

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 971 OF 2018

1. MALA SAHNI SETH

WIFE OF LATE SH. SUNIL SETH, R/O B-3/1202,

UNIWORLD CITY, SECTOR - 30, GURGAON, HARYANAComplainant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD.

87, MG ROAD, FORT, MUMBAI - 400 001Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE V.K. JAIN, PRESIDING MEMBER

For the Complainant : Ms. Kanika Agnihotri, Advocate.

Mr. Saurabh Seth, Advocate &

Mr. Amer Vaid, Advocate.

For the Opp.Party : Mr. Navdeep Singh, Advocate.

Dated : 08 Oct 2020

ORDER

JUSTICE V.K. JAIN (ORAL)

Late. Mr. Sunil Seth obtained a Personal Accident Insurance (Individual) Policy from the Opposite Party for the period from 17.09.2016 to 16.09.2017 whereunder a sum of Rs.5875000/- was payable by the insurer in case he was to die in an accident. Late Mr. Sunil Seth met with a fatal accident while driving a motor-cycle near Manesar in Haryana on 05.02.2017. A claim in terms of the above-referred policy was lodged by the complainant with the insurer which appointed M/s Somen Media as the surveyor to assess the loss. Vide their report dated 27.06.2017 the surveyor concluded that the death of Mr. Sunil Seth took place genuinely in a road accident and recommended that the claim may be processed accordingly as per the terms and conditions of the policy and its coverage. The claim, however, was repudiated by the insurer vide letter dated 20.07.2017 which, to the extent it is relevant, reads thus:-

“The claim is repudiated as per Exception No. 5(a) of the policy which stands as “The Company shall not be liable under this policy for Payment of compensation in respect of Death, Injury or Disablement of the Insured from Intentional self-injury”. The grounds of repudiation of the claim are as under:-

It has been informed by you that Sh. Sunil Seth while driving a motorcycle has met with an accident and has expired due to the injuries sustained in the said accident. You being the legal heirs of the deceased had sought the amount under the policy.

The company on receipt of intimation has deputed M/s Somen Media for the investigation of the claim. The said investigator after making detailed enquiries have submitted their report along with various documents collected by them. The said report along with the documents have been examined by the company.

In terms of the said report, it has come on record that a company namely M/s Eagle Rider has given on hire basis a high end motorcycle to one Sh. Neeraj Sethi, in terms of the hire agreement which was executed between the said company and Mr. Neeraj Sethi, Mr. Neeraj Sethi was only competent to drive the said motorcycle. No other person had any right to drive the said motorcycle. It has also been come up during the investigation that any person who intends to drive the said motorcycle is required to undergo Orientation Program which admittedly Mr. Sunil Seth has not undergone. Mr. Sunil Seth in an unauthorized manner without any requisite experience and knowledge was trying to move the said high end motorcycle. That in this process he lost control and sustained injuries. The policy which was extended by the company provide for indemnification in case of accident. The accident means some sudden and unexpected event taking place without expectations.

In the present case Mr. Sunil Seth was well aware of the implications and even then he has taken away the vehicle from an actual hirer without the permission of M/s Eagle Rider. The deceased by doing so not only controverted the terms of the agreement between Sh. Neeraj Sethi and M/s Eagle Rider but also exposed himself to all the risk of getting injuries. The deceased in the present case was well aware of the consequence of mishandling of such type of the motorcycle. The deceased had no basic knowledge to handle such type of motorcycle and deceased by taking the said vehicle without authority has invited the incidence. The sequence of events nowhere proves accidental injuries which is pre-requisite for payment of insured amount under the policy.”

2. Being aggrieved from the repudiation of the claim the complainant is before this Commission.
3. The complaint has been resisted by the opposite party which has taken a preliminary objection that this Commission lack pecuniary jurisdiction to entertain the consumer complaint. On merits the complaint has been resisted primarily on the ground on which the claim had been repudiated.
4. In terms of Section 21 of the Consumer Protection Act, 1986 which was in force at the time this complaint was instituted, this Commission had pecuniary jurisdiction to entertain the consumer complaint where the value of the goods or the services as the case might be and the compensation claimed by the complainant exceeded Rs.1,00,00,000/-. A perusal of the consumer complaint would show that the complainant sought the following reliefs against the opposite party in this complaint:-

“i) Allow the instant Complaint and direct the Opposite Party to forthwith pay the Sum Insured being an amount of Rs.58,75,000/-;

ii) Direct the Opposite Party to pay Rs.16,57,233/- as interest @ 24% p.a. on the Sum Insured being a sum of Rs. 58,75,000/- from 5th February, 2017 till the date of filing of the present Complaint, by way of compensation.

iii) Direct the Opposite party to pay pendent lite and future interest @ 24% p.a. on the Sum Insured being a sum of Rs.58,75,000 w.e.f. the date of filing of the present Complaint till the date of actual payment.

iv) Direct the Opposite Party to pay an amount of Rs.50,00,000/- as compensation towards mental agony, harassment and trauma suffered by the complainant.”

5. Though the amount payable to the complainant in case of death of the insured in an accident was Rs.58,75,000/-, the complainant having claimed a sum of Rs.58,00,000/- towards mental harassment and trauma alleged to have been suffered by her on account of the opposite party having denied her claim, the total amount claimed by the complainant comes to more than Rs.1,00,00,000/-. Therefore, this Commission did have requisite pecuniary jurisdiction to entertain the consumer complaint. In my view it cannot be said that in no case, whatsoever, an insurer can be asked to pay any amount beyond the sum insured to the complainant. Whether any compensation, over and above, the sum insured should be awarded in a given case or not would depend upon the facts and circumstances of the individual case. Therefore, it would be difficult to say that merely because the sum insured was only Rs.58,75,000/- this Commission would not have pecuniary jurisdiction to entertain the complaint.

6. Coming to the merits of the case in view of the decision of the Hon'ble Supreme Court in **Galada Power and Telecommunication Limited Vs. United India Insurance Company Ltd. & Anr. (2016) 14 SCC 161**, the insurer cannot be allowed to contest the consumer complaint beyond the ground on which the claim has been repudiated. A perusal of the repudiation letter would show that the claim was repudiated solely on the ground that M/s Eagle Rider who had given the motor cycle to its pillion rider Mr. Neeraj Sethi on hire had advised the person driving the motor-cycle to undergo an orientation and the deceased had not undergone such orientation with the vehicle before he drove the vehicle and, therefore, this was a case of intentional self-injury. The use of the term 'intentional self-injury' in the insurance policy would mean that the person who suffered the injury must have wanted such an injury to be caused to him. Ordinarily, this would happen in a case where a person either wants to commit suicide or he wants to cause injury to himself. The intention of a person is a state of mind which cannot be proved by way of direct evidence but has to be inferred from the attending facts and circumstances. There is no evidence to prove that Late Sh. Sunil Seth wanted to commit suicide or he wanted to cause injury to himself. Therefore, there was no basis for the insurer to even claim that this is a case of intentional self-injury. In my opinion an intentional self-injury cannot be inferred even if driving this particular motor-cycle required some special orientation or even a special training which late Mr. Sunil Seth did not possess. M/s Eagle Rider owned the vehicle and, therefore, must be quite keen to insure that the vehicle is not damaged while being driven by the hirer. That would be the purpose of requiring the hirer to take an orientation of the vehicle so that he is able to familiarize himself with the machine being taken on hire and did not cause an accident resulting in damage to the vehicle. A person driving a high-end motor cycle without taking the orientation which the owner of the vehicle wants to be taken by the driver of the vehicle may be said to be negligent if he drives the vehicle without such an orientation, but it can never be said that his intention behind driving such a motor cycle without orientation, desired by its owner, was to cause injury to himself. A negligent act such as driving a motor cycle without taking the orientation desired by its owner can never be equated with an intentional self-injury if driving the vehicle result in an accident. The intention being a state of mind required resolve on the part of the insured to either kill himself or to cause injury to himself. If a person drives a vehicle without having a driving licence it would be difficult to say that his intention is to cause self-injury. The intention of such a person would be to enjoy the driving though he may not be possessing the skill required for the purpose. If a person driving a vehicle meets with an accident it would be difficult to say merely from his driving without a licence that his intention was to cause injury to himself. The position of a person who otherwise possesses a valid driving licence but does not take the orientation advised by the owner giving the vehicle on hire would be much better than the position of a person driving a vehicle without requisite licence. Therefore, I have no hesitation in holding that the present case was not covered under exception No. 5(a) of the policy.

7. The complaint is disposed of in terms of the following directions:-

- (i) The opposite party shall pay a sum of Rs.58,75,000/- to the complainant along-with compensation in form of simple interest on that amount @ 8% p.a. w.e.f. 6 months from the date of lodgement of the claim till the date of payment. A period of six months is available to the insurer for settling the claim, in terms of Regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations 2002.
- (ii) The opposite party shall pay a sum of Rs.50,000/- as costs of litigation to the complainant.
- (iii) The payment in terms of this order shall be made within 3 months from today.

