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In the National Consumer Disputes Redressal Commission

Case No : NO 2790 of 2013

SUJATA APPELLANT

Vs

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Motor Vehicles Act, 1939, Section 185, Section 202

Citation : 2015 3 CPJ 104

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Abhigya, Madhu, Neerja Sachdeva

Judgement

1. Relevant facts in brief are that Sri Madhu Reddy (since deceased) obtained Personal Accident Policy from the OP-The Bajaj Allianz General Insurance Co. Ltd., Pune, Branch, (Maharashtra) valid from 25.01.2010 till 17.01.2015 for a sum of Rs.10,00,000/- where nominee was his wife Smt. Sujata. During the subsistence of the said policy; Madhu Reddy died in a motor vehicle accident on 21.3.2010. The nominee had filed a claim before the OP, but the OP repudiated the claim as the Policy holder was under the influence of alcohol while driving the car at the time of accident. Hence, Complaint No.23/2011 was filed by Smt. Sujatha (wife of deceased) before the District Consumer Disputes Redressal Forum, (in short, ''District Forum'') Nizamabad for claiming the accident benefit and proper compensation.

2. The District Forum, Nizamabad allowed the complaint and directed the OP to deposit Rs.10,00,000/- with interest @ 9% per annum from the date of repudiation i.e. from 07.07.2010,

the OP is further directed to pay Rs.20,000/- towards compensation for deficiency of service and negligence, and Rs.2,000/- as costs.

3. Against this order, the OP filed the First Appeal No. 450 of 2012 before the State Consumer Disputes Redressal Commission, (in short, ''State Commission'') of Andhra Pradesh at Hyderabad. The State Commission reversed the order and

dismissed the complaint. Hence, aggrieved by the order of the State Commission, the complainant/petitioner filed the present revision petition.

4. We have heard the learned counsel for the parties. The counsel for the complainant vehemently argued that there is no proper evidence regarding consumption of alcohol. The FSL report is inconclusive, while the Medical Superintendent of District Hospital, Nizamabad issued certificate for cause of death as "Head injury and intracranial bleed under Ethyl Alcohol intoxication".

5. The learned counsel for the OP vehemently argued that, after thorough enquiry the OP repudiated the claim on the ground that the deceased was under the influence of alcohol. As the Complainant has violated the policy conditions, she is not entitled to claim any amount; hence, the OP has rightly repudiated the claim. FIR, Charge-sheet, PM & FSL Report prove that he expired due to head injury and intracranial bleed under ethyl alcohol intoxication and claim towards death under the influence of alcohol is standard exclusion clause B1(b) of the policy. Clause B 1 (b) of the insurance policy states that, the amount will not be paid, if the death is due to accidental bodily injury while under the influence of liquor or drugs. Therefore, OP prayed for dismissal of the revision.

6. The counsel for OP admitted that, the FSL report did not show any quantification or concentration of Alcohol but, the counsel vehemently argued that the report mentions about presence of Ethyl Alcohol in the organs (Item 1 and 2 of the viscera from post mortem). He further contended that the provision laid down in Motor Vehicles (MV) Act, about alcohol concentration, is not applicable in this case. It has vitiated the terms and conditions of the policy. Therefore, the claim should not be allowed.

7. On careful perusal of FSL report, it is very surprising to note that the doctor who performed PM had not sent the blood sample from the dead body for analysis and to know Blood Alcohol Concentration (BAC). He took only samples as Item 1- the stomach and a piece of intestine and as Item-2 piece of liver and kidney which were sent to the FSL. The FSL report given after analysis is reproduced as below: "Item 1 and 2 are analysed and Ethyl alcohol is found in both of them. No other poisonous substance is found in them"

8. In our view, it was not a conclusive report from the FSL, it leads us nowhere. There was no mention of any alcohol concentration, by which we can decide whether the person was Intoxicated or not? We have perused several literature and medical texts in Medical Jurisprudence and Toxicology, which clearly define about the effects of different concentration of alcohol. It is pertinent to note that as per medical text, the alcohol concentration up to 50 mg per 100 ml of blood is tolerable; such person will not show any signs of intoxication.

9. Intoxication is perceived as a state of mind in which a person loses self-control and his ability to judge. As per Sections 185 and 202 of the Motor Vehicles Act, it would be considered intoxicated only if the person is tested and found to have more than 30 mg of alcohol in his blood, per 100 ml. In the present case, except

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for a mere noting in the Final Opinion Report and the FSL report, no test had been done to ascertain whether Blood alcohol concentration (BAC) had exceeded the legally stipulated limit. The mere smell of alcohol or presence of ethyl alcohol in the tissue samples cannot lead to an inference that a person is incapable of taking care of himself.

10. We are unable to get convinced, that the deceased person was in intoxicated state of alcohol. Earlier we have disposed of two revision petitions RP 3983/2013 and 3984/2013 filed by the same petitioner. In this context, we place reliance upon the judgment of this Commission passed in the Revision Petition 2481-82 of 2013 titled United India Insurance Co. Ltd Vs Sheela & Ors. The Special Leave Appeal (Civil) No 26791-92 of 2014 preferred by United India Insurance Co. was dismissed by Hon''ble Supreme Court, on 8.10.2014. Another judgment passed in Revision Petition 3934/2013 decided on 1/12/2013 in Bajaj Allianz General Insurance Co. Ltd. Vs Smt. Achala Rudraniwas Marde also dovetails with our view. The another judgment of this commission in the case National Insurance Co. Ltd. Vs. Soma Devi & Ors., 2012(2) CPR 467 (NC), observed that, ''Mere consuming of alcohol is not a ground to repudiate insurance claim.'' Both the post-mortem report and the investigator''s report merely state that the deceased had consumed alcohol without giving any details about the actual amount of alcohol if consumed. Even if the post-mortem report stating the deceased had consumed alcohol is accepted, this is not adequate proof that he was intoxicated, in the absence of any evidence regarding the quantity of alcohol consumed.

11. It should be borne in mind that, a person cannot be said to be intoxicated unless alcohol level exceeds the prescribed limit which can only be confirmed through Blood Alcohol Concentration (BAC) is most commonly used as a metric of alcohol intoxication for legal or medical purposes. Therefore, the State Commission''s observations appear to be unscientific one.

12. On the basis of foregoing discussion, we set aside the order passed by the state commission and allow this revision petition. The OP is directed to comply with order, rendered by the District Forum within 90 days'' from the date of receipt of a copy of this order; otherwise, it will carry further interest @ 12% per annum, till its realization. There will be no order as to costs.

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