

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.3973 of 2016 (O&M)

Date of decision:27.3.2019

Oriental Insurance Company Limited ... Appellant

Vs.

Krishna Devi ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashwani Talwar, Advocate
for the appellants.

AMIT RAWAL J.

C.M.No.10268-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 41 days in filing the appeal is condoned.

C.M. stands allowed.

RSA No.3973 of 2016 (O&M)

In pursuance to the previous orders, affidavit of Sh. Balbir Singh, Regional Manager, Oriental Insurance Company Limited has been filed which is taken on record.

The present regular second appeal at the instance of the appellant-defendant/Insurance Company is directed against the concurrent findings of fact and law whereby suit of respondent-plaintiff challenging the repudiation of the claim dated 08.10.2003 with mandatory injunction has been decreed by the trial Court and affirmed in appeal.

The plaintiff-widow of Mahender Singh alleged that her husband had obtained the policy under Scheme Nagrik Suraksha Policy on 18.04.2002. Her husband due to snake bite on 17.11.2002 untimely died. The claim was submitted but was repudiated, which was without any jurisdiction. Since the insured amount was Rs.5.00 lakhs, entitled to all the benefits under the policy.

The appellant-defendant opposed the suit raising numerous preliminary objections qua court fee etc. but it was found that post mortem report was falsely obtained from the concerned doctor who caused loss to the Insurance Company. The investigation conducted by M/s Royal Associates Investigators submitted their reports dated 18.8.2003 on 21.08.2003 wherein it was found that claim was not enteratainable.

On receipt of the replication, the trial Court framed as many as 09 (nine) issues including the issue of Relief. The plaintiff summoned the record Ex.P1 from the Insurance Company containing 173 pages to prove the correspondence and various other documents Ex.P2 to Ex.P6. On the other hand, defendants examined two witnesses. The trial Court decreed the suit and directed the Insurance Company to pay Rs.5.00 lakhs alongwith interest @ 12% per annum.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the appellant submitted that awarding of interest @12% per annum is on the higher side as even in other cases, interest is always on the lower side i.e. @ 7.5% to 8% per annum. The suit for mandatory injunction without payment of court fee was not maintainable. The deceased was not

financially sound as within a short span he had taken three more insurance policies to the tune of Rs.28.00 lakhs. The application for additional evidence preferred before the Lower Appellate Court has erroneously been dismissed. Report of Investigation Ex. R-1 revealed that death was not on account of snake bite.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Talwar.

The Insurance Policy, Ex.P1 was w.e.f. 18.4.2002 to 17.4.2003 and the incident occurred on 17.11.2002. The claim was repudiated on 08.10.2003. The plaintiff was constrained to file the suit within a period of limitation in April 2006. The post mortem report, Ex.P3 clearly showed that there were two puncture marks on the dorsum of left hand of Mahender Singh. It is only possible when there is snake bite or snake is hanging on the branch of the tree.

In my view, the appellant has not been able to bring on record any evidence to establish that death was not on account of snake bite but for some other reason. The decree of Rs.5.00 lakhs is on condition of payment of court fee, therefore, there cannot be any objection regarding non-payment of court fee. The interest awarded, cannot be said to be on the higher side as the plaintiff was made to run from the pillar to post for claiming the relief as after repudiation of the claim, had to approach the ombudsman but the case was not entertained and finally, approached the trial Court.

In my view, the findings of fact and law cannot be said to be suffering from illegality and perversity.

No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

March 27, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No