IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 WRIT PETITION NO.520 OF 2021
WITH
WRIT PETITION NO.533 OF 2021

VAISHALI SANJAY GHADGE
VS
BRANCH MANAGER, LIFE INSURANCE CORPORATION OF INDIA, LTD

Mr. M. D. Shinde, Advocate for the petitioner
Mr. S.B. Pulkundwar, AGP for the respondent/State

CORAM : N. J. JAMADAR, J.
DATE : 04-03-2021

P. C.

. These petitions under Article 227 of the Constitution of India assail the orders passed by the Permanent Lok-Adalat, Aurangabad, Aurangabad in Pre-Litigation Application Dispute No.25 of 2019 and 26 of 2019, whereby the Permanent Lok-Adalat was persuaded to dismiss the applications preferred by the petitioner under Section 22(C)(1) of the Legal Services Authorities Act, 1987 for grant of assured amount under the policy of insurance reckoning death to be an accidental death. Shorn of superfluties, the background facts leading to these petitions can be stated as under:-

a. Sanjay Ghadge (deceased), was the husband of the petitioner. He was a Medical practitioner. He ran a clinic at Loni (Kh). It is the claim of the petitioner that on 28-11-2018 after he returned from his clinic on account of stress of the work the deceased suffered heart-attack and on being shifted to Ghati Hospital, Aurangabad, he was pronounced dead. The cause of death was certified as "Coronary Artery Insufficiency".

b. During his life time, the deceased had taken two policies. One, under a plan "Jeevan Mitra" being policy No.968530631 with an assured amount of Rs.2,00,000/-. Second, under the plan of "Jeevan Saral Plan" being policy no. 985219674 with an assured sum of Rs.5,00,000/-. Under the first policy, insurer had undertaken the liability to pay the compensation which would be three times of the assured amount in the event of natural death and four times of assured amount in the event of accidental death. Under the second policy insurer had undertaken the liability to pay the assured amount of Rs.5,00,000/- in case of natural death and in the event of accidental death a further sum of Rs.5,00,000/- alongwith accrued bonus. Since, the respondent-insurer processed the claims and paid the amount reckoning death to be natural death and declined the claim of the petitioner that the deceased suffered accidental death on account of stress and strain of the professional duties, the petitioner preferred applications under Section 22 (C)(1) before the Permanent Lok-Adalat.

c. By the impugned order dated 20-07-2019, the

Permanent Lok-Adalat rejected the applications holding interalia that there was no material to indicate that the deceased suffered an accidental death and, in any event, disputed questions of fact could not be decided by the Permanent Lok-Adalat in summary proceeding. Resultantly, the terms of possible settlement could not be formulated and hence the applications were rejected.

2. Being aggrieved the petitioner has preferred these petitions.

3. Heard learned counsel for the petitioner.

4. A strenuous efforts was made on behalf of the petitioner to draw home the point that though the deceased died on account of heart-attack, yet it cannot be completely disassociated from stress and strain which the deceased underwent while discharging his professional service. The death which the deceased suffered on account of "Coronary Artery Insufficiency" is a culmination of the said stress and strain. Therefore, respondent was not justified in rejecting the claim based on accidental death of Sanjay Ghadge.

5. In order to lend support to the aforesaid submissions learned counsel for the petitioner placed a strong reliance on the judgment and order of the Supreme Court in the case of ***Mst. Param Pal Singh through Father Vs National Insurance Co. and anr reported in 2013 AIR SCW 283***. In the said case, the

question that arose before the Supreme Court was whether the dependents of the deceased driver were entitled to compensation under Workmens Compensation Act and accident arose out of and in the course of his employment with the employer. It was found that deceased was actually driving the truck and that in the course of such driving he felt discomfort, parked the vehicle on the road side and soon thereafter breathed his last. A defense was taken that the deceased had not suffered accidental death. In that context, the Supreme Court enunciated the casual connection between the death and employment in the following words:

> **"27. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CASUAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if**

> not the sole cause that accelerated his unexpected death to occur which in all fairness, should be held to be an untoward mishap in his life span. Such an 'untoward mishap' can therefore be reasonably described as an 'accident' as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business."

6. I find it rather difficult to accede to the submission on behalf of the petitioner that the aforesaid pronouncement governs the facts of the case at hand with equal force. A case where a drivers suffers heart-attack while he is on the wheel of the vehicle or soon after alighting from the vehicle in a state of discomfort, stands on a totally different footing. The live nexus between the employment and death is not snapped. It would be impermissible to import the aforesaid analogy to the facts of the case at hand.

7. A useful reference in this context can be made to the judgment of the Supreme Court in the case of ***Alka Shukla Vs Life Insurance Corporation of India reported in 2019 (6) SCC 64*** wherein after an elaborate discussion the Supreme Court expounded what accident postulates in the following words:

> "18. An accident postulates a mishap or an untoward happening, something which is unexpected and unforeseen. A bodily injury caused by an accident is not limited to any visible

> **physical marks in the form of lesions, abrasions or broken bones on the body. A bodily injury can be caused by violent means that are external and relate to the use of strong physical force or even threatening someone by the use of violent words or actions.”**

8. The Supreme Court went to on elucidate the onus which rests on a party who lays claim of accidental death, in the following words:

> **“29. The plain reading of the policy is to be accepted as our guide. Under the policy, in order for the complainant to prove her claim, she must show direct and positive proof that the accident of the assured falling from his motorcycle caused bodily injury by external/outward, violent and visible means. The complainant will have to prove that the accident and the injuries sustained as a result were a direct or proximate cause of her husband’s death.”**

9. The Supreme Court has enunciated the test of direct and proximate cause between the accident and the resultant injuries. On the aforesaid touchstone, reverting to the facts of the case, the submission on behalf of the petitioner that the deceased suffered cardiac arrest as he was carrying stress and strain of the professional duties, does not merit acceptance.

10. In the aforesaid view of the matter no fault can be found with the impugned order. The petitions, therefore, do not deserve to be entertained. The petitions stand dismissed.

[N. J. JAMADAR, J.]

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