AVANISH KUMAR V. RELIANCE GENERAL INSURANCE COMPANY LTD. & 1 ANR.

Avinash Kumar Vs. Reliance General Insurance Company Ltd. & 1 Anr.

1. AVANISH KUMAR

S/O LATE SH.RAM DUTT, R/O HANUKHEDA, TEHSIL-
BHOGAON,

DISTRICT : MAINPURI
UTTAR PRADESH

……..Petitioner(s)

Versus

1. RELIANCE GENERAL INSURANCE COMPANY LTD.
HIMALAYA HOUSE, 5TH FLOOR,38-B JAWAHARLAL
NEHRU ROAD,
KOLKATA
W.B
2. GOLDEN MULTI SERVICES CLUB LTD.,
(THROUGH MANAGER) H.O.S.B. MANSION, 16 R.N
MUKHERJEE
KOLKATA
W.B – 700001

……..Respondent(s)

Case No. : REVISION PETITION NO. 2869 OF 2017

Date of Judgement : 04 December 2023

Judges : MR. SUBHASH CHANDRA

For Petitioner : MR SIDDHANT GAUTAM, ADVOCATE

For Respondent : FOR RESPONDENT NO.1 MR NAVNEET KUMAR, ADVOCATE
FOR RESPONDENT NO.2 MS KSHITIJ SINGH,

PROXY COUNSEL FOR MR KUNAL CHATTERJI, ADVOCATE

Facts

- ***Smt. Sudama Devi held a personal accident policy of Rs 3 lakhs issued by Reliance General Insurance valid from 04.02.2011 to 03.02.2012***
- ***She died on 23.03.2011 after being hit by a buffalo***
- ***Her son and nominee Avanish Kumar filed a claim which was rejected by the insurer***
- ***He filed a consumer complaint against the insurer and the intermediary before the District Forum which was allowed***
- ***The State Commission set aside the order on appeal by the insurer***
- ***The present revision petition has been filed against the order of the State Commission***

Court's Opinions

- ***The District Forum had rightly concluded that the death was due to an accident based on medical records establishing head injuries***
- ***It had correctly noted that conducting a post-mortem is not mandated and lack of it cannot be held against the insured***
- ***The State Commission erroneously held that death due to animal hit was excluded without the insurer providing terms of the policy***
- ***As per Supreme Court judgment in Modern Insulators case,***

insurer cannot rely on exclusions not communicated to the insured

- *The insurer has not contested the revision petition and has no objection to release of amount deposited by it*

Referred Laws The Consumer Protection Act, 1986:

- *Section 21(b) – Power of revision*
- *The present petition has been filed under this provision against the order of the State Commission*

Order

- *The revision petition is allowed*
- *The insurer has already deposited Rs 3.26 lakhs out of which 50% released earlier*
- *Balance Rs 1.66 lakhs along with interest accrued to be released to the petitioner within 1 month*

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Full text of Judgement :

1. This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short, the “Act’) assails the order

dated 06.06.2017 in Appeal No. 17/2015 of the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (in short, the 'State Commission') dismissing the appeal of the petitioner against order dated of the District Consumer Disputes Redressal Forum, Mainpuri (in short, the 'District Forum') dated 31.10.2014 in Consumer Complaint no. 155 of 2013.

2. The facts as per the revisionist are that his late mother, Smt. Sudama Devi held a personal accident policy for Rs 3,00,000/- for the period 04.02.2011 to 03.02.2012 issued by the respondent. The insured died on 23.03.2011 due to an accident in which she was hit by a buffalo due to injuries. The revisionist's claim for insurance as her nominee and legal heir was repudiated by the respondent against which he filed a complaint before the District Forum which came to be allowed in his favour with interest and costs. The State Commission on appeal, however, set aside the order which is impugned by way of this petition.

3. I have heard the learned counsel for both the parties and carefully considered the material on record.

4. The petitioner argued that the order of the State Commission was erroneous and had incorrectly appreciated the evidence. It was argued that the death of the insured had been wrongly held to have not been an accident based on the exclusion clause of the policy. It was argued that the death of the insured was due to an untoward incident beyond the control of the insured and the purpose of the policy was to insure her life against such accidents. The State Commission had erred in not providing the terms and conditions of the policy containing the exclusion clause and only providing the cover note. It was argued that for this reason the respondent could not claim the benefit of the exclusion clause as held by the Hon'ble Supreme Court in Modern Insulators Vs. Oriental Insurance Co. Ltd. The reliance on a dubious report of the surveyor dated 06.09.2011 was also challenged by the petitioner. He therefore claimed the amount awarded by the District Forum with 6% interest p.a.

5. Learned counsel for the respondent no.1 submitted that the amount of Rs 3,00,000/- awarded by the District Forum had been deposited in an interest bearing account of the District Forum on 26.05.2015 as a condition to the appeal being admitted. During the course of oral submissions, he submitted on instructions that the respondent had no objections to the release of this amount to the petitioner inclusive of the accrued interest. It was also submitted that 50% of the award amount had already been released to the petitioner. This was not
disputed by the petitioner.

6. The order of the District Commission had, on contest, concluded as under:

10. The respondent insurance company has only disputed the cause of the accident wherein it is stated that being hit by buffalo and death due to hit does not come under the category of accidents.

11. The petitioner has presented the Medical Certificate and prescriptions from the doctor employed in Primary Healthcare Centre Saroth District Eta, who treated the mother of petitioner Smt Sudama Devi. The said medical of icer Dr R S Singh has mentioned in the medical certificate dated 03.05.2011 that son named Avnish Kumar taken his mother in unconscious condition with head injury, who died during treatment in the hospital on the said date. The above mentioned medical certificate has been proved by the petitioner by way of his affidavit. The respondent insurance company has not filed any medical certificate of said doctor which stated that Smt Sudama Devi was not treated by him and she was not taken to Primary Health Care Centre, Saroth in unconscious state due to head injury. It is not that the said medical certificate was issued by any NGO. The said medical certificate was issued by the Medical Of icer of Primary Health Care Centre, District Eta, which is a Uttar Pradesh Government Hospital.

12. The respondent insurance company has neither stated that the petitioner did not inform the police about the death of

Smt Sudama Devi nor post mortem was conducted.
13. It is argued by the counsel of the petitioner that the concerned policy station was informed by them as it is evident from page 37 of the file. Now, the question arises as to whether the post mortem of the mother of the petitioner Smt Sudama Devi was got conducted or not by the petitioner.
14. Learned counsel of the petitioner argued that the mother of the petitioner was hit by a buf alo and receive head injury and became unconscious and died in unconscious condition. It is also argued by the learned counsel of the petitioner that village people are less educated, thus they don't have any kind of legal knowledge, that's why they do not feel it suitable to get the post mortem of a dead body and because of this reason post mortem was could not be conducted. Learned counsel of the petitioner argued that the respondent insurance company have not stated this fact in their written statement that under which provisions of insurance policy, post mortem is necessary to be done. This forum find force in the argument of the learned counsel of the petitioner.
15. The respondent no.1 insurance company has placed reliance on II (2010) CPJ (SE) Shri Venkteshwar Syndicate vs Oriental Insurance Company Ltd., Civil Appeal no. 4487 of 2004 decided on 24.08.2009.
16. That the judgment presented by the respondent does not apply to the present case because of the fact of present case are different from the case cited above. In the present case, insurance of the individual was done only after assessing the insured amount. Whereas among the facts stated in the above position, it is stated that the assessment of damage in M/s Jai Bharat Cartorn Mill by the surveyor has been held to be justified.
7. The finding of the State Commission vide the impugned order is that:
The learned counsel of the appellant insurance company has presented the conditions of personal accident insurance policy of Reliance General Insurance Company Limited in the exclusion clause of which it is stated that in case of death due to

snake bite, dog bite, insect bit, drowning or animal hit the benefits under the policy will not be available and from the petitioner it is clear that the mother of the respondent/ petitioner was hit by a running buffalo. Therefore, the mother of the respondent petitioner died due to hit by buffalo which comes under the exclusion clause of the policy for which the insurance company is not liable to pay any benefit, therefore, the order passed by the District Consumer Forum to pay the insured amount for the death of the mother of the respondent/ petitioner due to buffalo hit is against the terms of the policy and is liable to be dismissed. It is undisputed that the insurance policy of the mother of the defendant/ complainant was obtained through the respondent/ opposite party no.2, i.e., Golden Multi Service Club Limited and it is not stated by the respondent/ opposite party no.2 that they were not aware of the terms and conditions of the policy. Based on the above facts it is clear that the impugned order passed by the District Consumer Forum is against the terms of policy and the law. Therefore, it is proper to admit the appeal and set aside the impugned judgment and order and dismiss the complaint.

8. From the material on the record, it is apparent the State Commission set aside the order of the District Forum on the ground that death due to a hit by an animal fell under the exclusion clause of the policy. However, it is also manifest that the opposite party has not brought on record any evidence to the effect that the terms and conditions of the policy had been disclosed to the petitioner. In view, however, of it placing on record no objections to the release of the balance amount deposited with the District Forum along with the accrued interest thereon during arguments before this Commission, it is manifest that it does not oppose the revision petition. The award of the District Forum includes the insurance claim of Rs 3,00,000/- with interest @ 6% from the date of filing of the petition (14.12.2012) till the date of final payment along with compensation for mental agony of Rs 5,000/- and litigation cost of Rs 3,000/-. An amount equal

to 50% of this amount already stands paid to the respondent.

9. In view of the foregoing, the revision petition is allowed. The respondent no.1 has already deposited an amount of Rs.3,26,392/- on 18.05.2015 out of which 50% of the amount has already been released to the petitioner. The balance amount of Rs 1,63,196/- deposited with the District Forum on 18.05.2015 along with the compensation of Rs 5,000/- and litigation cost of Rs.3,000/- is ordered to be released to the petitioner within one month of this order. The interest accrued on the total amount deposited by the respondent will also be released together with the above amount.

10. Parties will bear their own costs. Pending IAs, if any, also stand disposed with this order.

—END—