

Constitutional Writ**PRESENT : The Hon'ble Justice Mr. Tapen Sen****Judgment On: 16. 02.2010.****W.P. No. 18057 (W) of 2006****Sri Chand Mohan Saha****Vs.****National Insurance Company Limited & Ors.****Point:**

Delay: Whether delay of 4 months and 15 days from the date of the accident regarding the intimation about the accident and claim of insurance policy is condonable - Constitution of India – Art. 226

Fact: In this Writ Petition, the Petitioner prays for an Order commanding upon the Respondents to withdraw the impugned letter whereby he was informed by the National Insurance Company that since he had given the intimation about the accident and had submitted his claim after 4 months/15 days from the date of the accident, the same violated Condition No. 1 of the Policy and therefore, his claim was closed as “No Claim”.

Held: In the case of death of his son, it is natural for a father to come under severe stress and strain which may include acute depression and sadness in the family. In such cases, a short delay of 4 months and 15 days is pardonable and the Insurance Company having been created under a Statute and being a State within the meaning of Article 12, should have kept this fact in mind and should not have allowed one of its Officers to act in such a way that his decision could be termed to be arbitrary, when challenged in a Court of law. (Paragraph – 35)

Cases cited: (i) AIR 1966 SC 1644 (General Assurance Society Ltd. Vs. Chandmull Jain and another);

(ii) (1999) 8 SCC 543(Oriental Insurance Co. Limited vs. Samayanallur Primary Agricultural Co-operative Bank);

(iii) (2004) 8 SCC 644 (United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal);

(iv) (2005) 9 SCC 174 (Polymat India (p) Ltd. and another vs. National Insurance Co. Ltd. and others);

(v) (2007) 3 SCC 700 (National Insurance Co. Ltd. vs. Laxmi Narain Dhut).

(vi) United India Insurance Company Ltd. Vs. Manubhai Dharmasinghbhai Gajera and Ors. reported in (2008) 10 SCC 404,

For the Petitioners : Mr. Md. Yamin Ali

For the Respondent

Nos. 1 and 2 : Mr. Pranab Kr. Datta

Mr. Kaushik Dey

For the Respondent

Nos. 3 to 5 : Mr. Dwaipan Sengupta

Mr. Arnab Chakraborty

Tapen Sen, J.: In this Writ Petition, the Petitioner, Chand Mohan Saha, prays for an Order commanding upon the Respondents to withdraw the impugned letter dated 26.9.2005 as contained in Annexure- P6 whereby and whereunder he was informed by the Senior Divisional Manager, National Insurance Company that since he had given the intimation about the accident and had submitted his claim after 4 months/15 days from the date of the accident, the same violated Condition No. 1 of the Policy and therefore, his claim was closed as “No Claim”.

2. The Petitioner has further prayed for the issuance of an appropriate Writ or a Writ of or in the nature of a Writ of Mandamus Commanding upon the Respondents to settle the claim of the Petitioner with regard to the Janata Personal Accident Claim No. 100300/47059600/77 (Golden Trust Financial Services Claim Ref. No. The National Insurance Company Ltd./Janata Personal Accident/ 2005/0093) in relation to the death of his son, Sailendra Kumar Saha.

3. The Petitioner has also prayed for quashing of the aforementioned impugned communication dated 26.9.2005.

4. The facts as pleaded in the Writ Petition are that the Petitioner’s son Late Sailendra Kumar Saha died on 18th August, 2004 in a Crusher accident at Salbadra in Mahsra, Rampurhat in the District of Birbhum during the course of his employment. The Death Certificate has been brought on record vide Annexure- P1.

5. Prior to his death, he had purchased an Insurance Policy for personal accidental death/injury/total permanent disablement from the National Insurance Company Ltd. through the Golden Trust Financial Services/ Golden Multi Services Club (Respondent Nos. 3 to 5) known as the

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Group Janata Personal Accident Insurance Policy for the period 31.3.2003 to the midnight of 30.3.2018.

6. According to the Petitioner, the Respondent Nos. 3 to 5 are the authorised Agents of the Respondent No. 1 (Insurance Company). The Insurance Policy has been brought on record vide Annexure- P2 and it shows that the sum insured was Rs. 1,00,000/- (Rupees one lakh) and the name of the Petitioner had been mentioned as the Nominee. Condition No. 1 of the said Policy

states that *“upon the happening of any event which may give rise to a claim under this policy the insured forthwith give notice thereof to the Company. Unless reasonable cause is shown, the Insured should within one calendar month after the event which may give rise to a Claim under the Policy, given written Notice to the Company with full particulars of the claim”* (Quoted from Para 3(c) of the Affidavit-in-Opposition of the Respondent Nos. 1 and 2).

7. It appears that during the subsistence of the Policy, the son of the Petitioner, as stated above, died on 18.8.2004 in a crusher accident during the course of his employment. According to the further case of the Petitioner, he suffered great mental pain and agony on account of such a premature death of his son but on 2.9.2004, he went to the Office of the Respondent No. 4 (Manager, Golden Multi Services Club of Golden Trust Financial Services, Suri in the District of Birbhum and orally intimated about the death and the said Respondent requested the Petitioner to send a death intimation letter to the Manager, Golden Multi Services Club of the Nabadwip Branch in the District of Nadia.

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8. Thereafter by a letter dated 7.9.2004, the Petitioner sent the intimation of the death of his son to the Respondent No. 4 in which he quoted the Policy number and requested him to send him the Claim Form so that he could submit the same for getting the Claim. According to the Petitioner, this letter was sent under Certificate of Posting on 8.9.2004 vide Annexure- P3.

9. The Petitioner has made a grievance that in spite of sending the aforementioned letter dated 7.9.2004 (said to have been despatched on 8.9.2004 under Certificate of Posting), the Respondent No. 4 did not respond. Thereafter the Petitioner contacted the Suri Office and filed an Application on 29.1.2005 for the Claim Form vide Annexure- P4 and submitted the filled up Form on 29.3.2005 before the Golden Trust Financial Services, Suri vide Annexure- P5.

10. Thereafter, the Petitioner received the impugned letter dated 26.9.2005 informing him that the matter had been closed as “No Claim”.

11. On 11.11.2005, the Petitioner sent a Representation vide Annexure- P7 addressed to the Senior Divisional Manager of the Respondent No. 1, Division-III, Kolkata wherein he stated that since he had sent the intimation on 8.9.2004 (i.e. within 20 days from the accident of the death of his son), the claim be accordingly settled as there was no delay on his part.

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12. On 30.11.2005, the Manager of the Golden Trust Financial Services (Respondent No. 3) wrote a letter the Senior Divisional Manager of the National Insurance Company Ltd. (vide Annexure- P8) wherein,

while referring to the impugned letter dated 26.9.2005 (a copy whereof had been sent to them also), stated that the first intimation letter addressed to their Nabadwip Branch was made on 8.9.2004 under Certificate of Posting (See Annexure- P3). It was further stated that the Petitioner had not received any Claim Form or reply against the said letter despatched on 8.9.2004 and therefore, he had submitted the other Application for a Claim Form on 29.1.2005 (Annexure- P4) and it was thereafter that he received the Claim Form on the same day. The Respondent No. 4, in support of the argument of the Petitioner, forwarded the photocopy of the first intimation letter and the receipt issued under Certificate of Posting dated 8.9.2004 for reconsideration of the Claim.

13. According to the Petitioner, the Petitioner thereafter met the Officers of the Insurance Company on several occasions and requested them to settle the Claim but the Senior Divisional Manager, Division-III of the National Insurance Company acted in an arbitrary manner and refused to settle the same on the ground of delay regarding intimation of the death taking shelter of Condition No. 1 of the Policy which, according to the Petitioner, is incorrect because his intimation was sent under Certificate of Posting on 8.9.2004 to the Manager, Golden Multi Services Club (Respondent No. 5) within 20 days from the date of the accident and therefore, the ground taken by the Insurance Company in refusing to entertain the Claim was totally arbitrary and

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illegal. On the basis of the aforementioned set of facts and submissions, the Petitioner has prayed for quashing the aforementioned communication dated 26.9.2005 as contained in Annexure- P6 to the Writ Petition.

14. An Affidavit-in-opposition has been filed on behalf of the Respondent Nos. 1 and 2 (Insurance Company) wherein they have stated that so far as a matter pertaining to repudiation of claim is concerned, the same flows from a private contract and therefore no writ would lie. According to them, such a contract is governed under the provisions of the Contract Act and any dispute relating to the terms and conditions or interpretation thereof cannot be a subject matter of challenge before the High Court in a proceeding under Article 226 of the Constitution of India.

15. It has further been submitted that the Insurance Policy is a Group Janata Personal Accident Insurance Policy which was entered into pursuant to a Memorandum of Understanding between the Insurance Company and the Golden Multi Services Club of the Golden Trust Financial Services (Respondent Nos. 3 to 5). It is the further case of the Respondent No. 1, relying upon Condition No. 1 of the Policy referred to above, that the Petitioner admittedly failed to comply with the said Condition No. 1 which, they have referred to, as a condition of the Contract of Insurance. They have further argued that none of the documents brought on record in the Writ Petition can justify any reasonable cause that may have been shown either by the insured or the Writ Petitioner as to why the Claim was made long beyond the stipulated

period of one Calendar month after the accident despite having knowledge of the
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terms and conditions of the contract. They have further argued and submitted that while interpreting documents relating to a contract and insurance, it is not for the Court to make a new contract if the parties have not made it themselves. Referring to the Supreme Court, these Respondents have submitted that an Insurance Policy has to be construed having reference only to the stipulations contained in it and no wrongful, far-fetched meaning could be given to the words appearing in it. They have submitted that in terms of Condition No. 1, it was the duty of the Petitioner to intimate either the Respondent No. 1 (National Insurance Company Ltd.) or the answering Respondents (Senior Divisional Manager- Respondent No. 2) about the accident forthwith and to file the Claim within one month from the date of the accident. They have stated that from the letters dated 7.9.2004 as well as 29.1.2005 (Annexure- P3 and P4) it is clear that the Petitioner neglected and failed to intimate the Respondent No. 1 and the answering Respondents (Respondent Nos. 1 and 2). They have further stated that it was the Respondent No. 5 (Manager, Golden Multi Services Club) who did not issue the Claim Form forthwith for which the Petitioner could not file the Claim earlier and therefore, for such laches on the part of the Respondent No. 5, neither the Respondent No. 1 nor the answering Respondents were responsible and that the Petitioner has the option to initiate appropriate proceedings against such persons before the Consumer Court.

16. In para-7, these Respondents have stated and submitted that the alleged date of death was on 18.8.2004 and the Claim was submitted in the Office of the Golden Trust Financial Services on 29.3.2005
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which is admittedly much beyond the stipulated period as laid down in the Policy. Under these circumstances, they have submitted that it had no option but to repudiate the Claim as "No Claim". They have also denied the Representation of the Petitioner said to have been filed before the Senior Divisional Manager, National Insurance Company on 11.11.2005. This denial has been made in Para-8 of the Affidavit-in-opposition. They have once again repeated that admittedly, the intimation of the accident was made beyond the stipulated period.

17. With regard to the letter dated 30.11.2005 sent by the Golden Trust Financial Services (Annexure- P8), these Respondents have stated that the said Financial Services have got no authority under the Agreement to ask for reconsideration of the Claim. These Respondents have submitted that their action in refusing the Claim is neither arbitrary nor irregular and that they have acted within the parameters of law since the Petitioner had made the Claim much beyond the statutory period. They have also stated that this Petitioner, being a nominee, has no locus standi to allege that the conditions contained in the Agreement for Insurance are unfair, arbitrary, irrational or unconstitutional.

18. The Respondent Nos. 3,4 and 5 (the Golden Trust Financial Services, the Manager, Golden Multi Services Club of the Golden Trust Financial Services and the Manager, Golden Multi Services Club of Golden Trust Financial Services respectively) have also filed their Affidavits. Opposing the affidavit-in-opposition of the Insurance Company only to the extent they concern these Respondents, they have submitted inter alia as follows:-

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- i) "That the Insurance Company cannot repudiate a claim arising out of the accidental death of the insured person, during the period of continuance and subsistence of the period of insurance policy, solely on the ground of delayed claim intimation.
 - ii) That the condition relating to the submission of claim intimation within a stipulated time, is not the essence of the insurance contract. In others words, time is not an essence to the present contract of personal accidental insurance in as much as the time stipulation for submission of claim is intended to enable the insurance company to verify the claim. The magnitude of loss or injury by reason of an accident, may be too difficult to assess even after a considerable lapse of time. But, when Life is insured and there is clear evidence of death on account of accident of a person covered by the insurance, the legitimate claim of the nominee or heirs cannot be defeated on the sole ground of delay in submission of claim, more so when the death by accident is not disputed.
 - iii) The denial of a claim of a nominee or heir in case of admitted accidental death, merely on the ground of delay in claim intimation or submission of claim form renders the times stipulation void, being an unconscious deal between parties of unequal bargaining power.
 - iv) That the condition of the policy as will be evident from the letter of repudiation dated 26.9.2005, being Annexure 'P-6' to the writ petition, cannot be followed/performed in as much as the insured being Golden Multi Services Club of GTFS cannot give notice to Golden Multi Services Club of GTFS itself.
 - v) That the Golden Multi Services Club of GTFS is the 'insured' under the said Janata Personal Accident Insurance Policy. The National Insurance Company Ltd. being the 'insurer', has taken the premium in respect of the said insurance policy. Under no stretch of imagination nor under any provisions of Insurance Law, Golden Multi Services Club can be made liable to settle any claim under the said insurance policy. The power and or authority to settle a claim solely rests on the National Insurance Company, being the 'insurer' within the meaning of Section 2(9) of the Insurance Act, 1932."
- (Quoted)**

19. These Respondents have also submitted in Para-8 of their Opposition to the Affidavit-in-Opposition of the Respondent Nos. 1 and 2 that a bare reading of Condition No. 1 would show that the same related to giving intimation within one Calendar month and the same is merely directory and not mandatory and in any event, the said condition is not at all relevant for the adjudication of the instant Writ Petition inasmuch as the grounds for repudiation given in the letter dated 26.9.2005 has no relation with the Memorandum of 10

Understanding entered upon between the Insurance Company and these Respondents. They have further stated in Para-8 that the reason given by the Respondent No. 2 in the impugned letter dated 26.9.2005 is non est and that the claim cannot be repudiated only on the ground of delay by an Insurance Company and that too, in a case where the claim arose due to the accidental death of the insured person.

20. However, with regard to the letter dated 7.9.2004 (said to have been despatched on 8.9.2004 as has been stated by the Petitioner) these Respondents have stated in Para-10 that they had never received the said letter and that there is nothing on record to show that the letter dated 7.9.2004 was received by them. However, they have stated that only after receiving the letter dated 11.11.2005 (Annexure- P7) that they came to know about the initial Claim intimation dated 7.9.2004 said to have been originally posted under Certificate of Posting on 8.9.2004. They have therefore denied the allegation that there had been laches on their part and have submitted that there was no scope of sending the said Claim because they did not have any knowledge about the accidental death before the letter dated 29.1.2005 (Annexure- P4). In Para-12, these Respondents have stated that the reasons given in the letter of repudiation dated 26.9.2005 (impugned letter) reflects a pre-determined mind of Respondent No. 2 to repudiate the claim on any score even if it is untenable in the light of law.

21. In reply to the said affidavit of the Respondent Nos. 3,4 and 5, the Respondent Nos. 1 and 2 have filed an Affidavit submitting in 11

Para-4 that neither the Golden Trust Financial Services nor the Golden Multi Services Club are authorised Agents of the Respondent No. 1 as alleged and that under the Memorandum of Understanding it would be evident that it was resolved that the terms and conditions of the Group Janata Personal Accident Insurance Scheme of the National Insurance Company shall be applicable for the effective operation of the Scheme. They have denied the suggestion that the submission of Claim papers by any Claimant before the Respondent No. 3,4 and 5 would be considered to be equivalent to submitting the same before them or submitting the same before the Insurance Company. They have further justified the reasons for repudiating the Claim and they have also justified that since the submission of the Claim was made beyond the stipulated period provided in the

Agreement, they were bound by the terms and conditions of the Policy and therefore, had no option but to repudiate the same.

22. The Respondent Nos. 3,4 and 5 have also filed an Affidavit-in-opposition to the main Writ Petition. It is not relevant to deal with each and every paragraph thereof save and except those that appear to be relevant. They have however, brought on record a photocopy of the Memorandum of Understanding dated 1.1.2001 and in Para-5 (viii) they have stated that they have a very limited role to play in so far as of its members are concerned save and except collecting the premium but however, as a good gesture, they help the members in completing the formalities when Claims are raised by providing Claim Forms and assisting the Claimants while filling them up and also by providing information about necessary documents to be enclosed therein. They

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have also denied the statements made by the Petitioner that they are the Agents of National Insurance Company. They have also denied the statements of the Petitioner to the effect that he had been to the Office of the Respondent No. 4 on 2.9.2004 or that he had orally intimated him (Respondent No. 4) about the death of his son or that they/Respondent No. 4 had advised the Petitioner to send the intimation to the Office of the Manager, Golden Multi Services Club of Golden Trust Financial Services, Nabadwip Branch, Nadia. However they have admitted that the Petitioner's deceased son, late Sailendra Kumar Saha was a member of the Club and that a Janata Personal Accident Insurance Policy Certificate was issued for the period covering 31.3.2003 to 30.3.2018 (midnight) for an insured sum of Rs. 1,00,000/- (Rupees One Lakh). They have also admitted that the Petitioner is the nominee under the said Policy.

23. While referring to the letter dated 7.9.2004 (said to have been despatched by the Petitioner on 8.9.2004 under Certificate of Posting), they have stated that at no point of time was the same received either by the Respondent No. 4 or by any of the other answering Respondents. However while referring to the receipt enclosed with Annexure- P3, they have stated that it appears that it was duly posted but they had never received the same. However as soon as the incident of posting came to their knowledge, they immediately sent a letter on 30.11.2005 which was addressed to the Insurance Company.

24. These Respondents have also criticised the action of the Respondent Company and have stated that the grounds for repudiation being taken by the said Insurance Company is absolutely arbitrary and that the

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same was done in a mechanical manner without taking note of the fact that Condition No. 1 of the Policy was merely directory and not mandatory and that since the legislation relating to Insurance is a beneficial legislation, the benefit of doubt should always go in favour of the insured persons or claimants. They have admitted and stated that the Petitioner's son was covered under the Janata Personal Accident Insurance Policy Certificate for the period covering 31.3.2003

to 30.3.2018 after the Insurance Company had been satisfied that the Petitioner's son fulfilled all the requisite formalities.

25. The Petitioner has filed an Affidavit-in-Reply to the Opposition of the Respondent Nos. 1 and 2. He has repeated his version with regard to the letter of intimation having been despatched under Certificate of Posting on 8.9.2004 and intimation having been given to the Respondent No. 5. He has nothing much to add in his reply save and except the facts already stated by him in the Writ Petition and also narrating the sequences which are mere repetition in nature.

26. Mr. Pranab Kumar Datta, learned Counsel appearing for the National Insurance Corporation has inter alia submitted, that the pleadings made in the Writ Petition are sufficient to establish that it was the Golden Multi Services Club who were negligent as they did not forthwith give notice of the happening of the event and therefore, for their negligence and the delay, the Insurance Company is not liable. He further submits that the most important condition of the Policy was that intimation of the happening of the

14 event ought to have been given to the Company, i.e., the Insurance Company but in this case, the Petitioner had given notice to the Club.

27. Learned Counsel submits that they closed the Claim on 26.9.2005 by Annexure- P6 and it was only thereafter on 11.11.2005 that the Petitioner, for the first time, raised his Claim before the Company vide Annexure – P7. He submits that since the repudiation of the Claim was made strictly on the basis of Condition No. 1 of the Policy and since the Petitioner had raised his Claim for the first time before the Company **after** such repudiation, the question of there being any arbitrariness on the part of the Insurance Company did not arise and therefore, the Writ Petition as against the National Insurance Corporation is totally misconceived and the remedy, if any, lies before a Consumer Court against the Golden Multi Services Club and not before this Court in any Application under Article 226 of the Constitution of India. Learned Counsel for the Insurance Company has submitted that since their action is not arbitrary, the High Court should not interfere.

28. The Insurance Company has taken the plea that both the raising of the Claim before them on 11.11.2005 and the letter dated 30.11.2005 sent by the Golden Trust Financial Services to them were both after the repudiation of the Claim.

29. Strong reliance of the Insurance Company on Condition No. 1 appears to be the sheet anchor of their case by taking the grounds of delay in intimation of the happening of the event. This argument is stretched further by saying that the intimation was not given to them within a

15 reasonable time from the date of the incident and instead, it was given to the Golden Multi Services Club and the actual intimation which they received was

after the repudiation of the Claim. Consequently, according to them, they did not act arbitrarily and therefore the High Court should not interfere as whatever action has been resorted to is on the basis of the insurance Policy and therefore, that action must be interpreted and construed with reference to the stipulations contained therein and the High Court must interpret a document of contract as was understood by the parties. Mr. Dutt places strong reliance in support of such a contention in the cases of :

- (i) **AIR 1966 SC 1644 (General Assurance Society Ltd. Vs. Chandmull Jain and another);**
- (ii) **(1999) 8 SCC 543(Oriental Insurance Co. Limited vs. Samayanallur Primary Agricultural Co-operative Bank);**
- (iii) **(2004) 8 SCC 644 (United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal);**
- (iv) **(2005) 9 SCC 174 (Polymat India (p) Ltd. and another vs. National Insurance Co. Ltd. and others);**
- (v) **(2007) 3 SCC 700 (National Insurance Co. Ltd. vs. Laxmi Narain Dhut).**

30. In this case, Condition No. 1 of the Policy clearly lays down that if an event occurs giving rise to a Claim, the insured should forthwith give Notice to the Company and unless reasonable cause is shown, the Insured should, within one calendar month thereafter, give a written Notice to the Company with full particulars of the Claim. In the instant case, admittedly 16

the death occurred on 18.8.2004. Even if the giving of the intimation dated 7.9.2004 (said to have been posted Under Certificate of Posting on 8.9.2004) is disputed by the Respondents, this Court has to see as to whether, in the facts and circumstances of the case, the delay in giving the information even on 11.11.2005 was so gross that it justified repudiation ?

31. From the impugned Order closing the Claim dated 26.9.2005, the Insurance Company has referred to the filing of the Claim made before the Golden Trust Financial Services on 29.1.2005 which, according to them was belated by 4 months and 15 days from the date of the accident. Their own impugned Order shows that the Claim was submitted to the Golden Trust Financial Services on 29.1.2005. Therefore, a delay of only 4 months & 15 days is not so gross that it entails automatic repudiation.

32. The Group Janata Personal Accident Policy is a Policy which is tripartite in nature involving the Insurance Company, the Golden Trust Financial Services and the Insured. If the Insurance Company wants to take the plea that the Claim should have been directly filed before the Company, the same, in the opinion of this Court, is thoroughly misconceived and arbitrary. Giving Notice to the Golden Trust Financial Services (which is a part of such a tripartite transaction) was, according to this Court, sufficient compliance of the requirement of giving Notice for which this Court does not find any fault with the Petitioner.

33. So far as the question of delay is concerned, the delay is only 4 months and 15 days from the date of the accident and such a
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delay, in the opinion of this Court, was neither unreasonable nor can the Claim be said to be so grossly delayed that it justified the Insurance Company to throw out and non-Suit the Petitioner. In the opinion of this Court, they have acted arbitrarily and illegally.

34. In the Judgment of the Hon'ble Supreme Court passed in the case of **United India Insurance Company Ltd. Vs. Manubhai Dharmasinhbhai Gajera and Ors.** reported in (2008) 10 SCC 404, the Supreme Court clearly held that although the State should be free to negotiate its terms in the field of contract qua contract, its actions however cannot be arbitrary. In this case, this Court holds, for the reasons stated above that the action of the Insurance Company was wholly arbitrary and therefore, there is no question of this Court attempting the rewrite the contract or to make a new contract. All that this Court desires to say is that the Insurance Company having acted arbitrarily cannot be allowed to say that a Writ Court should not interfere.

35. The Respondent No. 1 being a State within the meaning of Article 12 as has been held in the case of **United India Insurance Company Ltd.** (supra) in paragraph 25, cannot be allowed to act arbitrarily. Therefore in such a case, a Writ would be maintainable even if it arises within a contractual obligation inasmuch as the Insurance Company being a State or an instrumentality of a State cannot be allowed to go scot free because one of its officers mechanically decided to come to a conclusion that merely because there was a delay of about 4 months, the Claim itself should be repudiated. If the delay was grossly disproportionate i.e. beyond 3 years, then the Petitioner perhaps would have had to explain sufficient cause but in the instant case, the delay is only 4 months and 15 days. Moreover Condition No. 1 itself contains a Clause that the Policy should be filed forthwith and unless reasonable cause is shown, the Claim should be filed within one month. In other words, the option of giving a reasonable cause is contained in the Contract. In the case of death of his son, it is natural for a father to come under severe stress and strain which may include acute depression and sadness in the family. In such cases, a short delay of 4 months and 15 days is pardonable and the Insurance Company having been created under a Statute and being a State within the meaning of Article 12, should have kept this fact in mind and should not have allowed one of its Officers to act in such a way that his decision could be termed to be arbitrary, when challenged in a Court of law. Here in the instant case, the repudiation at the instance of the senior Divisional Manager of the Insurance Company who passed the Order on 26.9.2005, was arbitrary as he did not at all apply his mind to the facts and circumstances of the case and therefore, the Order dated 26.9.2005 is fit to be set aside. This Court under such circumstances and having regard to the facts of the case, entertains the Writ Petition as being maintainable and

considering the action referred to above, holds that it is not necessary to deal with the other Judgments cited by the learned Counsel appearing for the Insurance Company.

36. Having thus held, this Court has no hesitation in quashing and setting aside the impugned Order dated 26.9.2005 as contained in Annexure- P6. The same is accordingly set aside and a Writ in the nature of a Writ of Mandamus is issued in terms prayed for in Prayer No. B directing the Insurance Company to forthwith settle the Claim with the Petitioner in relation to the concerned Janata Personal Accident Claim for the death of his son Late Sailendra Kumar Saha and for the arbitrariness perpetrated upon him and for the agony suffered by him for such arbitrariness, a cost of Rs. 10,000/- is imposed upon the Senior Divisional Manager, National Insurance Company Ltd. who exercised his powers arbitrarily in repudiating the Claim in the manner indicated in the impugned Order dated 26.9.2005.

The Writ Petition is allowed with costs as indicated above.

Upon appropriate Application(s) being made, urgent Xeroxed Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.

(Tapen Sen, J.)

.....February, 2010

S.B. A.F.R / N.A.F.R.

Later:

After the aforementioned judgment was delivered in Court, learned Counsel for the Insurance Company prayed for stay.

Having considered the facts and circumstances of the case and having considered the mental stress and agony suffered by the Petitioner during all these years when his son was no longer with him having died in a crusher accident, this Court considers it appropriate to refuse such a prayer for stay.

(Tapen Sen, J.)
