
(2007) 10 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Rita Devi @ Rita Gupta

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Citation : 2007 4 CPJ 355

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

Final Decision : Revision Petition Allowed

Judgement

1. THE only question which requires consideration is: "whether the death caused by "cold wave" is considered to be an "accidental death" for the purpose of insurance cover"?

2. IN our view, for the purposes of insurance cover death caused by "cold wave" is accidental death. Law on the issue: For this purpose, at the outset, we would refer to the following paragraph from Halsbury's Laws of England (4th Edition, 2003 Reissue, Insurance, 569 and 570) and also the decisions of the Patna High Court in Kamlawati Devi v. State of Bihar and Others, 2002 (3) BLJ 26 and Branch Manager, United India Insurance Company Ltd., Biharshariff at Nalanda with National Insurance Company and Others v. The State of Bihar and Others, 2003 2 BLJ 407:

In the Halsbury's Laws of England, the meaning of the word "accident" is given and also "accidental death" in case of exposure to natural elements as stated to be accidental death- "569. Meaning of "accident"-The event insured against may be indicated in the policy solely by reference to the phrase "injury by accident" or the equivalent phrase "accidental injury", or it may be indicated as "injury caused by or resulting from an accident". The word "accident", or its adjective "accidental", is no doubt used with the intention of excluding the operation of natural causes such as old age, congenital or insidious disease or the natural progression of some constitutional physical or mental defect; but the ambit of what is included by the word is not entirely clear. It has been said that what is postulated is the intervention of some cause which is brought into operation by

chance so as to be fairly describable as fortuitous. The idea of something haphazard is not necessarily inherent in the word; it covers any unlooked for mishap or an untoward event which is not expected or designed, or any unexpected personal injury resulting from any unlooked for mishap or occurrence. The test of what is unexpected is whether the ordinary reasonable man would not have expected the occurrence, it being irrelevant that a person with expert knowledge, for example of medicine, would have regarded it as inevitable. The stand point is that of the victim, so that even wilful murder may be accidental as far as the victim is concerned.

571. Exposure to elements. Even where there are no antecedent circumstances which can be separately visualized and described as "an accident", the results to the victim may nonetheless be accidental. Injury or death caused by lightning, sunstroke or earthquake has been held to be accidental. Similarly, where a man in the course of his work is exposed to excessive heat coming from a boiler and becomes exhausted or has to stand in icy cold water and sustains pneumonia or, having got overheated, is exposed to a draught resulting in pneumonia or sustains sub-acute rheumatism as a result of baling out of a flooded mine, his injuries have been held to be accidental."

3. FURTHER, it is settled law that when two reasonable interpretations of the terms of the policy are possible, the interpretation which favours the insured is to be accepted and not the interpretation which favours the insurer. FURTHER, the terms of the insurance policy are drafted one-sided by the Insurance Company. Therefore, in case the terms of the policy are vague, benefit should be given to the insured and not the insurer. The law on the subject is settled by the Apex Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan & Ors.*, I (1987) ACC 413 (SC)=(1987) 2 SCC 654; *Shashi Gupta v. LIC of India & Anr.*, II (1995) CPJ 15 (SC)=(1995) 1 SCC (Suppl.) 754; *B.V. Nagaraju v. M/s. Oriental Insurance Co. Ltd. Divisional Office, Hassan*, II (1996) CPJ 18 (SC)=I (1997) ACC 123 (SC)=(1996) 4 SCC 648; and *LIC v. Raj Kumar Rajgarhia & Anr.*, II (1999) SLT 362=(1999) 3 SCC 465. In this case, because of the cold wave a number of persons died. Death was due to exposure of natural events. Accident is caused by external violent means. Cold wave not only took the toll of the insured but also a number of other persons. Facts:

4. THIS revision petition is filed against the judgment and order dated 1st November, 2006 passed by the State Consumer Disputes Redressal Commission, Bihar in Appeal No. 564 of 2005, by the petitionerwife of the assured. The assured had taken "Group Janata Personal Accident Insurance Policy" for a sum of Rs. 3,00,000/-, from the respondent-National Insurance Company Ltd., through Golden Multi Services Club of G.T.F.Srespondent Nos. 3, 4 and 5. The validity of the insurance cover was from 15th February, 2001 to 14th February, 2006. The insured, aged 37 years, died on the New Year day i.e. 1st January, 2004, because of extreme cold wave. As the sum assured was not paid, the wife of the assured filed case No. 102 of 2004 before the District Forum, Vaishali,

Hajipur, Bihar. That complaint was dismissed by the District Forum by order dated 18th August, 2005, solely on the ground that death of the assured caused due to cold wave would not be an accidental death. The State Commission, in appeal, confirmed that finding. Hence, this Revision Petition by the petitioner/complainant. Learned Amicus Curiae Mr. Sharma, appearing for the petitioner, vehemently submitted that the State Commission has not followed the well-reasoned two judgments of the Patna High Court, which were cited before the State Commission. In our view the order passed by the State Commission without referring to the well-reasoned judgments rendered by the Patna High Court, is totally erroneous. Findings:

5. IT is undisputed that because of the severe cold wave a number of persons died at various places in the State of Bihar including Purani Bazar Mahua, Vaishali, as per the newspaper reports which are produced on record. We are not referring to the said newspaper reports. This aspect is undisputed.

6. DEALING with the similar contention, the Patna High Court in *Kamlawati Devi v. State of Bihar and Others*, 2002 (3) BLJ 26 and in the case of *Branch Manager, United India Insurance Company Ltd., Biharshariff at Nalanda with National Insurance Company and Others v. The State of Bihar and Others*, 2003(2) BLJ 407, has discussed exhaustively in which set of circumstances the case would be accidental death caused by external violent and any other visible means. Both the judgments refer to various decisions rendered by different Courts. We would first refer to the judgment rendered by the learned Single Judge in the case of *Kamlawati Devi* (supra). In that case also the question came up for consideration was whether the death of the husband of the complainant (petitioner), who was on election duty, can be said to be "resulting solely and directly from accident caused by external violent and any other visible means"? In that case it was pointed out that the husband of the complainant who was on election duty in a village, went to the bank of the river Gandak, flowing by the side of that village, for relieving himself. He came back deeply agitated, frightened and reported to his colleagues that on the bank of the river he had encountered armed miscreants who threatened him with dire consequences if the polling team did not help and cooperate with them during the election on the following day. At about 9.00 p.m. he developed pain in the chest and was sent to the village hospital. Thereafter he came back to the school and died due to heart failure at mid-night. The insurance claim which was made was rejected. Hence, a writ petition was filed before the High Court. The Court allowed the writ petition and observed that the death of the insured was caused due to heart failure and the act of threatening by the armed miscreants was plainly covered by the expression "external violent and any other visible means". In that case also a Memorandum of Understanding (MOU) was executed between the State of Bihar and the Insurance Company whereby after receiving the premium, the MOU provided that in the event of death due to accident while performing election duty the amount of compensation payable would be Rs. 10 lakh in the case of the person belonging to Category "A". The "scope of cover" is as under: "The

insurance is intended to provide for the payment of compensation in the event of death only resulting solely and directly from accident caused by external violent and any other visible means."

To understand the discussion on this aspect, relevant parts of paras 18 to 42 are reproduced below: The question, however, is over the years the Courts have understood and interpreted the restricted cover clause in the insurance policy.

7. ON examining this brand the law of insurance one finds a series of decisions which tend to do away with the distinction between "accidental result/death" and "accidental means". ONE also finds another set of decisions which though maintaining the formal distinction between "accidental result" and "accidental means" have so interpreted the key words in the restrictive clause (e.g. accident, external violence and any other means etc.) as to greatly relax the rigours of the ordinary meanings of those words. Of the cases in which the distinction between "accidental result/death" and "accidental means" was sought to be done away with a fine example is to be found in the U S Supreme Court decision in *Landress v. Phoenix Mut. L Ins. Co.*, (1993) 291 US 491. In *Landress* the judicial view that there was no distinction between accidental death and accidental means found one of its most forceful expressions in the dissenting opinion of Cordozo, J.

8. *LANDRESS* was a case of death by sunstroke. The insured while playing golf one day, fatally succumbed to the heat. His beneficiary claimed compensation under the Insurance policy on the ground that the layman regarded death from sunstroke as accidental death. The majority decision of the Court rejected the claim and held that the claimant must demonstrate something unforeseen or unexpected in the act itself: "For here the carefully chosen words defining liability distinct between the result and external means which produces it. The insurance is not against any accidental result." However, Cordozo J dissented from the majority and in his dissenting opinion observed as follows: "Sunstroke though it may be a disease according to the classification of physicians, is nonetheless an accident in the common speech of men. The suddenness of its approach and its catastrophic nature, have made the quality stand out when thought is uninstructed in the mysteries of science. Violent it is for the same reason, and external because the train of consequences is set in motion by rays of the sun beating down upon the body, a cause operating from without. The attempted distinction between accidental results and accidental means will plunge this branch of the law into a Serbonian Bog. Probably it is true to say that in the strict sense and dealing with the region of physical nature there is no such thing as an accident. On the other hand, the average man is convinced that there is and/so certainly is the man who takes out a policy of the accident insurance. It is his reading of the policy that is to be accepted as our guide, with the help of the established rule that ambiguities and uncertainties are to be resolved against a company. The proposed distinction will not survive the application of that test. When a man has died in such a way that his death is spoken of as an accident, he has died because of an accident, and hence by accidental means. So Court of

high authority have held....."

The dissenting opinion of Cardozo J in *Landress* had great influence on the development of this branch of the law of insurance in the different states in the U.S. Scales Adams F. in his essay "Man God and the Serbonian Bog: The Evaluation of Accidental Death. Insurance" 86 Iowa L Rev. 173 nicely summed up the effect of Cardozo's dissent in the following words: "Cardozo's dissent might have been merely an elegant footnote in the history of accidental death insurance but then a funny thing happened: the *Erie* decision. In an irony made possible by *Erie*'s check on federal common law, the majority decision in *Landress* (being merely an unauthorized exercise in federal common lawmaking) has faded into a widely condemned echo. Only Cardozo's dissent retains substantial influence. And it has been substantial. As might be expected, Cardozo's evocative literary allusion has had a lasting impact on Courts even among those Judges who were not quite sure what a Serbonian Bog was. The dissenting opinion of Cardozo J in *Landress* and its effect on subsequent decisions by Courts have also been discussed in Mac Gillivray on Insurance Law, Fifth Edition, Vol. II, pages 787, 788. The relevant passage is as follows: "Divergence in modern American authorities-In *Landress v. The Phoenix* where the United States Supreme Court decided by a majority that death by sunstroke was not death by violent external and accidental means". Cardozo J. delivered a powerful dissenting opinion in which he held, in effect, that the use of the phrase "external violent and accidental means" adds nothing to the problem which the Court has to consider, which is in every case whether the death or disability was accidental in the usual sense of that word. This opinion has prevailed in a number of jurisdictions, including New York, where, as Conway J has said, there is no longer any distinction made between accidental death and death by accidental means, nor between accidental means and accidental results. [*Burr v. Continental Travellers*, (1946) 67 N E 2d 248] complete a cleavage now exists between the jurisdictions which have adopted the view of Cardozo J and those which have not, and how far-reaching effects of that cleavage are, can be seen from the following examples. Of the jurisdictions in which the view of Cardozo J. has been adopted : In New York assured who took an overdose of veronal in an attempt to cure ear-ache [*Romsbach v. Prudential*, (1938) 7 N E 2d 18] who died from a dose of novocaine properly administered by a medical man [*Aderblum v. Metropolitan Life* (1940) 30 N E, 2d 728], and who exerted force to open a jammed desk and contracted hernia, [*Simson v. Travellers Mutual Accident*, (1942) 45 N E 2d 457] have all recovered under accident policies in the form now under consideration. In Illinois, where the life assured spread petrol in a house with a view to arson, and was killed because it caught fire before he was ready, an innocent beneficiary recovered on the footing of death by accidental means; [*Taylor v. John Hancock Mutual Life*, (1957) 142 N E, 2d 5] and in the district of Columbia, death by sunstroke has been held to be death by external violent and accidental means. [*Raley v. Life Casualty of Tenn*, (1957) 117-A 2d 110, so also New York Life, (1944) 152 P 2d 70] and (Oklahoma) U.S. Fidelity &

Gurantee v. Dowds (1950) 219 P 2d 215]. Of the jurisdictions which have followed the majority decision in Landress case: In Washington it has been held that a death from a heart attack is within such a clause only if the action which led to the attack was unintentional. [Commercial Travellers v. Walsh, (1955) 228 F 2d 200] in Alabama that injury resulting from looking deliberately, at a blow lamp at close range was not covered; [Emergency Aid Ins v. Dobbs (1955) 83 So 2d 335; Cf Gay v. Pacific Mutual Life, (1956) 237 F 2d 448] in Ohio and N Carolina, that the aggressor, in a quarrel, who knows or ought to know that he will be in danger of bodily harm as a natural result of his conduct cannot allege that the resulting injury was caused by accidental means [Hirschfeld v. Kentucky Central Life and Accident, (1951) 103 N E 2d 839]; Scarborough v. World Ins. (1956) 94 S E 2d 558]; but in California, although "accidental means is in that stage given its strict interpretation, it has been held that fist-fighting is not likely to result in death, and that an assured who while so engaged, fell and struck his head on the pavement, died from accidental means [Rooney v. Mutual Benefit Health & Accident, (1947) 170 P 2d 72]; In Tennessee, assured was killed by playing "William Tell" with a pepper pot on his head, and his death, perhaps surprisingly, was held, not through accidental means, Beker v. National Life & Accident, (1956) 298 S W 2d 715)."

9. IF the view propounded by Cardozo J. is to be followed which indeed commends itself to the very strongly, then nothing more is required because no one can deny that the death of Parshuram Singh was the result of an accident and was an accidental death.

10. BUT let us also examine the other view in which though the distinction between accident result and accidental means is formally maintained, the key restrictive words like accident, external, violent and visible means are attributed a very broad and unrestricted meanings. Let us first take the word "Accident". Black's Law Dictionary, seventh edition defines accident to mean as follows: "Accident"-1. An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated. 2. Equity, practice. An unforeseen and injurious occurrence not attributable to mistake, neglect or misconduct-accident, adj.

"The word accident": In accident policies means an event which takes place without one's foresight or expectation. A result, though unexpected, is not an accident; the means or cause must be accidental. Death resulting from voluntary physical exertions or from intentional acts of the insured is not accidental, nor is disease or death caused by the vicissitudes of climate or atmosphere the result of an accident; but where, in the act which precedes an injury, something unforeseen or unusual occurs which produces the injury, the injury results through accident. "(1) A John Allan Appleman & Jean Appleman, Insurance Law and Practice: 360 at 455 (rev. vol. 1981).

11. POLICIES of liability insurance as well as property and personal injury insurance frequently limit coverage to losses that are caused by "accident". In

attempting to accommodate the layman's understanding of the term, Courts have broadly defined the word to mean an occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can be either a sudden happening or a slowly evolving process like the percolation of harmful substance through the ground. Qualification of a particular incident as an accident seems to depend on two criteria: the degree of foreseeability, and (2), the state of mind of the actor in intending or not intending the result." John F Dobbyan, Insurance Law in a Nutshell 128 (3d ed. 1996). Stround's Judicial Dictionary of Words and Phrases, sixth edition defines accident as follows: "Accident; Accidental; Accidentall-The Courts have established a long line of cases which identify the essential characteristics of an accident as an event; which was neither expected nor intended and which causes hurt or loss [Hersey v. White, (1990) 1 Q B 481; Fenton v. Thorley, (1903) A C 433; Boyle v. Wright, (1969) V L R 699; R v. Pico, (1971) RTR 500]. "In deciding for the purposes of an insurance policy whether an event was "accidental" a distinction has to be made whether the cause was the deliberate taking of an appreciated risk, and therefore, not accident, Gray v. Barr, (1971) 2 Q B 554, where a person intending to scare another with a gun shot him; held not accident), and cases where the cause (such as excessive drinking) although a deliberate act, led to the taking of a risk (such as dangerous driving) which was not deliberate and not appreciated but which was nevertheless the immediate cause of the event [Chief Constable of West Midlands Police v. Bellingham, (1979) 1 W L R 747]."

12. IN Mackinnon Mackenzie & Co. v. Ritta Farnandes, 1969 ACJ 419 (a case arising under the Workmen's Compensation Act) the Supreme Court held that even if a workman died from a pre-existing disease, if the disease was aggravated or accelerated under the circumstances, his death results from injury by accident. IN taking this view the Supreme Court noticed with approval a decision of the House of Lords in Clover Clayton & Co. v. Hughes, 1910 AC 242. Coming now to the word "external" used in the expression "accident caused by external violent and any other visible means", it is described in Stroud's as follows: " "EXTERNAL-In an insurance against bodily injury caused by violent, accident, external and visible means" but excepting "natural disease, or weakness or exhaustion consequent upon disease" "external" is used in contradistinction to such unnatural cases as disease or weakness."

The next word is "violent" and violence is defined by Black's as follows: "Unjust or unwarranted use of force, usually accompanied by fury, vehemence or outrage; physical force unlawfully exercised with the intent to harm. Some Courts have held that violence in labour dispute is not limited to physical conduct or injury, but may include picketing conducted with misleading signs, false statements, erroneous publicity, and veiled threats by words and acts."

13. IF in labour disputes the expression violence may include veiled threats by words and acts, I see no reason why plain and open threats by armed miscreants

may not come within the meaning of the word "violent".

14. NEXT the word "visible" is defined by Black's to mean: "Visible: 1. Perceptible to the eye discernable by sight 2. Clear, distinct, and conspicuous." In the Law of Insurance by Raoul Colinvaux (Fifth edition), discussing the true meaning of the expressions "violent, external and visible", the author points out that in a large number of cases though the policies insured against bodily injury caused "by violent, accident external and visible means only", 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 "accident". 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"."

"Similarly "external" is used to express anything which is not "internal" and any cause which is "external" in this sense is also "visible" within the meaning of an accident policy. These words refer to the accident, not the injury, and are used to distinguish injuries covered by the policy from those due simply to such causes as disease or senility which arise in the body of the deceased.

15. THUS the words, "by violent, external and visible means" add little if anything, to an accident policy and have been adversely criticize by the Court of appeal. [Re: United London and Scottish Insurance, Brown's claim (1915) 2 Ch.167]." In the light of the above there can be no denying that the death of Parshuram Singh was an accidental death caused by accidental means. If the view expressed in the book, the Law of Insurance that the words "by violent external and visible means" add little if anything to an accident policy is to be accepted, then his death would attract the insurance cover without anything else. But even if the applicability clause in the MOU is to be given a literal interpretation and the distinction between accidental result and accidental means is to be maintained, I come to the unescapable conclusion that the act of threatening by the armed miscreants was plainly covered by the expression "external violent and any other visible means" and the deceased encountering those threats while he had gone to relieve himself was clearly an accident that triggered off the heart attack and, thus, resulting solely and directly into his death. It appears to me, therefore, that the death of the petitioner's husband was fully covered by the cover clause in the MOU.

16. I would like here to briefly examine some of the cases in which the Courts held that the death was covered by the insurance policy even while maintaining the distinction between accidental death and death by accidental means. In Brown v. Metropolitan Life Ins. Co., (1959, Mo) 327 SW 2d 252, the Court held that the evidence was sufficient for the jury to conclude that the insured's death from a coronary occlusion was effected by accidental means, even though the

insured suffered from pre-existing coronary seterosis and a old myocardial infraction, where the insured was subject to emotional stress from a verbal assault and an actual physical assault by another person. The Court said that if an accident sets in motion agencies that result in death, such injury is regarded as the sole, direct and proximate cause of death, even though the injured person was suffering from physical infirmity or disease. In Bankers" Health & Acci. Co. v. Shadden, (1929, Tex Civ. App.) 15 SW 2d, 704, the insured, a man 50 years of age, in good health, and long a United States mail carrier by occupation, being unable on a cold morning to start his Ford Car by means of the self-starter, undertook to crank it in the usual manner, consuming approximately an hour in hour in doing so, and in the course of his deliveries immediately afterwards, he experienced great discomfort became suddenly worse and declined until he died, before returning from the trip from dilation of the heart due to the strain and exertion involved.

17. IN Railway Mail Ass'n v. Forbes, (1932 Text Civ. App) 49 SW 2d 880, the death of an insured resulted directly, independently, and exclusively of all other causes from a strain on his heart received in lifting a mail sack in the course of his employment, and upon evidence that employee had no heart disease prior to the time of the alleged injury which was or could have been a contributory cause of his death.

18. IN Commercial Travellers INs. Co. v, Walsh, (1955 CA 9 Wash) 228 F 2d 200, 56 ALR 2d 796, the insured, while engaged in receiving heavy sacks of grain when slid down a plank from a truck to the loading floor, instinctively grabbed one and held it for a moment upon seeing that it was about to slip off the plank, thereby straining himself so that he suffered a coronary occlusion. The Court said that although the insured's action in reaching for the slipping sack was unintentional in the instant case, where an insured does a deliberate act and the exertion causes a heart attack; it cannot be held that the death was caused by accident means. In Carrothers v. Knights of Columbus, (1973) 10 III App 3d 73d, 295 NE 2d 307 the insured suffered an acute myocardial infarction and died approximately 50 minutes after engaging in an altercation in a parking lot during which he was struck and his face slashed with a knife, the Court saying that the fatal heart attack was an unforeseen and unexpected result of the stress and activity engendered by the altercation.

In the light of the discussions made above, it plainly appears to me that looked at from any point of view (whether with or without maintaining the distinction between accidental result/ death and accidental means), the death of Parshuram Singh, the husband of the petitioner will be covered by the policy. The stand of the insurance company that his death was not covered by the insurance because there was no bodily injury on his person is plainly misconceived and I am afraid it must be said that the insurance company does not seem to fully realize the correct meaning of the cover clause in the MOU.

19. IN the L.P.A the Division Bench in the case of Branch Manager, United INDia

INSurance Company v. State of Bihar (supra), has affirmed the aforesaid judgment. The Court specifically observed that in such matters, it appears that the INSurance Companies are "belabouring under misapprehension that unless the persons have an external visible injury by external visible means the INSurance Company would not be answerable to it. IN our opinion, the phraseology used in the covers does not have the scope to read external visible injury. The phrase simply says in the event of death only resulting solely and directly from accident caused by external violent and any other visible means." In addition the Court has quoted a passage from "Law of Insurance by Raol Colinviaux (Fifth Edition) discussing the effect and impact of the expression "violent", "external"; and "visible" which is as under: That was because such words as "violent", "external" and "visible" have been given wide meanings, practically co-extensive with "accident".

20. "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."

"Similarly "external" is used to exPpress anything which is not "internal" and any cause which is "external" in this sense is also "visible" within the meaning of an accident Policy. These words refer to the accident, not the injury, and are used to distinguish injuries covered by the Policy from those due simPly to such causes as disease or senility which arise in the body of the deceased." "Thus the words "by violent, external and visible means" add little if anything to an accident Policy and have been adversely criticized by the Court of aPPeal. (Re: United London and Scottish Insurance, Brown's claim (1915) 2 Ch. 167).

21. IN our opinion , in each of the matter the INSurance Company cannot be allowed to gain say that the death was not an accidental death as a result of external violent and visible means.

22. IN the matter of Rajanibai Jamnadas Chamsey v. New INdia Assurance Co Ltd., AIR 1956 Bom. 633, while interpreting the words, Hon"ble Mr Justice Desai as he then was, has observed that: "If I found myself compelled to accept the construction and meaning urged on behalf of the insurers I should not have hesitated to use the off-quoted words of Lord Esher in Cole v Accident INSurance Co. (1899) 5 T L R 736 (B) where it was said, "I hold that this is a policy not to be praised and people ought to be warned against insuring under policies in that form". And even if I had felt that there was ambiguity in the policy I should have followed the rule that words ought to be construed "contra proferentes" and held that the insurers should be held liable because they had not clearly exempted themselves."

His Lordship also observed- "But I am unable to read the clause as Mr. Mody would want me to do. The way I read the clause is that death of the assured

must be caused by bodily injury solely and directly accidental and this must be caused by outward violent and visible means. Indubitably in this clause there is an attempt to define the event assured against by a form of words common in Insurance policies of this nature."

"But the words in my judgment aim only to emphasize that the death must not only be accidental; it must be caused by violent, external and visible means. These expressions, violent, external, and "visible" have come up for consideration before the Courts in England and it has there been held that the word "violent" is used in this connection to express antithesis to "without any violence at all", the word "external" expressed antithesis to "internal". Any cause which is not internal must be external. The injury need not be external. There may be nothing on the surface of the body to disclose its existence. The word is intended to make it clear that causes such as disease which may arise within the body of the assured are excluded from the scope of the policy."

"The decisions of Courts of England are to be found quoted and summarized in Halsbury's Laws of England (2nd Edition) Vol. 18 at page 535, para 849, to which my attention was drawn by learned Counsel on either side. It is there stated that where the actual cause of the injury is external the fact that it is brought into operation by some internal cause has to be disregarded. Thus, if the assured is seized by a fit and is drowned or falls in front of a train and killed death is due to external cause."

" "As to visible" it has been held in England that any cause which is external is visible within the meaning of the policy. The statement of law referred to above clearly goes to support the view that injuries received from a fall must be regarded as external injuries. It also appears that the words "external", violent and "visible" have been given wide meaning by Courts in England and have been regarded practically as co-extensive with the word "accidental"."

"It is also clear that in most of the cases cited in support of the above statement of law from Halsbury's Laws of England the decisions were mainly on the question whether or not the particular injury was caused by accidental means."

"Springs of human action do not always flow from sources influenced by prudence and caution are in fact the key words for appreciating the present conditions and the election conditions in special. One who knows the reality would not close his eyes from it but the one sitting in the ivory tower would always talk of the deteriorating conditions and would always go in search of eldorado. This is the high time to say that everything which glitters is not gold and every transparent stone which shines is not a diamond."

From the aforesaid law developed in other countries and in this country, it is clear that the injury or death caused by lightening, sun-stroke or earthquake has been held to be accidental. Further, where a man in the course of his work is exposed to excessive heat coming from a boiler and becomes exhausted and death occurs, it would be an accidental death. Similarly, a person working in a icy

cold water and thereafter, sustains pneumonia which causes his death, such death is also considered to be an accidental death. Similarly, if the assured is seized by a fit and drowns or falls in front of a train and killed, death is due to external cause and is an accidental death. Death resulting from the threats by miscreants is also considered to be an accidental caused by external violence and visible means. In substance, death which does not occur in the usual course or natural course of events or events/causes which could not be reasonably anticipated is considered to be accidental one. Death due to cold wave is not natural and it would be accidental because all the persons may not get the same effect and it is by natural external violent force. Further, "cold wave" is an untoward event which is not expected or designed, and an ordinary man could not expect the occurrence.

23. HENCE, it is apparent that the death of the husband of the petitioner is covered under the Janta Accidental Insurance Policy issued by the respondent No. 1. It is to be stated that in the present case, cold wave was sudden and due to that a number of persons including the husband of the petitioner suffered massive heart attack as a result of which he died. This undisputed fact was reported in various news papers. In the result, the revision petition is allowed and the Insurance Company respondent No.1 is directed to pay the assured a sum of Rs. 3.00 lakh with interest @ 12% p.a. from 1st July, 2004 (i.e. after six months from the date of accident) till its payment. Insurance Company shall also pay the cost of litigation which is quantified at Rs. 10,000, to the petitioner.

24. RESPONDENT Nos. 3, 4 and 5 shall also pay Rs. 10,000 as costs to the petitioner because they have not rendered any assistance to the complainant in recovering the money from the Insurance Company. We appreciate the assistance rendered by the Amicus Curiae, Shri Ashutosh Sharma, in this case. The Registry is directed to pay Rs. 5,000/- to Shri Sharma, from the "Consumer Legal Aid Account". R.P. allowed.