

Sushila Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Dec-13-2004

Judge : Aftab Alam, J.

Acts : [Constitution of India](#) - Article 226; Consumer Protection Act; Contract Act - Sections 182 and 185; [Insurance Corporation Act, 1956](#); Insurance Act; Insurance Regulations; Insurance Corporation Regulations

Appeal No. : C.W.J.C. No. 12373 of 2001

Appellant : Sushila Devi

Respondent : The State of Bihar and ors.

Advocate for Def. : Ajay Behari Sinha, S.C. X and Shashi Shekhar Pd. Sinha, J.C. to S.C. X

Advocate for Pet/Ap. : Mirtunjay Kumar, Adv.Ashok Priyadarshi, Adv.

Disposition : Petition allowed

Judgement :

Aftab Alam, J.

1. One Hare Ram Sah was a constable in Bihar Police. He was allotted Brass No. 385. At the material time, he was attached as body-guard to the Dy. Supdt. of

Police (Town), Bhagalpur. On 20.8.1993, while with the Dy. Supdt. of Police, he was killed in an encounter with criminals. On that date, the slain police constable, like all other police personnel in the State, was covered by an insurance policy taken out by the Director General and Inspector General of Police, Bihar. Under the policy, a constable was, insured against accidental death for rupees one lakh. Therefore, on Hare Ram Sah, getting killed by criminals his nominee should have got the insured amount. But the information with regard to his killing was not given to the Insurance Company within the time stipulated in the conditions to the policy; the information was given to the insurance company several months after the policy had lapsed and on that ground the insurer rejected the claim. The petitioner, who claims to be the wife of the slain constable Hare Ram Sah, was thus forced to come to this court in a petition under Article 226 of the Constitution praying for a direction to the Insurance Company to make payment of the insured amount for the accidental death of her husband; alternatively, she prays that the concerned authorities in the police department should be directed to make payment of the amount to her.

2. In the counter affidavit filed by the officers in the police department, it is plainly admitted that the death of the constable Hare Ram Sah was fully covered by the insurance policy but the liability is sought to be shifted to the insurance company and it is stated that the insurer was not justified in rejecting the claim on the plea of delayed information. In the show cause filed on behalf of the highest police officer, namely, the Director General-cum-Inspector General of Police, Bihar, it is stated (vide para 8) as follows :

'That it is also submitted that although the claim of Smt. Sushila Devi (petitioner) is genuine, but due to delay in giving information regarding the death of constable No. 385, late Hare Ram Sah to Insurance Company, the plea that insured amount is not payable by the Insurance Company, is not a strong justification.'

3. In the facts and circumstances of the case, the claim of the petitioner appears to be irresistible and the only question that requires consideration is whether the liability to make payment would lie with the insurer or with the concerned officers in the police department for their default in giving information with regard to the killing

of the constable to the insurer within the stipulated time.

4. The facts of the case are brief and admitted by all concerned. The Director General and Inspector General of Police, Bihar, took a Group Personal Accident policy from the Oriental Insurance Company Ltd., for the period 11.3.1992 to 28.2.1993. The policy covered all police personnel of various ranks in the State. It was taken on payment of Rs. 22,17,659/- as net premium and the amount of premium was raised by deduction from the salary of every police personnel in the State. The insured sum in regard to the different ranks was fixed in a graded way and the amount for A.S.Is., Hawaldars and constables was rupees one lakh. One of the conditions of the policy, that is relevant for the present, was as follows :

'Upon the happening of any event which may give rise to a claim under this policy, written notice with full particulars must be given to the company immediately. In case of death, written notice also of the death must unless reasonable cause is shown, be given before interment/cremation and in any case, within one calendar month after the death, and in the event of loss of sight or amputation of limbs, written notice thereof must also be given within one calendar month after such loss of sight of amputation.'

5. At the time of taking out the policy, a circular was issued from the office of the Director General and Inspector General of police vide Memo No. 2477/P2, dated 16th April, 1992 (part of Annexure-A to the show cause of the Director General) laying down the 'rules' regarding execution of group accidental insurance scheme. In the circular, it was, inter alia, laid down that all working police personnel, without option, would be covered by the scheme; that no correspondence concerning the insurance policy should be made to the Insurance Company but only to the headquarter. It was further noted in the circular that with regard to payment of the insured sum the same procedure would be applicable as in case of pension/provident fund and the person nominated in the service book as heir would alone be the recipient of the insured amount. It was further laid down in the circular that it was the responsibility of the Supdt. of Police/Commandant to send the relevant documents/F.I.R./supervision report/post-mortem report/injury report etc. together with his recommendation to the head-quarter giving the details of the

incident in which the police personnel met with the accident. The last mentioned provision was slightly modified by another circular vide Memo No. 367/P2, dated 19.1.1993 (Annexure-2 (sic.)) by which it was directed that the concerned Supdt. of Police should send all the relevant documents with regard to the death/accident of a police personnel, by special messenger, directly to the office of the Insurance Company with information in that regard to the head-quarter.

6. After the expiry of the policy on 28.2.1993, it was renewed on 22.4.93 for the period up to 21.4.1994. All terms and conditions of the policy remained as before excepting that the net premium amount was raised to over rupees thirty four lakhs. It was during the period covered by this policy that Hare Ram Sah was killed on 20.8.1993. Under the conditions of the policy the information regarding his death was required to be sent to the Insurance Company within one month from 20.8.93 and as directed in the circular dated 19.1.1993, all relevant documents showing his death in encounter with criminals should have been sent directly to the office of the Insurance Company with information in that regard to the head-quarter. But the admitted position is that the claim for the payment of the insured amount to the petitioner, the wife of the slain constable was made for the first time on 29.6.1994 when the supdt. of Police, Bhagalpur, forwarded the application, the F.I.R., and the post-mortem report along with his letter of that date (Annexure-6) to the Assistant to the I.G. of Police (Welfare), Bihar Had this letter been sent directly to the office of the Insurance Company, the insurer might still have accepted the claim as would appear from its letter of 12.7.1994 (Annexure-1) to the counter affidavit by respondent No. 7 and 8), addressed to the Assistant to the I.G. (Welfare), Bihar. Along with this letter the Insurance Company had sent three cheques of rupees one lakh each being the insured sums in regard to the deaths of three other constables. In this letter, it was further stated as follows :

'Kindly note that your policy with us has expired on 21.4.94 and you are requested to intimate to us all claims arising during the policy period within one month of receipt of this letter after which as per policy condition we shall not be able to admit our liability.'

7. Unfortunately, however, the claim with regard to the death of the petitioner's husband lay at the head-quarter and it was sent to the Insurance Company, along with the claims in regard to four other constables, vide letter dated 5.9.94 from the Assistant to the I.G.(Welfare), Bihar. A reminder in regard to the claim was sent on 8.10.1994 (Annexure-9) but the claim was rejected by the company on the ground that the information regarding the death was given beyond the stipulated time, in violation of condition No. 1 of the policy and further that all claims arising from the policy had been closed; intimation in that regard was given by letter dated 13.9.2000 (Annexure-1). It was only at this stage that the petitioner was informed by the police authorities regarding the rejection of her claim by the Insurance Company and then she came to this court.

8. In none of the counter affidavits filed separately by the different police officers the claim of the petitioner is denied or disputed. On the contrary, as seen above, her claim is plainly admitted in the show cause filed on behalf of the Director General-cum-Inspector General of Police, Bihar. A plea is taken that the Insurance Company was not justified in rejecting the claim on the sole ground of delayed information and an attempt is made to explain the delay on the part of the Supdt. of Police, Bhagalpur, in sending the information and the relevant documents to the head quarter. It is stated that the slain constable Hare Ram Sah was appointed on compassionate ground following the death of his brother while he was in service. His appointment on compassionate ground was made on the basis of 'no objection' given by Uma Devi, the wife of the deceased constable 1180 Gangadhar Sah, the brother of Hare Ram Sah. It appears that after the death of Hare Ram Sah, conflicting claims were raised by his wife, the present petitioner, his father and the widowed wife of Gangadhar Sah. It further appears that Budhi Sah, the father of Hare Ram Sah, went to the extent of submitting an application on 14.11.1993, alleging that the petitioner Sushila Devi was not the legally married wife of his son Hare Ram Sah. A plea is taken that the delay was caused due to the conflicting claims arising after the death of Hare Ram Sah.

9. On a careful consideration of the matter, it plainly appears to the court that the explanation for the delay by the police authorities is completely devoid of any substance. The admitted position is that the father Hare Ram Sah filed the

application disputing the claim of the petitioner on 14.11.1993, that is to say about two months after the expiry of period of thirty days from his death on 20.8.1993 within which time the Supdt. of Police was obliged to give information to the Insurance Company and to the head quarter. Secondly, notwithstanding the dispute raised by the father of the slain constable the police authorities treated the petitioner, for all purposes, as his wife. After the death of Hare Ram Sah, the petitioner was, admittedly, given appointment on compassionate ground treating her to be the wife of the slain constable; provisional family pension was sanctioned in her favour and she was paid the amounts of provident fund, G.I.C. and the leave encashment admissible to him. Therefore, there was no reason to allow her claim for the insurance amount to be diverted on the basis of any conflicting claims raised by the father of the slain constable or the widowed wife of his brother. Thirdly, there appears to be no connection between the conflicting claims as to who would receive the money and the giving of information to the Insurance Company in regard to the death of the constable. The conflicting claims could be resolved even after receipt of payment from the insurer which in any event was to come in the hands of the authorities and not directly in the hand of anyone claiming to be the nominee/heir of the slain constable. In a given case where the slain constable left behind no one claiming to be his nominee or heir, the amount of insurance received from the insurer could even go to the Police Welfare Fund. Thus, looked at from any point of view the default in giving information to the Insurance Company cannot be justified on the basis of the explanation given by the police officers.

10. The inordinate and apparent delay by the police authorities tends to overshadow the conduct of the Insurance Company. But on a closer scrutiny it would appear that the police authorities alone were not responsible for bringing the matter to this sorry state. It is seen above that by letter dated 12.7.1994, the Insurance Company had asked the police head-quarter to send all claims arising from the policy within one month from the receipt of letter. The claim in regard to the death of Hare Ram Sah was sent to the Insurance Company on 5.9.94, that is, within less than one month of the period intimated in the insurer's letter yet the claim was formally rejected by the Insurance Company, by letter, dated 13.9.2000 i.e., after six years of the receipt of the claim/information. It, therefore, does not

require much imagination to see that the information/claim with regard to the death of Hare Ram Sah lay in the office of the Insurance Company unattended for several years before it was brought to the notice of someone in the position to take decision. By that time, the matter had come too old and stale and the easiest and simplest course was to reject the claim, without much taxing the mind, on the ground of violation of condition No. 1 of the policy.

4. The Insurance Company has filed a very brief counter affidavit with the lone annexure being a copy of the letter dated, 12.7.1994. In the counter affidavit it takes the position that as no claim was received within the time indicated in the letter dated 12.7.1994, the claim file was closed and the claim concerning Hare Ram Sah was rejected for the simple reason that it was received after the closure of the file, Mr. Ashok Priyadarshi, counsel appearing for the Insurance Company supported its stand on the basis of an order passed by this court in the case of Smt. Lilawanti Devi v. The State of Bihar and Ors., 1998(2) PLJR 692. Mr. Priyadarshi also relied upon a Supreme Court decision in National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co. and Anr. 1997(4) SCC 366.

12. On behalf of the petitioner the alternative claim made against the police authorities was not given up in the slightest degree but the counsel for the petitioner contended that notwithstanding the delay by the police authorities in giving information it was still the liability of the Insurance Company to make payment of the insured amount. In support of the contention, learned counsel relied upon a Supreme Court decision in Delhi Electric Supply Undertaking v. Basanti Devi and Anr., (1999) 8 SCC 229. Mr. Ajay Behari, SC X appearing for the police authorities also took the same stand, based upon the decision in the case of Basanti Devi. The counsel for the petitioner further pointed out that the Supreme Court's decision in Basanti Devi was followed by this court first by a learned single judge and then in appeal by a Division Bench for holding the insurer and not the employer as responsible for payment of the insured amount in Rajiv Kumar Bhaskar v. The Chairman, Life Insurance Corporation of India and Ors., 2001 (4) PLJR 180 and (then in appeal) in the Chairman, Life Insurance Corporation of India and Ors. v. Rajeev Kumar Bhaskar, 2001 (4) PLJR 581.

13. In the light of the decisions relied upon by the parties, it is to be examined whether the insurer is still to be held liable to make payment of the insured amount, notwithstanding the delay in giving information with regard to the death of the insured or whether the insurer can legitimately repudiate the claim and in that event liability to make payment of an amount equal to the insured amount may fastened upon the authorities responsible for the delay in giving information to the insurer.

14. Mr. Priyadarshi submitted that the case of Smt. Lilawanti Devi arose in similar circumstances and the order of the learned single judge in that case was conclusive of the issue. The order passed in Smt. Lilawanti Devi is very brief and I find that it does not address all the issues arising in the case. Moreover, it appears that the case of Smt. Lilawanti Devi was fundamentally different from the facts of this case. From the order passed in the case it appears that the husband of Lilawanti Devi died on 25.3.1993, as a result of sustaining injuries in an encounter with criminals. It is seen above that the insurance policy was initially for the period 1.3.1992 to 28.2.1993 and then it was renewed from 22.4.1993 to 21.4.1994. There was, thus, a gap from 1.3.1993 to 21.4.1993 when there was no insurance cover and the death of the husband of Lilawanti Devi had taken place during that gap. It was under that circumstances that the order observed as follows :

'This Court is of view that it cannot direct the Insurance Company to make payment after expiry of the policy.

In that view of the matter, this court directs the appropriate respondents authority of the State Government to examine the claim of the petitioner in respect of insurance amount. The petitioner is directed to make a representation along with the relevant records to the respondent No. 6. If respondent No. 6 finds that the petitioner has been deprived of from the insurance claim as a result of laches on the part pf the officers of the State Government, he will make order for payment of insurance amount to the petitioner.'

15. In this case, the death of Hare Ram San indisputably took place when the insurance policy was alive and subsisting and, therefore, there is no question of his claim arising after the expiry of the policy. The order passed in Smt. Lilawanti

Devi, therefore, has no application to the facts of this case.

16. The other decision relied upon by Mr. Priyadarshi in National Insurance Co. Ltd. has also no application to the facts of this case. That decision examined the effect of the stipulation in the insurance policy that unless an action was instituted within the specified period after the repudiation of the claim by the insurer, all benefits under the policy would cease and would be deemed to have been abandoned. That relates to para 4 of condition No. 8 of the present policy while the present case relates to the alleged violation of condition No. 1.

17. Coming now to the decision in Basanti Devi, relied upon by the petitioner and the State; in that decision an employee of the Delhi Electric Supply Undertaking (DESU) took an insurance policy from LIC under its Salary Savings Scheme. He paid premium for two months. The scheme provided that the premium for the following months would be paid, not by him directly, but by DESU by making deductions from his monthly salary. The premium for the 3rd month was paid as per the scheme by DESU by making deduction from his salary. For the next two months, though deductions were made from his salary, the DESU did not remit the premium amounts to the Insurance Company. At that stage, the employee died. The claim for the insured amount made by his widow was rejected by the Insurance Company on the ground that the policy had lapsed for non-payment of premium. The claimant took the matter to the State Commission, constituted under the Consumer Protection Act. The Commission upheld and accepted the plea of LIC but held DESU responsible for making payment to the widow of the deceased employee on the ground that it was responsible of the lapse of the policy. In appeal, the National Commission affirmed the order passed by the State Commission. The Supreme Court, however, took the view that in the scheme of things DESU was in the position of an agent of LIC and hence, the liability to make payment of the insured amount still lay with the insurer.

18. In that decision, the Supreme Court examined in detail the nature of the policy as appearing from the brochure on the scheme. The court also noticed specimen of the letter addressed by the insurer to the employer and the specimen of the letter that the employer was to write in reply to the insurer. It is significant to note

that in the letter meant to be written by the employer in reply to the letter from the LIC it was specifically stated as follows :

'In all transactions made by us pertaining to this Scheme and any policies issued by you thereunder, we shall act as the agent of our employees and not as your agent for any purpose.'

19. Notwithstanding the above declaration, the Supreme Court held that the employer was an agent of the LIC as defined under Section 182 of the Contract Act though not within the meaning of the Regulations framed under the [Insurance Corporation Act, 1956](#). The finding that the employer was an agent of the insurer is based primarily on the consideration that once the policy was taken by the employee, the employer assumed the responsibility of deducting the premium amount from his monthly salary and remitting it to the Corporation. The employer, this, got the implied authority to collect the premium amount on behalf of the Corporation. The relevant passage from paras 11 & 12 of the decision is as follows :-

'..... .DESU is certainly not an insurance agent within the meaning of the aforesaid Insurance Act and the regulations but DESU is certainly an agent as defined in Section 182 of the Contract Act. The mode of collection of premium has been indicated in the Scheme itself and the employer has been assigned the role of collecting premium and remitting the same to LIC. As far as the employee as such is concerned, the employer will be an agent of LIC. It is a matter of common knowledge that insurance companies employ agents. When there is no insurance agent as defined in the regulations and the Insurance Act, the general principles of the law of agency as contained in the Contract Act are to be applied.'

Agent in Section 182 means a person employed to do any act for another, or to represent another in dealings with third persons and the person for whom such act is done, or who is so represented, is called the principal. Under Section 185 no consideration is necessary to create an agency. As far as Bhim Singh is concerned, there was no obligation cast on him to pay premium direct to LIC. Under the agreement between LIC and DESU, premium was payable to DESU who was to deduct every month from the salary of Bhim Singh and to transmit the

same to LIC. DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of LIC. There was, thus, valid payment of premium by Bhim Singh. The authority of DESU to collect premium on behalf of LIC is implied. In any case, DESU had ostensible authority to collect premium from Bhim Singh on behalf of LIC. So far as Bhim Singh is concerned DESU was an agent of LIC to collect premium on its behalf.'

20. This court followed the decision in *Basanti Devi* in the case of *Rajiv Kumar Bhaskar v. The Chairman, Life Insurance Corporation of India and Ors.*, and held LIC liable to make payment even though according to the Corporation the policy of the deceased employee had lapsed due to non-payment of the premium amount for several months. In the case of *Rajiv Kumar Bhaskar*, the deceased was a teacher in one of the colleges of Magadh University. The payment of monthly salary to him was in default for several months. A distinction was, therefore, sought to be made out that in the case of *Basanti Devi* before the Supreme Court, though deductions were made from the salary of the employee, the employer defaulted in remitting the deducted amounts of premium to the Corporation and, therefore, the concerned employee had no means to know that his monthly premium was not deposited in time but in the case of *Rajiv Kumar Bhaskar*, no salary was paid to him at all for several months and hence, it was well known to him that the monthly premium of his policy was not being sent to the Corporation and in that situation the liability for payment of a lapsed policy would not lie with the Corporation. This Court rejected the submission holding that as long as the employer was in the position of an agent of the insurer, the liability to make payment would continue with the insurer, the principal.

21. The reasons for which the employer was held to be in the position of an agent are fully present in the case in hand. I am not unconscious that the case of *Basanti Devi* arose from a life Insurance Policy under the Salary Savings Scheme floated by the Life Insurance Corporation of India and the present case arises from Group Personal Accident Policy of the Oriental Insurance Co. Ltd. But the basic reason and the ground on which the finding in *Basanti Devi* is based remain the same. In *Basanti Devi*, under the Salary Savings Scheme the employer assumed the responsibility of deducting the premium amount from the monthly salary of the

employee and remitting it to the Insurance Company. In the present case, the amount of net premium was raised by making deductions from the salaries of police personnel and was paid to the Insurance Company directly by the head-quarter. In Basanti Devi, the employee had taken out the policy and he had paid the premium for the initial two months. In the present case, the individual at no stage came into any contact with the insurer. Even the policy on behalf of the individual police personnel was taken under the signature of the Director General and Inspector General of Police or his nominee. An individual employee had no option in the matter and it was not open to him to opt out of the policy. Under the rules, he was prohibited from making any correspondence directly with the Insurance Company and the claim and all matter appertaining thereto were to be routed through the police head-quarter. The payment of the insured amount was also received not by the individual claimant directly but by the police head-quarter and it was disbursed to the individual through the head-quarter. It is, thus, evident that the reasons for holding the police head-quarter as the agent of the Insurance Company are available in the present case with greater force than in the case of Basanti Devi.

22. Once it is held and found that the police head-quarter, or acting for it, the District Supdt. of Police was in the position of an agent of the Insurance Company/the matter becomes quite simple and straightforward. The information regarding the accident/death received by the agent would satisfy the requirement of condition No. 1 of the policy and if there was any default on the part of the agent in passing on the information to the insurer, it would be a matter to be resolved between the principal and the agent. In this case, it is undisputable that the District Supdt of Police had information about the death of Hare Ram Sah from day one and the police head-quarter was also informed in this regard on 29.6.1994, that is, well within the time specified in the letter of Insurance Company of 12.7.94. The information to the agent must be deemed as information to the principal and thus the plea of violation of condition No. 1 is not available to the Insurance Company.

23. On the basis of the discussions made above, I have no hesitation in holding that in the light of the decision of the Supreme Court in Basanti Devi, the liability to make payment of the insured amount still lies with the Insurance Company. It is

clarified that in case the Insurance Company feels that it suffered a damage due to default of its agent, the police head-quarter/Supdt. of Police, it will be open to it to bring such action against them as may be permissible under law but that would not absolve it from making payment of the insured amount to the petitioner. The Insurance Company is, accordingly, directed to make payment of the insured amount to the petitioner along with simple interest @ 7% per annum from 5.9.1994 till the date of payment.

24. In the result, this writ petition is allowed but with no order as to costs.

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