

Nagia Devi Vs. Central Coalfield Limited and ors.

Nagia Devi Vs. Central Coalfield Limited and ors.

SooperKanoon Citation : sooperkanoon.com/520309

Court : Jharkhand

Decided On : Jul-24-2009

Reported in : 2009(57)BLJR2716

Judge : D.G.R. Patnaik, J.

Acts : Legal Services Authority Act; [Constitution of India](#) - Article 226

Appeal No. : W.P. (S) No. 5672 of 2007

Appellant : Nagia Devi

Respondent : Central Coalfield Limited and ors.

Advocate for Def. : Ananda Sen and; Abhay Kumar Mishra, Adv.

Advocate for Pet/Ap. : M.M. Pal, Adv.

Judgement :

D.G.R. Patnaik, J.

1. Heard Mrs. M.M. Pal, learned Counsel for the petitioner, Sri Ananda Sen, for the respondents C.C.L. and Sri Abhay Kumar Mishra for the respondent Insurance Company.

2. Petitioner's husband Ram Sewak was employed as an Electrician in the Bhurkunda Colliery under the respondent C.C.L. While on duty, he suffered an

accident on 04.04.2000. He was promptly admitted to the Colliery Hospital and thereafter referred to the Gandhinagar Hospital, C.C.L., Ranchi. Despite his medical treatment, he could not survive on account of fatal injuries and he died on 16.05.2000 in the hospital leaving behind the petitioner, being his widow, sons and daughters.

3. The petitioner applied before the respondent employer for payment of the benefits of the Group Personal Accident Insurance Scheme under which her husband was a beneficiary and on the ground that death of her husband had occurred in course of his performance of duty.

4. The petitioner's grievance is that despite several representations submitted by her, the respondent employer has failed to pay her the benefits of the Insurance Scheme which was payable in the account of her husband. In the present writ application, the petitioner's prayer is for a direction to the respondents to pay the amount of compensation which was payable in the account of her deceased husband under the Group Personal Accident Insurance Scheme, of which he was a beneficiary.

5. The employer namely the respondent C.C.L. has filed a counter affidavit wherein it is admitted that the deceased husband of the petitioner was employed as an Electrician at the Bhurkunda Colliery under the C.C.L. and had met with an accident while on duty, on 04.04.2000. It is added that later, with effect from 30.04.2000 he retired on superannuation and subsequently, he died on 16.05.2000.

The counter affidavit states further that the respondent company had entered into a memorandum of understanding dated 16.02.2000 with the Oriental Insurance Company Ltd., Ranchi for a Group Accident Insurance Policy for the Executive and non-Executive employees of the respondent-Company. Pursuant to the understanding, a contract of insurance was entered into and under the Insurance Scheme, which was made effective from 20.03.2000, and the risk covered under the Insurance Scheme had also covered the petitioner's husband. It is contended by the respondent C.C.L. that it would be therefore the liability if any, of the Insurance Company to pay the amount of compensation by way of settlement of

the petitioner's claim.

6. Denying, however, the petitioner's claim, the stand taken by the employer is that petitioner did not submit her application demanding the accidental death benefits promptly, either immediately after the death of her husband or even before the date of death and she had infact submitted her claim before the Project Officer of the Bhurkunda Colliery on 20.12.2005. Her claim was forwarded to the Senior Branch Manager of the Insurance Company by office letter dated 09.05.2006 but the response from the Insurance Company was not forthcoming even after a reminder issued by the employer vide letter dated 04.12.2007.

7. The Insurance Company was impleaded as a party respondent and Sri Abhay Kumar Mishra had accepted notice on behalf of the Insurance Company.

I.A. No. 2735 of 2008 has been filed on behalf of the respondent Insurance Company by way of its written statements, whereby the Insurance Company has sought to disown its liability for payment of compensation to the petitioner under the Group Personal Accident Insurance Scheme.

8. Sri Abhay Kumar Mishra, learned Counsel for the Insurance Company would submit that the claim of the petitioner arises essentially out of a contractual liability between the employer and the Insurance Company as per the conditions of the Insurance Policy, and therefore, the present writ application is not maintainable in view of the fact that an alternative remedy being available to the petitioner through the Consumer Protection Forum and through the Legal Services Authority, which has not been availed by her.

Learned Counsel would want to explain that the husband of the petitioner, being a consumer and the Insurance Company being a service provider, the dispute is amenable to the Consumer Protection Forum. Furthermore, the dispute in the present case involves complicated questions of facts which, this Court, in exercise of its writ jurisdiction, cannot possibly decide.

Referring to several judgments of the Supreme Court including the judgment in the case of Mafatlal Industries and Ors. : 1997 (5) SCC 536, judgment in the case of

Tata Chgur Company Ltd. : AIR 1983 SC 603, judgment in the case of U.P. State Bridge Corporation Ltd. and Ors. : 2004 (4) SCC 268 and the judgment in the case of Lift Insurance Corporation of India v. Kiram Sinha AIR 1985 SC 1265, learned Counsel submits that in all these cases, the Supreme Court has categorically declared that where an alternative remedy is available, the writ application under Article 226 of the [Constitution of India](#) is not maintainable.

A further objection against the claim of the petitioner has been taken on the ground that it is belated in as much as the claim has been made after five years of the death of the petitioner's husband whereas under the scheme of the Insurance Policy, the application for accidental benefit claims must be filed within 30 days from the date of accident.

9. Mrs. M.M. Pal, learned Counsel for the petitioner, on the other hand, submits that there was admittedly, no delay on the part of the petitioner in putting up her claim before the concerned authorities of the respondent employer and the delay if any, in forwarding her claim to the Insurance Company, was on the part of the employer and for which, the petitioner cannot be made to suffer. Learned Counsel argues that even otherwise, no period of limitation has been prescribed for payment of compensation under the Insurance Scheme to the beneficiary. It is the statutory duty of the Management of the C.C.L. to collect the compensation amount from the Insurance Company and pay the same to the legal heirs of the deceased employee. Learned Counsel argues further that even otherwise, the final payment made by the Insurance Company, is to be made only through the C.C.L. and not directly by the Insurance Company to the Claimant.

Learned Counsel argues further that the objection on the ground of non-maintainability of this writ application is totally unfounded. Relying upon the judgment of the Supreme Court in the case of United India Insurance Company Ltd. v. Manubhai Dharmasinhbhai Gajera and Ors. : 2008 (10) SCC 404, learned Counsel submits that in cases of contract entered into by the State, and in this case the C.C.L. and the Insurance Company, a duty is caused upon them to act fairly and reasonably and not arbitrarily and the jurisdiction of this Court in exercise of its writ jurisdiction cannot be curtailed on the plea that the dispute involves

performance of a commercial contract.

10. From the rival submissions, the facts which emerge undisputedly, are as follows:

(i) The petitioner's husband was employed under the C.C.L.

(ii) He was a beneficiary under the contract of insurance entered into by his employer and the respondent Insurance Company covering death-cum-accident benefits.

(iii) The petitioner's husband had suffered fatal injuries in an accident in course of discharge of his duties.

(iv) The petitioner, being the widow of the deceased employee, had submitted her application claiming compensation under the scheme of the Insurance Policy.

(v) Information regarding the accident and the resultant death of the employee due to the fatal injuries suffered by him was conveyed promptly to the employer.

(vi) The claim was forwarded by the employer to the Insurance Company after about three years of the receipt of the petitioner's application, though reasons for such delay have not been explained in the counter affidavit of the respondent employer.

(vii) The Insurance Company refused to acknowledge its liability or even to respond to the first letter and even the second letter forwarded by the employer in respect of the petitioner's claim for compensation under the Insurance Policy.

11. The employer, while acknowledging the claim of the petitioner, has taken a stand that it is for the Insurance Company to bear the liability for payment of compensation under the contract of insurance which was operative on the date when the deceased had suffered the fatal injuries resulting death, under the contract of insurance.

12. The denial of the Insurance Company to bear the liability appears to be on two grounds:

(i) The first ground is that an alternative remedy being available to the petitioner under the law, both under the Consumer Protection Forum and under the Legal Services Authority Act, she ought to have availed such alternative remedies and therefore, the present writ application is not maintainable.

(ii) The second ground is on the ground of delay in submitting the claim.

13. As regards the first ground, it appears that the same is totally misconceived. The forum under the Legal Services Authority Act is only an alternative dispute resolution forum and does not oust the jurisdiction of the Court to adjudicate upon the dispute. Likewise, the Consumer Protection Forum does not invariably oust the jurisdiction of the courts to decide upon the claims and disputes arising out of insurance contracts. It cannot be urged that the petitioner ought to have availed the option of the two alternative forums instead of filing this writ application.

14. The contract of insurance was admittedly entered into by and between the employer and the Insurance Company under which the employees were the beneficiaries. The ground of limitation as sought to be advanced by the respondent Insurance Company, cannot apply to the petitioner firstly, because there was no limitation prescribed for the petitioner to submit her application claiming the benefits of compensation under the Group Personal Accident Insurance Scheme and in any case, there was no unreasonable delay on her part to notify the death of her husband and put forth her claim for compensation. The onus and duty squarely rested upon the employer to ensure that the benefits under the Insurance Scheme is obtained and made available to the beneficiary. The dispute regarding the delayed claim is between the employer and the Insurance Company and the petitioner cannot be made to suffer on account of such dispute since admittedly, the benefits of compensation under the Insurance Scheme did accrue to the petitioner in the account of her deceased husband.

15. A similar issue came up for consideration before a Bench of this Court in the case of *Most. Chanda Devi v. C.C.L. and Ors.* vide W.P.(S) No. 1596 of 2007. While rejecting the plea of delay in putting up the claim, this Court had directed the Insurance Company to ensure that the legally payable amount under the Company Insurance/Group Insurance of the deceased employee, is paid to the legal heirs of

the employee within the stipulated period. This judgment of the Single Bench of this Court was upheld in appeal vide order passed in L.P.A. No. 36 of 2008.

16. In the light of the above discussions, I find merit in this writ application. Accordingly, the same is allowed. The objections advanced by the respondent Insurance Company, both regarding maintainability of this writ application and in respect of its liability to acknowledge and pay the compensation amount, are rejected. The Insurance Company is directed to ensure that the legally payable amount under the Group Personal Accident Insurance Scheme, under which the petitioner's deceased husband was a beneficiary, be paid to the petitioner within two months from the date of receipt/production of a copy of this order, failing which the respondents will be jointly and personally responsible to pay compensatory interest at the rate of 18% per annum from the date of receipt of a copy of this order till final payment is made.

However, the Insurance Company would be at liberty to seek redressal of its grievance, if any, against the employer before the appropriate forum on account of delayed forwarding of the petitioner's claim application, by way of an independent petition.

With these observations, this writ application is disposed of.