15
23.04.2024
Ct. No. 15
adeb

W.P.A. 15545 of 2019

Furki Mahato
Vs.
The State of West Bengal & Ors.

Mr. Satya Ranjan Kundu
...for the petitioner
Mr. Sk. Md. Galib
Ms. Sujata Mukherjee
...for the State

Mr. Rajesh Singh
...for the respondent no. 5

Writ petition is heard in presence of the learned advocates representing the petitioner, State-respondents and National Insurance Company Limited.

The grievance of the petitioner is that the husband of the petitioner met with an accident and died on 20th August, 2013 and the accident occurred on 29th July, 2013, but the insurance claim of the petitioner on account of accidental death of her husband till date has not been processed due to want of chemical examination report.

In terms of the previous orders passed by this court two separate affidavits have been filed, one, on behalf of Superintendent, Suri Sadar Hospital, Birbhum being respondent no. 3 and another on behalf of Chief Medical Officer of Health, Birbhum being respondent no. 2.

The respondent no. 2 in paragraph 10 of his affidavit has already made statements that the Inspector-in-Charge, Suri Police Station in his report stated that all requisite documents including surathhal report, dead body challan, letter of medical officer of Suri Sadar Hospital relating to *post mortem* report were handed over to the Assistant Sub-Inspector of Dubrajpur Police Station by the Assistant Sub-Inspector of Suri Police Station.

In view of such statements made in paragraph 10 by the respondent no. 2 question arises why till date, the insurance claim of the petitioner due to death of her husband could not be processed.

Today, Mr. Rajesh Singh, learned advocate representing the insurance company has drawn attention of this Court to page 16 of the writ petition containing *post mortem* report wherefrom, according to the insurance company, it cannot be ascertained whether the death caused due to accident or not since it has been stated therein that the opinion regarding the cause of death is kept pending till the chemical examination report is received. In addition thereto, reliance is also placed on statements in paragraph 9 of the affidavit affirmed by the respondent no. 2 wherein it has been stated that the Superintendent, Suri Sadar Hospital made correspondences with the Inspector-in-Charge, Suri Police Station dated 9th February, 2024 and 10th

February, 2024 relating to chemical examination report whereby it was expressed his inability to provide the cause of death due to unavailability of the chemical examination report. According to the insurance company, either *post mortem* report is required wherein it needs to be mentioned that the cause of death in the present case which should be certified as accidental death or a chemical examination report is required for the purpose of processing the claim of the petitioner due to her husbands' death.

Court is considering feasibility of giving necessary direction upon the insurance company for processing the claim of the petitioner due to accidental death of her husband which has been stalled after the death took place on 20th August, 2013 till date. On perusal of the two affidavits, one by Superintendent, Suri Sadar Hospital, Birbhum and another by the Chief Medical Officer, Birbhum depict a situation where at this belated stage it may not be possible to obtain chemical examination report in connection with the death of the husband of the petitioner or a *post mortem* report containing the opinion of the physician that the death caused due to accident since approximately 10 years have passed in the meantime.

It is also required to be taken into consideration that there is no fault on the part of the petitioner in the matter of getting benefit under the insurance scheme due to accidental untimely death of her husband. While considering the entire gamut of the issue it is found that Sk. Md. Galib, learned advocate representing the State-respondents has rightly pointed out upon placing reliance on the letter dated 13th March, 2024, annexed to the affidavit of respondent no. 2, relevant portion of which is required to be quoted below:-

> *"In course Investigation as per statement recorded u/s 161 Cr.P.C. of the available witnesses and circumstances evidences collected by Investigating officer ASI Rakshakar Debanshi of Dubrajpur PS it was clear that Lusuram Mahato was the accused driver of the case who expired due to Road Traffic Accident in that incident and after completion of the investigation Investigating officer ASI Rakshakar Debanshi submitted Final Report vide Dubrajpur PS Final Report No.-160/13 dt. 16.09.2023 u/s 279/337/338/427/304A IPC as true in this case, as Lusuram Mahato (deceased) was the accused of the case who expired in that road traffic accident. In the case diary there is no reflection regarding chemical examination report whether it was received or viscera was sent for chemical examination. But from the case diary and final report submitted by investigating officer it is clear that the death of Lusuram Mahato was due to Road Traffic Accident."*

In absence of chemical report and opinion of the physician which according to the insurance company is required to be expressed in the *post mortem* report on the cause of death this Court has no other option but to rely upon this document dated 13th March, 2024 issued by the Officer-in-Charge, Dubrajpur Police Station wherefrom it can be ascertained that the husband of the petitioner died due to accident.

It needs to be recorded herein that this Court posed query to the learned advocate representing the insurance company whether there is any statutory provision which requires insurance company to process the claim in connection with the accidental death only in the event of availability of chemical report or *post mortem* report containing the opinion of the physician certifying the death caused due to accident. Nothing is placed before this Court on behalf of the insurance company which authorizes the insurance company to process the insurance claim in the event of availability of aforesaid documents/ materials excepting terms of contract.

In above conspectus, the writ petition stands disposed of directing the concerned authority of National Insurance Company Limited to process the insurance claim of the petitioner in view of accidental death of her husband on 20th August, 2013 expeditiously but not later than 6 (six) weeks from the date of communication of this order.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)