

(2018) 11 J&K CK 0120

Jammu & Kashmir High Court (Srinagar Bench)

Case No: Other Writ Petition (OWP) No. 1743 Of 2013

Divisional Manager
National Insurance Co.
Ltd
@APPELLANT@Hash
Ghulam Hassan Koka
And Ors

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 30, 2018

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 â€” Section 103, 104#Jammu And Kashmir State
Ranbir Penal Code, 1989 â€” Section 102, 201, 302

Citation: (2018) 11 J&K CK 0120

Hon'ble Judges: Sanjeev Kumar, J; Sindhu Sharma,J

Bench: Division Bench

Advocate: J.A.Kawoosa

Final Decision: Dismissed

Judgement

1. This petition under Section 103/104 of J&K State Constitution is directed against order dated 14th July, 2012 passed by the Divisional Consumer

Protection Forum, Kashmir (hereinafter referred to as Ã¢â€šâ„¢the Divisional Forum) in complaint file no.203 of 2010 titled Gh. Hassan Koka vs. Divisional

Manager, National Insurance Co. Ltd. and Anr. and upheld by the J&K State Consumer Disputes Redressal Commission, Srinagar (hereinafter

referred to as Ã¢â€šâ„¢The State Consumer CommissionÃ¢â€šâ„¢) in its order dated 17th May, 2013 passed in appeal no.47/2012. Both the forums below i.e.,

the Divisional Forum and the State Consumer Commission have concurrently held respondent no.1 entitled to sum of Rs.1.00 lac to be paid by the

petitioner-Insurance Company. Respondent no.1 has also been held entitled to sum of Rs.10,000/- on account of mental pain and agony and sum of

Rs.2000/- as litigation charges. In total sum of Rs.1,12,000/- has been awarded.

2. Before appreciating the contentions raised on behalf of the petitioner in support of the grounds of challenge urged to assail the impugned orders, it

would be appropriate to take note of few facts which have given rise to the filing of this petition:

Son of respondent no.1, namely, Sh. Mohammad Ashraf Koka was working as Process Server in the court of Sub Judge, Bijbehara, Anantnag. He

was allegedly picked up by the personnel of ITBP, 10th Bn from his house on 27th October, 2001 and thereafter he never returned. An FIR was also

registered with Police Station, Dooru on 03.11.2001 under Section 302 and 201 RPC against 11 personnel of ITBP. Since there was nothing heard

about the son of respondent no.1, the matter was taken note of by the Dy. Commissioner, Anantnag as head of the District Screening-cum-

Coordination Committee, who vide Order No.21/ER of 2008-09 dated 12.02.2009 directed that the son of respondent no.1 would be presumed as

dead. On the basis of aforesaid order of the Dy. Commissioner and in view of the fact that his son was insured under Group Janta Accident Insurance

Policy being employee in the court of Sub Judge, Bijbehara, he approached the petitioner-Insurance Company for indemnification. The case of

respondent no.1 for indemnification of insurance claim was forwarded by the High Court on 05.02.2010 to the Nodal Officer, Finance Department,

Civil Secretariat Jammu and the Nodal Officer concerned in turn forwarded the case of respondent no.1 to the petitioner-Insurance Company for

release of the insured amount to the rightful person vide Communication No.FD/JI/2010/Court-390 Dated 08.02.2010. The petitioner-Insurance

Company, however, did not entertain the claim and returned the same on the ground that it was time barred. It is in these circumstances that

respondent no.1 laid a claim for payment of the sum assured i.e, Rs.one lac as per policy and also claimed interest @18% per annum.

3. On being put on notice, petitioner-Insurance Company appeared before the Divisional Forum and filed their written version. The claim of

respondent no.1 was contested primarily on the ground that it was hopelessly time barred. Another objection to the maintainability of the claim was

taken by the petitioner-Insurance Company that the claim was not covered under the terms and conditions of the policy as there was no evidence to

indicate that the son of respondent no.1 had died on account of the contingencies mentioned in the insurance policy. In support of the complaint

respondent no.1 filed his own affidavit whereas the petitioner-Insurance Company did not lead any evidence.

4. The Divisional Forum after considering the rival contentions and perusing the record held the defences taken by the petitioner-Insurance Company

to repudiate the claim untenable in law and, accordingly, held respondent no.1 entitled to payment of sum assured alongwith compensation and costs of

litigation. As noted above, one lac was the sum assured which was directed to be paid to respondent no.1 by the petitioner-Insurance Company

alongwith Rs.10,000/- as compensation for mental pain and agony and Rs.2000/- as litigation expenses. The petitioner-Insurance Company assailed

the order of the Divisional Forum before the State Consumer Commission. The State Consumer Commission after affording full opportunity of hearing

to the petitioner and after going through the record, concurred with the order passed by the Divisional Forum and, consequently, dismissed the appeal.

It is this order of the State Consumer Commission which is assailed before us through the medium of this petition.

5. Having heard learned counsel for the parties and perused the record, we are of the considered view that the orders passed by the Forums below do

not call for any interference. As rightly observed by the State Consumer Commission, the extension of Group Janta Accident Insurance Policy to the

employees of the Subordinate Courts, including the son of respondent no.1, namely, Mohammad Ashraf Koka is not denied. The claim of respondent

no.1 has been opposed only on two grounds which were vehemently urged by the learned counsel for the petitioner-Insurance Company. It is

submitted by learned counsel for the petitioner-Insurance Company that the claim was highly belated and, therefore, barred by limitation. It is urged

that the son of the petitioner went missing on 27th October, 2001 whereas the claim was lodged in the year 2010 and the complaint before the

Divisional Forum was filed on 29th October, 2010. The arguments raised are totally untenable. It is true that son of respondent no.1 was allegedly

picked up by the personnel of ITBP 10th Bn. on 27th October, 2001 and it is equally true that for long his whereabouts were not known. The

concerned Police Station also registered the case under Section 302 and 201 RPC against the 11 personnel of ITBP 10th Bn. on 03.11.2001 but the

investigation could not culminate into any conclusive result. It is only when nothing was heard about Mohammad Ashraf Koka, respondent no.1

approached the Dy. Commissioner, Anantnag who declared the son of respondent no.1 as presumed dead on 12.02.2009. Thereafter, without any

further waste of time, respondent no.1 processed the case and forwarded the same to the petitioner-Insurance Company through proper channel. The

High Court forwarded the insurance claim of the son of the respondent no.1 to the Finance Department which in turn sent the same to the petitioner-

Insurance Company. The claim was, however, repudiated by the petitioner-Insurance Company on 30th April, 2010 when it was returned to the

Finance Department with the remarks that the same was not tenable being time barred. The complaint was thus filed on 29.10.2010. We, therefore,

do not understand how the claim petition was barred in any manner. This aspect has been correctly considered by both the forums below and we see

no reason to take a view different from the one taken by these forums.

6. It was next contended that in terms of the insurance policy the risk cover was provided only for death or disablement due to accident caused by

external violence, violent or visible e.g fire, drowning, road accident, electrocution, snake bite, attacks by wild animals, sterilization risks and claims

arising out of racing in wheels etc. and since cause of death of son of respondent no.1 could not be ascertained, therefore, the same cannot be linked

to the aforesaid factors. It is, thus, urged that the case of the respondent no.1 with regard to the insurance claim on account of death of his son was

not covered by the insurance policy.

7. We have given thoughtful consideration to this aspect of the matter and are in agreement with the view taken by the Divisional Forum. As noticed

above and as not disputed by the petitioner-Insurance Company that the son of respondent no.1 did not die the natural death. He was allegedly picked

upon by the personnel of 10th Bn. ITBP on 27th October, 2001 and thereafter he never returned. There is an FIR registered against 11 personnel of

10th Bn. ITBP with Police Station, Dooru under Section 302 and 102 RPC. Registration of FIR itself gives rise to presumption with regard to the

unnatural death of the son of respondent no.1 presumably in the hands of concerned personnel of 10th Bn. ITBP who had picked him up on 27th

October, 2001. All these factors taken cumulatively would demonstrate that the death of the son of respondent no.1 was due to external violence and,

therefore, the plea of the petitioner-Insurance Company that it was not covered by the Insurance Company is without any substance.

8. For all these reasons and also for the reason that this Court in exercise of its writ jurisdiction would sit in an appeal to disturb the finding of fact

concurrently returned by the two Forums below, we are not inclined to entertain this petition and the same is accordingly dismissed.