

Court No. - 18

Case :- WRIT - C No. - 5578 of 2019

Petitioner :- Oriental Insurance Company Ltd. Thru. Senior Divisional Mng.

Respondent :- Smt. Sarita Katiyar And Ors.

Counsel for Petitioner :- Rehana Khan

Counsel for Respondent :- C.S.C., Rinku Verma

Hon'ble Subhash Vidyarthi, J.

1. Heard Miss Rehana Khan, learned counsel for the petitioner and Sri Rinku Verma, learned counsel for the opp. party Nos. 1, 2 and 3, and Sri Vishal Tehlani, the learned Standing Counsel representing the opp. party Nos. 4 and 5.

2. By means of the instant petition, the petitioner has challenged validity of a judgment and order dated 16.01.2019 passed by the Permanent Lok Adalat, Lucknow, in P.L.A. Case No. 164 of 2017, whereby the petitioner-Company has been directed to pay Rs. 1 lac as insurance amount to the opp. party Nos. 1, 2 and 3 for accidental death of Late Kashmeer Singh, husband of opp. party No. 1 and father of opp. party Nos. 2 and 3. The petitioner has also been directed to pay Rs. 1.50 lacs as penalty, Rs. 5000.00 as cost of litigation and interest on the aforesaid amount.

3. Learned counsel for the petitioner has assailed validity of the said order on the solitary ground that the deceased suffered injuries in an accident that took place on 12.09.2009. The petitioner had entered into a contract of insurance with the State of U.P. on 19.11.2009 and the insurance cover commenced therewith. The deceased died on 22.11.2009, therefore, although the deceased died during the period, when the policy in question, viz. Janta Personal Insurance Policy (hereinafter referred as 'Policy') was in force, he died because of injuries suffered in an accident, which took place prior to commencement of the Policy.

4. Submission of the learned counsel for the petitioner is that death of husband of the opp. party no. 1 and father of the opp. party Nos. 2 and 3 due to an accident, which took place outside the period of the Policy, will not be covered by the Policy. In support of this contention, learned counsel for the petitioner has relied upon a decision rendered by a Division Bench of this Court in the case of ***Rajesh Kumar v. State of U.P. & ors., 2009 (5) ALJ 581***, which case also arose from an order passed by the Permanent Lok Adalat granting insurance company in that case, namely, ICICI Lombard Insurance Company, to pay death compensation to dependants of a deceased. A similar question was involved in this case also, as the accident in question took place on 02.01.2006, the Janta Personal Insurance Policy was issued on 16.09.2006 and the deceased died on 22.10.2006. The scope of cover of that insurance policy is quoted in-paragraph-10 of the report, which is as follows:

“....

4) Scope of Cover:- ICICI Lombard, hereby agrees subject to the terms, conditions and exclusions contained or otherwise expressed in the policy document, to pay to the insured a sum not exceeding the sum insured during the tenure of the policy, if any of the insured Person dies due to or disability as mentioned in the benefit table occurs due to sustaining any bodily injury resulting solely and directly from accident, caused by external, violent and visible means, to the extent and in the manner hereinafter provided. The accident will include death due to Snake bite, drowning in river, Tank, Pond, or Well, Collapse of roof or falling of tree, falling from roof or tree, Vehicle accident, dacoity, riot, scuffle, enmity etc.”

5. The Division Bench has also held as follows:

“18. From the proposition as laid down in the foregoing cases, it is clear that the period when the accident took place should be covered under the policy. Although in the aforesaid cases the issue that if death occurs during currency of the policy and accident occurs beyond the coverage of the policy what shall be the consequence has not been decided but taking into consideration various clauses of the agreement and the policy document, it is clear that what was covered by the policy was the personal accident. Thus, the first issue is answered holding that the policy covers a personal accident and unless the accident takes place during the currency of the policy, the respondent No. 4 cannot be held liable.”

6. In the present case also, scope of coverage under the policy is as follows:

“....

4) Scope of Cover:- Oriental Insurance Company Limited hereby agrees, subject to the terms, conditions and exclusions contained or otherwise expressed in the policy document, to pay to the insured a sum not exceeding the sum insured during the tenure of the policy, if any of the insured Person dies due to or suffers disability as mentioned in the benefit table occurs due to sustaining any bodily injury resulting from accident, caused bny external, violent and visible means, to the extent and in the manner hereinafter provided. The accident will include death due to Snake bite, drowning in river, Tank, Pond, or Well, Collapse of roof or falling of tree, falling from roof or tree, Vehicle (including tractor/trolley and tempo) accident, dacoity, riot, scuffle, enmity, violence, terrorist activities, fire, flood, lightning thunder and electric shock etc.”

7. Thus, it is evident that the scope of policy in the present case and the scope of policy in the case of **Rajesh Kumar (supra)**, are identical. In these circumstances, the present matter appears to be squarely covered by the ratio laid down by the Division Bench of this Court in the case of **Rajesh Kumar (supra)**.

8. Therefore, this court is of the considered view that when the deceased died due to an accident, which took place prior to commencement of Janta Personal Insurance Policy, his death which occurred subsequent to commencement of the policy will not be covered by the policy in question as per the law laid down by the Division Bench of this Court in the case of **Rajesh Kumar (supra)**.

9. Learned counsel for the opp. party Nos. 1, 2 and 3 has relied upon a decision rendered by a Coordinate Bench of this Court in the case of **Oriental Insurance Co. Ltd. v. State of U.P. & ors., Case:- Matters under Article 227 No. 27 of 2021, decided on 15.03.2023**, wherein while examining validity of a challenge made to an order passed by the Permanent Lok Adalat about accepting the claim for seeking compensation under Mukhya Mantri Kisan Evam Sarvhit Bima Yojna, this court affirmed the finding of the Permanent Lok Adalat that although

accident had occurred prior to enforcement of the scheme, the deceased died during currency of the insurance policy.

10. The Division Bench judgment in the case of **Rajesh Kumar (supra)** was not placed before the Coordinate Bench while it was deciding the case of **Oriental Insurance Co. Ltd. (supra)**. Further the judgment of **Oriental Insurance Co. Ltd. (supra)** deals with a matter arising out of Mukhya Mantri Kisan Evam Sarvhit Bima Yojna and the terms and conditions of that scheme are not evident from the judgment and it cannot be said as to whether the terms and conditions of that scheme are similar to Janta Personal Insurance Policy.

11. For the aforesaid reasons, this court finds that the present case has to be decided keeping in view the law laid down by the Division Bench in the case of **Rajesh Kumar (supra)**, as per which the death of the deceased due to an accident that took place prior to commencement of the policy, will not be covered by the policy.

12. Accordingly, the award dated 16.01.2019 passed by Permanent Lok Adalat, Lucknow, in P.L.A. Case No. 164 of 2017, directing the petitioner to pay death compensation, penalty, cost and interest for death of husband of opp. party No. 1 and father of opp. party Nos. 2 and 3, Late Kashmeer Singh, is **set-aside and claim is dismissed**. The petition is accordingly **allowed**.

(Subhash Vidyarthi, J.)

Order Date :- 17.10.2024
A.Nigam