S/L 34
11.04.2023
Court. No. 12
Sourav

WPA 25459 of 2008
With
CAN 2 of 2022

Ashis Chatterjee & Anr.
Vs.
National Insurance Company Limited & Ors.

Mr. B. N. Ray
Ms. Shetparna Ray
... for the petitioners.

Ms. Pragya Bhowmick
Mr. Prasenjit Saha
... for the respondent nos. 3 and 4.

The writ petitioners and the respondent nos. 3 and 4 are represented by their respective learned advocates.

It reveals that though on the last occasion i.e., on 16.02.2023, one Ms. Ankita singh, learned advocate appeared on behalf of the respondent nos. 1 and 2/National Insurance Company Ltd. and its officials but for the reasons best known to her she has not appeared today on behalf of the respondent nos. 1 and 2 i.e., the Insurance Company. Accordingly, this Court proposes to dispose of the instant writ petition in absence of the respondent nos. 1 and 2.

Liberty as prayed for, is given to the learned advocate for the writ petitioners to incorporate the new address of the respondent nos. 1 and 2 in the cause title of the instant writ petition.

I have heard learned advocates for the writ petitioner and respondent nos. 3 and 4. I have perused the entire materials as placed before me.

In this writ petition as filed under Article 226 of the Constitution of India, the letter dated 28.12.2004 as written by respondent no. 2 being the Senior Divisional Manager of the respondent no. 1/Insurance Company has been assailed. By the impugned letter, the respondent nos. 1 and 2 denied to settle the claim of the writ petitioner on account of delay in intimating the factum of accident/death of the insured within 30 days from the date of incident. The writ petitioners felt aggrieved and thus approached before this Court.

In support of the instant writ petition, learned advocate for the writ petitioner at the very outset draws attention of this Court to the typed copy of the policy which has been annexed to the writ petition with the mark 'Annexure P'. It is submitted that according to the conditions of policy, the claim should have been lodged with the Insurance Company within one calendar month after the incident giving rise to the claim unless reasonable cause is shown for delayed submission of claim. It is contended on behalf of the substituted writ petitioners that on account of accidental death of the insured who is the son of the original writ petitioner, she became mentally shattered on account of untimely death of her son which is why the claim was made on 05.12.2022 i.e., within two months from the occurrence of the accident. It is submitted that there cannot be any justifiable cause on the part of the respondent nos. 1 and 2/Insurance Company to deny the claim of the original writ petitioner based upon condition no. 1 of the said policy. In support of his contention, Mr. Ray, learned advocate for the substituted writ petitioners placed his reliance upon a reported decision ***Bimal Chandra Vs. Regional Manager, the New India Insurance Company Limited and Ors.*** reported in ***2005 (3) Calcutta High Court Notes, 154***.

Per contra, learned advocate for the respondent nos. 3 and 4 in course of her argument draws attention of this Court to the pages 19 and 21 of the affidavit-in-opposition as filed by her client. It is contended by her that from the materials as placed before this Court, it would reveal that the respondent no. 1/Insurance Company entered into an agreement with the respondent nos. 3 and 4 to the effect that they would extend Janata Personal Accident Insurance cover to their members under group insurance scheme and it is further contended that the insured Debabrata Chatterjee (since deceased) during his lifetime was a member of their club. It is further argued on behalf of the respondent nos. 3 and 4 that by issuing a letter dated July 17, 2001, the respondent no. 1 /Insurance Company has agreed to settle the claim of the insured who is covered under the personal accident insurance.

On perusal of the entire materials as placed before this Court and after hearing the learned advocates of both the sides, this Court has no doubt that admittedly a Group insurance in the name of 'Janata Personal Accident Insurance Policy' was issued in the name of Debabrata Chatterjee (since deceased) by the respondent no. 1/Insurance Company wherein his mother Sandhya Chatterjee (since deceased) was made nominee.

Sufficient materials have been placed before this Court that on 03.102002 the said insured Debabrata Chatterjee met with an accident and on the self-same day he succumbed to his accidental injuries. From the impugned letter dated 28.12.2004, it reveals that the respondent no. 1/Insurance Company had denied to settle the claim of the original writ petitioner basically on the ground that intimation of death was not given within one calendar month.

At this juncture, it becomes necessary to once again look to the condition no. 1 of the aforementioned policy which reads as under:

> ***"Upon the happening of any event which may give rise to a claim under the Policy this Insured shall forthwith give notice hereof to the issuing Office i.e. Golden Multi Services Club, unless reasonable cause is shown the insured should within one calendar month after the event which may give rise to a claim under the Policy given written notice to the Company with full particulars of the claim."***

On perusal of the aforementioned condition, it reveals to this Court that admittedly the time limit for lodging the claim or giving notice to the Insurance Company is restricted to one calendar month unless reasonable cause is shown.

In considered view of this Court, as rightly pointed out by the Mr. Ray, learned advocate for the writ petitioner that considering the tremendous trauma as suffered by the original writ petitioner being the mother of the victim, the respondent no. 1/Insurance Company ought to have considered that the original writ petitioner was prevented from sufficient cause for not lodging her claim with the Insurance Company within one month. The same view was taken by a co-ordinate Bench of this Court in the reported decision of ***Bimal Chandra (Supra)*** where the Hon'ble Court express the following view:

> ***"11. The respondents should have appreciated the fact that a reasonable time is necessary to overcome the sudden shock arising out of the accidental death of the nearest relation and in the present case, only 15 days delay, therefore, cannot be treated as fatal.***
>
> ***12. Furthermore, in the conditions of the policy it has been specifically mentioned to the following effect:***
>
> ***"Unless reasonable cause is shown, the insured should within one calendar month after event which may give rise to a claim under this policy give written notice.............."***
>
> ***13. Accordingly, in the present case, it cannot be said that there was no sufficient and reasonable cause for the delay in sending the written notice to the Insurance Company when the victim is the son of the petitioner and suddenly died in a road accident causing sudden shock and/or trauma. Therefore, the aforesaid delay cannot be regarded as valid ground for refusing and/or denying the claim of the petitioner in connection with the insurance policy."***

Keeping in mind the propriety of law as held in the reported decision of ***Bimal Chandra (Supra)*** and the facts and circumstances as involved in the instant case, this Court is of the considered view that considering the untimely accidental death of the insured Debabrata Chatterjee, the respondent no. 1/Insurance Company ought to have considered the mental trauma of the original writ petitioner, Sandhya Chatterjee and thus ought not to have reject the claim of the unfortunate mother of the insured by issuing the impugned letter dated December 28, 2004.

In further considered view of this Court, the original writ petitioner as well as substituted writ petitioners have given sufficient and reasonable explanation in not lodging the claim within 30 days and in intimating the incident of accident within two months for which the present substituted writ petitioners are entitled to get a favourable order from this Court.

In view of the discussion made hereinabove, the instant writ petition is hereby allowed.

As a result, the letter dated December 28, 2004 as issued by the respondent no. 1/Insurance Company is hereby set aside.

The respondent no. 1/National Insurance Company Limited is hereby directed to disburse the insurance amount with reference to Group Janata Personal Accident Policy No. 100300/47/01/960/00zz/01/96/31164, J.P.A. Claim No. 10030047039600/47 under National Insurance Company Limited in favour of the substituted writ petitioner nos. 1 and 2 in equal proportions along with 7 per cent interest per annum. The interest amounts shall have to be calculated from the date of lodging of the claim by the original insured till the actual payment.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)