

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3456 OF 2016

(Against the Order dated 30/08/2016 in Appeal No. 636/2015 of the State Commission
Maharashtra)

1. LIFE INSURANCE CORPORATION OF INDIA & 2 ORS.Petitioner(s)

Versus

1. ROHINI SWAMIRespondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

FOR THE PETITIONER : MR. KAPIL SANKHLA, ADVOCATE
MR. HANISH PHOGAT, ADVOCATE.

FOR THE RESPONDENT : MR. SHIRISH K. DESHPANDE, ADVOCATE
MR. APOORV SHARMA, ADVOCATE
MR. MOHIT GAUTAM, ADVOCATE.

Dated : 04 April 2024

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been filed against the impugned Order dated 30.08.2016 passed by the Ld. State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench at Aurangabad, in Appeal No. 636 of 2015, vide which the Appeal filed by the Complainant/Respondent was partly allowed and accidental death benefit was awarded in addition to the sum assured awarded under the Order of the Ld. District Forum.

2. The factual background of the case is that the husband of the Complainant, Late Sh. Baswaraj Swami obtained an Insurance Policy from the Petitioners on 31.12.2010. The Policy, bearing No. 985723115, had a sum assured of Rs. 5,00,000/- with an additional amount of Rs. 5,00,000/- accidental death benefit, totaling Rs. 10,00,000/-. The husband filled up the Proposal Form himself, underwent a medical check-up by the Petitioners' Doctors, and paid the premium, following which the Policy was issued. On 31.07.2011, the husband returned home from work complaining of acidity and vomiting. Despite treatment from Dr. Mirza and Dr. Nagime, his condition worsened, and he was admitted to Alpha Super Specialty Hospital. Despite being in the ICU, his health deteriorated, and he passed away on 07.08.2011. A Post-Mortem examination suggested suspected poisoning, leading to an accidental death case registered at Chakur Police Station. However, the subsequent report on the viscera found no poison. The Complainant filed a claim for insurance, but it was repudiated on 14.10.2013, citing false answers in the Proposal Form regarding alcohol consumption and suspicion of suicide due to poisoning. Aggrieved by the wrongful repudiation, the Complainant filed her complaint before the Ld. District Forum, Latur.

3. The District Forum vide its Order dated 28.08.2015 partly allowed the complaint and directed the Petitioners to pay to the Complainant the sum assured under the Policy, i.e. Rs. 5,00,000/- along with Rs. 2,000/- towards mental agony and Rs. 1,000/- towards litigation costs. Aggrieved with the Order of the District Forum, the Complainant filed Appeal before the Ld. State Commission, which vide the impugned Order dated 30.08.2016 allowed the Appeal and directed the Petitioners to pay Rs. 5,00,000/- of accidental death benefit in addition to the sum assured already awarded by the District Forum. The relevant extracts of the impugned Order are set out as below –

“9. Almost all the facts except the contention of the opponent LIC that death of insured Bawaraj is not accidental, are not disputed. Therefore the crux in this matter is as to whether death of insured Baswaraj is accidental and if yes, whether the complainant is entitled for additional accidental benefit of Rs.5 Lakhs or not?”

10. Mr.Paithankar advocate appearing for LIC pointing out from the terms and conditions of the policy specifically clause 10(b) of the policy submitted that in order to hold the accidental death, it should be by direct sustaining bodily injury caused by outward violent and visible means etc. Further it is submitted that as per the medical case papers the death of insured was suspected poisoning and not by consuming poison accidentally. Further pointing out the C.A. report it is submitted that no poison was detected. Therefore it was also not suspected poisoning case. But we find no force in this submission of Mr.Paithankar. Because undisputedly insured Baswaraj all of a sudden was hospitalised as he became unconscious and died there while under medical treatment. Therefore the accidental case was registered with Police Station, Shivaji Nagar, Latur. Investigation was made by the police and final report was also submitted. On perusal of copy of final report it manifests that death of insured Baswaraj is accidental only. Therefore whatever may be the cause of accidental death it cannot be disputed that death is being accidental, the complainant who is widow insured is entitled for the amount of insurance as well as amount of additional accidental benefit. But it appears from the copy of judgment and order that the Dist.Consumer Forum without considering the undisputed facts and final report submitted by police wrongly held that the death of insured is not accidental and committed further error in denying complainant's claim for additional benefit. Such erroneous finding cannot be sustained.

11. In the result, appellant succeeds and appeal deserves to be allowed. Hence the following order.

O R D E R

1. Appeal is allowed and the impugned judgment and order rejecting complainant's claim for additional accidental benefit is set aside. The opponent LIC is directed to pay to the complainant amount Rs.5 lakhs towards additional accidental benefit in addition to the amount of insurance already granted, with interest @ 9% p.a. with effect from the date of filing complaint.

2. Further opponent LIC is directed to pay to the complainant amount of Rs.5000/- towards cost of appeal proceedings.

3. Copies of the judgment be supplied to both the parties.”

4. Ld. Counsel for Petitioners has argued that the deceased Policy holder, as per the Medical Summary prepared by the treating Doctor, was noted to be a chronic alcoholic, and had consumed alcohol shortly before being admitted to the Hospital. This contradicts the information provided by the deceased in the Proposal Form where he stated he did not consume alcohol, indicating false declarations made at the time of obtaining the Policy; That the cause of death was reported as organophosphate poisoning in various medical and official reports, suggesting intentional consumption of poison rather than accidental death; Although no poison was detected in the viscera during the Post-Mortem examination, it is argued that certain poisons may not leave detectable signs in such examinations, as was held by the Hon'ble Apex Court in **“Mahabir Mandal and Ors. Vs. State of Bihar (1972) 1 SCC 748”**; That Clause 6 of the Insurance Policy places the burden on them to pay the claim amount only if it is deemed valid. Despite this, they have complied with the orders of the lower Fora, demonstrating their willingness to fulfil their legal obligations.

5. This Commission has heard both the Ld. Counsel for Petitioners and Respondent, and perused the material available on record.

6. The documentary material available on record goes to show that a Medicolegal Case had been started as the deceased was suspected to have died of poisoning. However, the concerned Police Inspector who investigated the case and submitted his final report of investigation on 31.08.2011, had mentioned, *“He did vomiting and toilet, but it is not proved that he had consumed poison. Only after obtaining chemical analysis report of viscera, this fact can be clear....”*

7. Now the final report submitted by the Regionals Forensic Science Laboratory of the state of Maharashtra on 08.01.2013 concluded, *“General and specific testing does not reveal any poison in Ex. Nos. (1), (2) and (3).”*

8. In this view of the matter, this Commission is of the opinion that the conclusion drawn by the Ld. State Commission that the deceased had died due to ‘poisoning’ was not based on any cogent material, particularly considering that while the deceased had stated in his original Proposal Form that he had never used alcoholic drinks, yet the specific noting in his Medical Case Summary prepared by the Alfa Super Speciality Hospital, where he had been admitted following the deterioration in his condition on 07.08.2011, to the effect that he had a History of Chronic Alcoholism, and had also consumed alcohol from the day prior to his admission, would rather indicate that his condition could have deteriorated for any reason other than ‘poisoning’ as well, since no proof of the same was in any case found in the Chemical Analysis Report of his viscera.

9. The Ld. State Commission had therefore erred in coming to the aforesaid conclusion, and setting aside the well-reasoned decision of the Ld. District Forum in this regard.

10. Consequently, the Revision Petition is allowed after setting aside the impugned Order, and affirming the original decision of the Ld. District Forum. Parties to bear their own

costs.

11. Pending Application (s), if any, automatically stand disposed off as having been rendered infructuous.

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SUDIP AHLUWALIA
PRESIDING MEMBER