ROYAL SUDARAM ALLIANCE INSURANCE CO. Vs A. BHAGYALAKSHMI & ANR.

2829 of 2013

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Sept. 21, 2015

Acts Referred:
Motor Vehicles Act, 1939, Section 92 A

Citation: 2016 1 CPJ 414

Hon'ble Judges: J.M.Malik, Dr.S.M.Kantikar

Advocate: A. Bhagyalakshmi, Abhishek Puri, P. K. Seth

Judgement

1. This order shall decide the above said two Revision Petitions, which are, separately, filed by both the parties. Both the Revision Petitions swirl

around two important questions. Firstly, whether a murder is an accident? Secondly, if it is an accident, whether the nominees/legal representatives

of the insured are entitled to Rs.10,00,000/- or Rs.5,00,000/-, as per the insured''s cards. Like State Commission, we will also decide both the

Revision Petitions through this common order.

2. Sh. Rajesh Artham (deceased), the insured, is the son of Smt. A. Bhagyalakshmi, the complainant. Through an agent Sh. Rajesh Artham, who

was working as Software Engineer, at Satyam Computers in Bangalore, opened two Credit Card Accounts with Standard Chartered Bank-OP-1.

There was a combined Credit-Card limit of Rs.29,000/-. Those credit-cards had insurance coverage of Rs.5,00,000/- each with nominee

facilities. The complainant was shown as the nominee.

3. On 10.01.2005 at Mahalakshmi Lodge in Bangalore, Sh. Rajesh Artham was murdered. A criminal case was registered. Royal Sundaram

Alliance Co. Ltd.-OP2, which provided the Insurance coverage, informed the complainant on 04.02.2005 to furnish the relevant documents regarding the death, FIR, P.M. Report etc. The OP also appointed Sh. L. Sriram as an investigator. The OPs, however, repudiated the claim. The

legal notice was sent. The Insurance Ombudsman at Hyderabad considered her claim. All these efforts did not bring any result. Ultimately,

complaint was filed before the District Forum. The District Forum decided the case on 17.06.2010. The order runs as follows:-

The Complaint is allowed in part. It is held that there is deficiency in service by the Opposite Parties. The opposite parties 1 and 2

shall be jointly and severally liable to pay the awarded amount. It is held that the Complainant is entitled to recover Rs.5,00,000/-

(Rupees Five lakhs) from the opposite parties 1 and 2, relating to the insurance policy along with interest at 12% p.a. from the date of

repudiation i.e. 7.3.2005 until actual payment. In addition to it, the opposite parties 1 and 2 shall be liable to pay Rs.25,000/-

(Rupees twenty-five thousand) as compensation and cost of Rs.5,000/- (Rupees five thousand) to the complainant.

4. Both the parties preferred appeal before the State Commission. The OPs prayed that the complaint be dismissed and complainant desired that

the compensation amount be enhanced to Rs.10,00,000/-. Both the appeals were dismissed.

5. We have heard the counsel for the parties. Counsel for the petitioner-Insurance Company has invited our attention towards the celebrated

authority of the Hon''ble Supreme Court, titled as Smt. Rita Devi & Ors. versus New India Assurance Co. Ltd. & Anr., decided on 27.04.2000,

wherein it was held:-

In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the

deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine

the actual legal import of the words death due to accident arising out of the use of motor vehicle. The question, therefore, is can a

murder be an accident in any given case? There is no doubt that murder, as it is understood, in the common parlance is a felonious act

where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there

are also instances where murder can be by accident on a given set of facts. The difference between a murder which is not an accident

and a murder which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of

the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the

cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then

such murder is an accidental murder.

In the said judgment, it was further held:-

In the case of Shivaji Dayanu Patil & Anr. vs. Vatschala Uttam More (1991 (3) SCC 530) this Court while pronouncing on the

interpretation of Section 92 A of the Motor Vehicles Act, 1939 held as follows : Section 92-A was in the nature of a beneficial

legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial

legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in

preference to a construction which tends to defeat that purpose.

Lasly, it was further held:-

In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased

(Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the

conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the

conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

6. Under these circumstances, the facts of the murder case deserve a look. The facts are detailed in para No. 14 of the order of the State

Commission, which runs as follows:-

14. After coming to know about the murder of the son of the complainant, the complainant as well as other relatives rushed to the

police station and identify the dead body though the head was severed from the body which was informed to the OP by the

complainant and the OPs have deputed their investigator to find out the truthfulness or otherwise of the same. The report indicate that

on 10.1.2005 two persons were checked into a hotel and hired the room for four days that is on the evening of 10.1.2005 and found

locked on 11 and 12 . As stench started emanating from the th th room and the jurisdictional police broke open the door and found

head less body which is not in dispute. The report of the investigator discloses that the police were investigating the case had

identified the murderer, Mr. Nagendra Reddy, a close friend of the deceased and Mr. Madan Raj, his accomplice, who had

confessed to have done the above act of murder. The head which was said to have been removed from the body, was found in

Mysore Road, which was recovered in charred condition and hence sent to Forensic laboratory for reconstruction and matching with

that of cerebral column removed from the body. Samples were sent for DNA analysis.

7. From the above said facts, it is not clear, what was the dominant motive? Dallops of mystery surround this case. The dominant intention of the

act of the felony to kill the insured does not stand proved . No investigation report, no judgment of the criminal court saw the light of the day, to

prove this fact. It is difficult to say whether the dominant intention had started from very beginning or it developed at the spur of the moment.

Consequently, we fully agree with the orders passed by the Fora below and held it to be a case of accident.

8. Now we turn to the second point, whether the petitioner is entitled to one card, i.e., Rs.5,00,000/- and 2 card also, i.e., Rs.10,00,000/-.

Counsel for the complainant very nd conveniently stated that Rs.5,00,000/- should be granted on each card. The complainant is entitled to

Rs.10,00,000/-.

9. However, a closure scrutiny on the evidence on the record does not go to support this plea. The Group Personal Accident Insurance Policy

Accident Protector Plus, mentions benefits. It starts as follows:-

BENEFITS

If at any time during the currency of this Policy, the Insured Person shall sustain any bodily injury resulting solely and directly from accident caused

by external, violent and visible means anywhere in the world, then the Company shall pay to the Insured Person or nominee(s)/legal heir(s) of the

Insured Person as the case may be, the sum or sums hereinafter set forth, that is to say:

Then there are exclusions. It mentions:-

EXCLUSIONS PROVIDED ALWAYS THAT The Company shall not be liable under this Policy for:

1.Compensation under more than one of the foregoing sub-clauses in respect of the same incident.

2. Any other payment after a claim under one of the forgoing sub-clauses (a), (b) or (d) hasbeen admitted and become payable.

3. Any payment in case of more than one claim under the Policy during any one period of insurance, by which the maximum liability of the

Company in that period for death and disablement payable shall exceeds the sum stated in the relevant section of the Policy Schedule.

Means that the petitioner is not entitled to have the amount of two policies. One cannot have two compensations for one murder/accident.

Likewise, the one injury will fetch only one compensation and not two compensations.

10. Consequently, we find no fault in the decisions given by both the Fora below. Both the Revision Petitions are therefore dismissed. No order as

to costs.