**(2013) 07 P&H CK 0930**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.W.P. No. 955 of 2012

Oriental Insurance Company Limited APPELLANT

Vs

Nirma Devi @ Nirmala Devi and Another RESPONDENT

**Date of Decision :** 03-07-2013

**Acts Referred:**

**Citation :** (2013) 4 ACC 40

**Hon'ble Judges :** Rajiv Narain Raina, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Rajiv Narain Raina, J.—The challenge in this petition is to an order dated 25.8.2011 passed by the Permanent Lok Adalat (Public Utility Services), Patiala (for short "P.L.A.P.U.S.") directing the petitioner Oriental Insurance Company Limited (O.I.C.L.) to pay Rs. 2 lacs to Nirmala Devi wife of insured Ram Nath on account of death. The amount has been directed to be paid with interest @ 12% from the date of death compounded yearly. Briefly stated the facts are that late Ram Nath bought an accidental Nagrik Suraksha Policy floated by O.I.C.L. It is stipulated on the first page of the policy that, "The policy offers Personal Accident cover (Death/Permanent total disability, loss of limb(s) and Permanent Partial disability including reimbursement of hospitalization expenses as specified under the scheduled of insurance of the policy". "Injury" has been defined to "mean an accidental bodily injury solely and directly caused by external violent and visible means". In the clauses dealing with compensation, it has been recited that: "if, at any time during the currency of the policy the insured person shall sustained any bodily injury resulting solely and directly from accident caused by external, violent and visible means then the Company shall pay to the insured person or his legal personal representative(s) as the case may be, the sum hereafter set forth is to say:..."

2. In the Exclusions applicable to Section 1 of the Policy it has been contracted that the company shall not be liable for: "4. Payment of compensation in respect

of injury as a direct consequence of: (i) Committing or attempting suicide, intentional self-injury, (ii) Under the influence of Intoxicating liquor or drugs." The full text of the policy was placed on record through Civil Miscellaneous application No. 8281 of 2013 after this Court called upon the petitioner to place it on record to examine the issue raised.

3. The few further essential facts of the case are is that Ram Nath is said to have died in a road accident on 30.12.2009. A D.D.R. No. 18 was recorded at Police Post Dakala. The autopsy of the body was performed on the next day at Rajendra Hospital, Patiala. The body was cremated by the family of the deceased. On 15.1.2010, another D.D.R. No. 9 was recorded at Police Post Dakala in which it is recorded that one Surinder Sharma and the deceased were returning to village Sullar after unloading goods at the Truck Union, Patiala; Ram Nath got the truck stopped near the culvert of village Sullar for purchasing some domestic goods and when he alighted from the truck he died due to hit and run by some unknown vehicle.

4. Dr. D.S. Bhullar who performed the post-mortem found an anti-mortem laceration of 1.5 x 0.5 cm, skin deep present on the right eye just below the lateral end of the eyebrow. According to information as received from the police, it is recorded in the P.M.R. that the cause of death was allegedly from attack. Further opinion could only be given after the report of the viscera was received. The P.M.R. is dated 31.12.2009.

5. After the claim for insurance was lodged and the matter was brought before the P.L.A.P.U.S., the Insurance Company wrote a letter dated 29.4.2011 to Dr. D.S. Bhullar, Assistant Professor, Department of Forensic Science, Government Medical College, Patiala, to inform the company of the cause of death of Ram Nath and whether it was due to roadside accidental injury or due to some other reason including natural death to enable the company to inform the Court accordingly. The letter was sent by hand through Sh. Uttam Singh Nagra, a retired police inspector who was the investigator appointed by the company. A note has been recorded by Dr. Bhullar signed on 3.5.2011 that road side accidental injury is not the cause of death in this case. Final opinion regarding cause of death is to be given on receiving reports of H.P.E. and C.E. of Viscera which were still awaited.

6. There can be no doubt that in the present case the exact cause of death or place cannot be ascertained and to that extent Mr. Talwar, learned Counsel appearing for O.I.C.L. may be correct. The death cannot be disputed. It also is not disputed that the death occurred during the currency of the policy of insurance. The post-mortem report also cannot be disputed that an ante mortem injury was found on the body of the deceased being a laceration skin deep present in the right eye just below the hair and the lateral end of the eyebrow. However, what relief the widow would be entitled to would depend on a construction of the recitals of the Nagrik Suraksha Policy against Personal Accident. That there was a bodily injury is a relevant fact. The word "Accident" or

 

"Personal Accident" has not been defined in the policy. It is also not a case of suicide or infliction of intentional self injury to fall in the exclusion Clause 4(i). Whether Ram Nath was under the influence intoxicating liquor or drugs to deny the widow the claim for insurance is also a question of fact which only the Visera or histopathological reports can determine which are not available on record. The opinion of Dr. Bhullar taken after a year and four months that roadside accidental injury was not the cause of death cannot be said to be final medical opinion in absence of reports. One thing appears to be certain that Ram Nath met an unnatural death and O.I.C.L. should have no advantage of repudiation of claim in the circumstances. If a private investigation points to addiction to poppy husk/ heads or intoxicating pills and the addiction pre-existed at the time of selling insurance policy then the company ought to have been circumspect at the outset and to have established that as a medical fact before entering into contract. The P.L.A.P.U.S. may not be incorrect in its reasoning that the claim of the widow would fall in the personal accident cover and not for roadside accident alone. Even if this remains a grey area, it may not be sufficient to accept this as a valid legal argument to throw out the claim. After all in the opening of the Policy the words are clear that the Policy offers Personal Accident cover on account of death. The manner of death in order to entitle or disentitle a claimant is not spelt out. The exclusion clause of the policy would not come to the aid of O.I.C.L. The judgments relied upon by Mr. Talwar are of no help to the petitioner. These are Suraj Mal Ram Niwas Oil Mills (P.) Ltd. Vs. United India Insurance Co. Ltd. and Another, ; United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, ; General Assurance Society Ltd. Vs. Chandumull Jain and Another, and Sikka Papers Limited Vs. National Insurance Company Ltd. and Others, . These cases do not apply to the facts of this case and are distinguishable. There is little doubt that the terms of the contract of insurance and the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any word. The rights and obligations of the parties are strictly governed by the terms of the policy and no exception or relaxation can be given on the ground of equity. The terms should be such as a common man can understand and should be free from booby traps, snares and like surprises. The widow of the insured is not claiming anything more than what is covered by the insurance policy.

For the foregoing reasons, I do not find any cogent reasons which would warrant interference with the impugned order. The writ petition to stand dismissed.

 