
(2008) 04 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Padma Ramanathan

APPELLANT

Vs

National Insurance Co.Ltd.

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Citation : 2008 0 NCDRC 81 : 2008 3 CPJ 86

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Advocate : Vikramjit Banerjee , Vishal Pandey , Joy Basu , Maibam N.Singh

Judgement

1. THE only question involved in this complaint is - Whether death caused due to drowning in a swimming pool can be considered to be accidental death in terms of the insurance policy, which provides that the Insurance Company will pay to the insured or his legal representative if at any time during the currency of this policy the insured shall sustain any bodily injury resulting solely and directly from accident caused by external, violent and visible means. In our view, in the present case, the death caused to the insured is an accidental death as it was not natural and that the insured did not intend to die by drowning. Violent means includes any external, impersonal cause, such as drowning or inhalation of gas or even undue exertion on the part of the assured. In such cases, the death is not due to internal cause and that any cause which is not internal must be external. But this does not mean that the injury must be external. This is the law settled in England for the identical terms of insurance policy. Late Mr.N.Ramanathan was a partner of S.R.Batliboi & Co., a firm of Chartered Accountants. THE firm had obtained a partners personal accident insurance policy from National Insurance Company Limited (hereinafter referred to as the Insurance Co.) for the period between 19.6.96 and 18.6.97 for a total sum of Rs. 25 lakhs. On 14th July, 1996, the insured went for swimming along with his children and wife at Madras Gymkhana Club around 6.15 p.m. At about 7.25 p.m. the insured took his children out of the pool and instructed his wife to attend their shower and change of clothes. After 5 to 7 minutes when the wife of the insured came to the pool area she found commotion at the pool as someone was found at the bottom of the pool. When the body of the deceased was pulled out by a couple of co-

swimmers she came to know the drowned person was her husband. THE insured at that time was unconscious. Extensive efforts were made by persons present at the pool site to revive the insured. As they could not succeed in their efforts, the insured was rushed to the Apollo Hospital where he was declared dead at 2.15 A.M.

2. THE firm which took the policy informed the insurance company about the death of the insured on 19.7.1996. THE Complainant (wife) also informed the Opposite Party about the death of her husband. THE insurance company repudiated the claim by their letter dated 10.09.1999 wherein it has been stated as under:- With reference to the captioned claim we wish to inform you that it has not been established that the death of the insured, Late N. Ramanathan has been caused due to bodily injury solely and directly caused by the external violent and visible means and therefore the claim does not come within the purview of the policy and no liability whatsoever attaches to us for the alleged death of late N. Ramanathan. We are, therefore, filling away the papers as NO LIABILITY which please note. Hence, the present complaint is filed before this Commission.

During the course of hearing, it was pointed out that a similar claim of insurance was settled by two other insurance companies. Thereafter, after hearing the Ld. Counsel for the parties exhaustively, by Order dated 21.11.2007 the Insurance Company was given an opportunity to reconsider its stand, after taking into consideration the settlement made by the Life Insurance Corporation as well as by the New India Assurance Co. Ltd. in similar matter. However, the Insurance Company had taken the stand that it is not possible to settle the matter and that it requires to be decided on merits.

In this view of the matter, we have heard the Ld. Counsel for the parties. Before deciding this matter we would refer to the law settled in England because most of the Insurance Companies have borrowed their forms of the policy from their counterparts in England and the law settled on the subject by the English Courts can be the basis for deciding the matter. (a) In The Law of Insurance by Raoul Colinvaux, Fourth Edition it has been stated by way of illustration as under:- 17-13 Illustrations of accidents But if a man walks and stumbles, thus spraining his ankle, the injury is accidental, for while he intends to walk he does not intend to stumble. In Hamlyan v. Crown Accidental Insurance the assured's injury was due to stooping forward to pick up a marble dropped by a child as it rolled from him. He stood with his legs together, separated his knees, leaned forward and made a grab at the marble, and in doing so wrenched his knee. The injury was held by the Court of Appeal to be accidental, on the ground that the assured did not intend to get into such a position that he might wrench his knee. Further illustrations of an accident within the meaning of an accident policy are provided in cases where the assured was drowned while bathing, where he sprained the muscles of his back in lifting a heavy weight, even though it was in the ordinary course of his employment, and where he took a poisonous mixture by mistake

instead of medicine and died immediately. This would mean that drowning while bathing is covered within the meaning of an accident policy. Thereafter while discussing the phrase which is used in the forms of the policy with regard to violent it has been observed as under:- 17-15 Violent In most of the above cases the policies insured against bodily injury caused by violent, accidental, external and visible means only, but the decisions turned mainly on the question whether or not the particular injury was caused by accidental means. That was because such words as violent, external, and visible have been given wide meanings, practically co-extensive with accidental. Thus violent does not necessarily imply actual violence, as where the assured is bitten by a dog. Violent means include any external, impersonal cause, such as drowning, or the inhalation of gas, or even undue exertion on the part of the assured. The word violent is merely used in antithesis to without any violence at all.

(b) Similarly, in Halsburys Laws of England this aspect is considered in para 578 wherein it has been stated as under:- 578. External and visible means. 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; there may be, and often is, nothing externally visible to indicate the presence of internal injury at all. The effect of the term is therefore to underline that disorders arising within the human body, without ascertainable reference at all to anything coming from outside, are not covered. Therefore, there are certain classes of injury such as hernia, or of disease such as pneumonia or erysipelas (skin infection), where the insured may or may not be entitled to recover, according to whether he can show that some external, as opposed to some internal, cause has operated as the effective cause. 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; if 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. Visible means is an attempted refinement which has not succeeded in achieving any strictly rational meaning. It has been held that an external cause is necessarily a visible one.

(c) Similarly, in the Insurance Law by MacGillivray & Parkington under the Chapter Personal Accidents Policy it has been stated in paragraph 1791 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.

3. IN the present case Ld. Counsel Mr. Joy Basu for the INSurance Company

relied upon the death certificate issued by the Apollo Hospital, Madras wherein cause of death has been stated as under:- Cardio-Respiratory arrest; Hypoxic-ischaemic encephalopathy; Disseminated intravascular coagulation accidental fresh water near drowning. Thereafter there is another certificate of the same date wherein it has been stated as under:- Accidental fresh water drowning; hypoxic ischaemic encephalopathy; Disseminated intravascular coagulation; cardiorespiratory arrest. He further submitted that the cause of death is because of cardiorespiratory and not by drowning. IN elaboration of the said submissions he relied upon the opinion given by Professor and Head of the Department of Forensic Medicine. That opinion is further explained by the Professor in the following manner:- Prolonged Swimming causes exhaustion, Exhaustion causes anoxia, Anoxia leads to myocardial anoxia, Myocardial anoxia causes acute cardiac failure, Acute Cardiac failure resulting in silent drowning.

In our view this opinion would support the cause of the Complainant that the insured died accidentally because of prolonged swimming which finally resulted in silent drowning.

4. FURTHER, there is no question of intention on the part of the insured to die in such a manner. On the contrary after taking the bath for some time he saw that his children were removed from the swimming pool and were sent for shower bath along with his wife. Within five to seven minutes when the wife came back she saw the unfortunate event. In this view of the matter the stand taken by the Insurance Company cannot be justified and hence, we hold that repudiation of the claim is totally unjustified. It is to be reiterated that even the Life Insurance Company and the New India Assurance Company Limited have accepted the claim of the Complainant, and the terms of the LIC policy and the policy in the present case are identical. In view of the above discussion, this complaint is allowed. The Insurance Company is directed to reimburse the Complainant (wife of the deceased) the sum assured, namely, the sum of Rs. 25 lakhs with interest at the rate of 12% per annum from 14.1.1997 till its payment. The Insurance Company is also directed to pay the Complainant a sum of Rs. 50,000/- as cost of litigation.