

(2015) 06 KL CK 0205

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16473 of 2008

Valsala Devi

APPELLANT

Vs

Divisional Manager, Kottayam and Others

RESPONDENT

Date of Decision : 22-06-2015

Acts Referred:

Citation : (2015) 3 KHC 948 : (2015) 3 KLJ 373

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : George Varghese, A.R. Dileep and Kavitha Gangadharan, for the Appellant; S. Easwaran, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J—The issue arising in the above writ petition, filed impugning the award of the Ombudsman, is whether the petitioner is entitled to the additional benefit of "death by accident" as covered in Ext. P1 policy. The policy is said to be one which indemnifies the death and death by accident, the latter entitling double benefit to the beneficiary. With respect to death by accident, the nominee is entitled to Rs. 5 lakhs as indemnity for the death caused and an additional Rs. 5 lakhs as indemnity if such death is caused by an accident. The petitioner, the nominee of the policy holder—who died by reason of a fall from a height, was granted the death benefit, but was declined the accident benefit for reason of the death having not been caused by an "outward, violent and visible means". This is the exact words used in Clause 10(b) of Ext. P1 which refers to the entitlement of an "additional sum equal to the sum assured under this policy, if the life assured shall sustain any bodily injury resulting solely and directly from the accident caused by outward, violent and visible means and such injury shall within 120 days of its occurrence solely, directly and independently of all other causes result in the death of the life assured".

2. The learned Counsel for the petitioner would rely on *Ambalal Lallubhai Panchal Vs. L.I.C. of India*, (2000) 1 ACC 37 : (1999) ACJ 956 : AIR 1999 Guj 280 :

(2001) 104 CompCas 237 : (1999) 2 GLR 214 United India Insurance C. Ltd. v. State of Bihar to contend that, the repudiation made on the ground of the accident itself having been caused by Diabetes Mellitus and Hypertension cannot be sustained. The learned Counsel would also take me through the 4th edition of Halsbury's Laws of England, 4th edition, 2013 (Vol. 25) in which the concept of injuries resulting from accident by violent, external and visible means has been dilated upon on the strength of judicial precedents.

3. The learned Standing Counsel appearing for the respondent Insurance Company however, would urge that, a strict interpretation is necessary in the case of the policies governing the indemnification of death and accident, as has been consistently held by the Hon"ble Supreme Court in Life Insurance Corporation of India and Another Vs. Shri Dharam Vir Anand, (1999) ACJ 84 : (1998) 94 CompCas 663 : (1998) 7 JT 167 : (1999) 121 PLR 328 : (1998) 5 SCALE 584 : (1998) 7 SCC 348 : (1998) 2 SCR 295 Supp : (1999) 1 UJ 56 , The Amravati District Central Co-operative Bank Ltd. Vs. United India fire and General Insurance Co. Ltd., (2010) 4 JT 1 : (2010) 5 SCC 294 : (2010) 4 SCR 661 and Export Credit Guarantee Corpn. of India Ltd. Vs. Garg Sons International, (2013) 4 AD122 : (2013) 116 CLT 395 : (2013) 178 CompCas 341 : (2013) 2 CPJ 1 : (2013) 2 RCR(Civil) 428 : (2013) 1 SCALE 410 : (2014) 1 SCC 686 .

4. The learned Counsel for the insurer relies on these decisions, to persuade this Court to construe the provisions in the policy strictly; not tinged with liberalism or laced with equity. The decisions of the Secretary of State for Education and Science vs. Metropolitan Borough of Tameside in the, 1976 3 All England Law Reports, 665at 696 is placed not as a precedent but for the compelling reasoning, in an identical situation.

5. The background facts are that, the policy holder had been employed in Saudi Arabia and the death was caused in that foreign State, while he was in employment. Ext. P2 is the medical report issued by the Ministry of Health, Kingdom of Saudi Arabia, which diagnosed the death as having been caused by "severe injury in the head after falling down from a high place which caused severe damage to the brain". The "death notification" issued by the hospital is also produced at Ext. P3 in which the cause as indicated herein above is reiterated. The Insurance Company however relies on the "morbid condition" noticed in Ext. P3-Diabetes Mellitus and Hypertension-to contend that this was the cause of death. The ground of repudiation was that, the fall occurred not due to any "outward, violent and visible" means but due to either of the medical conditions referred to in Ext. P3 and hence cannot be said to be an accident eligible for the double benefit under Ext. P12 policy. The repudiation also is in those terms as is evidenced from Ext. P4.

6. Dharam Vir Anand (supra) interpreted the provision in a life insurance policy which excluded suicide, within three years from the date of the policy. The Hon"ble Supreme Court held that the words "date on which the risk commenced" and the "date of policy" have been used distinctly with different connotation and

there can be no interpretation rendering the clause itself otiose. Amravati and ECG (both supra) reiterated a principle; succinctly stated in the latter decision at para 13:

"Thus, it is not permissible for the Court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of equity. The liberal attitude adopted by the Court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement."

7. That the terms of the policy has to be strictly construed brooks of no dispute. Amravati (supra) was with respect to the interpretation of an "excess" clause applicable inter alia to each action of embezzlement by an employee. The Arbitrator combined the amounts embezzled and applied the excess clause while the embezzlement by the employee related to various instances spread over a period from various accounts. The Hon"ble Supreme Court held the excess clause applied to each such instance, and that which came within the amount specified in the clause, in each of such instances was the liability of the insured. ECGC (supra) related to the issue of non-compliance of a clause; requiring information to be supplied of default within the period stipulated which was not complied with. Dharam Vir Anand (supra) dealt with an interpretation rendering otiose a specific clause in the policy. None of these, on facts, apply herein. There is no doubt that the terms have to be interpreted strictly not rendering otiose any stipulation condition.

8. N. Shanker Reddy (supra) was a case in which a similar policy came up for consideration, of death allegedly due to a fall. But, the circumstances cannot be said to be identical. There was absolutely no evidence placed on record to show that the life assured had fallen as contended and that death was due to the said fall. No police report, post-mortem report or Doctor's certificate was available. Neither was there any plausible explanation offered as to how the fall occurred nor was there any details of injuries which ultimately is said to have caused the death. The National Commission in fact, found fault with the finding of the District forum that, it was the liability of the insurer to prove that the death of the insured was by reason of a natural cause.

9. The ground of repudiation postulates that either Diabetes Mellitus or Hypertension caused the fall and the accident if at all, cannot be attributed to an outward cause. Only a cause which can be attributed to a third party; would come within the coverage of the policy entitling the beneficiary for the additional benefit, is the argument.

10. In the present case, it is very evident that, death was not caused due to Diabetes Mellitus or Hypertension, which medical conditions could cause the death of a person suffering from such conditions. The word "morbid" is often

used with reference to feelings as in a "morbid fear of heights" and also refers to an unhealthy situation; often, psychologically and at times physiologically too. The mere reference to Diabetes and Hypertension as the "morbid condition" does not necessarily lead to the conclusion that death was caused due to these or even that the fall was due to either of the said medical conditions. A death by reason of hypoglycemia or an elevated blood pressure, though cannot be totally ruled out, here the reference is only to such "unhealthy" conditions of the deceased. The said conditions were not definitely the cause of death which cause is evident from Ext. P3. Looking at Ext. P3 it cannot also be said that, the fall was caused by either of the said medical conditions.

11. It is the submission of the learned Counsel for the insurer, that an accident/slip causing death, would not fall within the strict interpretation of the clause as incorporated in the policy. This Court is unable to accept such a contention. Then the exclusion should be of an accident, occurred other than that induced by a third party. To say that, if the fall occurred by reason of another pushing the policy holder, then the accident would be covered, is to stretch the interpretation of the words used in the policy.

12. The overwhelming evidence in the present case i.e. the post-mortem certificate and the medical certificate, clings the issue in favour of the policy holder in the present case. This distinguishes the said case considerably from N. Shanker Reddy (supra) and the reasoning therein would not be applicable to the circumstances herein. The decisions cited by the learned Counsel for the petitioner too does not apply on facts, since in one of them the death was caused by dog bite and in the other due to heart failure, a direct consequence of the violent threats made by a mob.

13. The commentaries in Halsbury's Laws of England speaks about "violent, external and visible means" and deals with policies with stringent terms in the following manner:

"576. Injury resulting from accident caused by violent, external and visible means. A form of clause now in common use in accident insurance to indicate the kind of injury covered by the policy is "injury resulting solely and directly from accident caused by violent external and visible means". Phrases of this kind were introduced to limit the width which might be covered by a general phrase such as "injury by accident". It does not seem, however, that anything of any substance has been achieved by the change of formula.

577. Violent means. In relation to the injuries covered by a policy of accident insurance, "violent" has been interpreted as connoting the antithesis to "without any violence at all". It does not, therefore, postulate the presence of brutal strength or savage temper, as when the victim is bitten by a dog. Again, an external cause of death, such as the inhalation of gas, may, it seems, be violent in as much as it does violence to the human frame by rendering it incapable of functioning. Similarly, where the cause of injury is some extra exertion or

exercise of effort on the part of the insured, as where he stoops to pick up a marble, it is violent in the sense that it does damage impairing the bodily functions, however impaired they may have been before.

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 gets 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.

579. Special kinds of accident. Sometimes the protection of the policy is limited to accidents of a particular kind, such as railway accidents or accidents of transit. To give rise to a claim it is not necessary, unless the policy so provides, that there should be an accident to the train or vehicle by which the insured is travelling; it is sufficient if the accident happens in the course of the transit and arises out of the fact of the journey. The accident may happen during the actual transit, whilst the vehicle is in motion; but the policy is equally applicable to an accident which happens whilst the insured is in the act of entering or leaving the vehicle at the beginning or end of his journey, as, for instance, where he slips on the step of the vehicle. Where the insurance covers accidents in the course of a journey undertaken for business purposes, the journey must have been undertaken primarily, not incidentally, for business purposes; but if some other purpose is an equal reason for undertaking the journey, the insurer will be liable if it is not the primary purpose."

14. What is covered, evidently is an accident caused by an "outward, violent and visible means". It cannot at all be said that, only an accident caused by a third party would be covered under the said clause. Whether it be induced by a third party or by reason of a mere slip or as in the present case, an accident, a fall would be an accident coming within the coverage of the policy; if it is fatal. Even if the fall were by reason of either Diabetes or Hypertension, then too it would be an accident insofar as the medical condition which caused the fall was not the

cause of death. Death was solely due to the fall and was directly occasioned by the injury to the head, caused in the fall. The "outward, violent and visible cause" is the head injury which injury alone was the cause of the death. The fall and the injury to the head, which occasioned death, is the outward cause, as distinguished from an internal cause like a hemorrhage or hypoglycemia. The injury is visible as also was due to the violence of the fatal fall. In such circumstances, this Court is not inclined to uphold the award of the Ombudsman. The award at Ext. P10 would stand set aside. The respondent Corporation shall on production of the certified copy of the judgment, pay the amounts due under the policy being the additional benefit of death caused due to accident, within a period of two months from the date of receipt of a copy of this judgment, with interest at the rate of 6% from the date on which the other amounts were paid. But however, excluding the 8 months delay occasioned in the filing of the writ petition.

The writ petition is allowed.