
(2007) 08 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 5923 of 2006

Nirmalabai Pawar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Citation : (2009) ACJ 1073 : (2008) 1 ALLMR 358 : (2007) 6 MhLj 44

Hon'ble Judges : R.V. More, J;A.P. Lavande, J

Bench : Division Bench

Advocate : R.P. Joshi, for the Appellant; A. Deshpande, AGP for Respondent Nos. 1 and 3 and S. Jaiswal (absent), for the Respondent

Final Decision : Allowed

Judgement

A.P. Lavande, J.—On 26-3-2007 this Court issued notice to the respondents for final disposal of writ petition at the admission stage. Pursuant to the said notice, the respondents have filed their replies. Thereafter the matter was adjourned from time to time. On 9-8-2007 the matter was taken up for final disposal.

2. We heard Mr. Joshi, learned Counsel for the petitioner and Mr. Deshpande, learned AGP for respondent Nos. 1 and 3. Neither Mr. Jaiswal, learned Counsel appearing on behalf of respondent No. 2 nor any representative on behalf of respondent No. 2 remained present.

3. In view of order dated 26-3-2007, Rule.

4. By this petition, the petitioner challenges communication dated 23-12-2005 addressed to her by respondent No. 2 rejecting the claim of the petitioner to pay compensation amount of Rs. One lac to the petitioner as per insurance coverage,

5, Briefly, the facts leading to filing of the present petition are as under:

The petitioner is the widow of Vishnu Pawar, an agriculturist owning an agricultural field admeasuring 5 acres. He died in vehicular accident on 17-5-2005 leaving behind the petitioner and five children.

The Government of Maharashtra, in order to extend helping hand to the farmers introduced scheme "Shetkari Vyaktigat Apghat Bima Yojna". The said scheme which was implemented in the year 2005-06 in the State of Maharashtra, through respondent No. 2 extended the insurance cover to all registered farmers in the age group between 12-70 years. The State Government paid Rs. 7.50 crores to respondent No. 2 and respondent No. 2 issued Insurance Policy No. 4005/0003134. The said insurance coverage was valid for a period of 12 months from 10th April, 2005 till 9th April, 2006. The said policy covered the following causes:

1. Road Accident.
2. Railway Accident.
3. Drowning.
4. Effect of Poison due to pesticides.
5. Electric shock or Electrocution.
6. Murder.
7. Fall from height.
8. Snake bite, Scorpion bite.
9. Naxalite Violence.
10. Animal bite (Rabies)
11. Riots.
12. Any others accidents.

6. For the implementation of the said scheme, the Government of Maharashtra constituted Dispute Redressal Committee which was chaired by the Commissioner, Agriculture. The said Committee consisted of Revenue Officers and the officials of respondent No. 2. The claim of the petitioner for compensation of Rs. One lac on account of death of the husband of the petitioner was considered by the said Committee in various meetings and the Committee found that the claim of the petitioner was genuine and as such the petitioner was entitled to the compensation of Rs. One lac. However, respondent No. 2 took the stand that it was not liable to pay compensation since it was not covered by the policy. By communication dated 23-12-2005 respondent No. 2 informed the petitioner that deceased Vishnu Pawar had exposed himself to needless peril and as such on account of exclusion clause in the policy, the petitioner was not entitled to compensation. The exclusion clause mentioned in the said letter reads as under:

2. Exclusion

The Company shall not be liable under this policy for:

(xii) Payment of compensation in respect of Death or disablement resulting directly or indirectly when the insured is self-exposing to Needless Peril (except in an attempt to save human life)

7. The petitioner has challenged the said communication dated 23-12-2005 on various grounds which have been taken in the petition. Affidavit of one Suresh Raut has been filed on behalf of respondent No. 1 by which the respondent No. 1 has supported the claim of the petitioner on the ground that the claim is covered by the policy taken out by respondent No. 1. Respondent No. 2 has filed affidavit dated 7th June, 2007 of Rajesh Dhane, the Legal Manager of respondent No. 2. It is surprising that in the said affidavit respondent No. 1 has, inter alia, denied the death of Vishnu Pawar, the relationship of the petitioner with Vishnu, the ownership of 5 acres of land by Vishnu. However, in the same affidavit, it has been stated that deceased Vishnu Pawar was proceeding from village Gatkinhi for attending funeral of his relative in auto-rickshaw in which about 7-8 persons were travelling. It has also been stated that deceased Vishnu sustained severe injuries. The defence taken in the return filed by respondent No. 2 is that the deceased Vishnu travelled in an auto-rickshaw in which there were about 7-8 persons and the driver of the said auto rickshaw drove it in a very high speed and negligently on account of which the accident occurred resulting in death of Vishnu. It has been also stated that the petitioner has alternate remedy without mentioning the remedy available to the petitioner.

8. As stated above, no arguments have been advanced on behalf of respondent No. 2 since neither any Advocate nor any representative appeared on behalf of respondent No. 2 at the time of hearing of the writ petition.

9. Mr. Joshi, learned Counsel for the petitioner submitted that the petitioner is entitled to compensation of Rs. One lac inasmuch as the case of deceased Vishnu who died in vehicular accident is covered by policy issued by respondent No. 2. Mr. Joshi submitted that the records clearly establish that deceased Vishnu died in road accident while he was travelling in a rickshaw. He further submitted that even if the fact that the deceased was travelling in rickshaw in which more than permissible number of passengers were travelling is accepted, respondent No. 2 is not exempted from the liability in view of the policy issued by it. According to Mr. Joshi, respondent No. 2 cannot be absolved from liability OVA the ground that deceased Vishnu exposed himself to needless peril. Even, if deceased travelled in auto rickshaw along with 7-8 passengers, it cannot be said that he exposed himself to be needless peril thereby attracting exclusion clause quoted in the communicated dated 23-12-2005 of the respondent No. 2. According to Mr. Joshi, exclusion clause in the policy is not attracted and therefore, the grounds on which respondent No. 2 has refused the claim of the petitioner is unsustainable in law. He, therefore, urged that the petition be allowed with heavy costs.

10. Mr. Deshpande, learned AGP appearing on behalf of respondent Nos. 1 and 3 supported the submissions advanced by Mr. Joshi learned Counsel for the

petitioner.

11. We have perused the records and have also carefully considered the submissions advanced by Mr. Joshi. Respondent No. 2 by communication dated 23-12-2005 has sought to avoid its liability of Rs. One lac to the petitioner on the basis of exclusion clause which has already been quoted above. In the return filed by respondent No. 2 it has not been seriously disputed that deceased Vishnu died in road accident while he was travelling in auto rickshaw. The records also establish that on 16-5-2005 deceased Vishnu was travelling in auto rickshaw in which about 7-8 passengers were travelling and the auto rickshaw met with an accident which resulted in causing severe injuries to deceased Vishnu resulting in his death on 17-5-2005.

12. Having regard to the above facts, we fail to understand as to how exclusion clause is attracted in the present case. Mere fact that 7-8 passengers were travelling in auto rickshaw which is supposed to carry less number of passengers, by itself, would not mean that deceased Vishnu exposed himself to needless peril to attract exclusion clause in the policy. In our considered opinion, the clause is not clearly attracted and the case of deceased Vishnu is squarely covered under the policy issued by respondent No. 2 and, therefore, the petitioner is entitled to compensation of Rs. One lac. It is really surprising that in the return filed by respondent No. 2, respondent No. 2 has initially denied the status of deceased as an agriculturist, his death and the relationship of the petitioner which do not appear to have been denied earlier, even in communication dated 23-12-2005. This is not expected from the Insurance Company, after having agreed to be a party to the scheme floated by the Government of Maharashtra for the benefit of farmers. In our opinion, respondent No. 2 is liable to pay compensation of Rs. One lac to the petitioner in terms of policy taken out by respondent No. 1. In our opinion, exclusion clause is clearly not attracted and, therefore, communication dated 23-12-2005 addressed to the petitioner deserves to be quashed.

13. In the present case respondent No. 2 has tried to avoid its liability under the policy by taking defence which is clearly unsustainable in law thereby depriving the petitioner a poor widow of an agriculturist with five children from getting compensation of Rs. One lac to which she is entitled. In our opinion, this is fit case in which respondent No. 2 deserves to be saddled with heavy costs. Considering the facts and circumstances of the case, we quantify the costs at Rs. 15,000/- (Rs. Fifteen thousand only).

14. For the reasons aforesaid, writ petition is allowed. The communication dated 23-12-2005 addressed by respondent No. 2 to the petitioner is quashed and set aside. Respondent No. 2 is directed to pay compensation amount of Rs. One lac and also to pay costs of Rs. 15,000/- to the petitioner within a period of four weeks from the receipt of writ from this Court.

Rule is made absolute in the aforesaid terms.