

**HIGH COURT OF GUJARAT****METLIFE INDIA INSURANCE CO P LTD***Versus***STATE OF GUJARAT****Date of Decision:** 20 July 2007**Citation:** 2007 LawSuit(Guj) 1684**Hon'ble Judges:** [M R Shah](#)**Case Type:** Special Criminal Application**Case No:** 126 of 2007**Subject:** Constitution**Acts Referred:**[Constitution of India Art 227](#), [Art 226](#)**Final Decision:** Petition dismissed**Advocates:** [P R Abichandani](#), [M R Mengdi](#), [Nanavati Associates](#)

**[1]** By way of this petition, under Articles 226 and 227 of the Constitution of India, the petitioner- MetLife India Insurance Co.Pvt. Ltd. has prayed for an appropriate Writ, order and direction quashing and setting aside the order of the Sub Divisional Magistrate, Bharuch, Sub Division, in Accidental Case No. 210 of 2006 in Accidental Death Case No. 24 of 2006 registered with Bharuch Railway Police Station on 29.11.2006.

**[2]** The deceased Kailash Baser was covered under the Policy No. 1200400057530 for insurance cover of Rs.4 lacs and the petitioner is the Insurance Company. That the dead body of the deceased Kailash Baser was found near the railway track and Accidental Death Case No. 24 of 2006 was registered on 30.03.2006. That necessary formalities of drawing the Inquest Panchnama, scene of incident Panchnama etc. was carried out. That thereafter, the body of the deceased was sent for Postmortem which was conducted. The Investigating Officer believed that the deceased died because of falling accidentally from Train No. 2927 Down Baroda Express before 06.15 hrs. The Investigating Officer found that the deceased was to alight at Bharuch Railway Station and having realized that the train had started moving, had tried to get off from the

train and during such an attempt, apparently, died. The Sub-Divisional Magistrate, Bharuch, by his order dated 29.11.2006 held that the death of the deceased Kailash Baser was accidental death.

**[3]** It is the case on behalf of the petitioner that on the basis of the order passed by the Sub-Divisional Magistrate, Bharuch, and his finding that the deceased had died due to accident, the petitioner ?L Insurance Company was required to pay amount of insurance, and therefore, they have also independently investigated the case and have engaged the services of an Investigator who gave an expert opinion to the petitioner on 01.07.2006. As per the said report it is the case of suicidal death and not accidental death. It is submitted that forensic expert a person who is qualified forensic expert has clearly after studying the relevant material indicated that it is a case of suicidal death and not accidental death. Therefore, it is requested to quash the order passed by the learned Sub-Divisional Magistrate, Bharuch in Accidental Death Case No. 24 of 2006. It is also submitted that procedure which is required to be followed under Section 179 is not followed. Therefore, the petitioner ?L Insurance Company has preferred the present petition for the aforesaid reliefs.

**[4]** That by way of interim relief in terms of Para 16(BB), the petitioner also prayed to stay further implementation, operation, execution and enforcement of the order dated 29.11.2006 passed by the learned Sub-Divisional Magistrate, Bharuch and also further prayed to direct the concerned Investigating Officer to take an expert's opinion and/or take into consideration the report of the expert dated 01.07.2006 and file appropriate report before the competent Criminal Court.

**[5]** The learned Single Judge of this Court vide order dated 09.03.2007 while issuing Notice granted ad-interim relief in terms of Para 16(BB) on condition that the petitioners Company deposits an amount of Rs. 4 lacs (Rupees Four lacs only) by way of Demand Draft with the Registry of this Court before the returnable date. It is reported that the aforesaid amount of Rs.4 lacs has been deposited by the petitioner with the registry of this Court. In view of the interim relief in terms of Para 16(BB) directing the Investigating Officer to get expert opinion, Investigating Officer, Bharuch Railway Police Station approached Department of Forensic Medicine and Toxicology, Govt. Medical College, Surat for obtaining expert opinion. When the matter was last heard, expert opinion from the Department of Forensic Medicine and Toxicology, Govt. Medical College, Surat was awaited. It was submitted by the learned Advocate appearing on behalf of the petitioner that if ultimately the report from the said Department is against the petitioner, then the petitioner would not have any objection in making the payment of Rs.4 lacs to the heirs of the deceased.

**[6]** Today when the matter is called out, learned Additional Public Prosecutor has produced on record expert opinion dated 17.07.2007 from the Department of Forensic Medicine and Toxicology, Govt. Medical College, Surat of Accidental Death Case No. 24 of 2006 dated 30.03.2006. The expert opinion reads as follows :

"(1) From the injuries which deceased had acquired, it is difficult to comment whether such death was suicidal / accidental.

(2) So, in all such instances circumstantial evidence should be considered which are interpreted as follows:

(a) No suicidal note is available;

(b) No Eyewitness is found;

(c) Neither provocation factor/events provoking suicide found; and

(d) Position of the body and luggage at the scene of crime, position of S5 coach, it can presumed that deceased had left the train during its departure and might caught into the railway track and this also does not favour suicide strongly.

Considering all these points, it is concluded that death of Kailash RamGopal Baser is more suggestive towards accidental rather than suicide. However, possibility of suicide cannot be excluded."

It appears that while forming such opinion the expert has considered Postmortem Report of deceased Kailash RamGopal Baser; Inquest Panchnama; Panchnama of place of incidence; Statements of various persons concerned with the case; and special visit to scene of crime. Thus, considering above, it cannot be said that Sub-Divisional Magistrate, Bharuch has committed any error in holding that the death of deceased ?SKailash RamGopal Baser?? was accidental death.

**[7]** Under the circumstances, in view of the insurance policy and the aforesaid expert opinion, respondent No.3 ?L widow of deceased and legal heir and beneficiary is to be paid aforesaid amount of Rs.4 lacs by the petitioner which is deposited with the Registry of this Court. However, Shri Abichandani, learned Advocate appearing on behalf of the petitioner has submitted that as such as per the practice and procedure, in case of accidental death, beneficiary has to submit the claim and the same is required to be considered. After considering the statement, referred to herein above, if this Court is of the opinion that respondent No.3 herein, who is to be paid Rs.4 lacs towards insurance amount, in that case it is submitted that this Court may observe that in the peculiar facts and circumstances of the case and without citing the same as

precedent, aforesaid amount be paid, as the aforesaid statement was made by the learned Advocate to show bona-fide of the Insurance Company.

**[8]** Under the circumstances and in view of the expert opinion dated 17.07.2007 from the Department of Forensic Medicine and Toxicology, Govt. Medical College, Surat opining that death of Kailash Ramgopal Baser is more suggestive towards accidental rather than suicide, amount of Rs.4 lacs which is already deposited pursuant to the order dated 09.03.2007 passed by this Court, instead of submitting the beneficiary claim application, it is directed that the said amount be paid to respondent No.3 directly towards full and final settlement of the claim of respondent against Insurance policy in question. It is also observed that aforesaid order is passed in the facts and circumstances of the case and without citing the same as precedent. Present petition is dismissed in view of the expert opinion dated 17.07.2007 and it cannot be said that learned Sub-Divisional Magistrate, Bharuch has committed any error and/or error in passing the impugned order. Registry is directed to pay Rs.4 lacs (Rupees Four lacs only) deposited by the petitioner pursuant to the order dated 09.03.2007 passed by this Court to respondent No.3 by Account Payee Cheque. Such exercise to be completed within a period of 4(four) weeks from today. Notice discharged.

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