

Neutral Citation No. - 2024:AHC-LKO:37780

AFR

Reserved

Court No. - 5

Case :- SECOND APPEAL No. - 66 of 1992

Appellant :- Smt. Saroj Jaiswal

Respondent :- L.I.C. Of India Branch Sitapur

Counsel for Appellant :- Avadhesh Kumar

Counsel for Respondent :- P.K.Khare,Raj Kumar Singh

Hon'ble Rajnish Kumar,J.

1. Heard Shri Avadhesh Kumar, learned counsel for the appellant. None appeared on behalf of the respondent even in the revised list.
2. This second appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.09.1991 passed by the District Judge, Sitapur in Civil Appeal No.57 of 1991; Life Insurance Corporation of India Vs. Smt. Saroj Jaiswal by means of which the appeal has been allowed and the judgment and decree appealed against has been set-aside and the suit of the plaintiff-appellant has been dismissed with cost through out.
3. The facts, giving rise to this appeal, are that the plaintiff-appellant filed a suit for the recovery of Rs.20,000/- with interest at the rate of eighteen per cent per annum towards the amount of policy and Rs.548.60 paise towards the excess premium paid and Rs.2500/- towards the accidental interest on the ground that late Vijay Singh had taken a policy on 28.12.1977 from the defendant-respondent, which was a policy for double accident benefit. The plaintiff-appellant was nominee in the said policy. Late Vijay Singh accidentally died by drowning in the river at Gopal Ghat on 14.05.1984, therefore the plaintiff-appellant put a claim and she was paid Rs.21,103.40 paise i.e. the amount of policy but the double accident benefit has not been given, whereas since the policy was for double accident benefit,

therefore the appellant is liable to be paid a further sum of Rs.20,000/-, which has not been paid despite demands alongwith other claims.

4. The defendant-respondent contested the suit. It was not denied that the policy was not taken by the deceased Late Vijay Singh on 28.12.1977 for Rs.20,000/-, which was a double accident benefit policy i.e. in case of death by accident, the double amount was to be paid. However it was pleaded that late Vijay Singh had not died on account of an accident. The defendant-respondent had demanded the documents in proof of death by accident, which were not furnished, therefore the amount of policy was paid which was accepted by the plaintiff-appellant towards full and final payment of the final claim under the policy and for this reason also the plaintiff-appellant is not entitled to any further amount.

5. Learned trial court, after exchange of pleadings, framing of necessary issues and evidence adduced by the parties, allowed the suit holding the plaintiff-appellant entitled the double the amount according to the policy. It was also held that the amount of Rs.21,103.40 paise has not been received towards full and final settlement. Accordingly, the suit was decreed by means of judgment and decree dated 19.07.1991 for Rs.20,000/- with interest at the rate of six per cent per annum. However, the suit was dismissed for Rs.548.60 for the excess premium paid and Rs.2500/- as interest. Aggrieved by the part of the decree, the defendant-respondent preferred Civil Appeal No.57 of 1991, which was allowed by the District Judge, Sitapur by means of the judgment and order dated 28.09.1991 setting aside the judgment and decree appealed against and dismissed the suit of the plaintiff-appellant. Hence this second appeal has been filed.

6. The following substantial questions of law have been formulated in this appeal:-

"1. Whether on the basis of medical attendant certificate issued by the doctor and the evidence adduced before the tribunal, the deceased can be held to be died on account of drowning as an accidental death and the appellants are entitled for double amount of policy in terms of insurance policy ?

2. Whether acceptance of the original amount of policy with full and final satisfaction will amount to relinquishment of the double amount of policy.?"

7. Learned counsel for the appellant submitted that late Vijay Singh had taken a policy for double accident benefit. He had died accidentally on account of drowning, a certificate in regard to which was given by the family doctor of the plaintiff-appellant, who was also a panel doctor of the defendant-respondent i.e. Life Insurance Corporation of India, therefore the plaintiff-appellant is entitled for the amount of Rs.20,000/- towards the double benefit and other claims as claimed by him in the suit filed by him. However the same has wrongly and illegally been denied to him. He further submitted that the trial court, after considering the pleadings of the parties and evidence adduced before it, had rightly and in accordance with law decreed the suit and directed to make the payment of Rs.20,000/- alongwith interest at the rate of six per cent per annum. However the appellate court wrongly and illegally, without considering that a panel doctor of the defendant-respondent corporation has given a certificate of accidental death of late Vijay Singh by drowning, which was also proved by him by oral evidence, allowed the appeal and dismissed the suit, which could not have been done.

8. He further submitted that merely because the plaintiff-appellant had accepted Rs.21,103.40 paise in full and final satisfaction of claim, it could not be said that the claim for double amount on the basis of double accident policy is not maintainable because the said amount was accepted as the plaintiff-appellant was entitled for the same and it

can not be said that the appellant is not entitled for the double amount on the basis of double accident policy.

9. I have considered the submissions of learned counsel for the appellant and perused the records.

10. Late Vijay Singh had taken a policy of Rs.20,000/- on 28.12.1977, which was a policy for double accident benefit. He had died on 14.05.1984, therefore the claim was put forth by the plaintiff-appellant and she was paid the amount of policy i.e. Rs.21,103.40 paise, which was accepted by plaintiff-appellant towards full and final payment without any protest. Thereafter the appellant claimed the benefit of the double accident policy and filed a Regular Suit No.258 of 1987 claiming the same. After exchange of pleadings, four issues were framed by the trial court; (1) As to whether the plaintiff is entitled to receive the amount in dispute, (2) As to whether the plaintiff-appellant is entitled for any interest, if so, on what rate, (3) As to whether the plaintiff would be stopped from receiving the claim of double accident benefit, since she has received towards the full and final settlement as mentioned in paragraph- 18 of the written statement and (4) The plaintiff is entitled for which relief.

11. The trial court partly allowed the suit and decreed for double accident benefit of Rs.20,000/- but dismissed for rest of the relief. Being aggrieved, the respondent filed civil appeal, which has been allowed and the judgment and decree passed by the trial court has been set-aside and the suit of the appellant has been dismissed. Hence the instant second appeal has been filed, in which the aforesaid substantial questions of law have been formulated.

12. In view of above and the first substantial question law formulated by this Court, this Court has to consider as to whether the appellant is entitled to double amount of the accident benefit of the policy, treating the death of late Vijay Singh as a result of the accident.

The plaintiff-appellant preferred the claim alleging that the death was caused due to drowning and it was accidental death. On her application the defendant-respondent demanded the inquest report and postmortem report to prove the accident, which was not submitted, therefore the claim of the plaintiff-appellant for double accident benefit was not accepted. The plaintiff-appellant has claimed that the death was result of drowning and therefore she is entitled to double of the amount of the policy, therefore she had to prove that the insured late Vijay Singh had died by accident of drowning. The plaintiff-appellant to prove her claim got herself examined as PW-1 and Dr. Laxmi Narain Agarwal as PW-2, who after examining the deceased had issued the medical attendant certificate, which was filed before the trial court to prove that the death was due to drowning.

13. PW-2 had issued the medical attendant certificate, which was placed on record as paper no.15 Ga-1/7. He admitted in his cross-examination that he is family doctor of the plaintiff-appellant, therefore he was called to examine the deceased after he was taken out of water and he found him dead. However no certificate was given by him on that day i.e. 14.05.1984 and it was given by him subsequently on 25.07.1984. In the certificate he has not mentioned any symptom or condition to show that the death was on account of drowning. He also stated in his cross-examination that certificate was issued by him regarding the death and not for the reason of the death. He also stated that he did not examine the dead body with a view to find the cause of death, therefore admittedly he had not examined the cause of death, therefore it can not be disputed that he had mentioned the cause of death on the information given by the appellant.

14. The medical attendant certificate (paper no.15 Ga-1/7) is on a proforma of the Life Insurance Corporation of India. Clause-5-(a) of the certificate is 'what was the exact cause of death? (Besides defining the deceased or other cause or death in such terms as you consider

appropriate, kindly add the distinctive technical name)'. Sub clause (b) is 'was it ascertained by examination after death or inferred from symptom and appearance during life.' Sub clause (g) is 'Did you attend him during the whole of it's course? If not, state during what period?' Against the sub clause (a), the PW-2 has given the primary cause "Drowning" and secondary cause 'nil', whereas as per sub-clause (a) of clause-5 the distinctive technical name was also to be added but the same has not been given. It is obvious because PW-2 had not examined the body of deceased to know the reason of death, therefore he has rightly not given. Against the sub-clause (b), PW-2 mentioned 'accidental drowning case' but it has not been disclosed in terms of sub-clause (b) as to whether it was ascertained by the examination after death or inferred from symptoms and appearance and what was symptoms and appearance. Against sub-clause (g), PW-2 mentioned 'yes, just after taking out of water, I was consulted', therefore admittedly PW-2 was consulted after the body was out of water. Therefore, admittedly PW-2 was consulted and had seen the dead body after taking out of the water. When the evidence of PW-2 as disclosed above is considered in the light of the observations made in the medical attendant certificate, this Court finds that the PW-2 could not prove that the death of insured person was as a result of the drowning.

15. The first appellate court, after considering the evidence of PW-2, has recorded a finding that his statement does not prove that the death of the insured person was as a result of the drowning. The appellate court has further recorded that the respondent i.e. the plaintiff-appellant has not produced any evidence to prove this fact, no postmortem report was produced, no person who might have seen the insured person drowning has been examined and from the circumstances it is not established that the death was the result of drowning.

16. The death on account of drowning can not be determined merely by observance and the external condition of the body. The doctor has also stated in his evidence that he has not examined the body of the deceased to know the reason of death. The reason of death has also not been given by the doctor, which could also not have been given without internal examination of the body which could reveal symptoms which may indicate with certainty as to whether the death was from drowning or from unlawful violence or any other reason before the body was immersed in water. If the body was immersed in water after some violence with the body or any other reason for the death it can not be said that the death was accidental on account of drowning.

17. The Hon'ble Supreme Court, in the case of **Kodali Purnachandra Rao and Another Vs. The Public Prosecutor, Andhra Pradesh; (1975) 2 SCC 570**, has held that medical jurists have warned that in the case of a dead body found floating in water, the medical man from a mere observance of the external condition of the body should not jump to the conclusion that the death was from drowning and it can be ascertained only by internal examination of the body. The relevant paragraph- 42 is extracted here-in-below:-

"42. Medical jurists have warned that in the case of a deadbody found floating in water, the medical man from a mere observance of the external condition of the body should not jump to the conclusion that the death was from drowning. Only internal examination of the body can reveal symptoms which may indicate with certainty as to whether the death was from drowning or from. unlawful violence before the body was immersed in water. That is what Taylor the renowned medical jurist, has said on the point:

When a deadbody is thrown into the water. and has remained there sometimes water. fine particles of sand, mud. weeds etc. may pass through the windpipe into the large air-tubes. In these circumstances, however, water rarely penetrates into the smaller bronchi and alveoli as it may by aspiration, and even the amount which passes through the glottis is small. If immersed after death the water is found only in the larger air-tubes and is unaccompanied by mucous froth. Water with suspended matters

can penetrate even to the distant air-tubes in the very smallest quantity even when not actively inhaled by respiratory efforts during life The quality, or nature of the suspended matter may be of critical importance.

When decomposition is advanced the lungs may be so putrefied as to preclude any opinion as to drowning but the demonstration of diatoms in distant parts of the body inaccessible except to circulatory blood, provides strong evidence of immersion in life-if not of death from drowning." (emphasis supplied)

17. This Court does not find any illegality or error in the findings recorded by the appellate court and as discussed above it could not be proved that the deceased died on account of drowning as an accidental death, therefore the plaintiff-appellant is not entitled for double amount of policy in terms of insurance policy.

18. The plaintiff-appellant received Rs.21,103.40 paise and issued a receipt towards the full and final payment and discharged the claim and demands under the above mentioned policy of the insured. It has not been alleged that the receipt has been signed without knowing the contents. The plaintiff-appellant has signed the receipt in English and it appears that she had signed after fully knowing it. The plaintiff-appellant has also received the amount without reserving any right towards full and final satisfaction of the claim under the policy. The first appellate court, after examining the pleadings, evidence and receipt given by the plaintiff-appellant, has recorded a finding that the respondent i.e. the plaintiff-appellant has signed the receipt in English and it appears that the respondent new English and signed the receipt knowing as to what is written in it. The appellate court, considering the case laws relied by the plaintiff-appellant also, has recorded a finding that the respondent i.e. the plaintiff-appellant without reserving any right has accepted Rs.21,103.40 in full and final satisfaction of the claim under the policy therefore the claim for double of the amount is not maintainable. This Court does not find any illegality or error in the findings recorded by the appellate court. Accordingly, this Court is of the view that the acceptance of the

amount of policy with full and final satisfaction will amount to relinquishment of the double amount of policy.

19. In view of above and considering the over all facts and circumstances of the case, this Court is of the view that on the basis of medical attendant certificate issued by the doctor and the evidence adduced before the trial court, it could not be proved that the death of the deceased was as a result of drowning as an accidental death, therefore the plaintiff-appellant is not entitled for double amount of policy in terms of insurance policy. The plaintiff-appellant has also accepted the original amount of policy i.e. Rs.21,103.40 paise towards full and final satisfaction without reserving any right, which will amount to relinquishment of double amount of policy. The aforesaid substantial questions of law formulated in this appeal are answered accordingly. Thus, this second appeal is misconceived and devoid of any merit, which is liable to be dismissed.

20. The second appeal is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 17.05.2024
Haseen U.