IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 19.08.2019

CWP No.1198 of 2016 (O&M)

United India Insurance Company Limited ...Petitioner

Vs.

Savita Devi & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Paul S. Saini, Advocate, for the petitioner.

Mr. S.P.Yadav, Advocate, for respondent No.1.

Mr. Pawan Kumar Longia, Senior Panel Counsel, for respondent No.2.

RAJIV NARAIN RAINA, J.

1. Constable Devender Kumar died on 06.09.2011 in an accident run over by a train while crossing the railway line at Railway Station Ateli. He was serving in the Central Reserve Police Force and was attached to 51 Battalion at Hallomajra, Chandigarh. The accident happened during home leave from 02.09.2011 to 11.09.2011.

2. Deceased Devender Kumar was a subscriber to a bank account with the State Bank of India (SBI). SBI had obtained an insurance policy from the petitioning Insurance Company called 'Special Contingency Insurance Policy' issued from Divisional Office of the Company in Mumbai, which was valid for the period from 31.12.2010 to 30.12.2011. The policy covered personal accident risk to all the account holders.

3. Chennai Office of the petitioning Insurance Company received belatedly a letter dated 12.07.2013 for the first time from 51-Batallion, CRPF, Hallomajra, Chandigarh along with death certificate and post mortem report of the deceased informing the Insurance Company regarding the death of Devender Kumar. On receipt of letter, the petitioning Insurance Company at Mumbai by letter dated 16.12.2013 requested the claimant to furnish the requisite documents mentioned therein so as to enable the company to process the claim for insurance cover. Pursuant thereto, the necessary papers were furnished. These documents were processed and after examination, it was hazard that the deceased committed suicide by lying down on the railway track before the train pulling in at the platform. Since it was thought to be a case of suicide, the claim under the Personal Accident Insurance was held not admissible as per the terms and conditions of the policy. Clause 5 of the Exceptions under the Insurance Policy stipulated that the Insurance Company shall not be liable under the policy for payment of any claim in respect of death, injury or disablement of insured person arising "*from intentional self injury, suicide or attempted suicide*". Accordingly, the claim was repudiated by passing an order dated 01.01.2014 and conveying the same to the widow.

4. The widow-Savita Devi impugned the said order before the Permanent Lok Adalat, (Public Utility Services), Narnaul by filing an application under Section 22-C of the Legal Services Authorities Act, 1987. Summons were issued to the Insurance Company on 26.03.2014 in order to persuade the parties to settle the dispute amicably. The Insurance Company entered appearance and filed its written statement vehemently contesting the

application on the lines of the repudiation ground. The CRPF also filed separate written statement.

5. It is submitted by Mr. Paul S. Saini for the petitioner that when there was no possibility of any settlement and no settlement was arrived at, the Permanent Lok Adalat lost jurisdiction in the matter and ought to have relegated the parties to seek their remedy before the appropriate Forum, but contrary to the settled legal position, the authority proceeded illegally to decide the matter on merits vide order dated 10.07.2015 allowing the claim for Rs 3 lakhs. The order is challenged as illegal, arbitrary, without jurisdiction and against the provisions of the Legal Services Authority Act, 1987 contrary to the terms and conditions of the insurance policy.

6. The Insurance Company has reached a final conclusion that the death of Devender Kumar was a case of suicide and that assumption became the basis of repudiation. What is relied upon by the petitioning Insurance Company is the opinion of the police and the inquest report, which according to them clearly established that the deceased had committed suicide. The Driver of the train, namely, Hukam Chand was summoned, but did not appear before the Permanent Lok Adalat to depose as the sole eye witness to the occurrence.

7. Mr. Saini relies on sub-section (8) of Section 22-C of the Legal Services Authorities Act, 1987 to contend that where no compromise or settlement could be arrived at between the parties and the dispute relates to any offence; the Permanent Lok Adalat fell in error in deciding the dispute on merits. There was no compromise or settlement between the parties nor was as it a case of an pure accident. It is submitted that the Lok Adalats

have no adjudicatory or judicial functions. Their functions relate purely to conciliation. To borrow the words of the Supreme Court a Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance and puts its seal of confirmation by making an award in terms of the compromise or settlement. No Lok Adalat has the power to hear the parties and adjudicate the case/s as a court does. It is designed only to settle the disputes by persuasion or conciliation by playing a conciliatory role and guided by principles of justice, equity and fair-play. For this proposition, Mr. Saini relies on the decision of the Supreme Court in **State of Punjab & another Vs. Jalour Singh & others**, (2008) 2 SCC 660.

8. Referring to the judgment of the Supreme Court in **United India Insurance Company Ltd. Vs. Ajay Sinha,** AIR 2008 SC 2398, where the provisions of Sections 22-C(1), 22-C(2), 22-C(8) and 22-E of the Act have been dealt with and considered, it is urged that the Permanent Lok Adalat has jurisdiction to settle the dispute at the pre-litigation stage. The determination of a case relating to an offence appearing in Proviso I must be interpreted broadly, the Supreme Court has guided that as the determination before the Permanent Lok Adalat will involve the question as to whether or not an offence, which is non compoundable in nature, has indeed been committed, the case falls outside the jurisdiction of the Permanent Lok Adalat. He also cites the judgment in **LIC of India Vs. Suresh Kumar, 2011 ACJ 2483**.

9. In the considered view of this court, the case falls in the ambit of understanding 'whether the deceased committed suicide or was the death by accident'. Mr. Saini refers to the claimant's statement for relief by way

of Personal Accident Insurance. In Column 4(c), the claimant was asked to give full description of the accident, its cause and injuries sustained. The response was 'while crossing the railway line met with accident'. According to the Station Superintendent, the person (Devender Kumar) suddenly laid down on the track before the train as per memo of the Engine Driver. As said earlier, the Driver was not produced in evidence to substantiate the statement which, therefore, is not to be treated as evidence. The inquest report dated 06.09.2011 under Section 174 Cr.P.C. by the SHO, GRPS Rewari records the opinion of the Doctor, which reads as follows:

> "In my opinion, the cause of death is due to injuries to vital organ i.e. Brain, which is sufficient to cause of death in normal course. All injuries are antimortem in nature. The possibility of injuries being caused by railway accident cannot be ruled out."

10. On the basis of this, the Senior Divisional Manager deduced that the death of Devender Kumar cannot be treated as accidental death as per terms and conditions of the policy issued. Hence the claim is not admissible.

11. In the application presented by the widow before the Permanent Lok Adalat, she has averred that she had good relations with her husband and there was neither any dispute ever nor remained and they were living a very happy family life. On the fateful day i.e. 06.09.2011 in the mid afternoon, he had gone to Narnaul from their village Navdi for some personal work. He left home in a happy mood. Neither he had any type of tension nor was her husband a drug addict. She came to know of the incident in the evening. Deceased Devender Kumar was the only son of his parents. The body was identified by the father of the deceased and his uncle, who

went to the spot at Railway Station Ateli. She stated that railway authorities have prepared a wrong death report on the statement of the driver, namely, Hukan Chand-respondent No.3. No inquiry was carried out on the statement of the petitioner's wife or statements of witnesses. The death was due to negligence of the railway driver and her husband had not committed suicide.

12. Several preliminary objections were taken against the widow including of territorial jurisdiction vesting in Mumbai courts; there was no negligence on the part of the driver; and, it was a case of suicide and not an accidental death.

13. The reply of the CRPF is non-committal and reiterates the stand of the Insurance Company. The Chairman and the two Members of the Permanent Lok Adalat in the impugned order dated 10.07.2015 have held that, in their opinion, only on the basis of the police report in the face of the affidavits furnished by the applicant and particularly the facts that respondent No.3-Hukam Chand, who was the driver of the train was made a part in this case and summons were issued to him at his residence but failed to appear or be produced in defence to stand cross examination. Even though summons could have been sent through Engineer Jaipur or C.C.C.R Loco Phulera, as it was not a personal case and Hukam Chand has not personally appeared before the Lok Adalat in response to the summons.

14. At the end of the day, the statement of Hukam Chand has not been substantiated by oral testimony before the Lok Adalat. There is no other direct evidence other than Hukam Chand. On these premises, the Permanent Lok Adalat has passed the award in a sum of Rs.3 lacs in favour of the widow with interest @ 9% per annum from the date of repudiation till

disbursement of the amount. The Lok Adalat has also directed the Insurance Company to pay a sum of Rs.20,000/- for the harassment caused to the widow as the claim was not paid in time.

15. Mr. S.P.Yadav, learned counsel appearing for the widow/respondent No.1 has drawn attention of this Court to the report of the Station Superintendent, Ateli, which is in contradiction to the report of the SHO, GRPS, Rewari, which ascribed the cause of death due to injuries to the brain as per the opinion of the Doctor. The Doctors report has not come on record of this case. The report (Annex P-6 at pp.76) of the Station Superintendent, Ateli does not mention any brain or facial injury. It is recorded that on 06.09.2011, an unknown person at KM 38/2 was run over by the train 9765 D, which resulted in amputation of one hand and one foot (*paer*). There is no mention of any injury to the brain. He submits that this vital fact was not picked up by the Permanent Lok Adalat even though it was vital to the decision making as it largely dislodges the case of the Insurance Company that it was a case of suicide. The plea is relevant and can well be taken into consideration ex debito justatiae.

16. The nature of injuries sustained would not, prima facie, show a case of suicide. If it was suicide, then the injuries would have been graver with severance on vital parts of the body and not clinical amputation of an arm and leg on the same side of the body. There is no eye-witness except the Engine Driver. The Engine Driver would naturally save himself from culpability. The railways would protect themselves from negligence. If it were not a case of suicide, attempted suicide or intentional self injury, the case would not fall in Clause 5 of the Exceptions and it could well have been

a pure accident. It may have been a foolish act on the part of the deceased to cross railway line with an oncoming train but an accident is an accident. There is no reason to disbelieve the affidavit of the widow that she was happily married to a physically fit paramilitary force Constable to afford him no earthly reason to take his own life. There is no presumption of suicide and none can be drawn in the skeletal facts.

17. The first proviso to Section 22(C) of the Act lays down that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law. If it is not a case of suicide, there is no offence committed by mere accident. Mismatching of medical evidence and the fact that there is no reason to believe that a physically fit Constable in CRPF without past history of any mental aberration would take his life and if he did, the medical evidence would have been otherwise and not just severance of right hand and right foot or leg of what came under the wheels.

18. The petitioning Insurance Company has failed to bring on record the medico legal report and has been satisfied to rely on the death certificate and the inquest report. That report records the condition of worn clothes to the effect that '*check shirt gray shade, vest Sandow medium colour, underwear medium colour, blue white colour lower torn apart*'. In Column No.10, the report records the marks of injury appearing on the dead body to the effect that '*Face cut near chin, injury on forehead, head, right hand cut from shoulder and separated from body, right foot cut from thigh totally separated, black colour scratches on the rest of the body*'. The injuries on the chin, forehead and head could be because of fall or being hit

by a moving train. The injuries were right indicated as hand cut from shoulder and separated from body, while the right foot (should be leg) cut from thigh, which means that the train sped over the right arm and leg. This in my considered view does not prove an attempt to commit suicide by falling bodily on to the tracks. There is a serious margin of doubt. Even the report in Column No.20 states that '*it seems that suicide has been committed by cutting with train*'. There is a degree of grave doubt in the death report short of proving suicide, which overshadowing doubt should go in favour of the widow and against the petitioner. The distinguishing aspect from the cases relied upon is that the PLA has not really adjudicated the case on merits but has taken the case away from suicide into unforeseen accident perhaps caused by tripping or misjudgment; albeit it was an imprudent thing to try and cross the railway line with a moving train. Accident was the most probable outcome of the occurrence.

19. For these reasons, I find no occasion to interfere with the award in its final conclusion and I am disinclined to accept the petition on the rounds taken and to the contrary, I dismiss the petition without any order as to costs. The award is maintained. Petition deserves to be dismissed to bring relief to the widow in her grief.

20. Ordered accordingly.

19.08.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes/No*