NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 735 OF 2018

(Against the Order dated 28/12/2017 in Appeal No. 554/2017 of the State Commission Chhattisgarh)

1. LIBERTY VIDEOCON GENERAL INSURANCE COMPANY LTD.
10TH FLOOR, TOWER A, PENINSULA BUSINESS PARK, GANAPATRAO KADAM MAGAR, LGF,
MUMBAI
MAHARAHSTRA .....Petitioner(s)

Versus

1. UMA BAI DHANKAR & 2 ORS.
W/O. LT. DALBEER DHANKAR, R/O. VILLAGE CHULGHAT, TEHSIL AND POLICE STATION TAKHATPUR,
DISTRICT-BILASPUR
CHHATTISGARH
2. KU. KHUSHBOO DHANKAR,
D/O. LT. DALBEER DHANKAR, R/O. VILLAGE CHULGHAT, TEHSIL AND POLICE STATION TAKHATPUR,
DISTRICT-BILASPUR
CHHATTISGARH
3. NAGESH DHANKAR
D/O. LT. DALBEER DHANKAR, R/O. VILLAGE CHULGHAT, TEHSIL AND POLICE STATION TAKHATPUR,
DISTRICT-BILASPUR
CHHATTISGARH.
4. JILA SAHKARI KENDRIYA BANK MARYADIT BILASPUR
THROUGH CHIEF EXECUTIVE OFFICER, HEAD OFFICE SAHKAR BHAWAN, NEHRU CHOWK,
BILASPUR
CHHATTISGARH .....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE PETITIONER :	PETITIONERS : MR.NAVNEET KUMAR, ADVOCATE AND MR. ASHWARY KATHED, ADVOCATE
FOR THE RESPONDENT :	FOR RESPONDENT NO.1 TO 3 : MR.RAJENDER YADAV, ADVOCATE FOR RESPONDENT NO.4 : MR. ADITYA SHARMA, ADVOCATE

Dated : 11 June 2024

ORDER

1. This Revision Petition No.735 of 2018 challenges the impugned order of the learned Chhattisgarh State Consumer Disputes Redressal Commission, Raipur ('the State Commission') dated 28.12.2017. Vide this order, the State Commission had allowed Appeal No.554 of 2017 and set aside the order of the District Consumer Disputes Redressal Forum, Bilaspur, Chhattisgarh ('the District Forum') dated 20.06.2017.

2. For convenience, the parties are referred to as in the original Complaint filed before the learned District Forum.

3. Brief facts of the case, as per the Complainants, are that the Complainant No1 is widow and Complainant No.2 & 3 are daughter and son of the deceased Dalbeer Dhankar who had held various accounts (Savings, Current, Recurring, Term Loan) with the OP-2 & 3 Banks. The banks obtained a Group Personal Accident Policy from OP-1 for account holders. A premium of Rs.100 was deducted from his Account and remitted to OP-1, confirming his insurance coverage for Rs.5,00,000. On 27.08.2014 he died due to electric shock. Complaint was filed at Police Station, Takhatpur and post mortem was held, confirming accidental death. She submitted the death claim through OP-2 & 3 to OP-1. However, OP-1 did not pay the insured amount. Therefore, they filed a Consumer Complaint before the District Forum.

4. The OP-1 Insurance Company has filed its written statement and the insurance company contended that the death was not accidental as Dalbeer Dhankar was unauthorizedly connecting an electric wire to an electric pole, which he was not qualified to do. This, according to OP-1, violated specific terms and conditions of the insurance policy. They cited Para 4 of Part 3 and Para 3 of Part 4 of the policy terms, arguing that the deceased's actions voided the insurance coverage. Thus, the claim was rightly repudiated. Thus, the Complainants are not entitled to get any compensation from the OP-1 and the complaint is liable to be dismissed against OP-1. OP-2 & 3 denied all allegations made by the Complainants against them in the complaint. OP-2 & 3 averred that they are collecting amount of insurance premium as agent of the OP-1 and forwarding the same to the OP-1. The premium was deducted from his Account and remitted OP-1. The Complainants contacted OP-2 & 3 for compensation, but it is the liability of the OP-1 to pay the claim amount. Therefore, the matter was forwarded to OP-1 for further action. OP-2 & 3 are not liable to pay any amount to the Complainants. No cause of action accrued to them against OP-2 & 3 and they are not entitled to get any amount from the OP-2 & 3. They sought the complaint to be dismissed against OP-2 & 3.

6. The learned District Forum vide order dated 20.06.2017, dismissed the complaint with the following observations:

"CONCLUSION WITH REASON

7. The fact of doing insurance of Dalbir Dhankar husband of applicant No. 1 and father of rests of the applicants through non applicant No. 2 and 3 under accidental insurance plan after receiving premium amount for the period from dated 01.03.2014 to dated 28.02.2015 for Rs.5,00,000/- as accidental insurance is undisputed. At the same time it is also not disputed that during the said insurance period on dated 27.08.2014 the accidental death of insured Dalbir Dhankar was caused due to electric shock.

8. That the submission of the non applicants is that by them for accidental death of Dalbir Dhankar for obtaining compensation amount application was filed before the non applicant No. 2 and 3, by them assurance was given for payment on receipt of the amount from non applicant No. 1 but no amount was paid. Consequently by them this complaint is said to have been filed.

9. The submission of non applicant No. 2 and 3 is that as Agent they had got accidental insurance of Dalbir Dhankar from the non applicant No. 1 and for payment of claim had sent the matter to the non applicant No. 1. On the said ground they have denied the liability of payment of compensation and have laid the liability of the same upon the non applicant No. 1.

10. That the submission of non applicant No. 1 is that by them Group Personal accidental insurance of Dalbir Dhankar was done by them from dated 01.03.2014 to dated 28.02.2015 under the conditions and liabilities of the policy but by Dalbir Dhankar it was violated, due to which the claim of the applicants have been repudiated by them and no deficiency in any manner in service has been caused.

11. From the perusal of the Marg Intimation, Naqsha Panchayatnama and Post Mortem Application filed on behalf of the applicants it is well evident that the incident of electricity shock to Dalbir Dhankar not knowingly but knowingly while unauthorizedly drawing wire from electricity pole had taken place. Therefore, for his own fault in violation of conditions of policy the non applicant No. 1 Insurance Company cannot be compelled to pay compensation.

12. Consequently, we reach to this conclusion that by the non applicant No. 1 insurance company by not admitting the insurance claim no deficiency in service **of any type has been committed. Therefore, the complaint being without force is dismissed.***"* *(Extracted from translated copy)*

7. Being aggrieved by the impugned order, the Complainants filed an Appeal before the State Commission. The learned State Commission, vide order dated 28.12.2017 allowed the appeal and directed the OPs as under:

"11. We have heard learned counsels appearing for the parties and have also perused the record of the District Forum as well as the impugned order.

12. The appellants (complainants) have pleaded that deceased Dalbeer Dhangar was having saving bank account current account, recurring account and term loan account with respondent No.2 (O.P. No.2) & respondent No.3 (O.P. No.3) and he was insured with the respondent No.1 (O.P.No.1) under Group Personal Accident Policy, The premium of Rs.100/- was deducted from saving bank account of deceased Dalbeer Dhankar. According to the appellants (complainants), Dalbeer Dhankar, died due to electric current. The appellants (complainants) have filed document No.1, which is photocopy of pass book of saving bank account of the deceased Dalbeer Dhankar in which it is mentioned that a sum of Rs.100/-was deducted towards insurance premium on 21.03.2014 from saving bank account of the deceased Dabeer Dhankar. It appears that the premium amount of the insurance policy was deducted from the saving bank account of the deceased and it shows that he was insured with respondent No.1 (O.P. No.1).

13. Now we shall examine whether the appellants (complainants) are entitled to get compensation from the respondent No.1 (OP No.1) under Group Personal Accident Policy ?

14. The appellant (complainants) have filed copy of Merg Intimation (document No.5), Inquest Report (document No.6), application for postmortem examination and post mortem examination report (document No.7). In the Merg Intimation, it is mentioned that on 27.08.2014, the dead body of Dalbeer Dhankar was brought by 108 ambulance and was kept in the mortuary. In inquest report, it is mentioned that the deceased Dalbeer Dhankar was connecting electric wire in electric pole of his house and during pulling the wire, he came into contact of the electric current and due to electric shock he had died.

15. The respondent No.1 (O.P. No.1) has taken a plea that the deceased Dalbeer Dhankar was connecting electric wire in electric pole and was pulling it from pole to his house and he had not taken proper precaution for his safety. The deceased himself was negligent and violated the terms and conditions of the insurance policy, but the respondent No.1 (O.P.No.1) has not filed terms and conditions of the insurance policy. The burden lies on the respondent No.1 (O.P. No.1) to prove that the deceased Dalbeer Dhankar, violated terms and conditions of the insurance policy and

for want of terms and conditions of the insurance policy, it cannot be held that deceased violated terms and conditions of the insurance policy. Looking to the inquest report and complaint itself, it appears that the deceased Dalbeer Dhankar was connecting electric wire in the electric pole, but in the instant case the respondent No.1 (OP No.1) has utterly failed to prove that the deceased Dalbeer Dhankar, has violated terms and conditions of the insurance policy.

16. According to the respondent No.1 (O.P. No.1) the deceased Dalbeer Dhankar violated the para 4 of part 3 and para 3 of part 4 of terms and conditions of the insurance policy. Looking to the Inquest Report, Post Mortem Report, Merg Intimation and Certificate issued by Sarpanch of Gram Panchayat, it is established that Dalbeer Dhankar died to Asphyxia, Electric Shock and his death is accidental in nature.

17. It is duty of the respondent No.1 (O.P. No.1) to prove that the deceased Dalbeer Dhankar had violated the terms and conditions of the insurance policy, but the respondent No.1 (O.P. No.1) did not file any terms and conditions of the insurance policy, therefore, it cannot be held that the deceased Dalbeer Dhankar had violated any terms and conditions of the insurance policy, hence the appellants (complainants) are entitled to get amount under Group Personal Accident Policy from the respondent No.1 (O.P.). The impugned order dated 20.06.2017, passed by the District Forum is not sustainable in eye of law and is liable to be set aside.

18. Hence, the appeal filed by the appellants (complainants) is allowed and impugned order dated 20.06.2017, passed by the District Forum, is set aside. It is directed that:-

(i). The respondent No.1 (O.P. No.1) will pay a sum of Rs.5,00,000/- (Rupees Five Lakhs) to the appellants (complainants) within one month from the date of this order, along with simple interest @ 9% p.a. on the above amount from 31.05.2016 till realization.

(ii). The respondent No.1 (O.P. No.1) will pay a sum of Rs.3,000/- (Rs. Three Thousand) towards cost of this appeal to the appellants (complainants).”

7. The learned counsel for the Petitioner-Insurance Company/OP-1 reiterated the grounds stated in the Revision Petition and asserted that the deceased insured had violated the terms and conditions of Part-III Para 4 and Part-IV Para 3 of the Policy in question and the repudiation of claim was justified as per terms and conditions of the insurance policy. He

sought the impugned order of the State Commission be set aside and the order passed by the District Forum be upheld. He relied upon **Export Credit Guarantee Corpn. of India V. Garg Sons International, 2013(1)SCALE410.**

8. Learned Counsel for Respondents No.1 to 3/ Complainants argued in support of the impugned order passed by the learned State Commission. He sought to dismiss the Revision Petition with costs.

9. The learned Counsel for the Respondent No.4 Bank reiterated the grounds taken in the reply and asserted that they are not liable to pay amount sought the complaint to be dismissed.

10. I have examined the pleadings and associated documents placed on record, including the orders of the learned District Forum and learned State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both parties.

11. The main issue revolves around the violation of terms and conditions of Part-III Para 4 and Part-IV Para 3 of the Policy in question and the repudiation of claim was justified as per terms and conditions of the insurance policy.

12. Towards determining the issue, it is relevant to reproduce the terms and conditions of Part-III Para 4 and Part-IV Para 3 of the Policy as under:

"Part III : General Exclusions

...

4. Any loss or damage arising from insured person committing any breach of law with criminal intent.

...

Part IV: General Terms & Conditions

...

3. Reasonable Care

The Insured/Insured Person shall take all reasonable steps to safeguard the interests of the Insured/Insured Person against accidental loss or damage that may give rise to a

claim.

…"

13. It is the Complainants contention that they are entitled for compensation of Rs.5,00,000/- under Group Personal Accident Policy from the Petitioner/ OP1 as the insured died accidentally due to electric shock. On the other hand, the Petitioner/OP-1/Insurance Company contended that the deceased insured had violated the terms and conditions of the policy reproduced above and therefore, they are justified in repudiating the claim of the complainants.

14. Towards appreciation of the 'Exclusion Clause' in a contract, the Hon'ble Supreme Court in Civil Appeal No. **8249 of 2022** [Arising out of SLP (Civil) No. 25457 of 2019] between M/s Texco Marketing Pvt. Ltd Vs Tata AIG General Insurance Company Ltd. & Ors. laid down that

11. An exclusion clause in a contract of insurance has to be interpreted differently. Not only the onus but also the burden lies with the insurer when reliance is made on such a clause. This is for the reason that insurance contracts are special contracts premised on the notion of good faith. It is not a leverage or a safeguard for the insurer, but is meant to be pressed into service on a contingency, being a contract of speculation. An insurance contract by its very nature mandates disclosure of all material facts by both parties.

12. An exclusion clause has to be understood on the touch-stone of the doctrine of reading down in the light of the underlining object and intendment of the contract. It can never be understood to mean to be in conflict with the main purpose for which the contract is entered. A party, who relies upon it, shall not be the one who committed an act of fraud, coercion or mis-representation, particularly when the contract along with the exclusion clause is introduced by it. Such a clause has to be understood on the prism of the main contract. The main contract once signed would eclipse the offending exclusion clause when it would otherwise be impossible to execute it. A clause or a term is a limb, which has got no existence outside, as such, it exists and vanishes along with the contract, having no independent life of its own. It has got no ability to destroy its own creator, i.e. the main contract. When it is destructive to the main contract, right at its inception, it has to be severed, being a conscious exclusion, though brought either inadvertently or consciously by the party who introduced it. The doctrine of waiver, acquiescence, approbate and reprobate, and estoppel would certainly come into operation as considered by this court in **N. Murugesan v. Union of India** (2022) 2 SCC 25.

13. On the aforesaid principle of law, particularly with respect to the issues *qua* onus, burden and reading down, this Court in **Shivram Chandra Jagarnath Cold Storage v. New India Assurance Co. Ltd.** (2022) 4 SCC 539 has held as follows:

"19. Another instance where exception clauses may be interpreted to the benefit of the insured is when the exception clauses are too wide and not consistent with the main purpose or object of the insurance policy. In *B.V. Nagaraju v. Oriental Insurance Co. Ltd.* (1996) 4 SCC 647, a two-Judge Bench of this Court read down an exception clause to serve the main purpose of the policy. However, this Court clarified that the breach of the exception clause was not so fundamental in nature that would have led to the repudiation of the insurance policy. In that case, the terms of the insurance policy allowed an insured vehicle to carry six workmen, excluding the driver. When the vehicle met with an accident, it was carrying nine persons apart from the driver. The insured had moved a claim for repair of the vehicle, which was rejected by the insurer.

20. Allowing the claim, this Court held thus: (B.V. Nagaraju case (1996) 4 SCC 647], SCC pp. 650-51, para 7)

"7. It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we find no such contributory factor. In Skandia case [Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan, (1987) 2 SCC 654] this Court paved the way towards reading down the contractual clause by observing as follows : (SCC pp. 665-66, para 14)

'14. ... When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" does not cross swords with the "main purpose" highlighted earlier. The effort must be to harmonise the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by Carter's "Breach of Contract" vide para 251. To quote:

> "Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in Glynn v. Margetson & Co. [1893 AC 351 (HL)] , AC at p. 357, Lord Halsbury, L.C. stated : (AC p. 357)
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> '… It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard … as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.'
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> Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suisse Atlantique Societed' Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale (1967) 1 AC 361 :(1966) 2 WLR 944 (HL)]. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."
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> *(emphasis in original and supplied)"*

15. In Civil Appeal No.10671 Of 2016 between Narsingh Ispat Ltd Vs Oriental Insurance Company Ltd. & Anr 2022 LiveLaw (SC) 443, the Hon'ble Supreme Court while reiterating *National Insurance Co Ltd vs Ishar Das Madan Lal (2007) 4 SCC 105 (Para 12)* has held that the burden is on the insurer to show that the case falls within the purview of exclusion clause. In case of ambiguity, benefit goes to the insured.

16. Part-III Para 4 and Part-IV Para 3 of the terms and conditions of the policy reveal that the deceased insured had not taken reasonable steps to safeguard his interests while connecting the wire with the pole for which he had not authorized to do so. However, when such contention to exclude the benefit under the exclusion clause is averred, the burden of proving the exclusion lies on the party asserting the same. In the present case, OP-1 is liable, and the same has not been established. Therefore, with due regard to the facts and circumstances of the case, the well reasoned order of the learned State Commission is just and proper and I find no reason to interfere with the same.

17. Based on the deliberations above, I find no merit in the present Revision Petition and, therefore, dismissed.

18. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

19. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER