



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 6106/2022

Susheela

----Petitioner

Versus

1. The Union Of India, Through Its Additional Secretary And Mission Director (N.h.m.) National Health And Family Welfare, Nirman Bhawan, New Delhi - 110011
2. The State Of Rajasthan, Through Director, Department Of Medical And Health Services, Secretariat, Jaipur.
3. The New India Assurance Company Limited, Through Its Director, New India Assurance Bldg, 87, Mahatma Gandhi Road, Fort, Mumbai - 400001

----Respondents

For Petitioner(s) : Mr. Lakshya Singh Udawat
For Respondent(s) : Mr. Mukesh Rajpurohit, Dy. SG.
Mr. Pankaj Sharma, AAG a/w
Mr. Rishi Soni
Mr. Jagdish Vyas

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

Reserved on 22/09/2023

Pronounced on 29/09/2023

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"It is therefore, prayed that this writ petition may kindly be allowed and :

- (a) The record of the case may kindly be called for;*
- (b) By appropriate writ, order or direction, the order dated 24.01.2022 (Annexure-9) may be quashed and set aside.*
- (c) By appropriate writ, order or direction, the respondents may be directed to release the compensation amount to Rs.50 Lakhs under the P.M.G.K.Y. Scheme in the name of the petitioner.*



(d) Any other order or direction which the Hon'ble Court feels appropriate in favour of the petitioner in light of justice, equity and good conscience may also be passed.

(e) Cost of the petition may kindly be awarded to the petitioner."

2. Brief facts of the case, as placed before this Court by learned counsel for the petitioner, are that the petitioner's husband, Late Shri Rajesh Kumar Mali, was a nursing officer engaged on contractual basis through M/s. Bedi and Bedi Associates in rendering duty in Intensive Care Unit (ICU) of Covid patients at All India Institute of Medical Sciences (AIIMS), Jodhpur w.e.f. 13.12.2016; and thus being in such engagement, he used to come in direct contact with the Covid-19 patients, whereafter he died due to heart attack, on 06.04.2021; and the Death Certificate dated 23.04.2021 was issued by the AIIMS, Jodhpur and the death summary of the deceased was prepared on 17.05.2021 by the AIIMS, Jodhpur.

2.1. The Ministry of Health & Family Welfare, Government of India, New Delhi, issued D.O. No.F.No.Z-18016/1/2020/PMGKP-NHM II dated 03.04.2020, and in accordance with the same, the authorities concerned were requested to inform all such health care providers through various mediums like SMS, WhatsApp, e-mail etc., about their inclusion under "Pradhan Mantri Garib Kalyan Package: Insurance Scheme for Health Workers Fighting Covid-19; in the said communication, two types of claims were specified, namely, (a) The Claim Form -I (Personal Accident Insurance Claim Form for loss of life due to COVID 19); and (b) Form-II (Personal Accident Insurance Claim Form for accidental loss of life on account of COVID-19 related duty).



2.2. The present petitioner, wife of the deceased, filed a claim for the purpose of compensation to the tune of Rs. 50 Lakhs under the said Scheme. The Director, Medical and Health Services, Government of Rajasthan vide order dated 24.01.2022 rejected the claim of the petitioner, while stating that the documents submitted by the petitioner do not prove that the death of her husband was caused due to Covid-19 related duty or accidental death.

3. Learned counsel for the petitioner submitted that the deceased-husband of the petitioner was discharging his duties, as per the roster assigned for nursing officers by the AIIMS, Jodhpur for month of March-April 2021, and he discharged such duties till the date of his death i.e. 06.04.2021, and death certificate of the petitioner's husband also fortifies his working status on date of death i.e. 06.04.2021.

3.1. Learned counsel further submitted that the Chief Medical & Health Officer in its letter dated 28.09.2021 clearly stated that at the time of the death, the petitioner's husband was with AIIMS, Jodhpur, and at that time, the petitioner's husband suddenly complained that he was not well, whereupon he was admitted in the ICU at AIIMS, where he took his last breath on 06.04.2021. Therefore, as per learned counsel, it is clear that the petitioner is entitled for the compensation, as claimed by her, under the Scheme in question.

3.2. Learned counsel also submitted that the Government of India announced 1.7 Crore relief package under the Scheme in question to extend financial help to the poor person(s) to enable them to fight the battle against Covid-19. It was further submitted that in



the present case, the husband (deceased) of the petitioner was a nursing officer in AIIMS, Jodhpur and discharged his duties, during the Covid-19 pandemic, due to which he was continuously coming in direct contact with the Covid-19 patients, till the date of his death i.e. 06.04.2021.

3.3. Learned counsel further submitted that as per the Scheme in question, there were two categories of claim i.e. (1) Loss of Life due to Covid-19 (2) Loss of life due to accident on account of Covid-19 related duty. As per learned counsel, the death of the husband of the petitioner falls under the second category, as he lost his life due to a heart attack, which was an accident on account of discharge of duties in the ICU Ward of AIIMS, Jodhpur, during the peak of the second wave of Covid-19. Therefore, as per learned counsel, the rejection of the petitioner's claim by the respondents, is illegal and contrary to the Scheme in question.

3.4. Learned counsel also submitted that the husband of the petitioner died due to heart attack, and the same falls under the definition of accident in the given circumstances, and thus is covered under the relevant category of the Scheme in question.

3.5. In support of such submissions, learned counsel, relied upon the following judgments:-

(a) *Kamlawati Devi Vs State of Bihar & Ors. 2002 SCC OnLine Pat 619;*

(b) *The Branch Manager United India Insurance Company Ltd. Vs The State of Bihar & Ors. 2003 SCC OnLine Pat 397;*

(c) *The Management of Hal Helicopter Division, Bangalore Vs Smt. L. Fathima Mary & Ors. 2009 SCC OnLine Kar 298;*



(d) *Divisional Controller N.E.K.R.T.C. Vs Kiran & Ors 2020 SCC OnLine Kar 2330;*

(e) *National Insurance Company Ltd. Vs P.V. Sheeja (MFA. (WCC) No. 59 of 2007 (A), decided 21.07.2011) by the High Court of Kerala at Ernakulam; and*

(f) *Smt. Harvinder Kaur & Ors Vs Shri Tarvinder Singh & Anr (First Appeal No. 1476 of 2007, decided on 17.01.2022) by the High Court of Bombay.*

4. On the other hand, Mr. Mukesh Rajpurohit, learned Deputy Solicitor General; Mr. Pankaj Sharma, learned Additional Advocate General assisted by Mr. Rishi Soni and; Mr. Jagdish Vyas, appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioner, submitted that as per the death summary of the deceased (husband of the petitioner) prepared by the AIIMS, Jodhpur, the deceased was referred to the emergency ward of AIIMS on 06.11.2021 at 1:40 p.m., at an unresponsive stage. It was further submitted that the death of the petitioner's husband was not caused, due to either of the eventualities as mentioned in the Scheme in question.

4.1. It was also submitted that as per the order dated 28.03.2020 issued by the Ministry of Health & Family Welfare, Government of India, New Delhi, the Competent Authority has approved the Scheme in question with certain conditions, including that it will be a comprehensive personal accident cover, for the person(s), who may have to be in direct contact and care of Covid-19 patients and who may be at risk of being impacted by the same.

4.2. It was further submitted that the petitioner's husband died due to heart attack and the heart attack was not covered under



the Scheme in question, and thus, the petitioner claim does not fall under any of the categories as mentioned in the Scheme in question.

4.3. It was also submitted that the respondent no.3-Insurance Company, after issuance of the letter dated 27.09.2022 by the Government of India, duly and comprehensively examined the matter, whereupon it was found that no claim, on count of her husband's death, is admissible to the petitioner, under the Scheme in question.

4.4. It was further submitted that the petitioner's husband died due to heart attack, and the said cause does not fall under the definition of the accident as per the Scheme in question, therefore, not covered under the Scheme in question. It was also submitted that the petitioner's husband did not die on count of Covid-19, but has expired due to heart attack; and he was not even a Covid-19 patient, and therefore, the claim of the petitioner was rightly rejected by the respondents.

4.5. In support of such submissions, learned counsel relied upon the following judgments:-

(a) National Insurance Company Ltd. Vs The Chief Electoral Officer & Ors. (Civil Appeal No.4769 of 2022, decided 08.02.2023) by Hon'ble Apex Court;

(b) Branch Manager, National Insurance Company Ltd. Vs Mousumi Bhattacharjee & Ors. (2019) 5 SCC 391; and

(c) Alka Shukla Vs Life Insurance Corporation of India (2019) 6 SCC 64.

5. Heard learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.



6. This Court observes that the petitioner's husband, was a nursing officer engaged on contractual basis in AIIMS, Jodhpur w.e.f. 13.12.2016 in the ICU ward; and while being in such engagement, he came in direct contact with the Covid-19 patients, whereafter he died due to heart attack, on 06.04.2021 at the peak of 2nd Wave of Covid-19. The Ministry of Health & Family Welfare, Government of India, New Delhi, introduced a Scheme "Pradhan Mantri Garib Kalyan Package, Insurance Scheme for Health Workers Fighting Covid-19".

7. This Court further observes that the present petitioner, wife of the deceased, submitted a claim for the purpose of compensation to the tune of Rs. 50 Lakhs under the said Scheme. The Director, Medical and Health Services, Government of Rajasthan vide order dated 24.01.2022 rejected the said claim of the petitioner.

8. This Court also observes that in the present case, a Coordinate Bench of this Hon'ble Court had passed an order dated 28.07.2022, whereby certain clarifications were directed to be issued by the respondents; the said order dated 28.07.2022 reads as follows:

"This writ petition has been filed by the petitioner being aggrieved with the action of the Director, Department of Medical and Health Services, Government of Rajasthan, Jaipur, whereby the claim filed by her for paying compensation under the Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19, has been rejected.

It is not in dispute that the petitioner's husband was working as a Nursing Officer on contractual basis in the All India Institute of Medical Sciences, Jodhpur (for short 'the



AIIMS'). The AIIMS has certified that the husband of the petitioner was in continuous employment on contractual basis with it from 13.12.2016 till the date of his death i.e. 06.04.2021. The certificate also states that husband of the petitioner was deployed on duty in COVID-ICU Ward during the pandemic, where he came in direct contact with the COVID-19 patients.

The claim for compensation filed by the petitioner was rejected by the Director, Department of Medical and Health Services, Government of Rajasthan, Jaipur while holding that the death of petitioner's husband was neither on account of COVID-19 nor an accidental death related to COVID-19 duties. As stated earlier, it is not in dispute that husband of the petitioner was working as a Nursing Officer in the COVID-ICU Ward of the AIIMS and on 06.04.2021, he was on duty in the said ward from 01:30 PM and unfortunately, at 01:40 PM, his condition became deteriorated and ultimately he was declared dead at 03:44 PM by the AIIMS Authorities.

Prima facie, this Court is of the opinion that the husband of the petitioner died on account of COVID related duties and, as such, the Director, Department of Medical and Health Services, Government of Rajasthan, Jaipur has illegally rejected the claim filed by the petitioner under Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19. However, as per the said scheme, in case of any clarification on the matter of interpretation, the decision of the Ministry of Health and Family Welfare, Government of India is considered to be final.

Taking into consideration the above facts and circumstances of the case, I deem it appropriate to direct the Director, Department of Medical and Health Services, Government of Rajasthan, Jaipur to immediately forward the case regarding compensation to the petitioner to the Ministry of Health and Family Welfare, Government of India within a period of one week from today.





The Ministry of Health and Family Welfare, Government of India shall issue clarification in this regard within a period of three weeks thereafter.

Copy of the case file related to the husband of the petitioner shall also be handed over to Mr. Mukesh Rajpurohit, ASG, who shall also instruct the Ministry of Health and Family Welfare, Government of India to issue clarification in this regard within the stipulated time.

List on 06.09.2022 in fresh admission category while showing name of Mr. Mukesh Rajpurohit, ASG as counsel for the respondent in the cause list. "

9. This Court further observes that for the first time, in the year 2019-2020, the entire world came to know about Covid-19 disease, whereafter it kept on spreading day by day, while adversely impacting the daily life of the people around the whole world. The World Health Organization (WHO) also declared the same as a Pandemic.

10. This Court also observes that due to Covid-19 pandemic, complete as well as regulated lock-downs were imposed in India as well as across the globe. Such lock-downs not only adversely affected the working in the government sector, but private sector as well.

11. The country and the world were engulfed in extreme panic and fear of death, that was lurking in the society, which almost resulted into collapse of the health services.

12. This Court also observes that in the wake of such petrifying and frightening situation, the health workers were continuously struggling at their respective places to provide the necessary medical facilities to the people, who were infected by Covid-19, despite the fact that in such a situation, no person was allowed to even have a sight of his/her family member, who was infected by



Covid-19, but the health workers were continuously providing all the medical assistance to the Covid-19 patients.

13. This Court further observes that the Government of India amended the Epidemic Diseases Act, 1897 through Epidemic Diseases (Amendment) Bill, 2020 to provide for the protection to all health workers working during the pandemic. In that challenging times, the Government of India introduced the Scheme for health workers, who lost their lives on account of Covid-19 related duties to shield them from trauma of future prospects of family members.

14. This Court further observes that the petitioner's husband died due to heart attack on account of Covid-19 related duty as health worker (Nursing Officer) and in the relevant period, he was deputed in ICU, during the course of which, he came in direct contact with the Covid-19 patients, which is clear from the certificate issued by the Medical Superintendent, AIIMS, Jodhpur; the said certificate reads as under:

"Certificate

This is to certify that Mr. Rajesh Kumar Mali S/o Mr. Labu Ram R/o Khera Ramgarh Road, Nimaj Pali was a Nursing Officer employed on contractual basis through M/s. Medi & Bedi Associates in AIIMS, Jodhpur. He was in continuous employment from 13/12/2016 till the date of death 06/04/2021. He was deployed on duty in the Covid ICU during the pandemic where he came in direct contact of Covid-19 patients.

15. This Court also observes that as revealed from the communication dated 03.04.2020 issued by the Ministry of Health & Family Welfare, Government of India, in accordance with the



Scheme in question, two types of claims specified therein, namely, (a) The Claim Form -I (Personal Accident Insurance Claim Form for loss of life due to COVID 19); and (b) Form-II (Personal Accident Insurance Claim Form for accidental loss of life on account of COVID-19 related duty). The intention of the Government of India behind introducing the Scheme in question was to provide financial assistance to the family of the health workers, who lost their lives, on account of Covid-19 related duties and to stop collapse of the health services such protective shield was created. The factual matrix of the case reveals that claim of the present petitioner (wife of deceased Nursing Officer) clearly falls under the second category i.e. accidental loss of life on account of COVID-19 related duty. The said communication dated 03.04.2020 is reproduced as hereunder:-

*"In continuation of letters by Secretary, MoHFW (D.O. No.Z.21020/16/2020-PH, dated 30th March, 2020), addressed to all the Chief Secretaries/Administrators of the States/UTs and the Heads of all the Associations of Doctors/Healthcare providers regarding '**Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19**', you are requested to kindly inform all such health care providers through various mediums like SMS, whatsapp, e-mail etc. in local language about their inclusion under Pradhan Mantri Garib Kalyan Package : Insurance Scheme for Health Workers Fighting COVID-19 in line with the enclosed order regarding this scheme.*

The claim Form-I (Personal Accident Insurance Claim Form for loss of life due to COVID-19) and Form-II (Personal Accident Insurance Claim Form for accidental loss of life on account of COVID-19 related duty) for the above scheme detailing the procedure, claim





certifying authority and documents to be submitted along with claim form is also attached for your reference and disbursal.

I request you to give more publicity to this initiative to instill a sense of security among healthcare providers. In case any clarifications, Dr. Manohar Agnani, JS (RCH) may be contacted by the States / UTs at agnanim@ias@nic.in.”

16. This Court also observes that as per the FAQs of the Scheme in question the aforementioned two types of claims are covered under the Scheme; for ready reference, question No.11 and question No.14, alongwith answers thereof, are reproduced as hereunder:

Question 11 : Is COVID-19 laboratory test mandatory for claiming the benefit?

• Laboratory report certifying positive medical test is required for loss of life on account of COVID-19. However, it is not required **in case of Accidental loss of life on account of COVID-19 related duty.**

Question 14 : Documents required to claim benefits under this scheme?

b. In case of Accidental loss of life on account of COVID-19 related duty following documents are required:

- I. Claim form duly filled and signed by the nominee/claimant.
- II. Identity proof of Deceased (Certified copy)
- III. Identity proof of the Claimant (Certified copy)
- IV. Proof of relationship between the Deceased and the Claimant (Certified copy)
- V. Death summary by the Hospital where death occurred (in case death occurred in hospital) (Certified copy).
- VI. Death Certificate (In Original)
- VII. Post-mortem Report (Certified copy)
- VIII. Cancelled Cheque (desirable) (In Original)
- IX. FIR (Certified copy)

X. Certificate by the Healthcare Institution/organization/office that the deceased was an



employee of/engaged by the institution and had an accidental loss of life on account of COVID-19 related duty.”

17. This Court further observes that it is not in dispute that the petitioner's husband, at the relevant time, was discharging his duties as a Nursing Officer in ICU at AIIMS, Jodhpur, and died at the young age of 36 years due to heart attack while being engaged in Covid-19 related duties. It is also not in dispute that the petitioner's husband directly came into contact with the Covid-19 patients, and therefore, as per the record as well as the Scheme in question and the FAQs of the said scheme, it is clear that the petitioner's claim falls under the Scheme in question, making the petitioner entitled for the relief claimed by her.

18. This Court finds that the perspective of the word 'accident' has to be seen with the prism of Covid-19, and not in isolation as during such pandemic, there was a sense of extreme panic, trauma and anxiety. Even in a colony/office where one person would get infected, the entire colony/office would be closed down and all contacts were traced to be quarantined resulting into extreme misery so much so that near and dear ones were deserted by their own family. In the living memory, this was the most trying times for the governance and in particular the health workers.

19. As far as the present case is concerned, it was not a regular disease that caused death of the petitioner's husband; he expired of heart attack at a young age of 36 years, and the trauma and terror of the ICU duties have definitely played an important role in causing such death due to heart attack.



20. This Court further observes that in the case of **Alka Shukla (Supra)**, the Hon'ble Apex Court did not decide the question regarding the heart attack falling under the ambit of the definition of an accident; it was observed therein, that, "*There exists a divergence of opinion on whether 'accidental means' and 'accidental death' are to be read as similar or whether in order for an accidental insurance claim to succeed, the means causing the injury or death also have to be accidental in nature. **For the purposes of this case, it is not necessary to conclusively decide this question.***"

21. This Court also observes that the judgments rendered in the cases of **National Insurance Company, Ltd Vs Chief Electoral Officer (Supra)** and **Branch Manager, National Insurance Company Ltd. Vs Mousumi Bhattacharjee (Supra)**, are not applicable in the present case, because the present case especially pertains to the policy of insuring the health worker in relation to Covid-19. The present claim before this Court is not an ordinary accidental claim, rather it is particularly relating to the claim on account of risk to the health worker, who was working in a very fearful, stressful, and traumatic situation.

22. Learned counsel for the respondents have taken this Court to the pure definition of the term 'accident' in ordinary cases, but in the present case, the definition of 'accident' has to be drawn from the original intention behind introducing this policy and the same was to create a safety network for the health workers, whereas in a regular accident, the safety network is risk coverage; here it is not a risk coverage alone, rather it was a financial shield to the family members of the health workers, whose bread-earner was



taking the extreme risk of death for saving the society at large. In the ordinary circumstances, where a person meets with an accident, he/she is not voluntarily performing the task at hand with the risk to his/her life. Here in the present case, the performance of the given task was at aggravated risk of life, and thus, the Scheme/policy in question was introduced to provide financial respite to the suffering family members of all the high risk group of health workers, who were on the Covid-19 duties.

23. This Court further observes that in an ordinary accidental claim, the claim was examined as per the policy of insurance and in such an eventuality, the terms and conditions of the policy have to be followed strictly. But in the present case, the situation is completely different because the life of the petitioner's husband at the relevant time of working, was at much higher risk, and therefore, he died due to heart attack while being deployed on the duty relating to Covid-19. The service to the nation in a shape of supreme sacrifice of life cannot be compared with an ordinary unfortunate accident.

23.1. The Scheme/policy in question has been brought into clearly reveals that the same was not pertaining to an ordinary road accident, nor the same was an accidental cover for life etc. The present Scheme/policy is a policy specifically meant for assuring the health worker that his/her family shall be taken care of while discharging their duties, in the extreme environment of fear of the pandemic while putting his life at risk. The policy was an essential gesture for the health worker in the wind of trauma, while he put his life to imminent risk.



24. In view of the above, this Court draws a conclusion that the word 'accident' in the present case has to be connected to the extreme pain, fear and trauma of the Covid-19 pandemic. The petitioner's husband made a supreme sacrifice in the interest of preventing the health system from collapsing and protecting ordinary citizens suffering Covid 19 pandemic.

24.1. Clearly, the legislative intention/the executive intention behind the government's decision of providing with an insurance policy to the health workers all over the country was to stem the collapse of the complete medical system in the health emergency. The shield of accidental insurance in the shape of the accident on duty were meant to reassure a health worker that the government stood by him and his family members in the time of the dire crisis.

24.2. The definition of an accident in an insurance policy may be bracketed in technical definitions, but a policy meant for a health worker ready to make a voluntary supreme sacrifice for maintaining the critical health and medical services for the extreme pandemic conditions required a wider connotation on the part of the State, and thus, when it was not disputed that the present petitioner's husband died while he was working in the ICU of AIIMS treating the Covid-19 patients, then the rest of the conditions and technicalities ought to be construed widely. The heart attack in this background could not be taken to be voluntary or by chance. In this peculiar circumstance, the accident was that petitioner husband's body at the young age of 36 years failed to stand up to the fear of imminent danger of his life while serving the Covid-19 patients, thus he collapsed causing heart failure.



24.3. In ordinary circumstances, the insurance policies are governed by strict meaning rule, but at least in such disastrous and traumatic pandemic conditions, the policy is having a wider ambit of providing the relief to the person to which it was meant for, that is a voluntary health worker working in the ICU of AIIMS serving the Covid-19 patients and dying an unnatural death at the young age of 36 years without any other prevailing ailment or any medical or health condition, which could result into such untimely sad demise.

25. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, the present petition is **allowed**, and accordingly, while quashing and setting aside the order dated 24.01.2022 (Annexure-9) passed by the Director, Medical and Health Services, Government of Rajasthan, the respondents are directed to consider the petitioner's application under Pradhan Mantri Garib Kalyan Package Scheme, and release the claim amount in favour of the petitioner within a period of **three months** from today treating her to be eligible for accidental cover for the health workers discharging duty of treating Covid-19 patients. All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI),J

SKant/-