

Court No. - 8

Case :- WRIT - C No. - 1007235 of 2015

Petitioner :- Oriental Insurance Co. Thru. Senior Divisional Manager

Respondent :- Smt. Ranjana And 3 Others

Counsel for Petitioner :- Miss Alka Saxena

Counsel for Respondent :- C.S.C., Dhruv Kumar

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner; Shri Dhruv Kumar, learned counsel appearing for claimant/respondent no.1 & 2 and learned C.S.C. who appears to assist on behalf of respondent nos.3 & 4 and in terms of the order dated 01.08.2023.

2. Present petition has been filed challenging the order passed by the Permanent Lok Adalat dated 07.09.2015 wherein the Permanent Lok Adalat was of the view that the Insurance Company should take the decision with regard to the claim on account of death in terms of the agreement and in terms of the policy issued under a scheme known as Janta Personal Accident Policy (hereinafter referred to as 'the JPA Policy').

3. The facts, in brief, are that the husband of Opposite Party No.1 and father of Opposite Party No.2 passed away on 15.10.2010 on account of an accident suffered by him. The case of the claimants before the Permanent Lok Adalat was that the husband of Opposite Party No.1 and father of Opposite Party No.2 was a registered farmer having Khatauni in his favour, and died while he was replacing a tyre. The said claim was refused by the petitioner Insurance Company mainly on the ground that the policy was not effective from 19.11.2009 up to 18.11.2010 and had come to an end on 12.10.2010 as the premium agreed in between the Insurance Company and the State in terms of the agreement dated 19th day of November, 2009 was not paid.

4. In sum and substance, the claim of the petitioner Insurance Company was that as the premium has not been paid, the Insurance Company was not liable to pay any amount. In that regard, reliance has been placed upon provisions of Section 64VB of the Insurance Act. It is further argued by counsel for the petitioner that the Permanent Lok Adalat has no jurisdiction to pass the order.

5. Learned counsel for the respondents, on the other hand, draws my attention to the agreement in between the Government of U.P. and the Oriental Insurance Company

Limited made on 19th day of November, 2009 (Annexure - 2), which was effective for a period of one year. In terms of the said agreement in between the parties, it was agreed that the JPA Policy issued by the Insurance Company shall be valid for the period of one year from 19.11.2009. It was specifically stated that the number of farmers covered under the policy shall be 2.50 crore and the premium rate would be fixed at Rs.21.84/- per farmer per year for a one lakh of Capital Sum Insured. In terms of the said agreement, stipulations were made with regard to entitlement. The exclusions in terms of the agreement are contained in Clause - 17 of the Agreement, which reads as under:

"17. Exclusions:

Oriental Insurance Company Limited shall not be liable under this policy for:

(i) Compensation under more than one of the categories specified in the Basis of Assessment of the JPA policy document in respect of the same period of disablement of the Insured Person under this policy.

(ii) Any other payment to the same person under this policy after a claim under one of the categories I & II as specified in the Basis of Assessment of the JPA policy document of claims has been admitted and become payable. However, this exclusion shall apply only to this policy and shall in no way affect benefits derived by the Insured Person or his/her legal heir(s) under any other Insurance policy or scheme.

(iii) Any payment in case if more than one claim in respect of such Insured Person, under this policy during any one period of insurance by which the sum payable as per the Basis of Assessment of claims of this policy to such Insured Person exceeds the maximum liability of Oriental Insurance Company Limited as applicable to such Insured Person.

(iv) Payment of compensation in respect of death, injury or disablement of Insured Person.

(a) From intentional self-injury, suicide or attempted suicide.

(b) Whilst under the influence of intoxication of liquor or psychotropic drugs.

(c) Whilst engaging in aviation or ballooning or whilst mounting into, or dismounting from or traveling in any balloon or aircraft other than as a passenger (fare-paying or otherwise) in any duly licensed standard type of aircraft anywhere in the world. Standard type of aircraft means any aircraft duly licensed to carry passengers (for hire or otherwise) by appropriate authority irrespective of whether such an aircraft is privately owned or chartered or operated by a regular airline or whether such a aircraft has a single engine or multiengine.

(v) Payment of compensation in respect of death, injury or disablement of the Insured Person due to, or arising out of, or directly or indirectly

connected with or traceable to war, invasion, act of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, mutiny military or usurped power, seizure, capture arrests, restraints and detainment of all kinds.

Payment of compensation in respect of death or bodily injury on any disease or illness to the Insured Persons:

(a) Directly or indirectly caused by or contributed to by or arising from ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this exception, combustion shall include any self sustaining process of nuclear fission.

(b) Directly or indirectly caused by or contributed to by or arising from nuclear weapon materials.

(vi) Death or disablement directly or indirectly caused by and/or contributed to and / or aggravated or prolonged by child birth or pregnancy or in consequence thereof.

(vii) Payment of compensation in respect of injury or disablement directly or indirectly arising out of or contributed by or traceable to any disability existing on the date of issue of this policy."

6. Clause 18 of the said Agreement specifies that the determination of the beneficiaries of claim could be in terms of the provisions of Section 171 to 174 of U.P.Z.A. & L.R. Act.

7. It is important to note Clause 24 of the Agreement, which is as under:

"24. This Agreement shall be implemented by following a procedure so that the claims are accepted as a rule and are rejected as an exception, in case the farmer dies of accidental death and when this fact comes in the knowledge of Oriental Insurance Company Limited as per this Agreement, and if there is any shortcoming or deficiency in the documents filed, the Oriental Insurance Company Limited would itself make an inspection for confirming the cause of death and shall make the payment accordingly. The claims shall not be rejected or repudiated on mere technicalities."

And Clause 25 of the Agreement on which the petitioner has placed heavy reliance, which is also as under:

"25. The Oriental Insurance Company Limited has agreed to submit a Bank Guarantee in favour of Commissioner and Secretary, Board of Revenue, U.P. Lucknow of 10% of the total annual premium amount equivalent to Rs.5,46,00,000/- (Rupees five crore forty-six lakh only) and this amount shall be treated as Performance Security."

8. It is also essential to note Clause 28 of the Agreement, which is quoted herein under:

"28. In case of any inconsistency between the provisions of the Agreement

and the provisions of JPA policy document, the provisions of this Agreement shall prevail over the provisions of JPA policy document."

9. In the light of the said, this Court is to decide with regard to the claim and the contentions of counsel for the petitioner.

10. The contention of counsel for the petitioner that as the entire premium agreed upon was not paid by the State the policy would lapse, flows from the mandate of Section 64VB of the Insurance Act. It is no doubt true that the Insurance Act provides for consequences on account of non-payment of premium, however, it is well settled that Insurance is a contract which has to comply with the provisions of the Contract Act. In the present case, the agreement executed in between the State and the Insurance Company can, in terms of the provisions contained in Clause 28 of the Agreement, make the provisions of the agreement over and above the policy document. The said Agreement is clearly novation of a contract of policy entered into in between the State and the Insurance Company. Once an agreement is executed and there is a stipulation that the same would prevail over the policy document, the exclusions contained in Clause 17 of the Agreement alone be raised by the Insurance Company to deny any benefit.

11. In the present case, the ground taken with regard to non-payment of the premium amount by the State Government is neither substantiated by any evidence nor can be looked into in view of the provisions of Clause 17 and Clause 28 read in consonance.

12. Contention of counsel for the petitioner also merits rejection in view of the mandate of Section 64VB of the Insurance Act and also in terms of the specific provisions contained in Clause - 26 of the Agreement. Section 64VB reads as under:

"64VB. No risk to be assumed unless premium is received in advance.—

(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. —Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

13. Considering the next submission of counsel for the petitioner that Permanent Lok Adalat could not decide the issue as there was no conciliation, merits rejection inasmuch as in the impugned award the Permanent Lok Adalat has not taken any decision and has relegated the matter to be decided by a committee presided over by the District Magistrate duly empowered under the agreement to take a decision and it has not actually decided any issue, more so, in respect of the claim of the respondents for compensation.

14. In view of the findings recorded above, the next question to be decided by this Court is whether to relegate the parties to appear before the committee of the District Magistrate or to take a decision by this Court in respect of the claim of compensation?

15. As the death had occurred in the year 2010 and more than 13 years have passed since the death and the family of the deceased on which they were dependent has considerably suffered coupled with the fact that it is the duty of all the Courts to avoid the technicalities and to award just compensation as laid down in the case of **Rajesh v. Rajbir Singh; (2013) 9 SCC 54**, I deem it appropriate to decide the quantum of compensation in the present proceedings itself, more so, as there is no dispute with regard to the occurrence of death, and the amount to be awarded in terms of the policy and the subsequent agreement also stands crystallized at Rs.1 Lakh.

16. In view thereof, I direct that a compensation at the rate of Rs.1,00,000/- (Rupees One Lakh) be paid to Opposite Party Nos.2 & 3 jointly alongwith interest at the rate of 9 per cent per annum from the date of filing of the claim before the Permanent

Lok Adalat till actual payment/realization.

17. The writ petition is ***disposed off*** in above terms.

Order Date :- 22.11.2023

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