IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

205 **CWP-6770-2018 (O&M)**
Date of Decision: 24.02.2023

DAVINDER SINGH

... Petitioner

VERSUS

CHAIRMAN PERMANENT LOK ADALAT SAS NAGAR, MOHALI AND ANR.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Manjinder Singh Saini, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for respondent No.2.

****

VINOD S. BHARDWAJ, J. (ORAL)

The present petition raises a challenge to the Award dated 09.11.2017 (Annexure P-7) passed by Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali, whereby the application under Section 22-C of the Legal Services Authority Act, 1987 filed by the petitioner had been dismissed.

Briefly summarized, the facts of the present case are that Harkamal Singh son of the petitioner had taken two policies in September 2012 bearing Nos.165440461 and 165440462 for Rs.1,00,000/- each from the respondent-LIC. However, on account of an accidental consumption of insecticide for medicine, he died on 20.10.2012. The petitioner being nominee in the aforesaid policies filed claim with the respondent-LIC. However, vide letter dated 31.10.2014, the abovesaid claim was repudiated on the ground that Harkamal Singh had committed suicide. The relevant extract of letter of repudiation reads thus:

> *"...... This policy shall be void if the life assured commits suicide (whether sane or insane at the time) at any time on or after the date of which the risk under the policy has commenced but before the expiry of one year from the date of this policy and the corporation will not entertain any claim by virtue of this policy except to the extent of a third party's bonafide beneficial interest acquired in the policy for valuable consideration of which notice has been given in writing to the office to which premiums under the policy were paid last, at least one calendar month prior to death. ...."*

Aggrieved of the aforesaid repudiation, the petitioner moved an application under Section 22 (C) of the Legal Services Authority, Act, 1987 before the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali.

Upon notice, the respondents entered appearance and filed their response taking various preliminary objections including that the claim is based on incorrect facts and false disclosures. It was also submitted that the deceased had committed suicide and as per the terms and conditions of the insurance policy, no claim is admissible to the nominee of the deceased in the event of commission of suicide by the policy holder within a period of one year of the issuance of the policy.

The conciliation efforts were initiated by the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali, however, the same failed to fructify in any amicable mutual settlement. Consequently, adjudication of the dispute in terms of Section 22 (C) (8) of the Legal Services Authority, Act, 1987 was initiated. Parties led their respective evidences in support of their respective contentions. Upon consideration thereof, the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali came to a conclusion that the circumstances surrounding the issue reflect that deceased Harkamal Singh had committed suicide. The application of the petitioner was accordingly dismissed. Hence, the present petition.

Learned counsel for the petitioner has argued that the application of the petitioner under Section 22 (C) of the Legal Services Authority, Act, 1987 has been wrongly rejected by the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali inasmuch the aspect of the son of the petitioner (insured) having committed suicide was not established. The incident in question had been duly reported to the police and inquest proceedings under Section 174 of Cr.P.C. had been conducted. Upon culmination of the proceedings, the Investigating Agency came to the conclusion that deceased Harkamal Singh, son of petitioner, had consumed some poisonous substance under the influence of intoxication and that it was a case of an accidental consumption and not a suicide. He further stated that the policies in question were for a sum of Rs.1,00,000/- each and the son of the petitioner had died at a very young age of about 23 years. He further submitted that the as a matter of fact, the confidential report submitted by the surveyors/agents of the respondent-Insurance Company itself mentions that it was a case of an accidental death and not a case of suicide. The aforesaid confidential report submitted by the agents of the respondent-Insurance Company is attached with the present petition as Annexure P-4. There was thus no basis for respondents to conclude it as a case of suicide.

Per contra, learned counsel for the respondent-Insurance Company submits that the Award passed by the Permanent Lok Adalat

(Public Utility Services), SAS Nagar, Mohali does not suffer from any illegality or infirmity. He submits that the abovesaid policies had been purchased by deceased Harkamal Singh in August/September, 2012 and that he committed suicide soon thereafter in October 2012. He contends that as per the initial version by the petitioner, the deceased consumed some wrong medicine under the influence of liquor, however, the postmortem report as well as report of Chemical Examiner does not prove that he was under the influence of liquor. Only the poison i.e. Aluminum Phosphide Insecticide was detected from the viscera. Hence, the very foundation of the case that the poison had been consumed by the deceased under the influence of liquor is falsified and a very strong case is made out towards the deceased having committed suicide. He refers to the following part of the impugned Award:

> *"12. It is an admitted case of the parties that Harkamal Singh has purchased two policies from the Life Insurance Corporation of Jeewan Anand (Profits) with accident benefit bearing policy no. 165440461 dated 29.8.2012 Ex-R1 and sum assured was Rs. 1 lacs and premium was half yearly to the tune of Rs. 2760/- and the nominee under the policy was Devinder Singh Father of deceased Harkamal Singh and another policy bearing policy no. 165440462 dated 28.9.2012. The sum assured was Rs.1 lacs and the premium was half yearly to the tune of Rs. 3223/- Ex-R2.It is also an admitted fact that the deceased life assured committed suicide. Although the case of the applicant was that the deceased has consumed some wrong medicine after taking liquor and under its influences as is clear from inquest report Ex-A5 yet the learned counsel for the respondent has placed on record copy of form no. 3816 Ex-R6, post mortem report Ex-R4, report of Chemical Examiner Ex-R5 to prove that the deceased life assured did not die as a result of consuming some wrong medicine after drinking liquor rather the decease Life Assured has consumed aluminum phosphate insecticide which was*

detected from pieces sliced kidney, liver, spleen and blood taken from the body of the deceased and as such it was a case of suicide i.e. un natural death for which policy Ex-R1 & Ex R2 do not cover the case of the applicant for compensation as a consequence of which vide repudiation letters Ex-A3 and Ex-A4 the claim of the applicant was repudiated and these are perfectly legal. The learned counsel for the applicant has although relied upon authorities cited as 2006 AIR (M.P.) 195 Branch Manager Vs. Ku. Ankita and Anr. decided by Hon'ble Madya Pardesh High Court while impressing upon that the case is not covered under suicide yet we do not subscribe to this argument of the learned counsel for the applicant for the simple reason firstly this authority cited 2006 on 195 (Supra) is not applicable of the facts of the present case and secondly once it is proved on record from the record of the chemical examiner to whom sealed parcels were sent by the PGI for chemical analysis who gave report Ex-R5 in which aluminum phosphate insecticide was detected. Firstly this report falsifies the tall claim of the applicant that the deceased has consumed wrong medicine after drinking liquor and secondly it proved the fact that deceased life assured Harkamal Singh committed suicide consuming this Aluminum Phosphate. Once it is proved on record that where life deceased assured committed suicide i.e. unnatural death then certainly no consequences flow from policies Ex-R1 & R2. As such the claim of the applicant who was nominee under the policies Ex-R1 & Ex-R2 which was repudiated by the respondents vide letter Ex-A3 and Ex-A4 is perfectly legal and valid repudiation. No other point was argued or pressed before us."

He further submits that reliance on the confidential report (Annexure P-4) appended by the petitioner cannot be placed since the aforesaid document had not been produced by the petitioner before the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali.

Learned counsel for the petitioner, however rebuts the aforesaid submission relating to absence of alcohol by submitting that the postmortem was conducted after a period six days of hospitalization and as such, it is indeed possible that no traces of liquor may be detected at the stage of conducting postmortem or the viscera examination.

Further, while adverting to the second arguments raised by the counsel for the respondent that the confidential report submitted by the agent of the respondent-Insurance Company had not been brought by the petitioner before the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali, counsel contends that the above said confidential report was not in possession of the petitioner and rather on the contrary, it was incumbent upon the respondent-Insurance Company to have produced the entire material which was in its possession. The very act that the respondent-Insurance Company retained a document which was generated by its own Agent reflects that the act of respondent-Insurance Company suffers from malafide.

It is further averred that the rejection of the claim is based solely on the ground of suspicion and not on the basis of any evidence.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Even though the amount in question is only a sum of Rs.2,00,000/- (i.e. Rs.1,00,000/- for each policy), however, the issue which is germane is as to whether a claim could be repudiated by the respondent-Insurance Company solely on the ground that it suspected the insured of having committed suicide. The above said suspicion was accepted by the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali to be valid and strong enough to dismiss the application of the petitioner under Section 22 (C) of the Legal Services Authority, Act, 1987.

It is evident from the perusal of the documents available on record that inquest proceedings under Section 174 of the Cr.P.C. had been initiated by the Investigating Agency and it had come to a conclusion that it was a case of an accidental death and not that of a suicide. Respondent-Insurance Company never raised a challenge to the conclusion drawn by the Investigating Agency which are duly placed on the case file. Besides, the Surveyor/Agent of the respondent-Insurance Company had also come to a conclusion that it was not a case of suicide as per his own independent inquiry. The said Agent Confidential Report which is available on record as Annexure P-4 is not denied by the respondents in their reply. No foul play or fraud is suggested or suspected by the Agent in his report which is more in the nature of personal spot verification by the respondents themselves. Surprisingly, the respondent-Insurance Company kept the aforesaid confidential report of its own agent with itself and did not share the same with the petitioners-assignees. Such an act is not expected of an Insurance Company and it is required to take a decision on the basis of objective material placed before it. It is well settled position in law that suspicion, howsoever strong, cannot be a substitute of proof. Once the petition had been filed bringing forth sufficient documents to substantiate that it was a case of accidental death, such documents could not have been ignored or disregarded on the basis of a suspicion.

The Hon'ble Madhya Pradesh High Court in the matter of ***The Branch Manager, Life Insurance Corporation of India and another Vs.***

Ku. Ankita and Another reported as ***2006 AIR (MP) 195*** has observed as under:

> *"8. Life Insurance Corporation Act, 1956, is a beneficial piece of Legislation. It was enacted to ensure absolutely security to the policy holder in the matter of his life insurance protection. Naturally, if a claimant is to be deprived of the benefit under the insurance policy, a burden is to be discharged by the Insurance Company in a very strict manner in order to prove that the policy holder did commit suicide within one year from the date of issuance of the policy. The probabilities, howsoever strong, they cannot take the shape of proof itself. The defendants in order to dislodge the plaintiff is required to prove by specific and cogent evidence that the assured did not commit suicide. It is true that Aluminum Phosphide (Sulphos Pesticide) & Ethyl Alcohol, were found to have contained in the viscera of the deceased. This is clearly established by Ex. D-2/C. However, the pesticide could have been taken by the deceased voluntarily or could have been administered by third person or could have been consumed unknowingly. It is only if it is consumed voluntarily, aforesaid Clause 6 of the Insurance Policy would come into play. In case of remaining two eventualities, Clause 6 (supra) cannot be applied at all. It is true that the plaintiffs did not take a plea that the pesticide was administered by some third person or the same was consumed by the deceased unknowingly. However, the plaintiffs have clearly averred in Paragraphs 5 to 9 of the plaint that Bhagchand Sharma' was discharging his duties in a routine manner in his office. While discharging the duties, he became unwell and was admitted to the Government Hospital for treatment. He died during the treatment itself. Thus, the plaintiffs have nowhere averred that Bhagchand Sharma consumed the poisonous item voluntarily. On the contrary, it is the contention of the defendants/revisionists in the written statement that Bhagchand Sharma committed suicide. In view of the specific plea, it was obligatory on the part of the*

defendants/revisionists to prove by positive evidence that Bhagchand Sharma did commit suicide. The essence of suicide is an intentional self-destruction of life. If, therefore, a person takes an overdose of poison by mistake, or in a state of intoxication, or in order to evade his arrest by his pursuers, he could not be held accountable for his action. But, if there was an intention to commit suicide, and an attempt for that purpose was made, the accused could not escape responsibility for his action, except on the ground of insanity. This Court in the case of ***Mohanlal v. The State of M.R, reported as 1992 Cr.LR (MP) 124,*** *held that all the evidence collected was that the applicant had consumed some poisonous substance but there is no evidence as to whether the poisonous substance was taken accidentally or intentionally. Accordingly, this Court in the case of Mohanlal (supra) held that the accused could not be convicted for the offence of an attempt to commit suicide.*

9. XXX XXX XXX

10. Obviously, the post-mortem report is no proof of actual commission of crime. It merely provides inference on the basis of scientific examination. Moreover, the plaintiff has clearly denied in their evidence that the deceased Bhagchand had committed suicide. In the absence of any positive evidence, the finding of the Lower Appellate Court cannot be disturbed in exercise of the revisory jurisdiction by this Court. Likewise, the Lower Appellate Court is not found to have committed any mistake in reversing the finding of the Trial Court which was not based on any specific evidence. One more important feature of this case is that the Life Insurance Corporation was required to make investigation about the cause of death according to the provisions contained in the Manual of Life Insurance Corporation of India. Under the Manual, death claims are categorised into two classes: (i) Early or premature claims viz., claims arising within two years from the date of risk or revival on the basis of-evidence of health; and (ii) other or ordinary claims. Chapter III of the said Manual provides that *investigation into the bonafides of the claim under a policy which has not run for two years from the date of risk or revival, should be started immediately without waiting for the completed claim forms. The Office should note to pass on to the investigator any useful information which maybe available from the completed Claims Forms when received as this would greatly assist the investigator in his job. Thus, investigation ought to have been conducted by the Life Insurance Corporation of India through its investigator. Although, the record of the Life Insurance Corporation is stated to have been destroyed but the Corporation has not chosen to examine any investigator. Moreover, there is no evidence on record that any investigation was conducted by investigator in accordance with the provisions contained in the Manual. In the absence of any investigation having been made, it may be inferred that the Life Insurance Corporation did not treat death of Bhagchand Sharma as a case of suicide and it is only on the basis of Police record that such a plea has been taken in the written statement. It has been stated by the witness that the record of the Life Insurance Corporation has been destroyed as per Annexure D-6/C. However, the plaintiffs cannot be put to any disadvantageous position on account of such alleged destruction of record. In order to succeed, it was necessary for the defendants to prove the commission of suicide on the part of the deceased. Without producing such evidence, the defendants cannot succeed.*

11. XXX XXX XXX

12. No perversity could be pointed out by the learned Counsel for the revisionists in the impugned judgment and decree. The findings of the Lower Appellate Court are based on correct appreciation of the evidence on record and the same are not liable to be interfered with, in exercise of the limited powers under Section 115 of the Code of Civil Procedure.

Emphasis Supplied"

Suspicion, howsoever strong, cannot partake evidence and in the event the respondent-Insurance Company intends to decline a claim lodged against the policies issued, the burden lies upon the respondent-Insurance Company to justify its stand and to establish that such opinion/suspicion founded by the Insurance Company was on valid grounds and on the strength of objective material available on record.

Besides, the Permanent Lok Adalat has observed in its Award in Paragraph No.12 that it was admitted to be a case of suicide. Such finding recorded by Permanent Lok Adalat is not based on any admission or evidence available on record. The petitioner had infact denied any suggestion of suicide and case was of the accidental consumption of insecticide.

Insurance Act and the Policies issued thereunder are welfare oriented and intend to provide relief to the family in distress. While Insurance Company can seek compliance of mandatory terms and conditions of the policy and claim repudiation on breach thereof, there is no presumption of a breach. The burden to prove a breach is on the one who claims a breach. Denial of benefits to the successors on suspicion without any tangible basis would tantamount to aggravating the agony of beneficiaries.

In view of the above, the present petition is allowed. Consequently, the Award dated 09.11.2017 (Annexure P-7) passed by Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali is set aside. The respondent-Insurance Company is directed to release the payment of claim qua the policies purchased by deceased Harkamal Singh son of the petitioner within a period of six weeks alongwith interest @ 6% per annum under Section 34 C.P.C., from the date of filing of the claim application under Section 22 (C) of the Legal Services Authority, Act, 1987 before the

Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali till its disbursement.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

24.02.2023.
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No