



2024/KER/11023

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

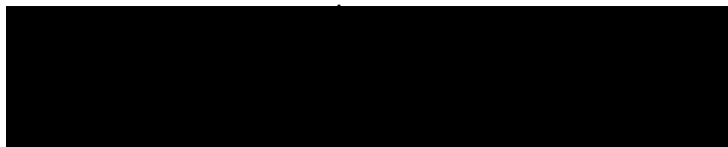
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 6TH DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945

WP(C) NO. 6768 OF 2022

PETITIONER:

SREEDEVI M. ,



BY ADVS.LINDONS C.DAVIS
E.U.DHANYA
SWATHY A.P.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
FINANCE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 INSURANCE DIRECTOR,
INSURANCE DIRECTORATE,
INSURANCE DEPARTMENT, TRANS TOWERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM-695 014.

SRI. RAJEEV JYOTHISH GEORGE, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 06.02.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**“C.R.”****JUDGMENT****Dated this the 6th day of February, 2024**

This is the second writ petition filed by the petitioner, after having obtained a judgment earlier in W.P.(C).No.12693/2020.

2. The petitioner is stated to be the wife of late Vijayakumar, who unfortunately died of drowning, after having accidentally tripped into a well on 18.10.2018. The petitioner says that her husband was covered by a Group Personal Accident Insurance Scheme ('Scheme' for short), namely Ext.P9; and thus that she was entitled to compensation to the sum of Rs.10 lakhs, but that this was denied on the allegation that her husband, at the time of death, was under the influence of alcohol. She says that this was irrelevant because, what is important as per Ext.P9 policy was the verified cause of death, which, according to her, cannot be attributed to the influence of alcohol - assuming that her husband was under such at the relevant time.



3. The petitioner says that she, therefore, had approached this Court through the aforementioned writ petition, namely, W.P.(C).No.12693/2020, which was disposed of, directing the competent Authority to reconsider the case, which has now entered in Ext.P8, wherein, it has been reiterated that, as per Ext.P9 policy, particularly Clause 6 thereof, any death due to accident, while under the influence of alcohol, would stand excluded from its ambit.

4. The petitioner submits that, therefore, she has been now constrained to challenge clause 6 of Ext.P9 because, the denial of a claim in the case of death, even if the accident was at a time when the deceased was under the influence of liquor - but the cause of death being not attributable to such condition - is arbitrary and capricious. She thus prays that the reliefs sought for in this writ petition be granted.

5. Sri.Lindons.C.Davis - learned counsel for the petitioner, vehemently argued that the impugned clause in Ext.P9 is irrational and, therefore, untenable; and that,



going by the various binding precedents, namely, ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath [1986 (3) SCC 156]*** and ***L.I.C. Of India & Anr v. Consumer Education & Research Centre & Ors. [1995 (5) SCC 482]***, this Court is obligated to set aside such clauses, if it is found to be unjust and unfair. He argued that, since the Group Personal Accident Insurance Scheme was propounded as per Government orders, it is amenable to judicial review and that his client is, therefore, constrained to approach this Court because, even going by the police reports, namely Ext.P1, her husband did not die on account of consumption of alcohol, but because he accidentally tripped and fell into a well, which could have happened even to a person who was not under the influence of alcohol. He concluded arguing that, therefore, his client's challenge to clause 6 of Ext.P9 is for good reason because, what is relevant to be determined is not whether the deceased was under the influence of alcohol, but if the cause of death had any direct nexus to it.



6. In response, the learned Government Pleader - Sri.Rajeev Jyothish George, vehemently supported Ext.P9, saying that the object of the Group Personal Accident Insurance Scheme is to cover deaths which are beyond the control of human intervention or action. He submitted that, therefore, as is available in any other contract of insurance, Ext.P9 contains a proviso to clause 6, wherein, it mandates that no compensation shall be paid for death or disablement arising out of intentional self-injury, suicide, attempted suicide, death or disablement due to accident, while under the influence of intoxicating liquor or drugs. He pointed out that, in fact, there is one more exemption provided in the said proviso, namely, in the case of death or disablement while breaching law with criminal intent. He submitted that, these causes are stipulated with loadable intent because, otherwise, it would be used as a premium by unscrupulous people for the purpose of obtaining compensation under it, by either intentional self-injury or an attempt to suicide or such other.



7. Sri.Rajeev Jyothish George - learned Government Pleader, thereafter, submitted that it would not be necessary for this Court to look into the validity of clause 6 of Ext.P9 'Scheme', at least in this case, because, Ext.P1 final report, read along with Ext.P3 chemical analysis report, would render it indubitable that the deceased had consumed a large amount of liquor, thus being unable to control himself, causing him to trip into the well and to unfortunately die due to drowning. He argued that, when the facts involved are so clear and undisputed, the allegation of the petitioner, that the cause of death was not attributable to the consumption of liquor by the deceased, becomes untenable and beyond reason. He vehemently asserted that, even a cursory reading of Ext.P1 final report, along with Ext.P3 chemical analysis report, would establish that the repudiation of the claim by the Insurance Directorate was without error, and hence prayed that this writ petition be dismissed.

8. It is evident from the afore narrative and the pleadings on record, that the petitioner has approached



this Court through this writ petition because, when her claim was directed to be reconsidered in the judgment issued in the earlier round of litigation, it culminated in Ext.P8, wherein, the Government took the specific stand that, on account of Clause 6 of Ext.P9 Group Insurance Scheme, the said claim cannot be considered because the deceased was under the influence of alcohol at the time of his unfortunate death. She has, therefore, chosen to challenge the said clause itself as being untenable and without any rational connection to the objectives sought to be achieved; and she asserts, through her learned counsel, that it operates oppressively because, even the case of death of a person who may be under the influence of alcohol, but for no reason that can be attributed to such influence, would stand excluded.

9. This Court certainly would have considered the afore contentions more intently but for the fact that Ext.P3 Chemical Analysis Report - which remains undisputed and uncontested - establishes that the deceased was under the influence of alcohol indicative of



not merely casual drinking, but of heavy indulgence. This is because, the sample of the deceased is certified to have contained 185 mg of methyl alcohol per 100 ml and this certainly establishes that he was in such an inebriated state, even not to have been aware the circumstances around him. To add to this, the police report, namely Ext.P1, says that the well had a protective wall around it; and therefore, normally except in the case of a person being incapacitated to be aware of the circumstances or being subjected to an external force applied on him, the falling to the same, thus causing drowning is improbable. Even according to the petitioner and going by the police reports, there was no external force applied on the deceased and he appears to have fallen into the well being oblivious of the danger that was lurking while he was walking through the property of his friend.

10. All the afore is suggestive of the fact that the death occurred unfortunately on account of the factum of the deceased having imbibed large volume of liquor; and hence the argument of the petitioner, that Clause 6 of



Ext.P9 would not be attracted in this case, the death being not on account of consumption of liquor, cannot find my favour.

11. In fact, this is exactly what has been stated by the Government also in Ext.P8; and hence, when the factual factors remain uncontested without dispute, the challenge to the proviso to Clause 6 of Ext.P9 insurance scheme would be more or less academic in nature, at least as far as the case is concerned, since it would not, in any event, inure any benefit to the petitioner. This is because, even this Court is to read down the impugned proviso to hold that a case of death on account of an accident, which is not directly on account of the consumption of liquor, would not be attracted under its purlieu, it would not help the petitioner, since, in this case, it is without much of doubt that, unfortunately, the victim succumbed on account of the factum that he was unable to physically control himself.

In the above circumstances, I do not think it is necessary for this Court to answer the argument of the



petitioner regarding the validity of the proviso to Clause 6 of Ext.P9 Group Insurance Scheme conclusively; but I deem it necessary to peripherally say that the said clause cannot be found to be capricious because, it is intended to avoid any temptation from any person to cause self injury or disablement, solely for the purpose of the cover of insurance. The proviso does not really impose any unreasonable restriction but only stipulates that an injury or disablement, caused on account of an accident due to the influence of alcohol, or while under such influence, would stand excluded. *Prima facie*, this Court cannot find fault with it, nor can I find it to be capricious. However, this is an issue that is left open to be decided in future cases, if it becomes so required.

Sd/-
DEVAN RAMACHANDRAN
JUDGE

APPENDIX OF WP (C) 6768/2022PETITIONER'S EXHIBITS

- Exhibit P1 A COPY OF FINAL REPORT DATED
31.10.2018 WITH RESPECT TO DEATH OF
VIJAYAKUMAR.
- Exhibit P1(A) THE RETYPED LEGIBLE COPY OF 1ST PAGE
OF EXHIBIT P1
- Exhibit P2 A COPY OF THE LETTER DATED 20.8.2019
ISSUED FROM THE OFFICE OF THE 2ND
RESPONDENT
- Exhibit P3 A COPY OF THE TEST REPORT OF THE
REGIONAL CHEMICAL EXAMINERS
LABORATORY, ERNAKULAM DATED 11.2.2019
- Exhibit P4 A COPY OF THE LETTER NO
INSU/G/P.O.A.I.S/M3/T 001906036 DATED
26.5.2020 OF THE 2ND RESPONDENT
- Exhibit P5 A COPY OF THE GO(P) NO 606/2012/FIN
DATED 3.11.2012
- Exhibit P6 A COPY OF THE GO(P) NO 133/2017/FIN
DATED 21.10.2017
- Exhibit P7 A COPY OF THE APPEAL DATED 16.6.2021
SUBMITTED BEFORE THE 1ST RESPONDENT
- Exhibit P8 A COPY OF GO(MS) NO 6315/2021/FIN
DATED 25.9.2021
- Exhibit P9 A COPY OF THE GROUP PERSONAL ACCIDENT
INSURANCE SCHEME AS PER GO(P) NO
616/2010/FIN DATED 23.11.2010