

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION CHAMBA, DISTRICT CHAMBA, H.P.**

Date of Institution: 15.12.2020

Date of final hearing: 17.01.2024

Date of Pronouncement: 20.03.2024

Consumer Complaint No.-28/2022

IN THE MATTER OF

1. Asha Devi Wd/o Late Sh. Anil Kumar
2. Ajay Kumar S/o late Sh. Anil Kumar
3. Ayushi Thakur D/o Late Sh. Anil Kumar

All R/o Village Brangal, Post Office and Sub Tehsil Bhalei, District
Chamba, H.P.

(Through: Mr. Nitin Gupta, Advocate)

.....Complainants

Versus

Future Generally India Insurance Company Ltd. 3rd Floor, SCO-128, Nagpal
Tower-1, Ranjit Avenue, Amritsar, Punjab, through its Manager.

(Through: Mr. Vaneet Vaid, Advocate)

.....Opposite Parties

CORAM:

President: Mr. Hemanshu Mishra

Members: Ms. Mamta Kaura

Present:- Mr. Nitin Gupta, Advocate for complainant.
Mr.Vaneet Vaid, Advocate for opposite party.

PER: Mr. Hemanshu Mishra, President:-

O R D E R

The complainant has filed instant complaint seeking direction to the opposite party(s) as under :-

(i) That the opposite party may be ordered to pay Rs.1,00,000/- plus interest at the rate of 12% per annum from 06.02.2019 till the realization of the amount to the complainant.

(ii) That the opposite party may be further ordered to pay a sum of Rs.50,000/- as cost of litigation and Rs.50,000/- for mental pain and agony to the complainant.

2. Facts giving rise to filing of this complaint are that late Sh. Anil Kumar used to run a vegetable shop at Village Brangal and during his life time being owner cum driver got himself insured for personal cover with opposite party, policy No.2018-V5751900-FTW for a sum of Rs.1,00,000/- which was effective w.e.f. 18.07.2018 to 17.07.2019 for a premium of Rs.50/-. It is pleaded that on 06.02.2019 late Sh. Anil Kumar was coming back to his house and when he reached near Simni depot. Per complainant, suddenly a stray animal came in front of the motorcycle from uphill and while avoiding collision, the deceased got imbalanced and lost control over his vehicle, which fell into gorge and ultimately Sh. Anil Kumar got fatal injuries and died due to said accident. Since late Sh. Anil Kumar died during the subsistence of the policy, the opposite party is liable to

pay the amount of Rs.1,00,000/- as coverage amount. The opposite party have illegally denied the claim. The accident did not occur due to any negligence on the part of late Sh. Anil Kumar and rejection of claim is based upon false and flimsy grounds. Alleging deficiency in the service on the part of opposite party, the complainant has filed the present complaint.

3. Upon notice, opposite party(s) appeared through counsel and contested the complaint by filing the reply. It is submitted that as per FIR No.11 dated 07.02.2019 P.S Kheri under section 279,304-A IPC, the insured Anil Kumar died due to rash and negligent driving causing intentional self-inflicted injury. As per Regional Forensic Science Laboratory, NR, Dharamshala report, 222.76mg% Ethyl Alcohol was detected in blood of deceased Anil Kumar. So claim of complainants in respect of death of Sh. Anil Kumar was rightly repudiated vide letter dated 10-07-2020.

4. The complainant has filed rejoinder denying the contents of the reply filed by opposite party(s) and reiterating those of complaint. It is specifically denied that deceased died due to his own negligent driving causing self-inflicted injuries. It is also denied that alcohol was deducted in the blood of deceased Anil Kumar. It is also denied that alcohol in the blood of deceased was 222.76mg%.

5. The parties were called upon to produce their evidence in support of their contentions. Complainant in order to prove her case has filed affidavit Ext.CW-1 along with documents Annexures C-1 to C-10 and

closed the evidence. On the other hand, opposite party(s) filed affidavit of one Sh. Mohini suryawanshi as Ext.OPW-1 along with documents Annexures OP-1 to OP-23. The opposite party filed an application under order 30 read with section 151 of CPC for sending interrogatories to RFSL, Dharamshala. Interrogatories were duly sent and replied. The opposite party requested to cross examine the witness, as such, after receiving the interrogatories, Assistant Director of RFSL, Dharamshala Sh. Rajesh Kumar was cross examined through Video conferencing.

6. We have heard learned counsel for the parties and also gone through the case file carefully.

7. Admittedly the accident occurred on 06.02.2019 while late Sh. Anil Kumar was coming back to his house and when he reached near Simni depot, per complainant suddenly a stray animal came in front of the motorcycle from uphill and while avoiding collision, the deceased got imbalanced and lost control over his vehicle, which fell into gorge and ultimately Sh. Anil Kumar succumbed to his injuries. Learned counsel for opposite party has argued that the deceased life assured was intoxicated at the time of accident. To substantiate there contention, the opposite party sent questionnaires to the RFSL, NR Dharamshala wherein it was answered by the Deputy Director, Northern Range that report No.304 RFSL CHEM (268) 18 was issued by this lab on dated 05.07.2019. The report is correct and true as per original office record and the ethyl alcohol was detected in

the blood of Anil Kumar and quantity of the same is 222.76 mg% (MOU+1.80). In the cross examination, Assistant Director Chemistry and toxicology Division HPSFL Junga has stated that report is dated 05.07.2019. The samples were received on 16.02.2019. He has not mentioned the date of testing and examination of sample. He was unable to say the exact date of examination as it was difficult to memorize for him due to large chunk of sample for testing. As per him, the sample after receiving remained in his custody. The sample was procured anti mortem as in this case MLC was issued. He has admitted the suggestion put forth by the Learned counsel for complainant that it is correct that degree of alcohol will increase in sample due to IN VITRO synthesis of alcohol due to Bacterial action, in case the sample kept for long. Self stated that the degree of the alcohol can be fixed in the refrigerator and in given temperature. As per witness there is no mention in RFSL report that the sample was kept in refrigerator during the time when sample remained in his possession. He has further stated that he cannot say that the police and his department (RFSL) have not kept the sample properly. He has denied that he has not conducted the examination properly and has wrongly shown blood alcohol concentration as 222.76 mg% in the report.

8. We have also perused the postmortem report annexure OP-3, wherein the medical officer has given final opinion and has mentioned that final opinion is reserved after chemical analysis report of the blood

samples. In the RFSL report annexure OP-4, PMR/MLC number is missing. Post mortem was conducted on 07.02.2019. The sample was sent on 16.02.2019. Meaning thereby blood sample remained with the police till 16.02.2019. The report was issued on 05.07.2019 i.e. after five months. The Assistant Director, Chemistry and toxicology Division HPSFL Junga, who has examined the sample, has admitted that degree of alcohol will increase in sample due to IN VITRO synthesis of alcohol due to Bacterial action, in case the sample kept for long. In the present case, accident took place on 07.02.2019. The sample remained kept for five months. It is not clear that the sample was kept in proper conditions, so that the result could not change due to any delay in testing. In the postmortem report, there is no mentioning of sealing of blood sample, whereas in the RFSL report annexure OP-4 it is mentioned that they have received one sealed cloth parcel for examination bearing two seals of MOCH Dalhousie, but in postmortem report, no such seal was shown to be affixed in the parcel. As per FIR, deceased Sh. Anil Kumar died during treatment at Bathri hospital, District Chamba. Both the parties have not annexed any MLC. It is difficult to infer about the first observations/ history of patient by the doctor made at the time when the deceased/insured was first brought in the Bathri hospital. The case of the opposite party rests upon the RFSL report only, which as per cross examination of the witness is not conclusive one. Hence, we opine that opposite party has wrongly repudiated the claim, which is deficiency in service.

9. The complainant has filed the present case for seeking the claim pertaining to policy No.2018-V5751900-FTW. We have perused the policy annexure C-1. The sum assured qua PA cover is Rs.1,00,000/- as premium of Rs.50/- has been paid. The deceased Anil Kumar was owner and driver of motor cycle Number HP 73 3381(Annexure C-2) and was holding valid driving licence (Annexure C-3), as such, the complainants are entitled for the same being legal heir of the deceased Sh. Anil Kumar.

10. Accordingly, the complaint is allowed and opposite party is directed to pay a sum of Rs.1,00,000/- to the complainant alongwith interest @ 9% per annum from the date of complaint i.e. 15.12.2020 till its realization. Opposite party is also directed to pay compensation to the complainant to the tune of Rs.10,000/-, besides litigation cost quantified as Rs.10,000/-.

11. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

12. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986/2019. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

13. File be consigned to record room along with a copy of this Judgment.

(Hemanshu Mishra)
President

(Mamta Kaura)
Member