

SUPREME COURT OF INDIA

Branch Manager National Insurance Co. Ltd.

Vs.

Mousumi Bhattacharjee

C.A.No.2614 of 2019

(Dr.D.Y.Chandrachud and Hemant Gupta,JJ.,)

26.03.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

SLP(C)No.4297 of 2017

1. The present appeal raises an interesting question of law. The Court is tasked with determining whether a death due to malaria occasioned by a mosquito bite in Mozambique, constituted a death due to accident. The appeal by the insurer has been filed against the judgment of the *National Consumer Disputes Redressal Reason Commission*¹, which upheld a decision of the *State Consumer Disputes Redressal Commission*². The State Commission, in first appeal, had upheld the award of a claim under an insurance policy.

2. Debashis Bhattacharjee, the spouse of the first respondent and the father of the second respondent applied for a housing loan for an amount of Rs. 13.15 lacs from the Bank of Baroda on 16 June 2011. The loan was sanctioned and was repayable in 113 monthly installments, each of Rs. 19,105/-. Incidental to the loan, he availed of the facility of an insurance scheme called “National Insurance Home Loan Suraksha Bima”. On 25 August 2011, a policy was issued to cover the loan amount of Rs. 13.15 lacs with a term of 20 years commencing on 25 August 2011. A single premium was paid against the policy. The policy was a non-life insurance product intended to provide insurance security to a person who obtains a loan for constructing, purchasing or repairing a residential house, flat or apartment. Section I of the policy insured the house against fire and allied perils, including earthquakes. Section II insured the borrower against personal accidents.

3. The insured was working as a Manager of a Tea Estate in Assam. He thereafter took up employment in 2012 as a Manager of a Tea Factory at Cha-De- Magoma, District Gurue, Province-Zambezia, Republic of Mozambique. During his stay in Mozambique, the insured was admitted to the hospital on 14 November 2012. He was diagnosed with encephalitis malaria and died on 22 November 2012 due to multi-organ failure. His death certificate issued by the Republic of Mozambique spelt out the conditions and causes of death thus:

WRITE ONE DIAGNOSIS PER LINE

56. Causes of the Death Direct cause Intermediary cause Basic Cause

- a) Multi organ failure
- b) Encephalitis Malaria
- c) Pnasiauria - Malaria.”

4. The heirs of the deceased filed a complaint under the Consumer Protection Act 1986 before the *District Consumer Disputes Redressal Forum*³, North 24 PGS, Barasat alleging that the insurer had committed a deficiency of service in not settling the claim under the insurance cover. In the written statement filed by the appellant, it set up the plea that Section II of the policy insured the borrower of the loan against personal accident. Death due to malaria caused by a mosquito bite was, in the submission of the insurer, a result of an infection or disease and was not an accidental death under the terms of the insurance policy.

5. By an order dated 28 February 2014, the District Forum allowed the claim and called upon the insurer to pay the entire outstanding EMIs in respect of the loan to the Bank of Baroda. A statutory appeal was filed by the appellant before the *State Commission*⁴. The State Commission by its order dated 2 February 2016 affirmed the order of the District Forum, holding that a “sudden death due to mosquito bite in a foreign land” was an accident; it would be rather silly to say that it was a natural death. The order of the State Commission was assailed in revision before the National Commission. The National Commission observed thus:

“The term “accident” has not been defined in the policy which the deceased had taken and therefore contextual dictionary meaning of the said term has to be taken for the purpose of deciding whether the death of the deceased was due to an accident or not. An accident is something that happens unexpectedly and is not planned in advance. It is defined as (i) as unpleasant event, especially in a vehicle, that happens unexpectedly and causes injury or damage, (ii) something that happens unexpectedly and is not planned in advance, in the Oxford Advanced Learner’s Dictionary (New 8th Edition). The word ‘accident’ is defined as (i) as accident, an unforeseen injuries occurrence, something that does not come in the usual course of event or that cannot be reasonably anticipated, (ii) an unforeseen and injurious occurrence due to mistake, negligence, neglect or misconduct; an unanticipated and untoward event that cause(s) harm (In Black’s Law Dictionary (Ninth Edition).”
(sic)

6. On whether a death as a result of encephalitis malaria was an accident, the National Commission held:

“It can hardly be disputed that a mosquito bite is something which no one expects and which happens all of a sudden without any act or omission on the part of the victim. In Consumer Complaint No. 223 of 2006, Shri Matber Singh versus Oriental Insurance Co. Ltd. decided on 05.09.2014, this Commission noted that as per the information available on the website of the Insurance Company, an accident may include events like snake bite, frost bite and dog bite. Hence, it would be difficult to accept the contention that malaria due to mosquito bite is a disease and not an accident.”

During the course of hearing Ms Madhavi Divan, learned Additional Solicitor General submitted that:

- (i) Among the perils which were insured against by the policy is ‘death due to accident’;
- (ii) Clause 3(A) of the conditions specified that the insured was required to give immediate notice of any change of business or occupation;
- (iii) No intimation was furnished by the insured of having taken a job in Mozambique which was a material breach of the policy condition;
- (iv) Malaria is a common occurrence in tropical countries, particularly so in Mozambique;
- (v) The death of the insured was hence not accidental, since the expression ‘accident’ postulates an occurrence which is unnatural, unforeseen or unexpected;
- (vi) It is well established that the expression ‘accident’ does not include disease and other natural causes;
- (vii) The insured died of multi-organ failure which may not necessarily be a direct consequence of a mosquito bite;
- (viii) The analogy drawn by the National Commission with a snake bite or a scorpion bite is inapposite; and
- (ix) A variety of ailments can be caused on account of mosquito bites such as Dengue, Chikungunya and Zika, which if unattended can lead to complications and result in death, but it would be absurd to term the cause of death as an accident.

7. On the other hand, learned Counsel appearing on behalf of the respondents supported the decisions of the District Forum, the State Commission and the National Commission. Counsel submitted that sustaining the mosquito bite is by its very nature a matter of chance or accident since it is unforeseen. Malaria traces its origin to a mosquito bite and hence, it was urged that a death which is caused as a result of malaria must necessarily be construed to be accidental in nature.

The rival submissions fall for consideration.

9. Section II of the policy covered the following perils:

“Section II:

1. Death due to accident.
2. Accidental loss of two limbs, two eyes or one limb and one eye.
3. Permanent total disablement or injuries other than that named above.”

10 The exclusions from Section II were:

- “1. Loss of one limb or one eye
2. Any accidental injury or loss not mentioned under Section-II above
3. Cumulative Bonus
4. Education Fund
5. Cost of transportation of the dead body
6. Persons below the age of 18 years at the time of disbursement of loan, and above 60 years at the end of repayment period
7. People having Hysteria
8. Death or accidental resulting from intentional self injury, suicide or attempted suicide
9. Death or injury from accident while under the influence of intoxicating liquor or drug
10. Death or injury from accident caused by insanity or venereal disease
11. Death or injury from accident arising or resulting from the insured committing any breach of law with criminal intent
12. War or war like operations
13. Ionising radiations or contamination by radioactivity
14. Loss by delay, loss of market or any other consequential or indirect loss or damage
15. Default in repayment of installments and or loan due to any reason whatsoever except due to the occurrence of insured peril.”

In support of the submission that death due to malaria is a common occurrence in Mozambique, Ms Divan has adverted to the World Health Organization's World Malaria Report 2018. According to it, in 2017, there have been an estimated ten million cases of malaria in Mozambique and an estimated 14.7 thousand deaths. According to the World Population Prospects 2017 Report published by the United Nations Department of Economic and Social Affairs, Population Division, nearly one out of three people in Mozambique contracted malaria.

11. In our view, it would be appropriate to approach the issue which has been raised in the present case as a matter of interpreting the conditions contained in the insurance policy.

12. A line of precedents, both of this Court and international, have dealt with the meaning of the expression 'accident'. In *Union of India v Sunil Kumar Ghosh*⁵, this Court held that:

“13...An accident is an occurrence or an event which is unforeseen and startles one when it takes place but does not startle one when it does not take place. It is the happening of the unexpected, not the happening of the expected, which is called an accident. In other words an event or occurrence the happening of which is ordinarily expected in the normal course by almost everyone undertaking a rail journey cannot be called an “accident”. But the happening of something which is not inherent in the normal course of events, and which is not ordinarily expected to happen or occur, is called a mishap or an accident.”

13 In a subsequent decision in *Regional Director, ESI Corporation v Francis De Costa*⁶, the expression 'accident' was defined as follows:

“4...The popular and ordinary sense of the word 'accident' means the mishap or an untoward happening not expected and designed to have an occurrence is an accident. It must be regarded as an accident, from the point of view of the workman who suffers from it, that its occurrence is unexpected and without design on his part, although either The same principle was adopted in *Jyothi Ademma v Plant Engineer, Nellore*⁷, where this Court held:

“7...the expression accident means an untoward mishap which is not expected or designed.”

P Ramanatha Aiyar's Law Lexicon⁸, defines the expression 'accident':

“an event that takes place without one's foresight or expectation; and event that proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected, chance, causality, contingency.”

The above Law Lexicon, relying on *Lovelace v Traveler's Protective Association*⁹, defines the expression 'death by accident' as:

“Death from any unexpected event, which happens, as by chance, or which does not

take place according to the usual course of things.”

14. In order to constitute an accident, the event must be in the nature of an occurrence which is unnatural, unforeseen or unexpected. The present case concerns death caused due to a disease being contracted. Section II of the insurance policy covers death caused by accident. Death or injury from accident caused by insanity or venereal disease has been specifically excluded and not covered under the policy. The issue is whether death caused by any other disease not specifically excluded under the policy, is covered. The issue whether a disease can be covered under the ambit of the expression ‘accident’ has been analysed in A W Baker Welford’s *The Law Relating to Accident Insurance*, where it was stated:

“The word “accident” involves the idea of something fortuitous and unexpected, as opposed to something proceeding from natural causes; and injury caused by accident is to be regarded as the antithesis to bodily infirmity caused by disease in the ordinary course of events.”

(emphasis supplied)

*Colinvaux’s Law of Insurance elucidates*¹⁰ on the ambit of the expression ‘accident’:

“Accident excludes disease. It follows from the above principle that a disease cannot be classified as an accident. Although disease proximately caused by an accident, in the absence of any exclusion for disease will be covered by a personal accident policy, it is well established that the word “accident does not include disease and other natural causes, and implies that intervention of some cause which is brought into operation by chance and which can be described as fortuitous.”

(emphasis supplied)

The expression ‘accidental death insurance’ has been explained in P Ramanatha Aiyar’s *Advanced Law Lexicon*:

“Insurance that provides coverage in the event of death due to accidental injuries, but not illness. In the event of death,¹¹ payment is made to the insured’s beneficiary. If bodily injury occurs (e.g., the loss of a limb), the insured receives a sum specified by the contract. (insurance)”

The treatises extracted above construe accidents and diseases as distinct concepts. Baker Welford regards ‘accident’ as a term which does not include disease in the ordinary course of events. Colinvaux acknowledges that a disease caused as a proximate cause of an accident will be covered by a policy for personal accident, in the absence of an exclusion. But then it is also argued that the term accident does not include disease.

15. Courts across international jurisdictions - including in the UK, US and Canada have interpreted the term ‘accident’. There is a fine distinction between the occurrence of a

disease which may be considered as an accident and a disease which occurs in the 'natural course of events'. In 1861, the Queen's Bench Division in the UK was called upon to consider whether a sunstroke suffered by a person while on board a ship in the course of performing his ordinary duties would amount to an accident. Cockburn C.J., delivering the judgment of the court held:

"It is difficult to define the term "accident", as used in a policy of this nature, so as to draw with perfect accuracy a boundary line between injury or death from accident, and injury or death from natural causes; such as shall be of universal application. At the same time we think we may safely assume that, in the term "accident" as so used some violence, casualty, or vis major, is necessarily involved. We cannot think disease produced by the action of a known cause can be considered as accidental. Thus diseases or death engendered by exposure to heat, cold, damp, the vicissitudes of climate, or atmosphere influences, cannot, we think properly be said to be accidental; unless at all events, the exposure is itself character of accident. Thus (by way of illustration), if, from the effects of ordinary exposure to the elements, such as is common in the course of navigation, a mariner should catch cold and die, such death would not be accidental; although if, being obliged by shipwreck or other disasters to quit the ship and take to the sea in an open boat, he remained exposed to wet and cold for some time, and death ensued therefrom, the death might properly be held to be the result of accident. It is true that, in one sense, disease or death through the direct effect of a known natural cause, such as we have referred to, may be said to be accidental inasmuch as it is uncertain beforehand whether the effect will ensue in any particular case. Exposed to the same malaria or infection, one man escapes, another succumbs. Yet diseases thus arising have always been considered, not as accidental, but as proceeding from natural causes." _

The Court contrasted the term 'accident' with an event that occurs naturally and held that death due to a sunstroke was not an accident:

"In the present instance, the disease called sunstroke, although the name would at first seem to imply something of external violence, is, so far as we are informed, an inflammatory disease of the brain, brought on by exposure to the too intense heat of the sun's rays. It is a disease to which persons exposing themselves to the sun in a tropical climate are more or less liable, just as persons exposed to the other natural causes to which we have referred are liable to disastrous consequences therefrom. The deceased, in the discharge of his ordinary duties about his ship, became thus affected and so died.

"We think, for the reasons we have given, that his death must be considered as having arisen from a "natural cause," and not from "accident," within the meaning of this policy."

16. In *Fenton v Thorley & Co. Ltd.* , the House of Lords held that a rupture caused by an act of over-exertion would not fall within the ambit of the term 'injury by accident'. Lord

Macnaughten speaking for the House of Lords held thus:

“Now the expression “injury by accident” seems to me to be a compound expression. The words “by accident” are, I think, introduced parenthetically as it were to qualify the word “injury,” confining it to a certain class of injuries, and excluding other classes, as, for instance, injuries by disease or injuries self-inflicted by design.”

The Court of appeal followed this decision in *Steel v Cammel, Laird & Co.*, Cozens Hardy L.J. observed:

“The doctor called as a witness by the workman said that the paralysis was an “occupation” disease, which he should expect in a certain number of cases to follow on the work on which the workman was engaged. It was not unforeseen; it was not unexpected...”

Injury by disease alone, not accompanied by an accident, is expressly excluded, as pointed out by Lord Macnaughten in *Fenton v Thorley & Co.*”

(emphasis supplied)

17. In *Co-operators Life Insurance Company v Randolph Charles Gibbens*, the Supreme Court of Canada was tasked with determining whether contracting a rare complication of herpes that resulted in paralysis caused due to engagement in unprotected sex would be covered under the definition of ‘accident’. The Court held thus:

“59. In the present case the evidence is that genital herpes is a sexually transmitted virus that spreads by sexual intercourse. Sex is its normal method of transmission. As such, unlike for example an internally developing condition leading to an aneurysm, its transmission requires an outsider's participation. But the same could be said of infectious diseases generally. Viruses and bacteria pass, directly or indirectly, from person to person, and occasionally across species. In the “ordinary language of the people”, an individual would not say on coming down with influenza that “I had an accident”. We come down with the flu “in the ordinary course of events.”

(emphasis supplied)

18. As the law of insurance has developed, there has been a nuanced understanding of the distinction between an accident and a disease which is contracted in the natural course of human events in determining whether a policy of accident insurance would cover a disease. At one end of the spectrum is the theory that an accident postulates a mishap or an untoward happening, something which is unexpected and unforeseen. This understanding of what is an accident indicates that something which arises in the natural course of things is not an accident. This is the basis for holding that a disease may not fall for classification as an accident, when it is caused by a bodily infirmity or a condition. A person who suffers from flu or a viral fever cannot say that it is an accident. Of course, there is an element of

chance or probability in contracting any illness. Even when viral disease has proliferated in an area, every individual may not suffer from it. Getting a bout of flu or a viral illness may be a matter of chance. But a person who gets the flu cannot be described as having suffered an accident: the flu was transmitted in the natural course of things. To be bitten by a mosquito and be imbued with a malarial parasite does involve an element of chance. But the disease which is caused as a result of the insect bite in the natural course of events cannot be regarded as an accident. Particularly, when the disease is caused in an area which is malaria prone. On the other hand, there may well be instances where a bodily condition from which an individual suffers may be the direct consequence of an accident. A motor car accident may, for instance, result in bodily injuries, the consequence of which is death or disability which may fall within the cover of a policy of accident insurance. Hence, it has been postulated that where a disease is caused or transmitted in the natural course of events, it would not be covered by the definition of an accident. However, in a given case or circumstance, the affliction or bodily condition may be regarded as an accident where its cause or course of transmission is unexpected and unforeseen.

19. Recently, in *Gloria Wells v Minnesota Life Insurance Company*, the United States Court of Appeals, Fifth Circuit, dealt with a case where the question of law before the court was whether death caused by a bite of a mosquito carrying West Nile Encephalitis virus in Texas was covered under an accidental death insurance policy. The Court while remanding the case to the lower court on the disputed issue of facts, observed that the determinate, single act of a mosquito bite was not incidental to a body process and the mosquito, an external force produced an unforeseen result. However, this may be distinguished from the facts in the present case. Malaria is most commonly transmitted to humans through malaria virus infested mosquito bites, and when a virus is contracted through normal means brought about by everyday life it cannot be deemed to be an unexpected or unforeseen accident.

20. In a policy of insurance which covers death due to accident, the peril insured against is an accident: an untoward happening or occurrence which is unforeseen and unexpected in the normal course of human events. The death of the insured in the present case was caused by encephalitis malaria. The claim under the policy is founded on the hypothesis that there is an element of uncertainty about whether or when a person would be the victim of a mosquito bite which is a carrier of a vector-borne disease. The submission is that being bitten by a mosquito is an unforeseen eventuality and should be regarded as an accident. We do not agree with this submission. The insured was based in Mozambique. According to the World Health Organization's World Malaria Report 2018, Mozambique, with a population of 29.6 million people, accounts for 5% of cases of malaria globally. It is also on record that one out of three people in Mozambique is afflicted with malaria. In light of these statistics, the illness of encephalitis malaria through a mosquito bite cannot be considered as an accident. It was neither unexpected nor unforeseen. It was not a peril insured against in the policy of accident insurance.

21. We are hence of the view that the interpretation placed on the terms of the insurance policy was manifestly incorrect and that the impugned order of the National Commission is unsustainable.

22. We have been informed during the course of the hearing that the claim under the insurance policy has been paid by the insurer. We direct in exercise of our jurisdiction under Article 142 of the Constitution that no recoveries shall be made. We have embarked on the present exercise since the issue raised in the present case will have a bearing on similar questions of interpretation in policies of insurance envisaging an accident cover.

23. The appeal is allowed and the impugned judgment and order of the National Commission shall stand set aside. There shall be no order as to costs.

Judgment Referred.

¹ *“National Commission*

² *“State Commission”*

³ *“District Forum”*

⁴ *“the “West Bengal State Commission”*

⁵ *(1984) 4 SCC 0246*

⁶ *(1993) Supp. 4 SCC 0100*

⁷ *(2006) 5 SCC 0513*

⁸ *3rd Edition, 2012*

⁹ *47 Am. St. Rep. 0638*

¹⁰ *2nd Edition, 1932*

¹¹ *10th Ed. by Robert Merkin*

¹² *3rd Ed. (2005)*