

Court No. - 40

Case :- WRIT - C No. - 31194 of 2023

Petitioner :- Santosh Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Parv Agarwal

Counsel for Respondent :- CSC, Arun Kumar Shukla, Vipul Kumar

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Shri Parv Agrawal, learned counsel for the petitioner, Shri Arun Kumar Shukla, learned counsel appearing for the respondent no. 3- United India Insurance Co. Ltd. and Shri Ambrish Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. Santosh Kumar is before this Court with request to issue a writ, order or direction in the nature of mandamus commanding/directing the District Magistrate, Kaushambi (respondent no. 2) and the Divisional Manager, United India Insurance Co. Ltd., Prayagraj (respondent no.3) to pay the amount of compensation of Rs. 5,00,000/- under the "Mukhyamantri Kisan Evam Sarvhit Beema Yojna", which was duly accepted by the District Committee on 19.06.2020 accepting the claim set up by the petitioner and directing the Insurance Company to pay an amount of Rs. 5/- lakhs to the claimant/petitioner.

3. Learned counsel for the petitioner has vehemently contended that for the welfare of landless farmers, who are related to agricultural activities including fishing, milk producing, pig farming, bee keeping etc., the State Government introduced an insurance scheme known as 'Samajvadi Kisan Evam Sarvhit Beema Yojna' in the year 2017 and accordingly, the respondent no.3 had entered into a Memorandum of Understanding with the State Government to implement the scheme in question. It is claimed that the mother of the petitioner, who was the recorded tenure holder, met with an accident on 20.03.2019 and eventually, succumbed to the injuries. He submits that it is not in dispute that the mother of the petitioner died in the accident on 20.03.2019. She was below the age of 70 years and her income was less than Rs.75,000/- *per annum*. The petitioner, being the legal heir and

dependent of the deceased, moved an application under the aforesaid scheme for *ex-gratia* payment. Finally, the District Level Committee headed by the District Magistrate *vide* an order dated 19.06.2020 has accepted the claim set up by the petitioner purely on merits. The relevant portion of the decision is reproduced herein :-

"44- मृतका राजकली (फाइल न० के-163) तहसील चायल की दावा पत्रावली को बीमा कम्पनी ने यह कहते हुए अस्वीकृत कर दिया गया है कि दावाकर्ता मृतका का शादीशुदा पुत्र है, जो कि परिवार का मुखिया व रोटी अर्जक है। दावाकर्ता मृतका पर आश्रित नहीं है। जो पालिसी शर्तों में आवरित नहीं है। दावा पत्रावली का अनुशीलन किया गया कि इस परिवार में राजकली देवी के नाम खेती है , उसके एक मात्र पुत्र- संतोष, दावाकर्ता है। इस प्रकार दावाकर्ता को अलग परिवार नहीं माना जा सकता है। दिनांक 27.9.19 को समिति द्वारा दावा स्वीकार कर लिया गया है, किन्तु शादीशुदा पुत्र मानते हुए भुगतान नहीं किया जा रहा है। उम्र 22 वर्ष है।"

4. Learned counsel for the petitioner, in this backdrop, states that the claim of the petitioner has been accepted by the District Level Committee *vide* order dated 19.06.2020 but till date the compensation has not been ensured by the Insurance Company. At no point of time, the said order has been challenged and for all practical purposes, the order dated 19.06.2020 has attained finality. In support of his submission, he has placed reliance upon the judgement and order dated 6.4.2022 passed by learned Single Judge in **Writ-C No. 5317 of 2022 (Oriental Insurance Co. Ltd. v. Smt. Kuntesh & 2 others)**. The operative portion of the judgement is reproduced herein below:-

"51. Thus, the principle being invoked by learned counsel for the petitioner - of 'main'/'sole' bread winner or of 'wholly/solely dependent' is unreal and artificial. If applied it would lead to absurd results. Looked through the eyes of the beneficiary, it may appear a bourgeois construct. It would stand in direct conflict to the socialistic soul of our Constitution. In that circumstance, the principle - each drop fills the bucket is more appropriate and apt. There, may not arise any surplus to such family and all money earned by different hands may, at best, be just enough. Each rupee or each hand full of grain earned would be equally valuable. It is impossible to differentiate between hands when each brings only a handful. In such an unfortunate and extreme circumstance, the concept of 'wholly dependent' is purely academic and a thought that may lead to absurd results. It is therefore, rejected.

52. Therefore, the only reasonable construction that may be given to the coverage clause under the Insurance Policy read with the Government Policy is to allow for coverage of each adult earning hand of an eligible family (below 70 years of age), including its 'Mukhiya / head of the family'. The fact that he may or may not be the sole bread winner, to a lesser or greater extent, would not be relevant. The eligibility would be subject to the general exclusions provided under the Insurance Policy, noted above.

53. That said, in the unfortunate occurrence of more than one death during the policy period, the insurer may be exposed to honour only the first claim per eligible family. It is so because as noted above, the 'Object' and 'Eligibility' clauses of the Government Policy and the Insurance Policy contemplate insurance coverage to overcome destitution described as 'Asuraksha / Vippati' arising from the death of an earning hand. Second, the coverage of life was provided (under the Insurance Policy) to an estimated 2939000 persons being the exact number of eligible families estimated and as recorded in Clause 4 of the Insurance Policy, against accidental loss of life of an earning member, as may plunge the family income below Rs. 206/- per day. That is the level of family income that the Government Policy (that is part of the Insurance Policy) recognised, both as the money required to survive and also as a factor to identify the beneficiaries who need the insurance cover to sustain basic human existence. The quantum of compensation is also equal to about 6-7 years of that minimum income support.

54. Further, in absence of any clause, words and expressions used, either under the Insurance Policy or the Government Policy to provide individual coverage to all bread winners, in an eligible family, it appears, during the policy term from 14.09.2018 to 13.09.2019, death of only one earning member of an eligible family would stand covered. The stroke - '/' mark placed between the words 'head of the family' & 'Bread Earner' under Clause 1 i.e. coverage clause of the Insurance Policy also suggests the same intent. To that extent, the submission of learned counsel for the petitioner carries weight. The object was to provide minimum and immediate succour to eligible family and not to compensate for all losses of lives suffered, by an eligible family, in one policy term. If accepted, that may amount to re-writing the contract which the Courts may not do.

55. Insofar as the present case is concerned, at the time of death of Rahul Kumar, he was found to be engaged in agricultural activity, though along with his father. The Permanent Lok Adalat has found, the deceased was also engaged in some manual labour drawing earning therefrom. That finding is not perverse. Undisputedly, he was more than 18 years of age during the policy term. Therefore, he was a person covered under the Insurance Policy as a bread winner of his family though he may not have been its 'Mukhiya'. He was a bachelor, contributing to his family's meagre income below Rs. 75,000/- per annum.

56. To that extent his entire family including his father Rajkumar would have

been partly dependent (on deemed basis), on his frugal material contributions, as a means of their daily survival, as a unit. To that extent, his father Raj Kumar would also have been partly-dependent on him. Since Rahul Kumar died during his father's lifetime and the claim therefrom arose first, the Permanent Lok Adalat has not committed any error in allowing the same. The challenge raised in the writ petition is found lacking in merit. Sri Ojha has also stated, similar claim made upon the death of Rajkumar was rejected by the Permanent Lok Adalat. It has attained finality.

57. It is however provided, in the event, petitioner pays up the awarded amount within a further period of one month from today, the petitioner would not be liable to pay any interest. If however such payment is not made within the time thus extended, the petitioner shall remain exposed to interest liability provided under the impugned award. "

5. *Per contra*, learned counsel for the respondent-Insurance Company has resisted the claim set up by the petitioner only on the ground that the deceased was not head of the family and the petitioner was not dependent upon her. In support of his submissions, he has placed reliance upon the judgement and order dated 09.05.2019 passed by a Division Bench of Lucknow Bench of this Court in Misc. Bench No.13240 of 2019 (**Ram Piyare vs. State of U.P. thru. Chief Secretary & Ors.**), wherein, the claim of Ram Piyare (supra) was rejected and the writ petition was dismissed on the ground that Ram Piyare was not dependent on his father. He submits that the claim set up by the petitioner is unsustainable and accordingly, the writ petition is liable to be dismissed. He further submits that in the connected matter, the claim of the petitioner has already been accepted by the Insurance Company and accordingly, the cheque has also been prepared in the present matter. A copy of the cheque dated 18.11.2023 has also brought on record.

6. We have proceeded to examine the record in question and find that the claim of the petitioner has already been accepted by the District Level Committee vide order dated 19.06.2020 with categorical terms. The District Level Committee is the Competent Authority to process the claim set up by the incumbent at the gross-route and it has found that the claim of the petitioner is sustainable. Admittedly, the Insurance Company has not filed any writ petition challenging the said order and for all practical purposes the same has attained finality. At this stage, we are not inclined to upset the claim set up by the the petitioner only on the

ground that the deceased was not head of the family and the said aspect of the matter has already been elaborately dealt with by learned Single Judge in Writ- C No. 5317 of 2022.

7. In the aforesaid facts and circumstances, we are not inclined to accept the objection so raised by the Insurance Company and the same stands rejected.

8. As it is informed that in response to the order dated 19.6.2020 passed by the District Committee, the Insurance Company has already prepared a cheque of Rs.5 lacs in the name of District Magistrate, Kaushambi, let the same be submitted before the District Magistrate, Kaushambi within two weeks and, thereafter, the District Magistrate shall release the said amount in favour of the petitioner forthwith.

9. With the aforesaid direction, the writ petition stands **disposed of**.

Order Date :- 24.11.2023

Rama Kant