

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1357 OF 2016

(Against the Order dated 10/08/2016 in Complaint No. 307/2011 of the State Commission
Maharashtra)

1. ROYAL SUNDARAM ALLIANCE INSURANCE
CO. LTD.

LEGAL DEPTT. CORPORATE OFFICE,
SUBRAMANIAM BUILDING, 2ND FLOOR, NO. 1,
CLUB HOUSE ROAD,

CHENNAI-600002

TAMIL NADU

.....Appellant(s)

Versus

1. PAWAN BALRAM MULCHANDANI

KAMAL NIWAS, B.K. NO. 732, ROOM NO. 1,
PUNJABI COLONY, ULHAS NAGAR,

DIST. THANE

MAHARASHTRA

.....Respondent(s)

BEFORE:

**HON'BLE MR. DR. S.M. KANTIKAR, PRESIDING MEMBER
HON'BLE MR. DINESH SINGH, MEMBER**

For the Appellant : Mr. S. M. Tripathi, Advocate with

Ms. K. Karuna Sree, Advocate

For the Respondent : Mr. Dinesh Prakash, Advocate

Dated : 25 Sep 2018

ORDER

DR. S. M. KANTIKAR, PRESIDING MEMBER

1. The relevant brief facts for disposal of this appeal are that Balram Mulchandani (since deceased, “the insured”) took personal accident shield insurance policy from M/s Royal Sundaram Alliance Insurance Co. Ltd./OP for the period 05-11-2008 to 04-11-2009 for an assured sum of Rs. 20,00,000/-. For several years he had been taking the insurance policy and getting it renewed without any break. The deceased had gone to his office on 21-01-2009, but he did not return home till 10 P.M. The complainant and his family members got worried and they made several inquiries and telephone calls. Thereafter the relatives lodged a complaint of ‘missing person’ at the Police Station, Ulhas Nagar. The police investigated the matter and arrested some persons, called Sambhaji Pawar, Sunil and Amzad Khan, who revealed that they had murdered Balram Mulchandani. The complainant filed a death claim with the OP-insurance co., but it was repudiated on the ground that the death was not due to ‘accident’, but was a case of ‘murder simplicitor’. Being aggrieved by the repudiation, the complainant, Pawan Mulchandani, the son of the deceased filed a complaint before the Maharashtra State Consumer Disputes Redressal Commission (for short “the State Commission”).

2. The OP-insurance co. contested the complaint by filing a written statement before the State Commission. The first contention raised was that since the complaint had been filed after two years from the date of repudiation, the complaint was barred by limitation under Section 24A of the Consumer Protection Act, 1986. The claim was repudiated on 26-05-2009, whereas the complaint was filed on 31-08-2012 after a considerable delay. Thus, the complaint was not maintainable. Secondly, as per the terms & conditions of the policy, the OP was not liable to pay the claim because the complainant had waived his right to sue by not filing the claim within 12 months from the date of cause of action. (However, the limitation for complaint under the Act 1986 is 24 months from the cause of action.) The OP further submitted that the murder took place because of property dispute between the parties. Balram Mulchandani was first kidnapped by Sambhaji Pawar and his associates Sunil and Amzad Khan; and then murdered on 21-01-2009. Therefore, it was clear that it was a case of ‘murder simplicitor’, and did not fall within the definition of ‘accident.’ The claim was not covered under the said personal accident shield policy.

3. After appraising the pleadings and evidence, the State Commission allowed the complaint and directed the OP to pay the insured amount of Rs.20,00,000/- with interest at the rate of 9% per annum from the date of repudiation along with cost of Rs.25,000/-.

4. We have heard the learned counsel for both the parties and perused the record.

5. The counsel for the appellant/insurance co. argued that it was not an accidental death. The insured was reported missing on 21-01-2009, when he did not come back to his residence. A police complaint was filed with Central Police Station, Ulhas Nagar by the insured’s close family. An FIR was registered and subsequently the police caught hold of Sambhaji Pawar and his associates, who admitted having murdered the insured for property dispute. The body of the deceased was recovered subsequently. Therefore it was a murder, as the culprits had intentionally kidnapped and killed the insured. It was a case of ‘murder simplicitor’, which does not fall within the scope of the policy. The same was informed to the complainant by letters dated 26-05-2009 and 14-07-2009. The counsel further submitted that the complainant initially filed a complaint on 01-02-2011 before the District Forum, which was dismissed on the ground of territorial jurisdiction on 5.8.2011. Thereafter, the complainant filed a complaint on 28-08-2011 before the State Commission, Mumbai claiming a sum of Rs.22,15,379/- alongwith interest. The counsel further submitted that the State Commission had ignored the issue of territorial jurisdiction and allowed the complaint by wrongly relying upon the judgment of this Commission in **Maya Devi**

Vs. Life Insurance Corporation of India, III (2008) CPJ 120 NC. The counsel further relied upon the judgment of the Hon'ble Apex Court in **Rita Devi Vs New India Assurance Co. Ltd.** , 2000 ACJ 801, in which it was held that "It is not as if every case of murder would be an accident. The murder too could be accidental, but would depend on the facts and circumstances of each case." If the dominant intention of the act of felony is to kill any particular person, then such killing is not an accidental murder, but is a murder simplicitor, which was not within the scope of the policy.

6. The learned counsel for the respondent-complainant submitted that the deceased had purchased a personal accident shield insurance policy for a sum of Rs.20,00,000/-, which was continuously in force without any break. The insured's close family lodged the complaint of 'missing' of the deceased and thereafter following the recovery of the dead body the concerned police authority sent it for postmortem and the concerned panchayat issued the death certificate. The OP had repudiated the claim arbitrarily by stating that the death was due to murder and the same was not within the scope of the insurance policy. The counsel relied upon the judgment of this Commission in **Maya Devi vs. LIC of India** in which this Commission had quoted from the Halsbury's Law of England, Vol. 25 pg. 307, para 569, 4th Edition (2003 reissue), in which the meaning of the word 'accident' had been stated to be as under:-

*"569. Meaning of 'accident'. The event insured against may be indicated in the policy solely by reference to the phrase 'injury by accident' or the equivalent phrase 'accidental injury', or it may be indicated as 'injury caused by or resulting from an accident.' The word 'accident', or its adjective 'accidental', is no doubt used with the intention of excluding the operation of the natural causes such as old age, congenital or insidious disease or the natural progression of some constitutional physical or mental defect; but the ambit of what is included by the word is entirely clear. It has been said that what is postulated is the intervention of some cause which is brought into operation by chance so as to be fairly describable as fortuitous. The idea of something haphazard is not necessarily inherent in the word; it covers any unlooked for mishap or an untoward event which is not expected or designed, or any unexpected personal injury resulting from any unlooked for mishap or occurrence. The test of what is unexpected is whether the ordinary reasonable man would not have expected the occurrence, it is being relevant that a person with expert knowledge, for example of medicine, would have regarded as inevitable. The stand point is that of the victim, so that **even willful murder may be accidental as far as the victim is concerned.**"*

In the same order of this Commission, of the Halsbury's Laws of England Vol. 25 Pg. 311, para 575, 4th Edition (2003 reissue), has been reproduced, in which it is stated as under:-

*" 575. Injury caused by a willful act. An injury caused by the willful or even criminal act of a third person, provided the insured is not a party or privy to it, is to be regarded as accidental for the purpose of the policy, since from the insured's point of view it is not expected or designed. Injuries sustained by gamekeeper in a criminal attack upon him by poachers, by a chashier who was murdered by a robber, and by a master at an industrial school who was murdered by the boys, have been held to be accidental. However, if the immediate cause of the injury is the deliberate and **wilful act of the insured himself**, there would seem to be no accident, and no claim will lie under the policy, at any rate if the insured is not mentally disordered at the time of his act."*

7. This Commission held that the death of the insured was accidental, because the immediate cause of injury was not the result of any deliberate or wilful act of the insured and the untoward event that had occurred was not expected or designed by the insured. The learned counsel for the complainant stated that relying upon the said judgment, this complaint had been rightly allowed by the State Commission.

8. We have given our thoughtful consideration to the arguments advanced by both the parties and examined the entire material on record. The main question for our consideration is whether the murder that took place in the instant case is to be counted under the definition of 'accident' or not and whether the repudiation of the claim by the insurance company was justified or not. In the case **Maya Devi vs. LIC of India** this Commission has dwelt at length on the circumstances in which the murder has to be taken as an 'accident'. This Commission also took into account the judgment rendered by the Hon'ble Apex Court in the case **Rita Devi vs. New India Assurance Co. Ltd. (supra)** and another order passed by this Commission in **Prithvi Raj Bhandari vs. LIC of India & Ors.** III(2006) CPJ 213. After analyzing the facts and circumstances in both these cases, this Commission reached the conclusion that in case the immediate cause of injury was not the result of any deliberate or willful act of the insured and that the occurrence of the accident was not expected on the part of the insured, the murder was to be counted as an 'accident'. This Commission also referred to the case **Nisbet vs. Rayne and Burn** [1910]2 KBD 689 in which it was held that murder was an accident from the stand point of the person, who suffered from it. The Commission categorically stated that unless the immediate cause of injury was deliberate and wilful act of the insured himself, it was difficult to hold that the murder was not an 'accident'.

9. In the case **Maya Devi vs. LIC of India** this Commission also referred to the exclusion clause referred to under the policy. We have also gone through the terms and conditions of the insurance policy in question, under the heading 'Exceptions'. Nowhere under the said clause it has been stated that the insurance company was not liable to pay the claim in case of murder. It has been stated that if there was an intentional self injury, suicide or attempted suicide the claim was not payable. It has also been stated that in the case of any war, rebellion, revolution, insurrection, mutiny, military or usurped power, etc. the claim was not payable. The facts and circumstances of the present case reveal, however, that none of these clauses is applicable in the present case and hence the repudiation of the claim by the insurance company was not justified.

10. It may further be stated that **Contra Proferentem Rule** applicable to insurance policies says that in case of ambiguities in the insurance policy the interpretation has to be done in favour of the insured. In the present case it is nowhere stated that even for 'murder simplicitor' the claim is not payable and hence the action of the insurance company in repudiating the claim cannot be justified.

11. Further, it is worthwhile to state after a close examination of the facts and circumstances of the case that a group of persons had kidnapped the insured due to some property dispute. The death of the insured took place due to injuries caused by external, violent, visible means.

12. We may further refer to an order passed by this Commission in **Taj Devi vs. National Insurance Company Ltd. & Ors.**, Revision Petition No. 4591 of 2009 decided on 30.03.2010, in which, placing reliance on the **Maya Devi case**, it was held that murder of the life assured was not excluded under the terms of the insurance company. The said order was challenged before the

Hon'ble Supreme Court by way of Special Leave to Appeal (Civil) No. 34115 of 2010, in which it was held as follows:-

“We have heard learned counsel for the parties at considerable length and carefully perused the record. We have also gone through the judgment of the National Commission in Maya Devi vs. Life Insurance Corporation of India (2008) CPJ 120 (NC), which has been referred to and relied upon in the impugned order for the purpose of setting aside the order of the State Commission and restoration of the order passed by District Forum. In our view the reasons assigned by the District Forum for entertaining and allowing the complaint filed by respondent No. 1 were based on correct analysis of the pleadings of the parties and the documents produced by them and the documents produced by them and the National Commission did not commit any error by restoring that order.”

It is evident from the above that the view taken by this Commission in the case **Maya Devi case** was upheld by the Hon'ble Apex Court, when they dismissed the above Appeal.

13. We therefore conclude that the murder in the instant case is to be treated and taken as an accident within the terms and conditions of the policy.

Per Hon'ble Member Mr. Dinesh Singh:

14.(a) In so far as the questions of limitation and territorial jurisdiction are concerned, we may first refer to para 5 of the State Commission's Order:

“In the present case, our attention is also invited to the order passed by the District Consumer Disputes Redressal Forum, Central Mumbai, Parel, whereby earlier by order dated 05/08/2011 the complaint was disposed of on the ground that it was not within the territorial jurisdiction of the said District Forum. However, specifically it was made clear that right of the complainant to approach appropriate forum was kept unaffected. In other words, complainant had liberty to approach the State Commission.”

The limitation period under the Act, 1986 is two years from the date on which the cause of action arose. The claim was repudiated on 26.05.2009. The complaint was filed in the District Forum on 01.02.2011. It was disposed of on 05.08.2011 on ground of territorial jurisdiction with the right of the complainant to approach appropriate forum kept unaffected. Objections on limitation and territorial jurisdiction are erroneous and lack merit. In any case, seeing the facts of the case, seeing that the complainant was running to police, sessions court, insurance company, District Forum, State Commission, seeing that it was a case of unexpected murder, seeing that it is reasonable to conclude that the complainant and the deceased's close family were in continuous shock and grief, continuous harassment and difficulty, therefore, in the totality of the case, any imperfection on limitation or territorial jurisdiction (though we see none) merits to be condoned in the interest of justice and to prevent miscarriage of justice.

(We also note that the appeal has been filed by the insurance company with delay of 5 days, which we have overlooked.)

(b) It is reasonable and logical to conclude that a person takes personal accident shield insurance policy to insure himself against accidental injury resulting in death caused by an unexpected and unintentional incident. In this case, there was no immediate deliberate willful act by the insured that led to his murder. Putting himself to risk of injury by immediate willful deliberate act or carelessness or instigation or aggression etc. is not evident. Death was due to unexpected and unintentional incident i.e. an accident. 'Murder' per se was not specifically excepted in the policy. Hence, in the facts of this case, the death was clearly accidental and was squarely covered by the policy.

(c) The deceased had been insured with this insurance company for a considerable period (05.11.2008 to 04.11.2009). He was periodically renewing his policy and regularly paying the premium. 'Murder' was not specifically excepted. No immediate willful deliberate act of the insured as led to his murder was visible. Death was unexpected and unintentional. Suicide or self-injury etc. are ruled out. Repudiating his claim, without the due application of mind to the facts, on a mechanical application that 'murder is not an accident', caused harassment and difficulty to the nominee(s) and his family (for whose benefit the deceased had taken insurance and paid premium). This qualifies as injury and loss that would and should attract compensation.

(d) The State Commission has made its award for deficiency in service. We, too, uphold and sustain the same.

(e) Adding thereto, we feel it just and appropriate that a reasonable compensation of Rs.2,00,000/- shall also be paid by the insurance co. to the nominee(s) within four weeks of this Order, failing which it shall attract interest at the rate for fixed deposit of any one scheduled nationalized bank. (The said rate of interest shall be ascertained by the insurance co.)

(f) 'Murder' was not specifically excepted in the policy. If 'murder is not an accident' had to be adopted by the insurance company, or if every / select murder had to be inquired into and determined whether or not it was an accident covered under the policy, the same should have been explicitly and categorically stated in the policy. In the absence of 'murder' in the exceptions and in the absence of such explicit and categorical averment in the policy, a reasonable man of normal intelligence would conclude that murder is an accident within the terms of the policy. The onus of being ab initio explicit and categorical on its terms and conditions was on the insurance company (not on the insured). First not including murder in the exceptions, then, on murder occurring and claim being filed, raising the plea that 'murder is not an accident' and repudiating the claim, at its own end, as per its own interpretation, tantamounts to unfair trade practice.

(g) We are dealing with consumer justice, in recognisedly a fight amongst unequals, an ordinary consumer who in good faith readily and straightaway believes that murder will (obviously) be an accident versus a pan country insurance co. that first keeps gaps and ambiguity in its terms and conditions, and then comes forth with its own interpretation of its own gaps and ambiguity after the murder occurs and after the claim is made, and then repudiates the claim at its own end on the basis of its own interpretation.

(h) Had gaps and ambiguity, in respect of murder being covered or not covered in the policy, and if conditionally covered under what facts and situation it may/will be inquired into to determine whether or not it was accident, not been there, a plethora of consumer disputes and resultant plethora of rulings of different fora / courts could have been avoided. For future, rather

than examining every / select cases subsequent to the event, litigating every / select cases, it is apt and necessary that the gaps and ambiguity be removed, the unfair trade practice be discontinued.

(i) The insurance company is directed to discontinue its unfair trade practice apropos 'murder' with immediate effect. If murder is excepted, it shall be included explicitly and categorically in the exceptions. If murder is an accident or is not an accident has to be inquired into and determined in every / select case, the same shall be stated explicitly and categorically in the policy. The insurance co. shall ensure that its terms and conditions and position in respect of 'murder' are explicitly and categorically conveyed to the ordinary consumer ab initio, at the time of purchase of the policy. (The articulation is at the wisdom of the insurance company, and will be subject to scrutiny of this Commission.) A report-in-compliance shall be filed by the chief executive of the insurance company with this Commission within three months.

(j) We may note that we fail to understand as to why, with a plethora of continuous consumer complaints, litigations, rulings, the insurance co. itself did not apply its mind and itself did not make its terms and conditions explicit and categorical and itself did not dispense away with its own arbitrariness in examining, interpreting, deciding litigating every / select cases of murder after they took place and after the claims were made. This is not viewed favourably. We now expect and require that our advice shall be implemented in the letter and the spirit, within the stipulated period of three months. Failure or omission to comply will be viewed in the perspective that it would merit to be viewed.

(k) In respect of just and equitable compensation for indulging in unfair trade practice qua the complainants / nominee(s) in this instant case, we note that after buying the accident shield insurance policy in good faith as ordinary simple consumer, and after murder in accident, the nominee(s) / family were made to undergo litigation in two consumer fora, one after the other, after rejecting the claim with mechanical application of 'rules' and without the due and conscious application of mind, and coming forth with its own interpretation of its own gaps and ambiguity after the murder in accident occurred and after the claim was made, and repudiating the claim at its own end on the basis of its own interpretation, and considering the loss and injury, continuous harassment and difficulty, the insurance co. shall pay in addition reasonable compensation of Rs.2,00,000/- to the nominee(s) within four weeks of this Order, failing which it shall attract interest at the rate for fixed deposit of any one scheduled nationalized bank (The said rate of interest shall be ascertained by the insurance co.)

(l) And consumer justice in the true sense has to be met. Once the amount awarded for deficiency in service and the amount awarded in addition for unfair trade practice are adjudicated and determined, the onus is on the insurance co. to be prompt and dutiful in making the necessary payments within the stipulated time. Creating yet further harassment, uncertainty and difficulty for the ordinary consumer by delaying payments or making reduced payments etc. (if the adjudication is not stayed or quashed or modified by a higher authority / court) will be an unacceptable situation, to be viewed seriously - the harassment, uncertainty and difficulty of the consumer should end promptly and fully, the chapter should close. Therefore, if the insurance co. delays the adjudicated payments beyond the time stipulated, it would and should attract higher / penal interest and other compensation / costs, which will be determined by this Commission if the contingency so arises. And the unfair trade practice must end promptly and fully. Therefore, if the insurance co. delays the re-articulation of its policies on this subject as directed, it would and

should attract higher / penal interest and other compensation / costs, which will be determined by this Commission if the contingency so arises. (Attention is also specifically drawn to section 25 and section 27 of the Act 1986.)

15. Based on the discussion above, it is held that there is no illegality or irregularity or jurisdictional error in the impugned Order passed by the State Commission in respect of deficiency in service and the same is upheld. Compensation in addition as directed in para 14 (e) above shall be payable for deficiency in service. Further, the unfair trade practice shall be discontinued by the insurance co. as directed in para 14(i) & (j) above. Furthermore, compensation in addition as directed in para 14(k) above shall be payable for unfair trade practice. (We clarify that the awarded amounts shall be made to the nominee(s).)

16. The present appeal is ordered to be disposed of with the above directions. There is no order as to costs.

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DR. S.M. KANTIKAR
PRESIDING MEMBER

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DINESH SINGH
MEMBER