IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1112 Of 2014
(Through hybrid mode)

Biplab Nayak .... ***Petitioner***

Mr. Ramdas Acharya, Advocate

-versus-

Registrar, Biju Patnaik University of Technology and others .... ***Opposite Parties***

Smt. Prativa Mishra, Advocate
Mr. B.K. Mohanty, Advocate
Mr. S.J. Mohanty, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
27.04.2022

Order No.

18.

1. Mr. Acharya, learned advocate appears on behalf of petitioner and had on 15th March, 2022 submitted that his client got admission in a college under the University (opposite party no.1). His client met with road accident on 23rd July, 2012. The University had taken a policy to cover the students. The University, in its counter, paragraph-8 has clearly admitted that consequence of the accident being hospitalization and amputation of his client's right hand, was covered by the policy.

2. Court had directed petitioner as well as the insurance company (opposite party no.3) to file additional affidavits disclosing relevant information. The affidavits were filed. Petitioner disclosed, inter alia Discharge Summary dated 5th September, 2012 from Ashwini Hospital (Unit of Cuttack Hospitals Pvt. Ltd.) saying, inter alia, as extracted therefrom and reproduced below.

> *"SURGERY:*
> ***1st surgery** done on 07-08-2012*
> *Procedure- Debridement & removal of all necrotic tissue from right hand.*
> ***2nd Surgery** done on 09.08.2012*
> *Procedure-Debridement of all necrotic mussle. Right forearm amputated at the proximal 1/3rd level. Amputated stump closed with skin flap. PVC drain given, The raw area covered by ssg taken from left thigh. The axilla wound margin freshened and closed with 2 pvc drain in two layers. Dressing done*
> ***3rd Surgery** done on 28/08/2012*
> *Procedure- Debridement of the right upper limb wound. Skin harvested from left thigh. On 29-08-2012 – SSG done in ward."*
>
> *(emphasis supplied)*

The insurance company had also filed additional affidavit disclosing Memorandum of Understanding (MOU) dated 31st July, 2012, containing terms of the policy.

3. Mr. Acharya submits, the accident took place on 23rd July, 2012. His client was hospitalized and thereafter discharged. On query from Court he submits, his client paid the amount demanded against premium on the insurance policy, on 14th July, 2012. The accident occurred subsequent thereto, on 23rd July, 2012. He submits, though the policy commenced thereafter on and from 1st August, 2012 and was valid for a year, his client suffered hospitalization and amputation by the 2nd surgery conducted on 9th August, 2012. His client claimed the hospitalization charges as covered by the policy. He refers to the MOU and in particular relies on following therefrom, quoted below.

> "**Hospitalisation Benefits-Students**
>
> *The policy covers reimbursement of Hospitalisation expenses incurred by the student as an inpatient due to disease/illness/injury sustained by him/her. In the event of any claim becoming admissible under this policy, the Company will pay to the insured student through the college/institution the amount of such expenses as would fall under different heads mentioned below, and as are reasonably and necessarily incurred thereof by or on behalf of such insured students, but not exceeding the sum insured of Rs.50,000/- (fifty thousand) during the policy period."*

4. Mr. Acharya reiterates, the University in its counter, paragraph-8 has clearly admitted that consequence of the accident being hospitalization and amputation of his client's right hand, is covered by the policy. He relies on entry-H in Table-I of the MOU to submit, there was Buffer Sum Insured, to be kept as reserved for the students, to meet expenses arising out of extreme medical cases only as per decision of competent authority of the University. The coverage was Rs.10,00,000/-. He submits, the decision was taken as reflected from paragraph-8 of the counter. There be direction for payment out of the Buffer Sum Insured.

5. Mr. Mohanty, learned advocate appears on behalf of the University and submits, the intimation of accident was given long after expiry of coverage period.

6. Ms. Mishra, learned advocate appears on behalf of the insurance company and had earlier submitted, the writ petition is not maintainable as it contains money claim. Without prejudice to such contention, she had on 12th April, 2022 relied on several judgments of the Supreme Court.

(i) **New India Assurance Co. Ltd. v. Ram Dayal**, reported in **(1990) 2 SCC 680**, whereby the Supreme Court declared that the policy became effective from commencement date of the policy.

(ii) **National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi**, reported in **(1997) 1 SCC 66**, whereby it was found that the accident took place before renewal and, therefore, not covered under the policy.

(iii) **New India Assurance Co. Ltd. v. Sita Bai (Smt.)**, reported in **(1999) 7 SCC 575**, whereby it was found that the motor vehicle policy commenced after the accident and, therefore, the claim was not covered.

(iv) **New India Assurance Co. Ltd. v. Rakesh Talwar,** reported in **(2000) 9 SCC 229.** The Supreme Court said the same thing regarding the insurance company as cannot be made liable for compensation on accident, when the policy was taken subsequent to the time of accident.

7. She reiterates, the accident took place before commencement of the policy. She also draws attention to letter dated 16th December, 2013 written by Senior Divisional Manager of her client to the Institute of Technology under the University. Text of the letter is reproduced below.

> *"In this connection we would like to inform you that we have received claim intimation of Biplab Nayak about his accidental hospitalization, which is forwarded by you on 09.12.2013. Although the claim is inordinately delayed in intimation i.e. after more than one year from its occurrence, we have processed the file and found that Sri Biplab Nayak was injured due to accident on 23.07.2012 and amputation of his right hand was done at Ashwini*

Hospital, sector-1, C.D.A. Bidanasi, Cuttack at a subsequent date i.e. on 25.07.2012.

As per student's application forwarded by you it is also observed that, Sri Biplab Nayak is a 1st year B.Tech student and was admitted in Mechanical Branch in your institution on 14.07.2012. But as per the MOU signed with BPUT and also insurance premium received from BPUT on 31.07.2012, our policy started from 01.08.2012 for a period of one year i.e. up to 31.07.2013 for the students of 2012-2013, new batch admitted during 2012.

Under this circumstance, the date of loss does not come in the policy period for which have not been able to accept the liability for the said loss. We are extremely sorry for the inconvenience caused to you."

She submits, petitioner has disclosed private hospital Discharge Summary. Information with her client is otherwise that the amputation took place on 25th July, 2012, before commencement of the policy. Furthermore, petitioner's suffering is a consequence of the accident. The policy covers consequences of accident. Fact to be determined, for liability of the insurer to arise on the peril insured, is accident. The accident took place before commencement of the policy and all consequences thereby are excluded from the cover. She reiterates, this is what the Supreme Court found in the several cases relied upon by her.

8. Position taken by the insurance company is that there is no liability under the policy since the accident took place prior to its commencement. This is the reason given in relied upon letter dated 16th December, 2013, disclosed in its counter. It will appear from extract therefrom that the amputation was said to be done at Ashwini Hospital. As aforesaid, petitioner has disclosed by additional affidavit, Discharge Summary dated 5th September, 2012. In the Discharge Summary inter alia, following was said.

> *"On 25/07/2012-Debridement of necrotic muscles of the right forearm was done."*

The Discharge Summary was issued by Ashwini Hospital. It is clear, the insurance company took this information to mean there was amputation on 25th July, 2012. Said Discharge Summary goes on to say that second surgery was done on 9th August, 2012, whereby right forearm was amputed and third surgery was also done on 28th August, 2012.

9. Court is convinced that the hospitalization and surgeries were required by reason of petitioner having met with the accident. The policy having commenced after the date of the accident, the insurance company's position, of the claim not being covered thereby. However, the University has said in its counter (paragraph-8) that the claim is covered. Petitioner has relied on such statement to make submissions as recorded above. The statements made by the University in paragraph 8 of its counter are reproduced below.

> *"8. That as per the terms and conditions contained in the said MOU (Annexure-A/1), the policy will be valid for a period of twelve months with effect from 01.08.2012 to 31.07.2013. The petitioner in his Writ Petition has admitted that he had met with an accident on 23.07.2012 and the petitioner stayed for more than six months in hospital for treatment. The medical records filed by the petitioner reveals that the petitioner had undergone three surgeries, the first one on 7.08.2012 and the second one on 9.08.2012 and the third and the last one on 28.08.2012 at Ashwini Hospital, Cuttack and he was discharged from the Hospital only on 5.09.2012. It is most respectfully submitted here that the period of hospitalization and the surgeries were performed during the insurance coverage period and as such the petitioner is fully covered under the insurance policy."*

10. The MOU also states coverage of hospitalization benefits as reproduced above. Close scrutiny of this coverage reveals cover for hospitalization expenses incurred by the student as an imposition due to disease, illness, injury sustained by him/her. This under a separate heading, which does not mention accident. The omission is simply because disease and illness may not be attributed to accident. However, injury sustained may be attributable to accident but under this heading of coverage, the word ‘accident’ does not find mention.

11. Facts in this case are that petitioner suffered the accident on 23rd July, 2012. The Discharge Summary says admission was taken in the hospital on 2nd August, 2012 and discharge was on 5th September, 2012. It appears, though petitioner suffered the accident but the injury caused him to be hospitalized, Mr. Acharya submits, for the second time on 2nd August, 2012. There is reference in the Discharge Summary that on 25th July, 2012, a procedure was done on right forearm of petitioner. It is obvious that after the procedure, petitioner stood discharged. The insurance company, inspite of having filed counter and additional affidavit, has not disclosed any other source of information regarding procedure conducted on petitioner by Ashwini Hospital on 25th July, 2012. The sequence of events, therefore, show that petitioner was hospitalized, on 2nd August, 2012 and remained hospitalized till 5th September, 2012. During this time three further surgeries were done on him, second of which was on 9th August, 2012, whereby his right forearm was amputated. Considering that this hospitalization happened during period of coverage and that petitioner had paid the premium along with admission fees, prior to date of the accident, petitioner appears to be covered under the hospitalization benefits heading clause in the MOU. The limit of coverage is Rs.50,000/- during the policy period. Entry-H in Table-1 adds Buffer Sum Insured to said limit, on it to be effected on admissible claims. Petitioner's claim having been held to be admissible under hospitalization benefits heading clause, the Buffer Sum Insured has to be applied in meeting petitioner's claim.

12. Ms. Mishra points out, the hospitalization benefits heading clause and all other heading clauses following the table, are elaboration of statements in the table and cannot be viewed out of context. She relies on period of insurance given immediately after the table in the MOU. It is reproduced below.

> ***"Period of Insurance:*** *The Students' Package Insurance Policy as per Table I shall be valied for a period of twelve months from the commencement of the policy i.e. from 01.08.2012."*

This submission of Ms. Mishra cannot be accepted because the clauses that follow Table-I are substantial clauses. For example, 'Personal Accident Insurance-Students' is a heading of substantial cover clause following the table. Clause-1 under the heading is reproduced below.

> *"If such injury shall, within twelve calendar months of its occurrence be the sole and direct cause of the death of permanent disablement of the insured student, the capital sum insured of Rs.2,00,000/- (two lakhs only)."*

Above clause clearly means that in event there is an accident within the period of coverage but the death or permanent disability thereby occurs twelve months thereafter, which may be beyond expiry of the cover period, the capital sum insured of two lakhs would be the insurance benefit. Court is convinced that the headings of cover following the table are substantial coverage terms, in addition to Table I.

13. Court finds that there are no disputed questions of fact involved in this writ petition, where petitioner has come to Court seeking relief under an insurance policy. The policy was taken by the University under direction, being subject to Odisha Joint Entrance Examination held in year 2012, as submitted by Mr. Mohanty. In the circumstances, judicial review is necessary over the act of repudiation by the insurance company.

14. The writ petition succeeds. The insurance company (opposite party no.3) is directed to revisit the claim of hospitalization charges incurred by petitioner on his hospitalization on and from 2nd August, 2012 and discharged on 5th September, 2012. The claim is to be evaluated and settled within four weeks of communication.

15. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks