**CWP-1098-2019 (O&M)****-1-****IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH****209****CWP-1098-2019 (O&M)
Date of Decision: 05.11.2024**

Krishan Gopal Gupta

..... Petitioner

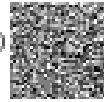
VERSUSThapar Institute of Engineering and
Technology, Patiala & anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.Present: Mr. Shailendra Sharma, Advocate,
for the petitioner.Mr. Rajat Khanna, Advocate
Mr. Vijay Pratap Singh, Advocate
Mr. Vishal Saini, Advocate
Mr. Balwan Singh, Advocate
for the respondents.**VINOD S. BHARDWAJ, J. (ORAL)**

Prayer in the present petition is for directing the respondents to pay the insurance amount to the petitioner, on account of accidental death of his son in a freak incident. Aggrieved of non-payment of the said amount, despite submission of representations, the instant writ petition has been filed.

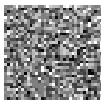
Learned counsel for the petitioner contends that petitioner's son Tarang Gupta was admitted in Bachelor of Engineering (Electronics) (Instrumentation and Control) Course with the respondent-University in the month of July, 2016. He contends that the respondent-University had charged a sum of Rs.1,73,900/- towards fee for 1st Semester, which also included an amount of Rs.400/- on account of medical fee and Insurance charges. The fee structure upto 8th Semester for a degree course had been



duly prescribed. The 1st Semester was completed by his son in December, 2016 and on the basis of his performance in the 1st Semester, the stream of Tarang Gupta was upgraded to Mechanical Engineering. The petitioner paid the 2nd Semester fee amounting to Rs.1,51,900/- and 3rd Semester fee w.e.f. July 2017 amounting to Rs.1,63,900/-. The respondents were charging Rs.400/- towards medical fee and insurance charges for each semester from the students. In an unfortunate accident which took place on 17.12.2017, the son of the petitioner expired while in hostel. A condolence resolution was also passed on account of the death of Tarang Gupta highlighting his academic achievements.

The petitioner claimed insurance amount on account of death of his son to be given to him since the premium amount had been regularly deposited by him along with Semester fee. However, the same was not done. An application dated 30.08.2018 under Right to Information Act was also filed by the petitioner for seeking information regarding the agency from where the life of the students was insured and further the amount of the insurance cover on the basis of premium charged, whereupon it was informed that the respondent-Institute is a private authority and is thus not covered under the domain of the RTI Act.

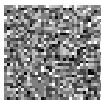
The petitioner has, thus, approached this Court claiming that as the respondents were charging Rs.400/- per semester towards medical fee and insurance charges from each student admitted in the respondent-Institute and that a sum of Rs.1200/- had already been paid towards its premium by the petitioner, hence the admissible insurance benefits ought to be extended to him.



A written statement dated 22.07.2019 was filed on behalf of the respondent-Institute raising objections that it being a privately managed un-aided Engineering Institute of the country is not amenable to the writ jurisdiction of this Court. While admitting the factum of admission having been granted to late Tarang Gupta as well as other factual aspects, it was stated that Institute had purchased the ‘insurance policy of students’ under the ‘Group Personal Accident Policy’ from ‘ICICI Lombard General Insurance Co. Ltd.’ in the year 2016 bearing policy No.4005/107827261/00/000. Based on the said policy another policy bearing No. 4005/107827261/02/000 dated 01.10.2017 was issued to the respondent-Institute and an amount of Rs.7,22,055.72 had been paid by it as premium against the said policy. The period of insurance was from 01.10.2017 to 30.09.2018. The said policy covered ‘accidental death’, loss of limbs, loss of eyes etc. The relevant part of the policy is extracted as under:-

"Part I of Policy: Policy Schedule

<i>Policy No 4005/107827261/02/000</i>	<i>Issued at MUMBAI</i>
<i>1. Name of the Insured:</i>	<i>THAPAR UNIVERSITY</i>
<i>2. Mailing Address of the Insured:</i>	<i>Thapar Technology Campus Bhadson Road PatialaPunjab Pin-147001</i>
<i>4. Period of Insurance: Hours</i>	<i>From 01/10/2017 Time: 00:00 To Midnight of 30/09/2018</i>
<i>5. Total numbers of person to be insured</i>	<i>16594</i>
<i>6. Total Capital sum Insured</i>	<i>6,457,974,700.00</i>
<i>7. Details of persons to be insured:</i>	<i>As per Annexure attached</i>
<i>8. Benefit Table:</i>	
<i>A- <u>Accidental Death only- 100%</u></i>	



*B-accidental Death + loss of limbs+ loss of eyes+ Permanent Total
Disablement*

9. Premium

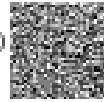
<i>Premium Break Up</i>	<i>(Rs.)</i>	<i>Premium (Rs.)</i>
<i>Stamp Duty</i>	<i>(Rs)</i>	<i>68.00</i>
<i>Total Premium</i>	<i>(Rs.)</i>	<i>722,055.72</i>

- *Premium value mentioned above is inclusive of taxes applicable.*

10. Conditions/Endorsements

- 1. B-Accidental Death + loss of limbs + loss of eyes + Permanent Total Disablement.*
- 2. Policy is issued on Unnamed basis, DOJ Confirmation and Photo ID Proof Required at the time of Claims.*
- 3. At any point of time if number of lives is found to be more than 16594, unless a premium bearing endt is passed, no claims will be payable.*
- 4. Policy is issued on Unnamed basis and all claims admissible subject to DOJ of the employees will be on or post policy inception date.*
- 5. Age Limit for Parents 18-65 years*
- 6. Age Limit for Students 18-30 years*
- 7. Total liability of Lombard is respect of each Insured beneficiary (member) shall not exceed the amount attached to single UHID/Unique ID irrespective of number of UHIDs/Unique IDs he is covered under the policy.*
- 8. Risk Category I & II are covered*
- 9. Premium to be charged on prorated scale for addition/deletion endorsement.*
- 10. Any endorsements will be from the date of addition and not from the inception of the policy.*
- 11. Premium shall not be refunded for deletion if any claim is paid during the policy*
- 12. Terrorism is covered, however, terrorism activity arising out of Nuclear, Biological and/or Chemical means is excluded from the scope of this policy*
- 13. A-Accidental Death only -100%.*

11. Special Conditions:



1. Below mentioned activity shall be outside the scope of the policy:-

Professional sports team in respect of specific benefit for inability to perform

Participation in any kind of motor speed contest.

While engaged in aviation, or whilst mounting or dismounting from or traveling in any aircraft. (Not applicable for fare Paying Passengers)

Underground mining & contractor specializing in tunneling

Naval, military or air force personnel

Radioactivity, Nuclear risks, ionizing radiation

Drivers are excluded from the policy

Animal bite/Snake Bite/Insect bite is not covered.

Perils of the sea are excluded from the scope of the policy

Exclusions:-

Suicide, attempt to Suicide or intentionally self-inflicted Injury, sexually transmitted conditions, mental disorder. anxiety, stress or depression

Being under influence of drugs, alcohol, or other intoxication or hallucinogens.

Participation in actual or attempted felony, riot, civil commotion, crime misdemeanour.

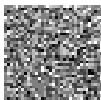
Committing any breach of law of land with criminal intent.

Death or disablement resulting from Pregnancy or childbirth.

Risk Category ill people are out of the scope of the policy:-

Persons working in Racing, Circus People, skiing, mountaineering, big game hurting, ballooning, hang gliding, river rafting, winter sports, skiing, ice hockey, polo & such other persons engaged in occupation of similar hazard and these are not covered under GPA.

For resolution of any query or grievance, insured may contact the respective branch office of the Company or may call toll free no 1800-2666 or may approach us at the sub section 2 Grievance redressal on our website www.icicilombard.com (Customer Support Section). However, if the resolution provided by us is not satisfactory you may approach Insurance Regulatory and Development Authority (IRDA) through the integrated Grievance Management Section (IGMS) or IRDA Grievance Call Centre (IGCC) at their toll free no 155255.



12. *Clauses:*

1. *The Cover is subject to inclusion of loss/damage/liability due to terrorism activity.”*

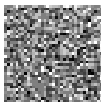
(emphasis supplied)

It is submitted that ‘exclusions’ applicable to the said policy have been stated in Part-I of Schedule at Serial No.11, which also includes ‘being under influence of drugs, alcohol or other intoxication or hallucinogens’.

On receipt of the representations/letters submitted by the petitioner, the institute immediately acted upon the request of the petitioner and forwarded the same along with all the requisite documents to the ICICI Lombard General Insurance Company Ltd. on 28.08.2018. It was requested that the insured amount of Rs.1,00,000/- be released to the guardian/institute at the earliest. The said claim form for personal accident insurance was duly signed by the petitioner himself.

The said claim was, however, rejected by the ICICI Lombard General Insurance Company vide its letter dated 04.10.2018 (Annexure R-3) while relying upon Part I of the Schedule S.No.11.1. The relevant part of the said letter is incorporated herein below:-

<i>“SI. No.</i>	<i>Policy Condition</i>	<i>Clause (s)</i>
<i>1.</i>	<i>Policy Copy part I of the Schedule, S.No. 11.1 Exclusions applicable to the policy</i>	<i>Being under influence of drugs, alcohol, or other intoxication or hallucinogens.</i>
<i>Remarks</i>	<i>It is understood from the Post mortem report dated on 17 Dec 17 that, Late Tarang Gupta met with an accident and expired on 17 Dec 17. Further it is evident from postmortem dated 17 Dec 2017 that, late Tarang Gupta was under</i>	



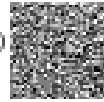
	<u>influence of alcohol at the time of accident"</u>
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The communication received vide letter dated 04.10.2018 was forwarded to the petitioner by the respondent-Institution itself. It was thus contended that the petitioner was well aware of the insurance policy and also the reasons for declining the claim by the Insurance Company but never challenged the same.

Despite the said reply having been filed in the year 2019 along with copy of the rejection communication conveyed by Insurance Company, the petitioner chose not to raise any challenge to the order of rejection in a manner known to law.

Learned counsel for the petitioner has been confronted with two issues i.e.:-

1. As to the liability of the respondent-Institute, especially when the claim form had specifically been forwarded by the respondent-Institute to the Insurance Company and the rejection letter has been received by the Institution and has also been forwarded to the petitioner, in the absence of any proceedings having been initiated against the said insurance Company or by impleading the insurance company as a party. He has failed to provide any satisfactory response to the same. No evidence or argument has been advanced on the basis whereof the reasons for rejection of claim may be held to be bad and unsustainable. This Court is thus not assisted by any evidence or even pleading to rebut the reasons cited by the Insurance Company for repudiation of the claim.

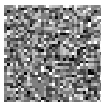


2. A second query was put to him as to how a writ petition, against a non -aided private autonomous body, would be maintainable for seeking compensation in the nature of an insurance claim. He responds that the respondent being a deemed University would thus be a 'State' within the meaning of Article 12 of the Constitution of India.

I find that the aforesaid explanation put-forth about maintainability of the writ petition merely on the ground that the respondent is a deemed University and thus would be amenable to writ jurisdiction is not sustainable. For an autonomous non-aided private body to be labelled as a State under Article 12 of the Constitution of India, the test as laid down by the Hon'ble Supreme Court in the matter of *Ajay Hasia Vs. Khalid Mujib Sehravardi and ors., reported as (1981) 1 SCC 722* has to be satisfied.

The tests evolved for determination of State or agency and instrumentality of State is based on the extent of financial, managerial or supervisory control and on the basis of its functional character or the public duty which it performs. A writ jurisdiction would extend only when the function/duty against which a person approaches a Constitutional Court is a public function or a public duty. The functions such as education, healthcare, transportation have an inherent character of a Public function but the dispute herein may involve an educational institution as a medium but it is not related to education. It is rather a dispute for release of insurance benefits under a policy for which premium had been paid through the college.

It is not disputed by the petitioner that the respondent-Institution is not controlled, managed or financed by the State and that the Institute has not received any grant-in-aid from the Government. Hence, the scope of writ



jurisdiction at the behest of the petitioner, against a private Institute in such matter, would not be available as there is no violation of any right of education. A contractual claim for financial benefits would thus not fall within the definition of public function or public duty so as to subject the respondents as a public authority or agency and instrumentality of the State rendering it amenable to writ jurisdiction.

Considering it from either of the perspectives, the present writ petition for seeking the relief of insurance claim is not maintainable. The same is, accordingly, dismissed at this stage.

Since the writ petition is being dismissed on the grounds of maintainability, it would be inappropriate to comment on the merits as it may cause prejudice to the rights of the respective parties.

Liberty is granted to the petitioner to take recourse to an appropriate efficacious remedy, by impugning the repudiation communication sent by the insurance company and disputing the reasons, whereby the claim submitted had been declined. The period spent in pursuing the matter before this Court shall be excluded from limitation.

05.11.2024.
monika

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No