HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.20058 of 2010

ORDER:

Petitioner seeks a Writ of Mandamus directing the respondents to pay the insurance amount covered under Group Personal Accident (GPA) Policy issued by the United India Insurance Company to the Andhra Bank Credit Card Holder, a sum of Rs.5,00,000/- relating to the death of K.S.Anand—husband of petitioner on 13.02.2009 with interest at 12% per annum from the date of accident till the date of payment.

2a) The petitioner's case is that her husband—K.S.Anand was working as Manager in M/s. Jaico Publishing House at Hyderabad and he was the privileged customer of Andhra Bank, having Visa Gold Card bearing No.4539 9210 0389 7005 issued by the respondent—Insurance Company covering under GPA Policy, claim limit of Rs.5,00,000/- and having its validity upto March, 2010.

b) Whileso on 10.02.2009, he left Hyderabad to Vijayawada on office work and thereafter he went to Tirupati on 12.02.2009 and stayed in Hotel Bhimas Deluxe. On 13.02.2009 early morning, while he was climbing Tirumala Hills by foot to have Darshan of Lord Venkateswara, he fell from the steps which resulted in head injury. Immediately he was admitted in SVRR GG Hospital, Tirupati where the doctors declared him dead.

c) The petitioner being the wife of the deceased, made death claim but the insurer repudiated the claim holding that FIR, postmortem report, inquest report and final investigation report were not submitted in support of proof of cause of death and the policy covers only accidental death due to "*external violent and visible means*" and such injuries are lacking in the instant case. Then, the petitioner approached the Insurance Ombudsman, Hyderabad in Complaint No.I.O. (Hyd) G-11, 014, 0051, 2010-11 who by Award dated 22.06.2010 dismissed the Complaint on the observation that death of the complainant's husband did not fall within the amplitude of the definition '*accident*' under the policy and the claim was not supported by necessary documents and thus confirmed the repudiation made by the respondents.

Hence, the writ petition.

d) The Respondents filed its counter and opposed the petition.

3) Heard arguments of Sri M.N.Narasimha Reddy, learned counsel for petitioner and Sri V.Samba Siva Rao, learned counsel for respondents.

4) Severely fulminating the rejection of claim by the respondents basing on the award passed by the Insurance Ombudsman, Hyderabad dated 22.06.2010, it is argued by learned counsel for petitioner that the material on record clearly depicts that death of K.S.Anand was due to his accidental fall from steps leading to Tirumala Hills while trekking. However, the Insurance Company repudiates the claim on untenable ground that no external injury was found on the dead body and the deceased was already brought dead to SVRR GG Hospital and the Causality Duty Doctor did not note any external injuries on the dead body and therefore he did not refer it as Medico Legal Case (MLC) and even

did not conduct postmortem. The Insurance Company disowned its liability also on the lame excuse that the claimant has not produced the records like FIR, PM report etc. and further, the report of the Investigator appointed by the respondents showed as if the death was a natural one and not accidental. Learned counsel argued the facts and circumstances would clearly manifest that it was a case where the deceased while trekking Tirumala Hills to have Darshan of Lord Venkateswara fell down at Step No.1750 and suffered external injury and died instantaneously. The other pilgrims found him fell, rang to Tirumala authorities, who immediately sent Sanjeevini Ambulance in which the deceased was rushed to SVRR GG Hospital where he was found already dead. Probably because the TTD rescue team informed the Casualty Medical Officer of SVRR GG Hospital that the deceased fell down while climbing Steps, the doctor believing their version might have formed an opinion that the death was not resulted out of any possible crime to treat it as a MLC and to conduct postmortem and omitted such exercise. However on that count alone, learned counsel strenuously argued, the death cannot be held to be not an accident. Subsequently, the Superintendent of SVRR GG Hospital, Tirupati issued death certificate dated 04.03.2009 wherein he clearly referred that death was due to head injury as per the opinion of Casual Medical officer. Hence, there can be no better evidence for the death to be treated as accidental, than the said certificate. In spite of the said thumping evidence being produced by the claimant, the Insurance Company as well as Ombudsman discarded the same on the ground that the said certificate was issued at a later stge. Learned counsel further argued that the Ombudsman misread the facts and material while interpreting the terms "*external, violent and visible"* means while holding death was not accidental. Just going by the fact that the duty doctor in the hospital did not record the head injury, Ombudsman jumped into an opinion that there was no contemporaneous evidence to suggest that deceased met with accident. He did not consider the death certificate issued by the Superintendent, SVRR GG Hospital wherein, as stated supra, he clearly referred the head injury. He was also not right in rejecting the claim on the ground that record such as FIR, postmortem report were not submitted. Learned counsel argued it was a pathetic case where the deceased was alone at the time of death as he went to Vijayawada on office work on 10.02.2009 and after finishing the work he went to Tirumala on 12.02.2009 and as an ardent devotee, he proposed to reach Tirumala Hills by climbing steps and therefore, at the time of his death none of his family members or known persons was there so as to lodge FIR or request the hospital authorities to intimate to the police for whatever worth it was. In this backdrop, it will be too harsh for the Insurance Authorities to reject the claim on the ground that the police record was not produced. He thus prayed to allow the writ petition.

5) Per contra, learned counsel for respondents supported the stand of respondents as well as the Award of Ombudsman. His main plank of argument was that if only the death was due to an accident as narrated in terms of the policy, which says that the accidental death must be due to "external, violent and visible means", the claim can be upheld otherwise

not. In the instant case, he would point out, the petitioner miserably failed to prove it to be an accidental death as there was no external manifestation of any injury as observed by Ombudsman. On the other hand, report of the Investigator appointed by the respondents—Insurance Company revealed that the deceased died near 35th cross which ruled out his accidental falling from any height i.e. steps. Further, as already stated, no external injury was found by the Casualty Medical Officer. All these would lead to an irresistible conclusion that death was a natural one probably due to some disease in which case, policy will not extend. He thus prayed to dismiss the writ petition.

6) The point for determination in this Writ Petition is:

> *"Whether the deceased met with accidental death within the ambit of insurance policy, and if so, whether the petitioner is entitled to make a claim for compensation?"*

7) **<u>POINT</u>**: I have given my anxious consideration to the respective arguments and material on record. It is not in dispute deceased—K.S.Anand was a privileged customer of Andhra Bank and having credit card which enabled him to have insurance claim. He was having Visa Gold Card bearing No.4539 9210 0389 7005. The said card holders are covered under GPA Policy issued by the respondents. The said Anand died on 13.02.2009 and admittedly policy was in force by then. The bone of contention, however is the nature of his death. It is the case of the petitioner that K.S.Anand was working as Manager in M/s.Jaico Publishing House in one of its branches at Hyderabad and on 10.02.2009

he went to Vijayawada on official work and after finishing the same he went to Tirupati on 12.02.2009 and stayed in Hotel Bhimas Deluxe and contacted several distributors to promote his business. On 13.02.2009 in the early morning, he proposed to visit Tirumala Hills to have Darshan of Lord Balaji and while trekking Tirumala Hills by steps, he slipped and fell down at Step No.1750 and got head injury and died on the spot. As per petitioner, it was accidental death and the policy would cover his risk and hence the respondents are liable to pay insurance claim amount. On the other hand, respondents repudiated their liability mainly on the contention that death was not accidental as revealed by the circumstances like deceased found dead on the pathway leading to Tirumala near 35th Cross and not at the steps; no external injury was found and noted by Casualty Medical Officer etc. It disowned its liability also on the ground that no report like FIR, postmortem report etc. were produced. It is pertinent to note that Ombudsman upheld the contention of the respondents and opined that the death cannot be regarded as accidental one within the ambit of the terms of the policy as there was no external manifestation of injuries.

8) The important term which is germane for our discussion noted in the Policy Conditions reads thus:

> *"NOW THIS POLICY WITNESSETH that subject to and in consideration of the payment made agreed to pay the company the premium of the period stated in the schedule or for any further period for which the Company may accept payment for the renewal of this policy and subject to the terms, provisions, exceptions and conditions hereinafter expressed contained or hereon endorsed, the Company shall pay to the Insurance to the extent and*

in the manner hereinafter provided that if any of the Insurance Persons shall:

1. Sustain any bodily injury resulting solely and directly from accident caused by ***external, violent and visible*** *means, the sum hereafter set forth in respect of any of the Insured persons specified in the Schedule:-*

Thus, the above term would show, to claim insurance amount, the policy holder shall sustain bodily injury resulting solely and directly from the accident caused by "*external, violent and visible means*". It is pertinent to note that the policy has not defined '*accident*'. It only explains how an accident should be caused so as to enable the policy holder or his legal heirs to claim insurance. As per the above term, the accident shall be caused by "*external, violent and visible means*". The words "*external, violent and visible*" thus qualify '*means*' by which the accident is caused. Therefore, if the petitioner is able to establish that the deceased while trekking Tirumala Hills by steps, slipped off and fell down and sustained head injury and died, there can be no demur that such death would be an accident within the ambit of terms of the policy because, such accident was caused by external means i.e. due to unexpected falling from the steps; violent means i.e. forcibly hitting to the rocky steps; and visible means i.e. steps which caused the injuries. Hence, the crucial question is whether the deceased met with his death by slipping from the steps.

9) On a careful scrutiny of the facts and material on record, I have no hesitation to hold that it was an accidental death. The report of the Investigator appointed by the respondents and Registry of Rescues issued by TTD would show that the Tirumala Authorities employed the services

of Sanjeevini Ambulance to take care of any eventuality while pilgrims are going uphills. The Registry of Rescues shows that the paramedical staff who went along with Sanjeevini Ambulance found the deceased (distressed) dead in the pathway leading to Tirumala near 35th Cross, from where they brought the deceased in the Ambulance to SVRR GG Hospital. Admittedly the case was not registered as MLC and no postmortem examination was conducted and no FIR was registered with the concerned police. From these facts, Investigator had drawn the conclusion that it was a natural death but not an accidental fall from height or steps. Obviously, his conclusion was based on the fact that the deceased was found on the pathway at 35th Cross and no head injury was recorded. The learned Ombudsman also came to same conclusion basing on the observation that there was no external manifestation of injury so as to bring the death within the ambit of accident.

10) I am constrained to disagree with the above observation of the Investigator as well as Ombudsman. The facts would unmistakenly show deceased was on his way to uphills. It is common knowledge that there are two ways to reach uphills from Alipiri Gate. One way is vehicular road way and another way is foot-step way. In the middle at few points, both the ways intercept with each other. The pilgrims who go by walk, shall necessarily choose the foot-step way to reach uphills and they will not be allowed to walk on the vehicular way. Therefore, when the deceased was found on the path way leading to Tirumala uphills at 35th Cross does not mean that he reached that place by walking all along the vehicular road

way and fell down and died due to some disease or bodily infirmity. There can be no scope to come to such conclusion. On the other hand, the only possibility is that while trekking Tirumala Uphills by steps, he must have slipped off and sustained injury and died. The good hearted pilgrims must have informed the said fact to TTD authorities and while sending Sanjeevini Ambulance, since the vehicle cannot reach the steps where the deceased fell down, the rescue team members must have instructed the pilgrims to bring the deceased to the nearest pathway which intercepts the steps. That was how the deceased was brought to 35th Cross. Unfortunately, the Investigator has not noted down the distance between 35th Cross and 1750th step where according to the petitioner, the deceased fell down and sustained injury. Therefore, merely because the deceased was found by the rescue team at 35th Cross, one can't plunge into automatic conclusion that he met with normal death due to some decease like heart pain and died at the 35th Cross.

10) Then, coming to the fact that the Casualty Medical Officer had not treated the death as MLC and conducted postmortem and not noted the head injury, by that count it cannot be concluded that it was not a case of accident. Because the rescue team reported that on the way to uphills he fell down and died, the doctor might not have suspected the death to be a crime. Though he did not mention about the head injury however, in the death certificate dated 04.03.2009 the Superintendent, SVRR GG Hospital clearly mentioned to the effect that the deceased was brought dead to the casualty with H/O fall from height while claiming to Tirumala Hills and

the cause of death was head injury as per the opinion of Casualty Medical Officer. Had the deceased not suffered head injury, the Superintendent would not have mentioned this fact. So, taking a holistic picture depicted by the facts and record, it can be held that deceased met with accidental death by external, violent and visible means. Therefore, the respondents cannot repudiate their liability.

11) In the result, this Writ Petition is allowed and the respondents are directed to pay the insurance claim amount of Rs.5,00,000/- with interest @ 9% per annum from the date of death till the date of realization within two (2) months from the date of this order. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 27.11.2018

<u>Note:</u> Office to issue CC in three days.
(b/o)
Murthy