

The Oriental Insurance Co. ... vs The State Of U.P. Thru.Director ... on 1 May, 2025

Author: Rajan Roy

Bench: Rajan Roy

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

High Court of Judicature at Allahabad

(Lucknow)

Neutral Citation No.- 2025:AHC-LK0:24960-DB

Reserved on: 05.04.2025

Delivered on: 01.05.2025

Court No. - 2

Case :- WRIT - C No. - 1822 of 2022

Petitioner :- The Oriental Insurance Co. Ltd.Thru.Deputy Gen Manager Incharge Regional O

Respondent :- The State Of U.P. Thru.Director Gen.Dir.Of Ins.Finance And 5 Others

Counsel for Petitioner :- Vashu Deo Mishra

Counsel for Respondent :- C.S.C.,Kumar Jaikrit,Rahul Roshan Dubey,Shrikant Mishra

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.) (1) Heard Shri Vashu Deo Mishra, learned Counsel for the petitioners, Shri Shrikant Mishra, learned Counsel for the opposite party No.6 and Shri Shishir Singh Chauhan, learned Counsel for the opposite party Nos.1, 2, 4 and 5.

(2) By means of this petition, the petitioner i.e. Oriental Insurance Co. Ltd has challenged decision of District Level Committee headed by District Magistrate dated 15.12.2021 communicated to it vide letter dated 05.01.2022 by which claim of opposite party no.6, who is a widow, for grant of compensation of Rupees Five Lakh under the Mukhyamantri Kisan & Sarvhit Bima Yojana has been accepted with a direction to the petitioner-company to pay the said amount under the said scheme and the agreement entered into between the petitioner and State of U.P. (3) The facts of the case in brief are that a scheme known as 'Samajvadi Kisan Evam Sarvhit Bima Yojana' was floated vide G.O. dated 20.06.2016 so as to provide insurance cover to farmers as also other citizens of State of U.P. who died or were injured in an accident etc. This scheme was renamed as 'Mukhyamantri Kisan & Sarvhit Bima Yojana' in the year 2017 and was continued accordingly. An agreement was entered into by the State of U.P. with the petitioner-insurance company on 13.09.2018 copy of which is annexed as Annexure 2 to the petition for implementation and enforcement of the said scheme. The Government Orders issued in this regard were part of the said agreement as is evident from a bare reading of it.

(4) The husband of opposite party no.6 died in an accident on 11.12.2018. A claim was raised by the wife i.e. opposite party no.6 under the aforesaid scheme, as per paragraph no.9 of the writ petition, on 07.03.2019, but, it was received in the office of the petitioner-company on 04.04.2019.

(5) Now, it is not in dispute, rather it is admitted in paragraph no.11 that such claim could be made within three months from the date of incident and thereafter, further one month's time may be condoned or granted by the District Magistrate. This is also borne out from Clause 21(d) of the order dated 20.06.2016 which has been relied by the petitioner-insurance company in para no.11 aforesaid. In this case, undisputedly, husband of opposite party no.6 died on 11.12.2018, in an accident. The claim was filed by opposite party no.6 on 07.03.2019 i.e. within the stipulated period of three months, but, the petitioner claims that it was received in its office on 04.04.2019. However, even if this is taken into consideration, the fact remains that claim was raised within the stipulated period of three months but the office of District Magistrate where it was submitted, transmitted it to the petitioner-company only on 04.04.2019. This, however, would not be relevant as the District Magistrate could extend the prescribed period by one month as stated by petitioner itself in para no.11 and the claim was received in the office of the petitioner within the extended period of one month which would end on 11.04.2019 from the date of accident. In spite of it, the petitioner-company repudiated the claim of opposite party no.6 vide letter dated 15.05.2019 copy of which is annexed as Annexure no.5 to the writ petition.

(6) The repudiation was on the ground firstly that the income certificate annexed with the claim had been submitted beyond forty five days from the date of death and the claim itself had been received in the petitioner-company after three months.

(7) As, under the scheme, a remedy was available to opposite party no.6 before the District Level Committee headed by District Magistrate by way of an appeal, therefore, the same was preferred and based thereon, the matter was considered by the District Level Committee which got an inquiry conducted as is mentioned in the impugned decision dated 15.12.2021, wherein, it was found that deceased-husband of opposite party no.5 was engaged in agricultural activities. Though his name could not be recorded in the revenue records but he was a farmer at the time of his death and relying upon a decision of High Court, the Committee reconsidered the claim and allowed it.

(8) Now, one of the points to be noticed is that as per the agreement and the scheme contained in Government Orders, if the deceased was a farmer then an income certificate was not required. Even otherwise, during the course of argument, this ground was not pressed by learned counsel for petitioner-company and it is not in dispute that the annual income of family of opposite party no.6 was less than Rs. 36,000/- which met the requirements of the scheme and government orders referred hereinabove, a fact which has not been seriously disputed by the petitioner.

(9) The main argument of learned counsel for the petitioner is that a similar matter bearing Writ-C No.15983 of 2020 'Gautam Yadav vs. State of U.P.' decided on 11.11.2020 where the High Court had extended the limitation for filing such claims to three years on a Special Leave Petition being filed bearing No.7647 of 2021 'The National Insurance Company Limited vs. Gautam Yadav & Ors.', Hon'ble the Supreme Court on 12.08.2021 had stayed the said judgment, however, subject to payment of Rs.5 Lakhs to the claimant therein in terms of the earlier order dated 02.07.2021.

(10) It was further submitted by learned counsel for the petitioner that though Hon'ble the Supreme Court in a Special Leave Petition (C) filed by the petitioner-Insurance Company bearing No.3978 of 2022 'The Oriental Insurance Company Limited vs. Sanjesh & Anr.' had found such condition in the agreement as involved herein prescribing a limitation for raising a claim for insurance as being violative of Section 28 of the Indian Contract Act, 1872 (in short 'the Act, 1872') and had dismissed S.L.P. of the petitioner-company but, in a subsequent case, on being pointed out that there were other SLPs involving the same issue which were pending, the same Hon'ble Bench which had passed the said judgment on 11.03.2022 in the petitioner's S.L.P., after taking note of the said order, directed that all pending matters be listed together for hearing after obtaining orders from Hon'ble the Chief Justice in the first week of May, 2022 and those petition were still pending.

(11) Much emphasis was laid on the aforesaid facts and an impression was sought to be conveyed as if Hon'ble the Supreme Court wanted to reconsider its decision rendered on 11.03.2022. However, on a careful consideration and reading of the order dated 08.04.2022 passed in Special Leave to Appeal (C) No(s).5533-5534/2022 'the Oriental Insurance Co. Ltd. vs. Phoolwati & Anr.', we do not find any recital therein which could even remotely suggest that the said Bench was doubting its earlier judgment dated 11.03.2022 or that it wanted to reconsider the earlier judgment dated 11.03.2022. Therefore, this contention appears to be merely based on convenience without any basis on facts and in law.

(12) The fact of the matter is that the judgment rendered on 11.03.2022 in a similar matter filed by the petitioner-Oriental Insurance Co. Ltd. i.e. S.L.P. (C) No.83978/2022 holds the field wherein

relevant clause of the agreement as is involved herein prescribing limitation of three months extendable by one month for raising a claim under the aforesaid same scheme was held to be contrary to section 28 of the Act, 1872, thus void. The special leave petition was dismissed by a reasoned order with reference to relevant provisions of the Indian Contract Act and the agreement in question, therefore, as has already been observed by us in another judgment rendered on 31.01.2025 in Writ-C No.953 of 2025 'Smt. Rachana Soni vs. State of U.P. & Ors.', though the said judgment dated 11.03.2022 has been rendered at the S.L.P. stage it is a reasoned judgment with reference to provisions of law/ statute, therefore, it contains a binding ratio especially as the petitioner before us is the same and the scheme involved is also the same. Thus, the contention of petitioner's counsel that said judgment should not be followed is not acceptable and the same is rejected. No doubt, the judgment of this Court in Gautam Yadav (supra) had been stayed on 12.08.2021 in Special Leave Petition No.7647 of 2021 which is still pending but thereafter, the judgment has been rendered on 11.03.2022 in an S.L.P. filed by the petitioner-company itself relating to the same scheme with which we are concerned, therefore, the final judgment of Hon'ble the Supreme Court dated 11.03.2022 is binding on us.

(13) Even otherwise, as already narrated earlier, the death of husband of opposite party no.6 occurred on 11.12.2018 and the claim was filed by opposite party no.6 on 07.03.2019 but not before the petitioner-company instead before the District Magistrate, Sultanpur or his sub-ordinate officials, which was ultimately received in the office of the petitioner on 04.04.2019. Therefore, firstly opposite party no.6 is not at fault at all if the DM's office did not forward the matter timely to the petitioner-company. Secondly, as already noticed, the claim could be raised within three months, which was done, albeit not before the petitioner-company but before the District Magistrate, moreover, even the said period of three months was extendable by another month and if that is taken into consideration then the claim was within limitation as the same had been received before the petitioner-company on 04.04.2019.

(14) Irrespective of it, in view of judgment of Hon'ble the Supreme Court dated 11.03.2022, the claim could not have been repudiated on this ground as the law has been clarified by the said judgment which obviously applies retrospectively, as all judgments do. There is nothing in it to show that it has been applied prospectively.

(15) Petitioner's counsel has informed that claim amount has already been deposited with the District Magistrate, Sultanpur but has not been released to opposite party no.6. The death occurred on 11.12.2018 and we are now in 2025 and opposite party no.6-a widow has not yet got the insurance amount under the aforesaid scheme thereby defeating the very object behind it.

(16) As it is, the opposite party no.6 who has suffered financially on account of non-payment of the due amount to her for more than six years, the insurance amount if it has been deposited with the District Magistrate, Sultanpur in pursuance to our order dated 31.03.2022 shall be released in favour of opposite party no.6 within three weeks of submission of a certified copy of this order before the District Magistrate, Sultanpur. If the petitioner-company has a cause against the State of U.P. for recovering the aforesaid amount from it, based on any alleged violation of the contract, it shall be open for the company to do so.

(17) The aforesaid agreement dated 13.09.2018 was for one year i.e. till 13.09.2019. Though, it was extendable but according to petitioner's counsel, it was not extended thereafter but that is not very relevant because the death as also the claim all happened during subsistence of the contract.

(18) Reliance placed by learned counsel for the petitioner upon the judgments of Hon'ble the Supreme Court reported in (2020) 13 SCC 564 'Shree Ambica Medical Stores and Ors. vs. Surat People's Co-operative Bank Limited' and 1966 SCR (3) 500 'General Assurance Society Lts. vs. Chandumull Jain & Ors' on the issue of interpretation of Contract of Insurance do not help his cause in view of the facts and reasons discussed hereinabove.

(19) For all these reasons, none of the contention of petitioner's counsel is tenable and the writ petition is liable to fail. The writ petition is, accordingly, dismissed.

(Om Prakash Shukla,J.) (Rajan Roy,J.) Order Date :-01.05.2025 Shanu/-