

Karmi Devi Vs. Central Coalfields Limited Through Its Chairman

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Court : Jharkhand

Decided On : Feb-19-2016

Appellant : Karmi Devi

Respondent : Central Coalfields Limited Through Its Chairman

Judgement :

INTHEHIGHCOURTOFJHARKHANDATRANCHI

W.P.(S)No.3350of2009

KarmiDevi,wifeofLateSitanGope,residentofvillageMohanNagar,P.O.

Dakara,P.S.Khelari,DistrictRanchi.

Petitioner Versus 1.CentralCoalfieldsLimited,throughitsChairman,DarbhangaHouse,Ranchi.

2.GeneralManager(P&IR),C.C.L.,DarbhangaHouse,Ranchi.

3.GeneralManager(Finance),C.C.L.,DarbhangaHouse,Ranchi

4.PersonnelManager,DakraProjectofC.C.L.,DakraColliery,Dakra,Ranchi.

5.TheProjectOfficer,N.K.Area,DakraColliery,C.C.L.Dakra,Ranchi,District Ranchi.

6. The Oriental Insurance Co. Ltd., through Divisional Manager, Divisional Officer1,TiwariEnclave,LalpurChowk,Lalpur,P.S.Lalpur,DistrictRanchhi. Respondents Present CORAM:

HON'BLEMR.JUSTICERATNAKERBHENGRA ForthePetitioner :Mr.RajivAnand,Advocate FortheCCL

:Mr.AnandaSen,Advocate FortheInsuranceCompany:Mr.G.C.Jha,Advocate C.A.V. ON :

09. 10.2015 PRONOUNCED ON:

19. 02/2016

JUDGMENT

1 The prayer of the petitioner, Karmi Devi, is for appropriate directionforquashingorderbeingRef.No.PO/DB/PD/GI/07/610914passed bythePersonnelManager,DakraProject(Annexure5),wherebytheC.C.Lhas informedthatithasnoauthoritytodecidetheclaimandtherebynotreleased theGroupInsuranceamountofRs.5,00,000/infavourofthepetitioner.And forthertoreleasetheamountofGroupInsurancealongwithstatutoryinterest sincepremiumamountfromthesalaryofthepetitionerhusbandhadbeen regularlydeducted. 2. Thefactsasclaimedbythepetitioneristhatthehusbandofthe petitionernamelySitanGopewasemployeeoftheRespondentCompanyand hisCode No.was071916andwasworkingatN.K.Area,DakraProjectas CoalBreaker.SitanGopediedduringthetenureofhisserviceinharnesson 18.07.2000leavingbehindhiswidow(thepetitioner).

3. ThatafterthesaidincidenttheRespondentAuthorityvideOffice OrderNo.272022dated01.09.2000struckoffthenameofsaidSitanGope fromtheRolloftheColliery.

4. Deceased Sitan Gope was the member of the Group Insurance

Scheme and a part of his salary was regularly deducted towards payment of premium amount by the Respondent Authority for coverage of Insurance liability. Immediately after death of her husband, the petitioner informed the Respondent Authority regarding death of her husband and requested the authority concerned for needful action and payment of admitted dues. 5. The respondent authority have full knowledge regarding death of the deceased employee but the respondent concerned for the reason best known to him did not proceed for payment of the Group Insurance amount for which the petitioner is entitled for.

6. The petitioner through her letter dated 28.08.2002 also requested for payment of Insurance amount but that too went without any result. Finally, the petitioner was compelled to move before this Hon'ble Court in W.P.(S) No. 2379 of 2007 and by order dated 17.09.2007, the Court directed the General Manager (Finance) C.C.L. Ranchi/The Personnel Manager, Dakra Project of C.C.L. Ranchi to consider the petitioner's claim and pass appropriate order in accordance with law. It is of note that in this case it is mentioned that nobody appeared on behalf of the respondents to contest in spite of service of a copy of the writ petition. 7. The C.C.L. did pass an order, which is challenged in the prayer as being Ref No. PO/DB/PD/GI/07/610914 dated 22.12.2007, however it tries to shift burden on to the Oriental Insurance Company. Petitioner has also annexed the order in Minuwa Devi Vs. C.C.L. & others, W.P.(S) No. 2380 of 2007, dated 01.05.2009, in support of its contention, with similar delay issue and also the date 15.08.2003 being the renewed deadline. The Hon'ble Single Judge therein held; Thus, the respondent authorities admittedly caused the delay of over 17 months in raising the claim of Group Insurance payment on behalf of the petitioner. It is obvious that now the respondents are trying to push the burden on the Insurance Company and on the petitioner which is unfortunate to say the least. As per the agreement entered into between the respondents and the Insurance Company, the claim was belated and that is a correct assertion since the claim on behalf of the employee was raised after a lapse of nearly 17 months whereas the petitioner raised it within 34 months. It is well settled that for the default on the part of authorities, the petitioner cannot be made to suffer and if at all it exists, it is between the respondent and the Insurance Company. Considering the aforesaid facts and circumstances of this case, this writ petition is allowed. The respondents are directed to ensure that the payment towards the Group Insurance in accordance with the policy entered into and agreed should be released and paid to the petitioner within a period of three months from the date of receipt of a copy of this order. They shall also consider payment of statutory interest in accordance with law. 8. Respondent C.C.L. Have appeared and filed their reply and submitted their knowledge of the facts as follows:

09. Late Sitan Gope was employed as EP Fitter at Dakra Colliery and died on 18.07.2000. Smt. Karmi Devi, wife of the deceased submitted claim for the Group Insurance on 04.12.2002 specifying that her husband has died due to Vajrapat. The claim form of Smt. Karmi Devi had been processed to Area Vide letter No. 7949 dated 14.12.2002 along with its enclosures for scrutiny. 10. The said claim had been returned to Dakra Project by the Area vide letter no. 3097 dated 22/25.02.2003 for submission of the same along with required documents. It had been directed by the GK(P&IR), CCL, Ranchi vide his wireless message no. 4999 dated 28.07.2003 that the last date for intimation of all death cases occurred upto 31.03.2003 is 15.08.2003. In view of the above intimation in respect of late Sitan Gope had been sent to the Area vide letter no. 3272 dated 4.8.2003. Accordingly area had forwarded said information about the death of late Sitan Gope to the GM(P&IR), CCL, Ranchi vide letter no. 1738 and wireless message both dated 14.08.2003.

11. The G.M(P&IR), CCL, Ranchi has sent intimation of death of Late Sitan Gope vide letter no. 5495 dated 14/16.8.2003 to the Sr. Branch Manager, Oriental Insurance Company Limited, Kutchery Road, Ranchi.

12. The said claim had been resubmitted to the Area vide letter no. 6496 dated 21.12.2003. It is stated that after scrutiny of the claim form and enclosures it had been sent by the Area to the GM(P&IR), CCL, Ranchi vide letter no. 4536 dated 09.01.2004. That it is stated that the claim form of Late Sitan Gope had been returned back to HQ, Ranchi for submission of some documents and a payslip etc. and the same has been resubmitted to the Area vide letter no. 2239 dated 23.07.2004 and it has been sent by the Area to the GM(P&IR), CCL, Ranchi vide letter no. 1726 dated 5.8.2004.

13. The Group Insurance Claim of the petitioner Karmi Devi is still pending in the office of the Oriental Insurance Company Limited, Kutchery Road, Ranchi.

14. That Karmi Devi had filed W.P.(S) 2379 of 2007 which was decided on 17.9.2007 wherein it directed the C.C.L. Authorities to consider the petitioner's claim and pass appropriate order in accordance with law within a period of six weeks from the date of receipt/production of a copy of this order.

15. In compliance of the directions passed by this Hon'ble Court in W.P.(S) No. 2379 of 2007, vide order dated 17.09.2007, respondents considered the claim of the petitioner and pass a reasoned order. Perusal of the reasoned order would reveal the Oriental Insurance Company had come up with a time frame that old claims should be intimated by 15.08.2003 and accordingly the claim of the deceased husband of the petitioner was informed to the Insurance Company vide letter dated 16.08.2003. As the Group Insurance Policy was taken from Oriental Insurance Company Ltd., it is said that the Insurance Company has the sole discretion to decide the claim. In pursuance to the directions of this Hon'ble Court, the respondents have forwarded the claim of the petitioner recommending to settle the claim in his favour to the Insurance Company and the matter is pending at their end. 16. C.C.L. has further submitted that the claim form for Group Insurance was submitted by the petitioner only on 4.12.2002, belatedly, and it is therefore said that the Insurance Company had got an opportunity to deny the claim. However, the answering respondents pursuant to an arrangement with the Insurance Company with respect to the submission of the old claims had once again forwarded the claim of the deceased employee to the Insurance Company and recommended for submission of the same. 17. Counsel for the C.C.L. has further stressed that C.C.L. was only the facilitator of the scheme. Moreover, there was no time frame or limitation as to when the claim could be made and referred to the Memorandum of Understanding between C.C.L. and the OICL (annexure B of the OICL reply). That he died within the coverage period, so the insurance company should cover him.

18. C.C.L. has also relied on the judgment rendered in C.C.L. Vs. Oriental Insurance Co. Ltd & Smt. Yashoda Devi, in L.P.A. No. 347 of 2013, dated 28.04.2014. Hence the Hon'ble Court observed: 10. When there is no clause in the MOU prescribing time limit for making insurance claim, the respondent Insurance Company was not right in rejecting the insurance claim. When the terms of the MOU does not contain any clause prescribing the time limit for making the insurance claim, the payment of insurance does not involve any interpretation of the terms of the MoU. The learned Single Judge was not right in saying that the dispute between the parties involves interpretation of the terms of MoU and in directing the appellant company to approach the civil Court. 13. In the instant case, the respondent Insurance Company is a Public Sector Undertaking. As an instrumentality of the State, the respondent Insurance Company was discharging the public duty and it has a duty to act fairly. As pointed out earlier, the respondent Insurance Company unjustly turned down the insurance claim on the ground that it is time barred even when MoU does not stipulate any such

time limit. To inform that the insurance claim of Late Neolal Bedia is time barred, respondent Insurance Company has taken 21 months event to repudiate the insurance claim. We are conscious that normally the writ petition praying for refund/reimbursement of money against the State or instrumentality of the State by issuing a writ of mandamus are not to be entertained. In the present case, since the contract has been unjustly repudiated and having regard to the fact that group insurance of the workmen is a social welfare measure, direction is to be issued to the respondent Insurance Company to reimburse the amount of Rs. 8,92,246.53 with 6% interest per annum. Since there was a delay on the part of the appellant in making the insurance claim (Late Neolal Bedia died on 20.3.2003 and insurance claim was made on 23.3.2005), for the said period of delay, i.e. from 20.3.2003 to 23.3.2005, the appellant is not entitled to get interest.

14. The order of the learned Single Judge in W.P.(S) No. 930 of 2013 dated 19.08.2013 is set aside and this LPA is allowed. The respondent Insurance Company is directed to pay the amount of Rs. 8,92,246.53 with subsequent interest at the rate of 6% per annum (less the interest for the period from 20.3.2003 to 23.3.2005 on group insurance amount of Rs. 5 Lakhs) till the date of payment. 19. The OICL in its reply has stated that according to the petitioner Late Sitan Gope, Ex Coal/Breaker of N.K., Dakra Area, C.C.L. died on 18.07.2000 due to Vajrapat and accordingly Piparwar Police submitted final form. The death of Late Sitan Gope had been intimated to C.C.L. authorities by the petitioner Smt. Karmi Devi along with the Death Certificate No. 584710 dated 14.08.2000 and the Respondent (CCL authorities) vide office order No. 272022 dated ...08.2000/01.09.2000 (Annexure 2, Page 14 of the writ application) by which name of the deceased employee, Late Sitan Gope, Ex Coal Breaker of Dakra Colliery had been struck off from the roll of the Dakra Colliery, C.C.L. with immediate effect. Hence, the intimation of death of the deceased employee had been given by the petitioner/wife of the deceased to the C.C.L. authorities along with the death certificate within one month approximately.

20. Respondent/Insurance Company, the Oriental Insurance Co. Ltd., CBOI, Ranchi had issued one insurance policy vide Policy No. 332201/48/POL/2000/MIG/87 to M/s Central Coalfields Ltd, Darbhanga House, as Group Personal Accident Policy (GPAI) for the Executives and, Non Executives employees of C.C.L. for the period of 31.3.2000 to 30.03.2001 with certain terms and conditions. Apart from the standard terms and conditions of the Personal Accident Insurance Policy (Group) the Oriental Insurance Company/insurer and Central Coalfields Ltd. (CCL)/insured entered into a Memorandum of Understanding (in short M.O.U) in connection with Group Accident Insurance Policy for the Executive and Non Executive employees of C.C.L. for the period of one year i.e. From 31.03.2000 and 30.03.2001 for coverage of risk of their employees as per the terms and conditions of the said M.O.U. which is a part of the insurance policy. As per the standard terms and conditions of the (GPAI policy condition 1) all the accidental deaths should have been intimated to the Insurance Company within one calendar month. In the instant case though the C.C.L. authorities received death intimation of the deceased employee, Late Sitan Gope through his wife/petitioner within one month (approx) but the C.C.L. forwarded it to the Oriental Insurance Company on 14.08.03/16.08.03 (after 3 years on one month from the date of accidental death), and was received by O.I.C. Ltd. on 18.8.2003.

21. The death intimation of the deceased employee had been made by the petitioner/wife of the deceased to the C.C.L. authorities within about one month but the C.C.L. authorities had for the first time informed the Sr. Branch Manager, O.I.C. Ltd. vide their letter G.M. (P&IR)/87/03/5495 dated 14.08.2003/16.08.2003 and received by the Branch office on 18.8.2003 (after 3 years on one month of the accidental death).

22. It is relevant to mention that the higher authorities of O.I.C. Ltd and C.C.L. in a joint meeting agreed to clear all those pending cases once for all for the period upto 31.3.2003 and the above information must be sent by 15.8.2003, failing which no claim received thereafter shall be entertained and the management of C.C.L. and Insurance Company will not take any responsibility of such claims pending, unclaimed, uninformed on or before 15.8.2003. Letter of G.M. (P&IR) No. 4135/25.06.2003/26.06.2003 was addressed to all the G.M.s of different areas of Central Coalfields Ltd. under the heading Timely Submission of Insurance Claim under GPAI Scheme in the event of accidental Death. Hence OICL are not liable to pay this claim. In spite of the directions made in the letter of G.M. (P&IR) dated 25.06.2003/26.6.2003, the death intimation of Late Sitan Gope had been made to O.I.C. Ltd. vide their letter No. 5495 dated 14.08.2003/16.08.2003 and received by O.I.C. Ltd on 18.8.2003, hence, the claim made after 15.8.2003 could not be entertained by the Respondent Insurance Company in view of the letter G.M. (P&IR) dated 25.6.2003/26.6.2003 as agreed upon by the insured and the insurer the answering Insurance Company. It is apparent from Para 6 to 15 of the Counter Affidavit filed by C.C.L. that the claim of the petitioner was running between different offices/authorities of C.C.L. and it had been intimated to the O.I.C. Ltd. for the first time vide Letter No. 5495 dated 14.08.2003/16.8.2003, that too after lapse of the time frame provided in the letter no. 4135/25.6.2003/26.6.2003 of G.M. (P&IR) C.C.L. as stated in the earlier paragraphs. The Oriental Insurance Co, returned all the papers to C.C.L. vide letter dated 01.02.2005 treating it as late claim intimated late. which is apparent from Annexure E of their Counter affidavit. In spite of the best effort the letter dt. 01.02.2005 is not traceable. The instant claim of the petitioner was neither entertained nor registered by the Insurance Company due to late intimation i.e. after a lapse of about 3 years and odd and papers returned back to C.C.L.

23. OICL has placed judgment in C.C.L. & others Vs. Most Punia Devi and another, L.P.A. No. 85 of 2013 on record. The judgment does not seem to relieve OICL from the liability of paying the the purposed amount, but only of the liability of paying interest and cost to the individual widow of the deceased employee/or heir. ANALYSIS: From the analysis of the fact the following emerges.:

24. Sitan Gope husband of the petitioner died on 18.7.2000. C.C.L. strikes Sitan Gope off from the roll of the Dakra Colliery. This is in around 40 days, so CCL cannot claim it had no knowledge of Mr. Gopes death within reasonable time. C.C.L. could have began processing the papers of the deceased employee, on off, at least as a part of its corporate social responsibility. On the other hand, CCL says that it only received the submission of claim by Karni Devi the widow on 14.12.2002, however, it cannot deny knowledge of his actual death as early as 31.08.2000 or 1.9.2000 when it stuck him off the rolls in Dakara Colliery.

25. Secondly, even if one is to take the submission of claim by the widow as the date i.e. 14.12.2000, hence, too, the claim is returned back to Dakra Project Area by letter dt. 22/25.2.2003 with directions to submit more documents. One is reminded here that the compromised date between CCL and OICL of 15.8.2003 is still to take place.

26. Thirdly, a new date for delayed claim is fixed between the CCL and OICL namely 15.8.2003. This knowledge of delayed claim was known to CCL at least before/by 25.6.2003 and this is obvious from the letter by its own G.M. (P&IR) to various and many executives, by his own letter dated 25.6.2003 (Annexure D of OICL reply). The G.M. in this letter had stressed on the importance and urgency of the deadline of 15.8.2003.

27. A calculation of the time involved in the case will show that even with this compromised date CCL had around 50 days to process the same (That is around 5 days in June + 3 days in July + 14 days in August).

28. So if one were to take a look at the occasions, CCL could have fulfilled its obligation to the deceased employee/or his widow, it was soon after or within a reasonable time after his death, after the claim was submitted, and then when a new compromise date of 15.8.2003 had been arrived at. But it fails on all three occasions. 29. Moreover, by its own submissions, even post 15.8.2013, CCL is still making internal communication as regarding submission of some documents and as payslip etc.

30. OICL, on the other hand, claims that it just received the claim on 18.8.2003, that is after the deadline of 15.8.2003, and hence the claim was neither registered or entertained by them.

31. I have gone through the case law cited. It is noticed that the issue of delay is a prominent aspect of this case including in this case. Delay on the part of the individual workman's widow, delay on the part of CCL to process and inform the Insurance Company and rejection by the OICL because of delay in meeting the requisite date when the claim has to be submitted. In L.P.A.No. 307 of 2012, (Sabir Hussain) the claim was submitted after six years and he succeeded.

32. An important point raised here has been that the OICL is Public Sector Undertaking with welfare concerns so the interest of employees, should not suffer. More so when premiums have already been paid. CCL, also is a public sector undertaking. A question that may very well be raised then is if it is a question of public sector undertakings, welfare aspects, then if premium is paid, then the claimant is entitled to receive the coverage anyhow. 33.

Coming to this current case in particular there is it seems delay made on the part of the CCL, which I have significantly pointed out. Though, it also tries to shift the blame on to the claimant. However, in this instance, because the M.O.U did not have a time framework or limitation period, and bearing in mind that this aspect of MOU had also been addressed in order in L.P.A.No.347 of 2013 dated 28.04.2014, the limitation presented may not be a mandatory framework.

34. The other aspect that has been pointed out is that the contract was to give benefit to the employees and not only for the benefit of the employer. In order dated 28.4.2014 in L.P.A.No. 347 of 2013, the Hon'ble Division Bench has observed that:

9. As pointed out earlier, the rejection of the insurance claim on the ground that the insurance claim of late Neolal Bedi was not received within three months of the death is not justified and the Group Insurance being a social welfare measure, the respondent Insurance Company was not justified in rejecting the claim and also in refusing to reimburse the claim amount. 13. The respondent Insurance Company is a Public Sector Undertaking. As an instrumentality of the State, the respondent Insurance Company was discharging the public duty and it has a duty to act fairly.

35. Therefore, on the basis of the facts and circumstances before us arguments and case law the respondent Insurance Company is directed to pay the amount of Group Insurance to the petitioner with statutory interest within eight weeks from the date of receipt/production of a copy of this order. If the amount admissible on account of Group Insurance with Statutory Interest is not paid to the petitioner within the said period, and additional compensatory interest of 10% per annum will be payable from the date the amount is payable till the date of actual payment. Further, I have demonstrated how CCL has delayed, hence CCL is directed to pay to the both the petitioner as well as OICL, Rs.20,000/each respectively as quantified cost of litigation within the said period. 36.

The petition is accordingly allowed and disposed of. (Ratnaker Bhengra, J) Jharkhand High Court, Ranchi Dated the 19.2.2016, NAFR/Amar