

Bhanwari Devi (Smt.) Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Dec-05-2001

Reported in : RLW2003(3)Raj2047; 2003(1)WLN509

Judge : N.N. Mathur, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 174

Appeal No. : S.B. Civil Writ Petition No. 4687 of 2000

Appellant : Bhanwari Devi (Smt.)

Respondent : State of Rajasthan and ors.

Advocate for Def. : G.K. Vyas, Dy. Govt. Adv.

Advocate for Pet/Ap. : Vinay Jain, Adv.

Disposition : Writ petition allowed

Judgement :

Mathur, J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India by the widow Smt. Bhanwari Devi aggrieved of the th order of the Dy. Director, Ordinary Insurance Fund rejecting her claim under the Group Personal Accident Insurance Scheme for the government employees.

2. The petitioner's husband Shri Ram Niwas was serving as a Teacher in Government Primary School, Chitani, Police Station, Mundwa. On 9.8.97 when her husband was working on his own farm house, he alleged to have received electric shock at Tube Well. He was taken to the hospital, where he was declared dead. The doctor issued a certificate Annexure-2 certifying that Ram Niwas died due to electric shock. Petitioner submitted a claim vide application dated 6.9.97 for grant of benefit of Group Personal Accident Insurance as her husband expired due to electric shock. The application was forwarded by the third respondent Vikas Adhikari, Panchayat Samiti, Mundwa to the second respondent i.e. Dy. Director, Ordinary Insurance Fund, Jaipur. Along with the application, the petitioner also submitted a report dated 1.9.1997 of the S.H.O., Police Station, Mundwa District, Nagaur. It appears from the said letter that an inquiry was conducted by the S.D.M., nagaur under Section 174 of the Code of Criminal Procedure and it was found that Ram Niwas died of electric shock. However, the petitioner was informed under communication dated 24.11.1998 that her claim has been rejected. The petitioner widow approached to this Court by way of writ petition. This Court by order dated 10.12.99 instead of admitting disposed of the writ petition with the observation that the petitioner may file a fresh claim for Group Personal Insurance after supplying the documents as demanded under letter dated 24.11.1998 or such explanation for non-availability of those documents as may be available to the petitioner. The Court also observed that fresh claim should be considered by the Department objectively. The petitioner submitted a fresh claim as per the directions of this Court. However, the second respondent rejected the claim on the ground of delayed F.I.R. and the fact that there was no post- mortem of the dead body. This way the petitioner has approached to this Court in second round.

3. I have heard Mr. Vinay Jain learned counsel for the petitioner and Mr. G.K. Vyas Dy. Government Advocate. It appears that the State Government has prepared a scheme known as Group Personal Accident Insurance Scheme for the Government employees. This scheme has been made applicable to all the government employees. The object of the scheme appears to be to provide minimum help to the family members of the deceased employee, who died in accident. Thus, what is required to be established by the claimed is that the deceased died in accident. This fact can be established by various facts and

circumstances including the F.I.R. and the post-mortem report. Thus, if there is sufficient material on record to show that the deceased died of the accident death the claim cannot be rejected simply on the ground that the post-mortem of the dead body was not conducted or there was delay in lodging the F.I.R. The authorities are required to consider the entire matter objectively keeping in view the object of the Scheme.

4. That in the instant case an inquiry has been conducted by the S.D.M., nagaur under Section 174 of the Code of Criminal Procedure and has concluded that deceased died of accidental death Section 174 Cr.P.C. provides that when the Officer Incharge of a Police Station or some other Officer specially empowered by the State Government in that behalf receives on information that a person has committed suicide or has been killed by another or by animal or by machinery or by a accident or has dies under the circumstances raising reasonable suspicion that some other person has committed an offence, he shall immediately give information thereof to the nearest executive Magistrate empowered to hold inquest. The provision further provides that the Sub Divisional Magistrate shall hold an inquiry into the cause of death. The procedure under Section 174 Cr.P.C. is for the purpose of discovering the cause of death and the evidence taken is relevant. There can be no reason to disbelieve the conclusion arrived at by the S.D.M. that deceased died of the accidental death. As far as the fact of non-conducting of post-mortem of the dead body, it cannot said to be fatal in all cases. There are number of cases in which for various reasons the post-mortem is not conducted. Still cases are registered for offence under Section 302 I.P.C., trial is conducted and in a number of cases conviction is recorded. In the Law of Evidence 'corpus delicti' in the sense of dead body being found is not absolutely essential if death is proved by other creditable evidence. In the case of homicide in order to establish 'corpus delicti' what is required to establish is firstly that the death has taken place and secondly the death was due to unlawful violence or criminal negligence. If in all cases post-mortem report is insisted, it may lead to absurdity and injustice. In a criminal case murders can escape conviction by successful preventing of discovery of the dead body. Therefore, now it is well established that the fact of death is legally inferred from such circumstances of presumption as rendered morally certain and leave no ground for reasonable

doubt.

5. Ordinarily, I would have remitted the matter to the second respondent to reconsider the case of the petitioner on the basis of report under Section 174 Cr.P.C. in absence of the post-mortem report, but I am not inclined to adopt the said procedure as the second respondent has failed to consider the entire case objectively inspite of the directions of this Court dated 10.12.99. The accidental death is established by the medical certificate dated 9.8.97, the report of the S.H.O. as addressed to the S.D.M. dated 1.9.1997 Annexure-4. The petitioner is clearly entitled to compensation under the Group Personal Accident Insurance Scheme for the Government Employees.

6. Consequently, the writ petition is allowed. The order dated 23rd June, 2000 passed by the Second Respondent is quashed and set aside. The respondent is directed to determine the claim and make the payment to the petitioner within a period of three months from today. The petitioner shall also be entitled to interest at the rate of 12% on the amount of claim from the date of initial application dated 6.9.97. The petitioner shall also be entitled to cost of the petition, which is assessed as Rs. 2000/-.

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