

**IN THE CONSUMER DISPUTES REDRESSAL FORUM
KANNUR**

**Complaint Case No. CC/314/2021
(Date of Filing : 06 Dec 2021)**

1. Thulasi Shajan

W/o Late Shajan.K.v,Kottukkara
House,Payattiyal,Chuzhali.P.o,Thaliparamba Taluk,Kannur-
670142.

2. Sruthi Shajan

D/o Late Shajan.K.V,Kottukkara
House,Chemangad,Chuzhali.P.O,Thaliparamba Taluk,Kannur-
670142.

3. Sreerag.K.S

S/o Late Shajan.K.V,Kottukkara
House,Chemangad,Chuzhali.P.O,Thaliparamba Taluk,Kannur-
670142.

.....Complainant(s)

Versus

1. The New India Assurance Company Limited.,
1st Floor,Sakthi Arcade,opp.Classic Theatre,Pookkoth
Nada,Thaliparamba.P.O,Pin-670141.

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. RAVI SUSHA PRESIDENT
HON'BLE MRS. Moly Kutty Mathew MEMBER
HON'BLE MR. Sajeesh. K.P MEMBER**

PRESENT:

Dated : 30 May 2024

Final Order / Judgement

SMT. RAVI SUSHA : PRESIDENT

Complainant filed this complaint under sec.35 of the Consumer Protection Act 2019 seeking to get an order directing opposite party to pay sum of Rs.15,00,000/- with interest to the complainant together with cost of the proceedings of this case.

The case of the complainant in brief is that the complainants claiming compensation of Personal Accident coverage for the death of Shajan.K.V in a road accident happened on 24/6/2021 while the deceased insured travelling from his workplace to his resident by riding the motor cycle KL59G/5053 and sustained grievous injuries and he was succumbed to death owing to the grievous injuries sustained to him in the accident. The Alakkode police registered crime and the postmortem of the deceased also was conducted. After the investigation of the police the final report finding that the death of the deceased was caused not due to the accident, but due to heart attack. The complainant s submits that the finding in the postmortem report are not conclusive aspect but the injuries sustained to the deceased increased the chance of his death. Further states that the deceased is having valid driving license at the time of accident

and as the vehicle was validly insured with the OP vide policy No.76080931200200008875, they are bound to pay compensation under the head of personal accident coverage to the complainants of the deceased. The OP failed to disburse the amount entitled to the complainant. Hence the complaint.

After receiving notice, OP filed version . It is submitted that the OP is not liable to pay the insurance amount to the complainants, since the riding the motor cycle was not involved any accident and the death of the insured was not due to the injuries sustained. As per the post mortem certificate the cause of death of insured was due to heart attack but not due to any of the injuries sustained. OP submitted that the complainants are not intimate the incident or submit a claim form before the OP until they had sent a lawyer notice. On receipt of the notice , OP requested the complainants to submit all the documents with regard to the claim, but till date complainants had not submitted the same. Therefore the OP was deprived of the earliest opportunity to conduct an enquiry or to process the claim. Therefore the complainants committed the fundamental breach of the insurance policy and its conditions and for which they are not entitled to put forward the claim. Hence prayed for the dismissal of the complaint.

At the evidence time, complainant filed chief affidavit and documents. Examined as PW1 .Marked Exts.A1 to A11. PW1 was cross-examined by OP. On the side of complainant two more witness Dr.Sreekanth.S. Nair, who conducted post mortem on the body of insured, was also examined as PW2 and the Sub Inspector of police in Alakkod police station as PW3. On the side of OP, the Manager of OP insurance company was examined as DW1. Marked policy terms and conditions as Ext.B1. After that the learned counsel of complainant filed argument note.

The undisputed facts in this case are that the deceased insured has taken personal accident cover in the motor insurance policy of the motor cycle KL59G/5053. It is also a fact that the insured was riding the vehicle at the time of accident and he is having valid driving license.

On the other hand OP contended that as per the above said policy, the death of insured is due to heart attack and not having any of the injuries sustained in the road accident. So the complainants are not entitled to the claim for the compensation under the personal accident insurance policy.

As per Ext.B1 policy sum insured is Rs.15,00,000/-. Further section III-personal accident cover for owner-Driver (i) death scale of compensation -100%, (ii) loss of two limbs or sight of two eyes or one limb and sight of one eye-100% (iii) loss of one limb or sight of one eye-50%, permanent total disablement from injuries other than named above -100%. In this case the insured has sustained any injuries in the road accident. As per Ext.A2 Final Report, it is evident that the cause of death of insured was due to heart attack.

Though the complainant has examined the Doctor who conducted Autopsy on the insured, it is evident that death of the insured was not due to the injuries sustained in the road accident. Moreover, police has closed the investigation without finding that the incident was a road traffic accident. So the complainant failed to prove that the insured died in a Road Traffic Accident and also the cause of death was due to injuries sustained in the accident.

From the facts and circumstances of this case, complainant failed to prove the case that the complainants are entitled to get policy amount. So we are of the view that the rejection of claim application of the complainants, by the OP is justifiable.

In the result, complaint is dismissed. No order as to cost.

Exts:

A1- Copy of FIR

A2- Final Report

A3- Postmortem certificate

A4-Death certificate

A5-copy of RC

A6-Insurance policy

A7- Copy of driving license

A8-Family Membership certificate

A9-Copy of lawyer notice

A10-Postal receipt

B1- policy with conditions

PW1- Thulasi Shajan- 1st complainant

Dr.Sreekanth S. Nair- witness of PW1

DW1- Haridasan.K- OP

Sd/

Sd/

Sd/

PRESIDENT

MEMBER

MEMBER

Ravi Susha

Molykutty Mathew.

Sajeesh K.P

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/Forwarded by Order/

ASSISTANT REGISTRAR

**[HON'BLE MRS. RAVI SUSHA]
PRESIDENT**

**[HON'BLE MRS. Moly Kutty Mathew]
MEMBER**

**[HON'BLE MR. Sajeesh. K.P]
MEMBER**