weeks from today. However interest at the rate of 12% per annum shall be payable in case, the aforesaid amount is not paid within eight weeks. In the facts and circumstances of the case, we do not deem it appropriate to award any legal cost to the complainant.