IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117 **RSA No.1077 of 2021**
Date of Decision : 21.03.2024

Harpal Singh @ Haripal Singh and Another ....Appellants

VERSUS

Tata AIG General Insurance Company Ltd. ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arun Sharma, Advocate for the appellants.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the appellants aggrieved by the judgment and decree dated 12.01.2021 passed by the First Appellate Court reversing the judgment and decree dated 04.12.2018 passed by the Trial Court.

2. The brief facts relevant to the present case are that the plaintiff-appellants approached the civil court on the ground that they were entitled to receive the claim amount on account of death of Jaswant Kaur as the insurance policy was taken by her husband i.e. plaintiff-appellant No.1 herein from the defendant-respondent. It was further averred in the plaint that the plaintiff-appellant No.1 - Harpal Singh @ Haripal Singh - and his wife Jaswant Kaur (since deceased) took the insurance policy No.0200371489 from the defendant-respondent on 05.03.2014 for a sum of Rs.25,00,000/-. Plaintiff-appellant No.1 stood as nominee for Jaswant Kaur in the said insurance policy and was covered for 100% of the sum insured by Jaswant Kaur and Jaswant Kaur was covered for 50% of the sum insured and their son, namely, Harjot Singh (plaintiff-appellant No.2 herein) was

covered for 25% of the sum insured being the legal heir of Jaswant Kaur. It was further the case that on 26.06.2014, when plaintiff-appellant No.1 came to his house, he was shocked to see that Jaswant Kaur had fallen down on the floor and was injured. Plaintiff-appellant No.1 called his son who further called Dr. Dharampal Sharma who checked Jaswant Kaur and declared her dead. The doctor declared that it was an accidental death due to the injuries suffered by Jaswant Kaur. The plaintiff-appellants lodged a claim in July 2014 for the death claim of Jaswant Kaur. It was further the case that the investigator appointed by the defendant-respondent demanded some amount illegally to get the claim settled. It was further the case that despite three letters the defendant-respondent did not accede to their claim. A legal notice in this regard was also sent on 08.07.2015. It was further stated in the plaint that earlier a petition was filed under Sections 11 to 14 of the Consumer Protection Act, 1986 before the District Consumer Disputes Redressal Forum, Patiala, however, he was advised to approach the civil court. It is pertinent to note that the outcome of the said petition before the District Consumer Disputes Redressal Forum has not been stated. Learned counsel for the plaintiff-appellants is also not in a position to apprise the Court as to what was the order passed by the Consumer Court. Thereafter, it was averred that the plaintiff-appellants approached the Permanent Lok Adalat, Patiala to settle the claim and since the other side did not appear to settle the claim, they withdrew their application. Hence, the present suit. Notice was issued to the defendant-respondent which admitted to having issued the accidental claim policy, however, it was stated that the policy was subject to certain terms and conditions. It was further averred that the plaintiff-appellants had registered a claim vide claim No.748891 dated 09.08.2014 for the death of Jaswant Kaur on 26.06.2014. At the time of registration of the claim it was informed that Jaswant Kaur had died due to fever. While processing the claim of the plaintiff-appellants the defendant-respondent informed that the claim was not admissible as the death was due to fever and was not covered under the terms and conditions of the policy being a sickness related condition. The claim was denied vide letter dated 18.12.2014. Meanwhile, one more claim was registered with the defendant-respondent on 18.09.2014 vide claim No.760941. It transpires that the plaintiff-appellant No.1 changed his statement and as an afterthought mentioned that Jaswant Kaur had died due to accidental injuries. Finally, letter dated 31.12.2014 with respect to earlier claim No.748891 was sent stating that the death due to sickness was not covered under the policy. While processing claim No.760941 the plaintiff-appellants failed to prove that Jaswant Kaur had died due to accidental injuries and despite repeated requests and reminders dated 05.11.2014 and 27.02.2015, plaintiff-appellants failed to submit any medical certificate or documents showing the condition at the time of death and certifying that the death was a result of accidental injuries. No FIR or postmortem report was produced. In view of the fact that there was no response to the reminders it was inferred by the defendant-respondent that Jaswant Kaur did not die of any accidental injuries and hence claim of the plaintiff-appellants was repudiated vide letter dated 07.04.2015. The plaintiff-appellants filed a replication reiterating the averments made in the plaint and denying those in the written statement.

3. On the basis of pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for declaration that plaintiffs are entitled to receive the claim of late Jaswant

Kaur for Insurance Policy taken by her from defendant? OPP

2. Whether the claim of insurance is not admissible as per insurance policy? OPD

3. Whether the present suit is not maintainable? OPD

4. Relief .

4. The Trial Court vide judgment and decree dated 04.12.2018 decreed the suit. Aggrieved by the judgment and decree of the Trial Court an appeal was preferred by the defendant-respondent which appeal was allowed by the First Appellate Court vide judgment and decree dated 12.01.2021. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants would contend that PW-3 Dr. Dharampal Sharma had stepped into the witness-box, who was a registered medical practitioner and had a certificate issued certifying him as a RMP by the Haryana Government and hence there was no requirement of a FIR or a postmortem report in the present case.

6. Heard.

7. In the present case, admittedly, there is no FIR which was registered regarding the injuries suffered by Jaswant Kaur. There is also no medical record of the deceased having been taken to the hospital. There is no postmortem report showing the cause of death. PW-1 Harpal Singh i.e. the plaintiff-appellant No.1 herein, admitted in his cross-examination that there was no injury mark on the body of Jaswant Kaur. He further admitted that he did not come to know that the death of Jaswant Kaur was accidental. When he reached home he found his wife lying on the floor and he sent his son to bring Dr. Dharampal Sharma. Similar is the statement of PW-2 Harjot Singh who stated that when he came home he saw his mother lying on the floor.

However, her body was not sent for postmortem examination. PW-3 Dr. Dharampal Sharma stated in his cross-examination that he has a RMP certificate issued to him by the Haryana Government. He also admitted that there was no injury mark on the body of Jaswant Kaur. The First Appellate Court also noticed that the qualification of Dr. Dharampal Sharma was that he was only a Matric pass. Even he, who is stated to have declared Jaswant Kaur dead, stated that there was no injury mark on her body. There is no death certificate which was issued by any doctor or even by Dr. Dharampal Sharma. Interestingly, earlier a claim was lodged wherein it was stated that Jaswant Kaur had died due to fever. Before the said claim was repudiated a second claim was filed stating that Jaswant Kaur had died due to accidental injuries. There is no reason forthcoming as to why in the first claim it was stated that Jaswant Kaur had died due to fever and subsequently the story was changed. It may have been understandable if there was any medical record to support the change in the stand taken in the claim petition, however, in the present case there is none.

8. In view of the above and in view of the fact that there is total absence of evidence on the record to even remotely suggest that the death of Jaswant Kaur was due to accidental injuries, this Court does not find any merit in the present appeal. No question of law muchless substantial question of law arises in the present appeal. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
21.03.2024 **JUDGE**
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO