

(2010) 09 NCDRC CK 0017

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Chandra Bhushan Prasad ,
Soumya Ranjan

APPELLANT

Vs

Life Insurance Corporation of
India

RESPONDENT

Date of Decision: Sept. 29, 2010

Citation: 2010 0 NCDRC 180 : 2010 4 CPJ 187 : 2010 4 CPR 60

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Advocate: Sujit Kumar Singh , Ashok Kashyap

Judgement

1. REVISION Petitions No. 3381 and 3382 of 2006 have been filed by Dr Chandra Bhushan Prasad and his son Soumya Ranjan (hereinafter referred to as "Petitioner") in the same insurance claim which was repudiated by the LIC (hereinafter referred to as "Respondent"), against the common order passed in both these cases by the Bihar State Consumer Disputes Redressal Commission, Patna (hereinafter referred to as the "State Commission").

2. THE brief facts of the case according to the Petitioners are that their late wife/mother respectively, Dr Sudha Sinha had obtained two LIC policies from the Respondent. In one policy covering her life her husband was the nominee and in the other policy pertaining to Double Benefit Accident amounting to Rs.3.00 lakh the son of the deceased Soumya Ranjan was the nominee. On 15.05.2004, Dr Sudha Sinha suffered a heat stroke while she was waiting for a bus and became unconscious. She was taken to a Nursing Home where she was diagnosed as having suffered from heat stroke and was referred to Magadh Hospital, Patna, where she

died on 04.06.2004, due to heart failure caused by heat stroke. THEnafter the Petitioners filed a claim with the LIC and also claimed payment of additional amount/ accident benefit since the death of the assured according to the Petitioners was caused by an accident. While the Respondent/ LIC paid the Petitioner Rs.1.5 lakh, in respect of one policy the claim for the double benefit/ accident benefit was repudiated on the grounds that death by heat stroke cannot be termed as an "accident" under the said policy.

Aggrieved by this decision of the Respondent, Petitioners filed complaints before the District Forum claiming a sum of Rs.1.5 lakh payable under the accident benefit policy alongwith Rs.50,000/- towards mental agony, harassment and cost of litigation.

The District Forum allowed the complaints and directed the Respondent to make payment of double benefit/ accident benefit to the Petitioner with 9% interest with effect from the date of claim to the date of payment alongwith cost of Rs.1000/-.

3. AGGRIEVED by the order of the District Forum, Respondent filed an appeal before the State Commission. According to the Respondent the claim of the Petitioners in the Double Benefit accident policy was rightly repudiated because as per the report of the medical attendant the primary cause of death was refractory hyperkalemia leading to cardiac arrest and only the secondary cause of death was attributed inter-alia to heat stroke with septicemia etc. As per medical literature on the subject it is commonly accepted that no person who suffers a heat stroke survives for as long as twenty days, as was the case with the deceased. In fact, death occurs normally as early as within five minutes to three days as per Modi's Medical Jurisprudence and Toxicology (23rd Edition). Even otherwise the Petitioner led no credible evidence to prove that the deceased suffered heat stroke and did not die of a heart episode. Further, heat stroke cannot be termed as an accident. According to the relevant provisions of the Insurance Policy, Double Accident Benefit is applicable only if the life assured "sustains any bodily injury resulting solely and directly from the accident caused by outward, violent and visible means and such injury solely, directly and independently of all other causes results in the death of the life assured". Sun stroke or heat stroke is not an accident as contemplated under clause 10 (2) (b) of the Insurance policy in as much as it is neither violent nor visible. In any case, as stated earlier heat stroke was not the cause of death and was only one of the secondary causes.

The State Commission after hearing both the parties allowed the appeal and set aside the order of the District Forum. The relevant portion of the State

Commission's order reads as follows: "Now the question is whether double benefit is permissible in these two cases. The appellants in both cases have pleaded that heat stroke is not an accident as envisaged by clause 10 (2) (b) of the terms and condition of the policy. Further another plea was that the medical attendant's certificate does not mention heat stroke as the primary cause of death. Further heat stroke is not an accident as it has no violent or visible injury of an accident as required under clause 10 (b) of the policy. Again a ruling of the Hon'ble Supreme Court has also been quoted by the appellants that when construing a contractual clause of the contract the words and terms used therein must be given effect to. The appellants have also filed a copy of the ruling of the State Commission, Maharashtra to show that heat stroke is not an accident. After careful consideration we agree with the plea of the appellant that the terms mentioned in clause 10 (b) cannot be interpreted in any other way and what the wordings used in the clause say. Clause 10 (2) (b) of the policy requires bodily injury caused by outward violence by visible means and which injury solely directly and independently of all other causes, results in the death of the assured. In the written statement filed by the appellants before the District Forum it has been stated by the medical attendant in Form-B that primary cause of death was heart attack and heat stroke was only a secondary cause. In conclusion after considering all the above facts we are unable to accept the finding of the learned District Forum that heat stroke is an "Accident". This being so, when the LIC have already paid the assured amounts with bonus against both the policies no claim for double benefit can be entertained. In result the impugned orders in both the appeals are set aside and the appeals are allowed. There shall however be no order to cost".

4. AGGRIEVED by the order of the State Commission the present revision petition has been filed. Learned Counsel for both the parties made their oral submissions.

Learned Counsel for the Petitioner sought to explain that the death of the deceased was caused by heat stroke which is often fatal. Prior to this episode, the deceased was healthy and this was also recorded in her LIC policy. In fact it was the heat stroke which led to other complications which compromised the functioning of the heart and lung. Further, heat stroke is very much an accidental death as decided by this Commission in RP No. 973 of 2007 " Rita Devi @ Rita Gupta vs National Insurance Co. Ltd. and Ors, (2007) wherein it has been concluded that accidental death includes death caused by exposure to natural elements. The relevant portion of this order reads as follows:

"From the aforesaid law* developed in other countries and in this country, it is clear that the injury or death caused by lightning, sun-stroke or earthquake has been held to be accidental. Further, where a man in the course of his work is exposed to excessive heat coming from a boiler and becomes Halbury's Laws exhausted and death occurs, it would be an accidental death. Similarly, a person working in a icy cold water and thereafter, sustains pneumonia which causes his death, such death is also considered to be an accidental death".

It was further submitted that the definition of accidental death stated in the Insurance Policy is not exhaustive but only illustrative. Bodily injury need not always be caused by an outward, violent and visible means. There are several cases of internal injuries being suffered by a deceased where there are no external marks of injury on the surface of the body. It cannot be said that in such cases death of life of assured and not take place by way of accident.

5. COUNSEL for the Respondent has reiterated that there is clear medical evidence that the primary cause of death was hyperkalemia leading to cardiac arrest and this was not a complication of heat stroke. In fact even most of the secondary causes of death was not because of heat stroke but septicemia, DIC etc., as submitted before the learned Fora. The shortest fatal period for a heat stroke is between five minutes which can be prolonged to three days at the most and not 20 days as in this case.

6. SO far as treating heat stroke as accidental death is concerned, the ruling of the National Commission in Rita Devi @ Rita Gupta vs National Insurance Co. Ltd., has not achieved finality since this interpretation is being challenged in the Supreme Court.

We have heard learned Counsel for both the parties and have carefully gone through the evidence on record. There is no ambiguity in the medical record of the deceased regarding the cause of death. It is clearly indicated that the primary cause of death was refractory hyperkalemia leading to cardiac arrest. Hyperkalemia is often a fatal medical condition caused by more than the normal levels of potassium ions circulating in the blood. It is usually caused because of severe malfunctioning of the heart and/ or kidney and is not caused by heat stroke. So far as the secondary cause of death is concerned septicemia also called "blood poisoning" is caused by

the spread of micro organisms and toxicants through the circulating blood. It is again not a symptom of heat stroke. Therefore, in the absence of any proof, medical or otherwise, we cannot conclude that the life assureds death was caused because of heat stroke.

The issue whether heat stroke is an accidental death has become infractuous in this case, since it has been established by medical evidence that the deceased did not die due to heat stroke. However, since the issue was discussed at length by the learned Counsel for both the parties, we would like to state that we agree that it is not yet a settled law, since an SLP has been filed on this issue in the Supreme Court. Also as pointed out in the order of the State Commission there have been contrary rulings on this issue by other Consumer Courts.

7. IN view of the above, we have to determine what is an accident, strictly as per the terms and conditions of the INsurance policy. IN Section 10 (b) of the INsurance Policy, it is clearly stated that:

"if the life assured shall sustain any bodily injury resulting solely and directly from the accident caused by outward, violent and visible means and such injury shall within 120 days of its occurrence solely, directly and independently of all other causes result in the death of the life assured".

Thus, there is no ambiguity in what constitutes an accident under this policy and heat stroke is clearly not covered under it. The contention that since insurance policies are one sided, being designed by the Insurance Company cannot be a reason for its rejection because once a policy is taken by the life assured it becomes a contractual agreement under the Indian Contract Act which has to be honoured by both the parties. The Respondent was justified in repudiating the two claims.

8. WE therefore, see no reason to interfere with the order of the State Commission, which is upheld with no order as to cost.