IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-23811-2021 (O&M)
Date of decision: 19.01.2024

SBI General Insurance Company Limited

...Petitioner

VERSUS

Permanent Lok Adalat (PUS) and another

...Respondents

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

Present :- Mr. Inderjit Sigh, Advocate for the petitioner.

Mr. S.S. Sidhu, Advocate for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 26.08.2021 passed by respondent No.1-Permanent Lok Adalat (Public Utility Services), Rupnagar whereby the application filed by respondent No.2-applicant was allowed and the petitioner-Insurance Company had been directed to pay an amount of Rs.20 lakhs alongwith interest @ 12% per annum.

2. Learned counsel for the petitioner contends that insured-Maghar Singh-husband of the applicant-respondent No.2 had obtained an insurance policy from the petitioner with a sum of Rs.20 lakhs. On 07.08.2019, he got up around midnight for nature's call when his arm is stated to have touched the Cooler in which current was flowing, due to short

circuit. Maghar Singh suffered electric current and died on the spot as a result of electrocution. On the matter being reported, an investigator was appointed and it was reported that deceased-Maghar Singh had accidently touched the cooler, through which the current was flowing due to a short circuit of the wiring. The death on account of electrocution is thus also reported by the investigator appointed by the petitioner insurance company. The claim was, however, declined relying on an exclusion clause of the policy and the information sent by the respondent-applicant to the effect that the deceased had consumed alcohol on the fateful day, before going to sleep. It was thus contended, in terms of exclusion clause incorporated in the policy, that as the deceased was under an influence of alcohol, hence, he would not be entitled to the benefits of the policy. The decision of the petitioner-insurance company of not releasing the benefits of the insurance policy was subject matter of challenge before the Permanent Lok Adalat (Public Utility Services) under Section 22(C) of the Legal Services Authorities Act, 1987.

3. The Permanent Lok Adalat (Public Utility Services) drafted a memorandum of settlement, however, the conciliation proceedings failed to reach at any result, hence, the adjudication was initiated in exercise of power under Section 22 (C) (8) of the Legal Services Authorities Act, 1987.

4. Upon consideration of the evidence and the arguments advanced by the respective parties, the application preferred by respondent No.2-applicant was allowed and the petitioner was directed to pay the sum assured to the representatives of the deceased along with interest. The

operative part of the award reads thus:

> *"10. After hearing the counsel for the applicant and the counsel for the respondent & after going through the file, we are of the firm opinion that the application should be allowed. Our opinion above said is based upon the following reasons.*
>
> *11. It is agreed that Maghar Singh had been insured with the respondent and the sum assured was Rs. 20 lakh. It is also agreed that Maghar Singh met with an accident and died. Obviously, the respondents should pay the assured sum of Rs. 20 lakh.*
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> *12. It is not disputed specifically that Maghar Singh had been insured at the S.B.I. Branch Bela, District Rupnagar. Obviously, the transaction is within the territorial jurisdiction of this Court.*
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> *13. A perusal of the investigation file reveals that the applicant had disclosed to the investigator that on the day of incident Maghar Singh had consumed three small pegs of alchohal and had gone to sleep at 10 P.M. By relying upon the same, the ld. Counsel for the respondent states that at the time of the accident, Maghar Singh was under the influence of the alchohal which is the violation of the terms and conditions of the insurance policy. We are of the opinion that even if it is believed that on that*

night Maghar Singh had consumed three pegs of alchohal, even then, it is inconsequential. The reason is the respondent agrees that Maghar Singh had died on account of an accident and not on account of consumption of alchohal. Further more, the respondent does not claim that the alchohal had played any role in the accident of Maghar Singh. Hence, we are of the opinion that the above said contention of the ld. Counsel for the respondent is ineffective.

14. It is agreed that neither the matter was reported to the police nor the post-mortem of Maghar Singh was got conducted. By relying upon the same, the ld. Counsel for the respondent states that the application is not maintainable. However, it has not been explained that in the given circumstances how the recording of F.I.R. would have affected this case. Since the respondent agrees that the death of Maghar Singh had occurred on account of an accident, therefore, neither lodging the F.I.R. nor the post-mortem were necessary, Hence, we hold that the abovesaid contention of the ld. Counsel for the respondent is inconsequential.

15. In view of the discussion made above, we direct the respondent to pay Rs.20 lakh to the applicant as the sum assured. The respondent is also directed to pay interest *upon the above said amount @ 12% p.a. from the date of institution of this application till realization of the amount in question. The parties are left to bear their own respective costs.".*

5. Aggrieved thereof, the petitioner has approached this Court.

6. Learned counsel for the petitioner has submitted that the deceased Maghar Singh was in breach of the terms & conditions of the policy and as such the exclusion clause would get attracted. Since the case of the respondent itself is that the deceased has consumed alcohol and the said aspect is duly covered under the exclusion clause, hence, the decision of the petitioner insurance company to repudiate the claim was in accordance with the terms & conditions of the policy and the same cannot be faulted with. Further, he, places reliance on the Hon'ble Supreme Court in the matter of '**Narbada Devi and anr. Vs. H.P. State Forest Corporation and anr.**' reported as 2012 (2) RCR (Civil) 618. Paragraph 17 thereof reads thus:

> *"17. Be that as it may, the Provisos of insurance policy specifically disclose that compensation will not be paid in respect of injury of the injured if he is under the influence of intoxicating liquor. The relevant Proviso 4 of the insurance policy reads thus:*
>
> *"PROVISOS*
>
> *Provided always that the company shall not be liable under this policy to:*
>
> *4) Payment of compensation in respect of death, injury or*

disablement of the insured from (a) intentional (illegible) suicide or attempted suicide,

(b) whilst under the influence of intoxicating liquor or drug (c) or (illegible) by insanity, (d) arising or resulting from the insured committing any breach of the law with criminal intent." The aforesaid Proviso 4 makes it amply clear that the injured is not entitled to compensation since on facts it is proved that he was intoxicated and that was due to intoxication."

7. Learned counsel for the respondent on the other hand contends that the Permanent Lok Adalat (Public Utility Services) has duly taken into consideration all the relevant aspects. He further contends that the deceased is stated to have consumed alcohol at around 9.00 p.m. -10.00 p.m. and that the electrocution happened at about 2.00 a.m. in the morning. Further, as per the case three pegs had been consumed by the deceased, however, there is no evidence on record to suggest that the deceased was under the influence of alcohol when the incident in question took place. He further contends that the cause of death of Maghar Singh, in the present case, is not on account of his being under the influence of alcohol but on account of electrocution. Since the cause of death is not relatable to the exclusion clause, hence, the benefits admissible to the petitioner under the insurance policy cannot be denied. It is further contended that insofar as the judgment in the case of '**Narbada Devi and anr.** (supra) relied upon by the learned

counsel for the petitioner is concerned, the same would not be applicable to the facts of the present case. In the said judgment a specific finding has been recorded that the deceased was heavily drunk before his death and had gone outside to sleep on a cold, rainy October night. The evidence in the form of Chemical Examiner's report and expert's opinion were also adduced before the Court wherein it was stated that cause of death was asphyxia on account of regurgitation of food articles into larynx and trachea after consumption of alcohol. The medical opinion taken from the Former Professor & Head of Department of Medicine and Principal, Indira Gandhi Medical College, Shimla was also on record according to which the alcohol found in the blood and urine was sufficient to cause deep sleep. The Court noticed that the cause of death in the said case was directly attributable to the excess consumption of alcohol. Hence, when the death in question is directly related to the violation, the exclusion would become operational in that case. Since in the present case, the death in question occurred as a result of electrocution and had no direct/indirect nexus with consumption of alcohol, hence, the judgment or the clause would not come into operation merely because a deceased may have consumed alcohol. The exclusion has to be read in exceptional circumstances and it is incumbent upon the petitioner-insurance company to establish that not only was the deceased under the influence of alcohol but also that the accident/death in question was directly attributable to acts/omissions which are in relation to the effect of alcohol. Once the above said link is absent, the petitioner-insurance company would not be justified to dispute its liability to disburse the insured amount. Further, the insurance policy is welfare oriented and unless the breach on the part of insured is well established, the petitioner-insurance company would not be justified in repudiating the claim.

8. No other argument has been raised by the learned counsel appearing on behalf of the respective parties.

9. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended with the present writ petition as also the contentions raised.

10. It is undisputed that the death in question occurred on intervening night of 07/08.08.2019, after having received an electric shock, at about 2.00 a.m. Even though the case of the petitioner-insurance company was to the effect that deceased-Maghar Singh, has consumed 3 pegs, however, there is no evidence that has been brought whereof it can be said the deceased was under the influence of alcohol or he was heavily drunk. Further, the death in question occurred on account of electrocution, as has been reported by the investigator of the petitioner-insurance company itself, hence, the death being in the nature of accidental death remains undisputed and uncontroverted. The question which thus arises next is as to whether the exclusion clause of the policy would come into play even if the cause of death is not directly/indirectly attributable to any of the exclusions set out therein.

11. It is well established that the contract of insurance are governed by the principle of uberrima fides and the terms of the contract are sacrosanct. The insurance company underwrites the rights a liability on tacit

understanding and that any breach of the terms & conditions or material non-disclosure would entitle the insurance company to repudiate the claim. However, the breach of the essential terms & conditions has to be direct and that such breach or concealment must necessarily be fundamental cause the accident/loss which has been under-written by the insurance company. Any remote violation, which has no bearing on the accident and/or the final outcome, would not be sufficient for the insurance company to claim that it is entitled to invoke its rights and repudiate a claim by invoking the exclusions merely on account of any violation and notwithstanding whether such violation has no bearing in the manner/nature and the circumstances in which the accident or incident in question took place.

12. There is no evidence on the basis whereof it can be concluded that the death in question was directly connected to the consumption of alcohol. Rather, both the acts are independent incidents, to the exclusion of each other. Thus, when the cause of death is not as a result of the being render the influence of alcohol, the contention of the petitioner that the deceased-applicant would not be entitled to the benefits would be untenable and would defeat the very object and intent of the welfare insurance policies.

13. Further, the judgment passed in case of '**Narbada Devi and anr.** (supra), relied upon by the learned counsel for the petitioner, would not be applicable to the facts of the present case since a specific finding based on evidence led had been recorded by Hon'ble Supreme Court that the deceased was heavily drunk and the death in that case was directly attributable to the act of consumption of alcohol by the deceased. The

asphyxiation of deceased, being a direct outcome of excessive consumption of alcohol, was proved on record by the medical evidence and by the opinion of the experts. The said opinion having been relied upon and having remained controverted, the deceased therein was in direct breach of the express condition, thus attracting the exclusions. Since the said facts are not existent in the present case, the judgment of the Hon'ble Supreme Court in case of '**Narbada Devi and anr.** (supra) would not apply in the present case.

14. Besides, the above said contentions of the petitioner have already been considered by the Permanent Lok Adalat (Public Utility Services) and has dealt with the same in Paragraph 13 of the award. Once the said contentions have been taken into consideration and a decision has been arrived at, based upon a possible and probable interpretation of the evidence adduced before the Court, exercise of such a discretion would not be ordinarily interfered with unless such exercise of discretion is illegal, perverse or suffers from impropriety and/or the conclusions are based upon gross misappropriation of evidence or against the settled position in the eyes of law.

15. The Permanent Lok Adalat is guided in its decision making by the guidelines mentioned under Section 22-D of the Legal Services Authorities Act, 1987 which holds that Permanent Lok Adalat shall decide on the basis of principle of natural justice, objectivity, equity, fairness & other principles of justice. Once such a jurisdiction has been exercised and when such exclusions are merely amongst probable and possible conclusions

on the appreciation of the evidence, I do not find that exercise of such discretion would suffer from a vice of illegality, procedural impropriety, gross irregularity, perversity or mis-appreciation of evidence which may led to a conclusion that the award would be unsustainable, on a correct appreciation.

16. It is further evident that the Permanent Lok Adalat (Public Utility Services), Rupnagar has taken into consideration all the relevant facts & arguments advanced by the petitioner Insurance Company and has exercised its discretion as per the guidelines prescribed under Section 22 –D of the Legal Services Authorities Act, 1987.

17. The award thus does not suffer from the vice of illegality, perversity or gross mis-appreciation of evidence. The present petition is accordingly dismissed. The order/award dated 26.08.2021 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Rupnagar is hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

19.01.2024
Mangal Singh

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