IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13623 of 2006

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Mrs. Sunita Singh wife of late Saket Kumar, village- Shivganj Dariapur, P.S. Muffasil Munger, District- Munger.

.... Petitioner

Versus

1. National Insurance Co. Ltd., 3, Middleton Street, Kolkata- 700071 through Senior Divisional Manager.
2. Senior Divisional Manager, National Insurance Company Ltd., Division-III, 1, Shakespeare Sarani, 6th Floor, Kolkata-700071.
3. Manager, Golden Trust Financial Services, 16, R.N. Mukherjee Road, Kolkata-700001.
4. Chief Regional Manager, National Insurance Co. Ltd., Sone Bhawan, Birchand Patel Marg, Patna-1.

.... Respondents

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Appearance :

For the Petitioner : Mr. Umeshwar Pd. Singh
Mr. Jitendra Narain Sinha, Advocates.

For the Respondents : Mr. Prakash Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-03-2018

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for a direction to the respondent nos. 1 and 2 for release of the insured amount of Rs. 5.00 lacs on the life of petitioner's husband late Saket Kumar who died after sustaining injuries in a road accident.

3. The short facts according to the petitioner are that her husband late Saket Kumar was a holder of Janta Personal Accident Insurance Policy No. 100300/47/01/9600022/02/96/30442 issued by the respondent-National Insurance Company Limited (for short

'NICL') which was valid and operative on 12.01.2004 when he met with a road accident and also on 22.01.2004 when he ultimately died during treatment for head injury. The policy had been taken on 31.03.2003 and the period covered thereunder was upto 30.03.2018 and the risk amount of the policy was for Rs. 5.00 lacs, with the petitioner named as the nominee. The petitioner's husband met with an accident involving a collision when he was returning home on a motorcycle, with a jeep, and suffered severe head injury for which he was treated at Primary Health Centre, Bariyarur before being referred to Sadar Hospital, Munger and thereafter to Patna. He was admitted to Tara Hospital, Bank Road, Patna from where he was shifted to Magadh Hospital, Patna but he died on 22.01.2004 in course of treatment. It is stated that the sudden death of the petitioner's husband left his family members shocked and in absence of proper advice, the body of the deceased was not taken for conducting post mortem and instead, it was taken for cremation at the village home.

4. In due course, the family members found that the deceased had two insurance policies, one for Rs. 1,00,000/- from the Oriental Insurance Company Limited under Form-51 of the Central Motor Vehicle Rules, 1989; and the other from the respondent-NICL for Rs. 5,00,000/- under the Janta Personal Accident Scheme. Claims were submitted for release of the insured amounts with both Insurance Companies. The Oriental Insurance Company Limited released the

payment of the insured amount of Rs. 1,00,000/- to the petitioner in full satisfaction of the claim vide cheque No. 338536 dated 02.11.2004 (Annexure-5/ii).

5. The petitioner had submitted her claim before the respondent-NICL on 20.02.2004 along with all relevant documents such as injury report of the Primary Health Centre, Bariarpur, medical prescriptions and other documents relating to the treatment of her husband, police report dated 12.06.2004 filed before the Chief Judicial Magistrate, Munger, the death certificate issued by Magadh Hospital as well as the death certificate dated 17.02.2017 issued by the Patna Municipal Corporation.

6. During processing of the claim, the petitioner was required to submit the post mortem report but it was clarified that post mortem had not been conducted in the circumstances obtaining at the relevant time. The respondent NICL's authorized agency namely, Golden Trust Financial Services, examined the claim along with all the supporting documents and after processing the same, forwarded its processing note dated 20.07.2004 to the respondent-NICL with a request to do the needful on the basis of treatment papers clearly mentioning that it is a case of RTA (Road Traffic Accident). The respondent-NICL by its letter dated 19.07.2005 duly acknowledged receipt of all relevant documents except the post mortem report and kept insisting for the same and kept the matter pending without

settling the claim of the petitioner.

7. Learned counsel for the petitioner submits that the action of the NICL in withholding the payment of the insured amount to which the petitioner is entitled, is wholly arbitrary. It is a matter of record that NICL had duly acknowledged receipt of the claim with all requisite documents necessary for its processing, save and except the post mortem report. It is submitted that there is no matter of doubt whatsoever that the deceased had suffered grievous injury in a road accident and subsequently died in the course of treatment. The police report dated 12.06.2004 also took note the fact of such death had occurred following a road accident and that by reason of ignorance and lack of advice, the post mortem had not been conducted. It is submitted that the petitioner has already received payment from the Oriental Insurance Company Limited under the relevant policy, terms and conditions whereof similar to the policy were issued by the NICL.

8. Learned counsel for the respondent-NICL appears and relies on the counter affidavit to vehemently oppose the writ petition. It is submitted that by letter dated 19.07.2005, the petitioner was required to submit the post mortem report to establish the cause of death, but no such post mortem report was made available which made the claim doubtful as to whether or not it was a case of accidental death. As such the payment under the policy could not be made in view of the dubious and controversial nature of the claim. A supplementary

counter affidavit has also been filed on behalf of NICL, in paragraph-3 whereof it has been stated that according to the death certificate issued by Magadh Hospital, Patna, the cause of death has been mentioned as "Cardio Respiratory Arrest" which is a natural death, whereas payment under the relevant policy could be made only in case of accident and not on account of natural death. It is submitted that the cause of death could only be ascertained on the basis of post mortem report but the petitioner failed to submit the same and as such the claim could not be settled till date.

9. Having heard the parties and on a consideration of the material on record, this Court finds substance in the writ petition. The petitioner repeatedly informed the respondent-NICL that no post mortem report had been conducted at all, which fact is not in dispute. Despite this, the NICL continued to insist upon the post mortem report as if the cause of death could be established as an accidental death only on the basis of the post mortem report and not on the basis of any other documents. I do not find the stand of the NICL tenable and no basis has been shown, much less a sound one, for such an impression carried by it. Clearly such approach was nothing more than a ruse to somehow defeat the claim of the petitioner. If the fact that the post mortem had not been conducted at all was not in dispute, the question of furnishing the post mortem report could not arise and insistence by NICL for furnishing the post mortem report was meaningless. There is

ample material on record to establish the fact that the deceased died in a road accident. The police report dated 12.06.2004 clearly recorded that a Jeep being driven in a negligent manner by its driver and approaching at high speed dashed into the motorcycle on which the husband of the petitioner was traveling, as a result of which the motorcyclist fell down and sustained grievous injury. It has further been noted that the Jeep bearing no. BR-10P-0160 was seized and its driver was released on bail. The deceased died on 22.01.2004 in course of treatment. It was specifically stated that owing to ignorance, post mortem was not got conducted. It was noticed that the death certificate had been issued by Magadh Hospital, Patna after extensive verification of the facts in that regard. On this basis and in view of the statement of witnesses, injury report and after due enquiry, the investigation was closed and police report submitted finding the case true against the vehicle driver Naresh Sah under Sections 279/304A/427 of the Indian Penal Code. Similarly the injury report of the Primary Health Centre, Bariarpur, the various documents relating to the treatment of the deceased, the death certificate of the Magadh Hospital, all show beyond doubt that the death of the petitioner’s husband occurred in course of treatment of grievous injury suffered in a road accident. From the police report, it was established beyond doubt that no post mortem had been conducted. There was thus no basis at all for the NICL to keep waiting for the petitioner to produce a post mortem report which was non-existent. The stand of NICL in the supplementary counter affidavit terming the cause of death of the petitioner's husband as natural death in view of the death certificate issued by Magadh Hospital reveals an attitude which is nothing short of callous and can hardly be accepted as bone fide. The same death certificate records the clinical diagnosis as RTA with head injury. NICL's conclusion that it was a case of natural death is thus completely unfounded and reeks of arbitrariness. The petitioner has also filed a supplementary affidavit taking a clear stand that the policy issued by the Oriental Insurance Company Limited which was settled within a year of death was similar in nature to the policy issued by NICL. This fact has also not been controverted by the NICL. This Court therefore fails to see any reason whatsoever for not settling the claim of the petitioner on one specious plea or another for almost 14 years, which has resulted in considerable harassment and irreparable injury to the petitioner.

10. In the above circumstances, this Court directs the respondent-NICL to forthwith make payment of the insured amount of Rs. 5,00,000/- to the petitioner together with simple interest to be calculated @ 6% per annum on the said insured amount. Such interest shall be reckoned from 19.07.2005 when NICL acknowledged receipt of all other documents but wrongfully demanded the post mortem report from the petitioner in terms of its letter dated 19.07.2005 (Annexure-9) till the date of actual payment.

11. This Court further finds the instant case to be one fit for imposition of cost on the NICL, and accordingly awards a cost of Rs. 1,00,000/- to be paid by NICL to the petitioner along with the insured amount with interest as aforesaid.

12. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
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