

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

W.P.A 103 of 2023

Chitra Mukherjee

vs.

Union of India & Ors.

For the petitioner	:	Mr. Rahul Karmakar, Adv. Mr. Jibantaraj Das Roy, Adv. Mr. Rittick Chowdhury, Adv. Ms. Champa Pal, Adv.
For the U.O.I	:	Mr. Sukumar Bhattacharyya, Adv. Mr. Somnath Adhikari, Adv.
For the Bank	:	Mr. Debashis Saha, Adv.
For the respondent nos. 4 & 5 / Insurance Company	:	Mr. Guddu Singh, Adv.
Last Heard on	:	27.04.2023.
Delivered on	:	10.05.2023.

Moushumi Bhattacharya, J.

1. The petitioner is the mother of one Chayan Mukherjee who was serving in the Indian Army and died on 20.12.2021 in the Command

Hospital (Eastern Command), Kolkata. The petitioner's son was admitted to the hospital on 16.11.2021 after developing certain post-surgical complications arising from a knee injury and was diagnosed with end stage renal disease while undergoing treatment at Command Hospital. The petitioner's son developed high grade fever with chills on 12.12.2021 and was found to be Dengue NS1 Ag positive. The petitioner's son succumbed to his illness on 20.12.2021.

2. The petitioner lodged a claim with the respondent no. 4 / United India Insurance Company pursuant to the death of her son. The Insurance Company refused the claim by way of a letter dated 22.9.2022 stating that the Insurance Company is unable to admit its liability on account of the cause of death of the petitioner's son. The Insurance Company was of the view that the cause of death was "non-accidental" and was hence not covered under the policy.

3. The petitioner has challenged the refusal of the Insurance Company to admit the claim and seeks quashing of the letter of the Insurance Company dated 22.9.2022.

4. Learned Counsel appearing for the petitioner urges that the petitioner's claim falls within the Insurance Policy which was specifically made for defense personnel and should be distinguished from a policy made for a civilian. Counsel submits that the primary cause of death was entirely accidental as the petitioner's son could not have foreseen that he would be afflicted with Dengue in the Command Hospital. Counsel relies on the

meaning of the word “accident” to submit that the death caused by Dengue was not within the control of the petitioner’s son and was the least expected incident of his admission to the Command Hospital. Counsel urges that the other cause of death namely IgA Nephropathy is a consequence of Dengue. Counsel seeks to draw a distinction between the judgment pronounced by the Supreme Court in *Branch Manager, National Insurance Company Limited v. Mousumi Bhattacharjee; (2019) 5 SCC 391* and the facts of the present case to contend that Dengue is not a common disease in India.

5. Learned counsel appearing for the Insurance Company relies on the “Renewal of MOU between IA and SBI Bank” dated 15.12.2021 between the Indian Army and SBI for a period of 3 years. Counsel places clause 5 of the document which deals with “Accident Insurance” to submit that the cause of death in the present case is not an accident as defined under the said clause. Counsel also relies on Schedule-I of the United India Insurance Company Limited Group Personal Accident Insurance Policy and the coverage for claims relating to an accident. It is submitted that the cause of death in the present case is Dengue as well as renal disease as recorded in the Medical Certificate and the Autopsy Report.

6. The point which falls for adjudication is whether death caused from a mosquito bite would count as an “accident”. If yes, it would follow that the Insurance Company should have admitted the petitioner’s claim for accident insurance in terms of the Policy. If no, the impugned decision would not call for interference.

7. The material before the Court would be the best indicator of the answer to the above question. The Medical Certificate recording the cause of death shows that the petitioner's son died on 20.12.2021 at 16:15 hours at the age of 29 years. The place of death was Command hospital (Eastern Command), Kolkata. The disease/condition directly leading to death is (1) Dengue Hemorrhagic Fever, (2) End Stage Renal Disease – IgA Nephropathy. The antecedent cause of death is shown as "NIL". The other significant conditions contributing to the death (with "if any") has been stated as right knee ACL tear repair (post-operated). It is undisputed that the petitioner can claim the benefit of the Policy as the registered nominee of the account.

8. The Autopsy Report gives the particulars of the diseases, the time of death and the date and time when the autopsy was conducted. The Report reiterates the disease/ condition directly leading to death as (1) Dengue Hemorrhagic fever (2) End stage renal disease – IgA Nephropathy. The antecedent cause - co-morbid condition leading to the above cause i.e Dengue and End stage renal disease, has been shown as "NIL". Therefore, the conditions directly resulting in death have been recorded as "Dengue" and "End-stage renal disease".

9. A short clinical history of the case and described as such, is also part of the record. The petitioner's son has been described as a 29 year-old serving soldier who was operated on 27.10.2021 for a right knee ACL tear. The investigation conducted thereafter revealed "deranged renal functions". The petitioner's son reported to the Command Hospital on 16.11.2021 with complaints of intermittent high-grade fever associated with right knee

swelling and pain and increased urinary frequency. The clinical examination conducted at Command Hospital revealed high blood pressure and right knee oedema and tenderness. Investigations done also suggested acute kidney injury with serum urea and pus cells. Further diagnostic tests revealed deranged renal functions tests with relative neutrophilia and anemia. Hemodialysis was started on 16.11.2021 and the patient was placed on injectable antibiotics and antihypertensives. Renal biopsy was done on 29.11.2021 which revealed End stage renal disease IgA Nephropathy. On 12.12.2021, the patient developed high grade fever with chills. Laboratory tests showed that the patient was Dengue NS1 Ag positive. On 14.12.2021, the patient was found to have right scrotal swelling with pain and tenderness. On 15.12.2021, the patient developed pain in the abdomen with abdominal distension. The patient was given IVIG and steroids on 18.12.2021 in view of the clinical diagnosis of Dengue hemorrhagic shock syndrome. The patient's condition deteriorated on 19.12.2021 and he suffered a cardiac arrest on 20.12.2021. The patient was declared dead at 16:15 hours on 20.12.2021.

10. The medical terms are reproduced from the clinical history given by the Classified Specialist in pathology and transplant immunologist of Command Hospital.

11. The important take-away from the clinical history is that the petitioner's son was admitted to the Command Hospital with a pre-existing condition of deranged renal functions, the immediate cause for admission was a right knee ACL tear with surgical site infection. The petitioner's son

unfortunately contracted Dengue while in the hospital for treatment of the first two conditions. The direct cause of death was hence attributed to Dengue hemorrhagic fever as well as the End stage renal disease.

12. This finding is at variance with the petitioner's stand that the only cause of death was Dengue and that IgA Nephropathy is a condition brought on by Dengue. In other words, the petitioner's contention is that both the causes of death were connected to Dengue and a consequence of Dengue appears to be contrary to the clinical history of the patient. It is clear from the Autopsy Report and the Medical Certificate that the direct cause of death was both Dengue and End-stage renal disease IgA Nephropathy. The clinical history does not disclose any connection between the two causes of death and more significantly shows that the patient was suffering from "deranged renal functions" at the time of admission to the Command Hospital. The conclusion which follows is that the death cannot be attributed solely to Dengue or seen as the sole and direct contributory factor resulting in the death of the petitioner's son. This substantially dilutes the argument that the cause of death was accidental since the mosquito bite was an unexpected "accident".

13. Before proceeding further on the merits of the rival claims, the specific words used in the policy must be seen.

14. The Renewal of MOU between the Indian Army and SBI dated 15.12.2021 defines "Accident Insurance" as set out below :

"5. Accident Insurance: Personal Accident Insurance (Death/Disability) is admissible only in case of death/disablement resulting solely &

directly from accident caused by external violent & visible means and as defined in IRDA norms/guidelines. The benefits of Accident Insurance is avbl only if the acct is cat under Salary Package with appropriate DSP product code. Death due to aircraft accident other than declared war will also be covered under PAI cover. Death occurred due to snake bite & in HAA due to HAPO/HACO are also eligible for PAI claim.”

(This is the exact reproduction of the clause. The abbreviations are part of the clause.)

The IRDA Guidelines on Standard Personal Accident Insurance Product defines an accident as “..... a sudden, unforeseen and involuntary event caused by external, visible and violent means”. The Group Personal Accident Insurance Policy of the United India Insurance Company Limited with the State Bank of India (Insured) defines an accident with reference to a Personal Accident Insurance as :

“If at any time during the currency of this policy the insured shall sustain any bodily injury resulting solely and directly from accident caused by external violent and visible means, then the Company shall pay to the Insured or his legal personal representative (s) as the case may be the sum or sums hereinafter set forth that is to say:-

.....”

15. The Accident Insurance Policy which covered the petitioner’s son in the present case intends to cover death and disablement subject to the death being caused solely and directly by and as a result of an accident which is caused by a violent and visible external tone. The coverage specifically includes snake bite and high altitude ailment as well as high altitude pulmonary oedema-but excludes other forms of insect bites.

16. The question of compensation for rat bite found place in *Muthulakshmi v. State of Tamil Nadu; (2022) 1 Mad LJ 277* where the Court held that rat bites in the Rajaji Hospital, Madurai cannot be described as a common incident. The Court was concerned with the hygiene and sanitary conditions in the Hospital and held that rat bite in a Government Hospital is an unforeseen event and compensation must therefore follow.

17. In common everyday language as it is spoken, an accident is an unforeseen event and is unexpected in so far as the person who encounters it did not expect or look for that event to happen. Black's Law Dictionary – 6th Edition - defines “accident” as unforeseen and unexpected. A person is usually startled by an accident since the event is unusual and catches the person off-guard. There is also a sense of physicality to an accident as in a collision, a crash, a fall or even physical breaking of an object (excluding the philosophical accident of birth). Accidents are not contemplated when a person gnashes his/her teeth so as to break a tooth or exerts himself / herself vigorously during physical exercise resulting in a back sprain, since these activities were voluntary and by choice. Accidents are usually the result of an external force where the person who suffers the accident least expected the accident to take place. The external force may not always be one of motion as in a car crash but may also be inert as in crashing a car against the wall. The pervading feature is therefore that of a mishap or a course of events which is ordinarily not expected to happen.

18. The Personal Accident Insurance Policy of the petitioner's son must be seen in the factual context of the definition of accident that Death or

Disability must result solely and directly from an accident caused by an external, violent and visible means. The causation must necessarily involve:

Accident → death

If the petitioner's case is read into the above causation it would be :

Mosquito bite (accident) → Dengue → death

The Insurance Policy makes it clear that death caused by a disease is not covered. The petitioner however seeks to use the mosquito bite and the disease (Dengue) interchangeably to say that :

Mosquito bite → Dengue (disease) = accident

Hence

accident → death.

19. The petitioner's case is required to be tested to ascertain whether the disease caused by a mosquito bite would qualify as an accident.

20. The jurisprudence on the subject leans substantially towards the view that an injury caused by an accident is the very antithesis of bodily infirmity caused by disease in the ordinary course of events – *A.W. Baker Welford's The Law relating to Accident Insurance*. Books and treatises on the subject have also opined that accident does not include disease and implies the intervention of an external cause which is fortuitous and happens by chance. The definition of accidental death includes accidental injuries, but excludes illness. The consensus also tilts towards the exclusion of death by disease alone, not accompanied by an accident.

21. The petitioner's argument is that the disease was the result of an accident which was the patient being bitten by a mosquito in the confines of the hospital. The element of the unexpected which counsel seeks to build into the fact is that the petitioner's son did not expect to be bitten by a mosquito and contract Dengue when he got admitted to Command Hospital. Although there is definitely some truth in this statement, the inescapable question would be :

Can a mosquito bite be regarded as an accident in India?

22. The reality of living in a tropical country like India is to take in one's stride, extreme summers, heavy monsoons, the weight of population - and the buzz of mosquitoes. Complaints aside, mosquitoes and mosquito-repellents are our unwelcome companions for life and a (residential) hazard to life in India. According to the data of the National Center for Vector Borne Diseases Control there were 5166 Dengue cases in 2020 and 8264 in 2021 in West Bengal. The data shows that there were a total of 193245 dengue cases and 346 dengue deaths in India in 2021. Specialised data in relation to Dengue shows that India features as one of the countries in the risk zone and Dengue is the 46th leading cause of death in the country.

23. Mosquitoes are also our travel companions these days. They are found in flights where one least expects them to fly to undisclosed destinations. It is arguable if a person claims aviation insurance on the plea of having booked tickets to travel to the planned destination and not contract Malaria in the bargain. The (buzz) word is that Mosquitoes are simply everywhere –

in pools, parks, movie theatres and convention centres – pests! Perhaps the time has finally come to use cannons to kill mosquitoes.

24. Therefore, suffering a mosquito bite in the sanitised confines of a hospital may be an unwanted and unwarranted incident at best; it is not something which is fortuitous such as to startle the sufferer (the ‘bitten’) as being unexpected. After all, an accident is an event which startles a person when it takes place but does not startle one when it does not take place. There is also a violence attached to accidents – a screech, a thud, usually destruction accompanied by high-level noise. Mosquitoes, on the other hand, are the silent, insidious enemies who go about their harmful business unnoticed.

25. The issue before the Supreme Court in *Mousumi Bhattacharjee* was whether death caused by Malaria - occasioned by a mosquito bite in Mozambique - constituted death due to accident. In that case, the spouse of the first respondent before the Court (and the insured) was working as a Manager in a Tea Factory at Zambezia, Republic of Mozambique. During his stay in Mozambique, the insured was diagnosed with Encephalitis Malaria and died after being admitted to the hospital as a result of multi-organ failure. The direct cause indicated in the Death Certificate was multi-organ failure and the intermediary cause was Encephalitis Malaria. The heirs of the deceased approached the District Consumer Disputes Redressal Forum, North 24 Parganas in West Bengal. The decision in favour of the heirs led to a challenge before the State Commission and then to the National Commission. The claim of the respondent that Malaria caused by a

mosquito bite is an accident succeeded all the way up to the Supreme Court. The Supreme Court, however, disagreed with the view of the National Commission and held that the disease of Encephalitis Malaria through a mosquito bite cannot be considered to be an accident. The Supreme Court was of the view that since the insured was based in Mozambique which accounted for 53% of global cases of Malaria even with a population of 29.6 million people, contracting Encephalitis Malaria through a mosquito bite could neither be seen as unexpected nor unforeseen. The facts before the Supreme Court in *Mousumi Bhattacharjee* were different compared to the facts before this Court – the primary difference being of Mozambique vs. Kolkata. There were an estimated 10 million cases of Malaria in Mozambique and 14.7 thousand deaths according to the World Health Organisation Report, 2018. Even though the Kolkata statistics (fortunately) pale into insignificance it cannot be said that Mosquito bites and resulting diseases are unforeseen events even to a resident of Kolkata. The facts are a sad reflection of the preventives used by any hospital to repel vector - borne diseases but it cannot be said that finding mosquitoes even in the most sanitized of interiors is a startling exception and not the rule.

26. This Court is also unable to accept the contention that the Personal Accident Insurance Policy in the present case was tailor-made for army men in particular and that the petitioner would accordingly be entitled to a more extensive interpretation of the clauses in the Policy. A comparison of the definition of accident in the Policy of the deceased, the IRDA Norms and for civilians indicates that the definition is the same across the board. The only

difference is inclusion of a snake bite and high altitude ailments in the Insurance coverage for the Indian Army. This however, does not help the petitioner since a snake bite has specifically been included in the definition of “accident” while all other kinds of injuries / bites of insects have been left out.

27. The death of the petitioner’s son is undoubtedly sad and this Court feels for the petitioner’s pain and anguish. However, the Insurance Policy and the precedents on the subject do not permit interpreting any disease caused by a mosquito bite as an accident. It is neither fortuitous nor unexpected and is entirely country / city-specific. The impugned refusal on the part of the Insurance Company to admit liability in the particular policy hence cannot be seen as arbitrary or unreasonable.

28. This Court therefore sees no reason to quash the letter dated 22.9.2022. WPA 103 of 2023 is accordingly dismissed without any order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)