

15.01.2025
Item No.11
gd/ssd

MAT/1411/2024
NEW INDIA ASSURANCE COMPANY LIMITED AND
ORS.
VS
BHABANI NAYAK AND ORS.
IA NO: CAN/1/2024, CAN/2/2024

Mr. Prolay Kar,
Ms. Debasree Dhamali,
Ms. Riya Ghosh
..for the Appellants.

Mr. Bibek Jyoti Basu,
Mr. Sandeep Prasad Shaw,
Mr. Aman Kr. Singh
..for the Respondent No.1.

Mr. Arnab Chakraborty,
Ms. Pragya Bhowmick,
Mr. Sukalyan Chakraborty,
Ms. Esha Kar
..for the Respondent Nos.2 and 3.

1. This intra court appeal by the New India Assurance Company Limited is directed against the order dated 19th February, 2024 in WPA 26994 of 2017.

2. The writ petition was filed by a widow of a person, who had availed a group insurance policy, called Janata Personal Accident Policy. The policy certificate was issued on 8th January, 2000 for a period of 15 years which was to expire on 7th January, 2015. Unfortunately, the insured person died on account of an accident on 7.4.2010 pursuant to which a claim was lodged by the widow of the deceased.

3. The appellant/insurance company sat tight on the said claim and did not consider the claim or reject the claim by passing a reasoned order.

4. The writ petitioner having waited patiently for several years was left with no other option to approach the learned writ court in the year 2017 and filed the writ petition.

5. The writ petition was heard elaborately and the learned Single Bench has allowed the writ petition directing the appellant/insurance company to entertain and decide the claim of the writ petitioner on its own merit and release the amount along with interest at the rate applicable to a savings account in a nationalized bank from the date of claim, till the date of actual payment. This order was passed on 19th February, 2024 and the present appeal has been filed by the insurance company before this court on 13th August, 2024.

6. It is not in dispute that the appeal is time barred and consequently the appellant has filed an application under Section 5 of the Limitation Act to condone the delay of 121 days in preferring the appeal.

7. The prayer for Condonation of delay is seriously opposed by the respondents and they have filed their affidavits-in-opposition.

8. It is true that the delay is only 121 days.

9. As pointed out by the Hon'ble Supreme Court the length of delay is not material and even in cases where the delay is very marginal and if it is found that the parties were not diligent in the matter and there was unreasonableness in the approach, the courts have refused to exercise any discretion in condoning the delay. Equally, even if the delay is enormous when the court found that sufficient cause has been shown the courts have exercised discretion and condoned the delay.

10. In this case, we have to consider as to whether any discretion is required to be exercised in the matter for Condonation of delay of 121 days. The facts and circumstances of the case which are available on record, prevents us from exercising any discretion in favour of the appellant/insurance company. We support such conclusion with the following reasons. Though such conclusion may slightly touch upon the merits of the matter, we are compelled to do so on account of the arguments advanced by the learned advocate for the appellant/insurance company and that of the respondents.

11. As pointed out earlier the policy certificate was issued by the insurance company on 8th January, 2000 for a period of 15 years which was to expire on 7th January, 2015.

12. It is not in dispute that the insured person died on 7th April, 2010 i.e. within the validity period of the insurance policy. After which the widow of the deceased had filed a claim petition before the appellant/insurance company which was not decided which compelled the writ petitioner to approach the writ court for a direction in the year 2017. The writ petition was pending and finally disposed of by the impugned order dated 19th February, 2024.

13. The contention of the appellant/insurance company is that the status of the deceased is disputed/not established and, therefore, the policy claim cannot be entertained.

14. The question would be as to whether the appellant/insurance company can raise such an issue.

15. In support of his contention the learned advocate appearing for the appellant referred to the decision of the Hon'ble Division Bench in an intra court appeal in APOT 120 of 2019 dated 27th July, 2023.

16. This intra court appeal was directed against the judgment and order passed by the learned Single Bench dated 18th March, 2019.

17. The learned advocate for the appellant/insurance company would strenuously contend that the writ petition filed by the Golden Trust Financial Services and Anr., namely, the partnership firm which had availed the Group Insurance Company

for its employees raised several issues and the learned Single Bench after having examined all issues in detail had dismissed all the writ petitions and, therefore, the stand taken by the appellant/insurance company in this appeal at this juncture that the status of the deceased could be gone into at this stage cannot be entertained.

18. Apart from that, it is contended that after the Insurance Development Regulatory Authority was constituted a policy decision was taken on 1st August, 2002 whereby the amount covered under the policy and the period of insurance was restricted.

19. Therefore, it is submitted that the claim of the writ petitioner could not have been allowed by the learned Single Bench.

20. To test the correctness of the submissions made by the learned counsel appearing for the appellant/insurance company, we have carefully gone through the judgment and order passed by the Hon'ble Division Bench in APOT 120 of 2019 dated 27th July, 2023.

21. It is no doubt true the Hon'ble Division Bench has held that the learned Single Bench has rendered a detailed finding and it does not propose to interfere with the findings rendered by the learned Single Bench.

22. As could be seen from the order passed by the Hon'ble Division Bench, the question which fell for consideration before the learned Single Bench was whether a writ petition under Article 226 of the Constitution of India would be maintainable in cases where an insurance policy is availed by a private individual or a partnership firm the then insurance company.

23. Essentially, therefore, the question revolved around maintainability of the writ petition.

24. The Hon'ble Division Bench in its judgment dated 27th July, 2023 has also noted this fact and has recorded its opinion in this regard.

25. However, in the concluding paragraph of the judgment the Hon'ble Division Bench has issued the following direction:

“In view of the civil consequences on the persons who have already lodged claims i.e., under the aforesaid Group Janata Personal Accident (G.J.P.A.) Insurance Policy upto 18th March 2019 (the date of the impugned order) it is directed by this Court that each of such claim shall be entertained and decided by New India Insurance Company on its individual merits and the impugned judgment and the observations of this Court shall not stand in the way of such consideration”

26. As could be seen from the above paragraph, despite the findings rendered by the Hon'ble Division Bench in the earlier paragraphs, the direction issued in paragraph 18 is a standalone direction which binds the appellant/insurance company as the

judgment and order in APOT 120 of 2019 has attained finality.

27. In terms of the above direction, the appellant/insurance company has to entertain and decide the claims made under the Group Insurance Policy upto 18th March, 2019 which was the date on which the order was passed by the Single Bench which was impugned in the appeal and to be decided on its individual merits and the judgment of the Single Bench dated 18th March, 2019 and observations made by the Hon'ble Division Bench in APOT 120 of 2019 shall not stand in the way of such consideration.

28. Therefore, the appellant/insurance company is clearly precluded from canvassing any issue such as the issue regarding status of the deceased or that whether the partnership firm was the lawful insured and such other issues.

29. The learned advocate appearing for the appellant placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner, Nagar Parishad, Bhilwara v. Labolur Court, Bhilwara and Another* in (2009) 3 SCC 525 for the proposition that High Court while dismissing an appeal on the ground of limitation would not be permitted to go into the merits of the case.

30. As observed earlier, we have not entered into the entire merits of the case but took note of the

various dates and events and we are invited to do so on account of the submissions made by the learned advocate appearing for the appellant/insurance company.

31. It needs to be clarified that in none of the preceding paragraphs the court has rendered a finding regarding the merits of the matter. In fact, the learned Single Bench was also conscious of the fact while issuing the direction in paragraph 39 of the impugned order which is quoted hereinbelow:

“Let the respondent no. 1 entertain and decide the claim of the present writ petitioner on its own merit and release the amount, alongwith the interest at the rate, applicable to a saving account in a nationalized bank, from the date of claim, till the date of actual payment made.”

32. Thus, in terms of the above direction, the insurance company would be precluded from raising a plea which, in our view, is a most unreasonable stand taken by the appellant/insurance company after a lapse of more than 20 years from the date on which the death of the insured occurred, namely, on 7th April, 2010.

33. As pointed out earlier, the insurance company did not take any prompt action nor there was any order passed repudiating the claim.

34. The writ petitioner having patiently waited for several years was compelled to approach the learned writ court in the year 2017 and the writ petition was

pending for all these years and finally disposed of on 19th February, 2024.

35. Therefore, in our view, the case on hand is very hard case on facts which precludes us from exercising any discretion in favour of the appellant/insurance company.

36. In the case of *Commissioner, Nagar Parishad, Bhilwara (supra)* the Hon'ble Supreme Court was satisfied with the explanation for the delay.

37. After going through the averments made in the application under Section 5 of the Limitation Act this court finds that the delay has not been properly explained.

38. This is an additional ground for us not to condone the delay in filing the instant appeal.

39. For the aforementioned reasons, the application for Condonation of delay is dismissed.

40. Consequently, the appeal stands rejected and the appellant/insurance company is directed to comply with the direction issued by the learned Single Bench within two weeks from the date of receipt of the server copy of this order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)