

## Disease caused by insect bite in the natural course of events not covered under the accident insurance.

written by Abhishek Bagga | May 11, 2019

The division bench of the Supreme Court of India (Supreme Court) comprising of Hon'ble Justice Dr. D.Y. Chandrachud and Hon'ble Justice Hemant Gupta, in its judgement dated March 26, 2019 in *Branch Manager, National Insurance Co. Ltd. vs. Smt. Mousumi Bhattacharjee & Ors*<sup>[1]</sup>, held that where a disease is caused or transmitted by insect bite not covered under accident insurance

### Background

of the case

The insured was working as

manager of Tea Estate in Assam and thereafter took up employment as a manager of a tea estate in Republic of Mozambique. During his stay in Mozambique, the insured was admitted to the hospital and was diagnosed with encephalitis malaria and died due to multi-organ failure, Encephalitis Malaria & Pnaisituria-Malaria.

The heirs of the deceased filed a complaint under the Consumer Protection Act,

1986 (hereinafter referred to as "Act") alleging that the insurer had committed

a deficiency of service in not selling the claim under the insurance cover before the District Consumer Forum. The District Forum allowed the claim and called upon the insurer to pay the award amount. A statutory appeal was filed by the appellant before the West Bengal State Commission (hereinafter referred

as "State Commission"). The State Commission affirmed the order of the District

Forum holding that a sudden death due to mosquito bite in a foreign land was accident. Subsequently, the order of the State Commission was assailed in revision before the National Commission. 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 and 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".

As per 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.

### Proceedings

before the National Commission

The term accident has not been

defined in the policy which the deceased had taken and therefore contextual

dictionary meaning of the said terms 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 causes injury or damage, something that happens unexpectedly and is not planned in advance.

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 contention is that being bitten by a mosquito is an unforeseen eventuality and should be regarded as an accident.

Proceedings before the

Supreme Court

The issue raised before the

Supreme Court was whether death due to malaria occasioned by a mosquito bite in

Monzambique, constituted a death due to accident.

In order to understand the

meaning of "accident", reference was placed on precedents from Indian case laws, foreign judgements and the noted literature on the subject.

Indian Case-Laws

Reference has been taken from

judgements wherein meaning of accident is defined, in the case of *Union of India v. Sunil Kumar Ghosh*<sup>[2]</sup> the term

accident has been referred to as an occurrence or an event which is unforeseen

and startling, happening of which is not inherent in the normal course of events and is not ordinarily expected to happen or occur. In *Regional*

*Director, ESI Corporation v Francis*

*De Costa*<sup>[3]</sup>,

Division bench of the Supreme Court held that, the popular and ordinary sense of the word 'accident' means a 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 intentionally caused by the author of the act or otherwise. The same principle

was adopted in *Jyothi Ademma v Plant*

*engineer, Nellore*<sup>[4]</sup>

wherein it was held that the expression accident means an untoward mishap which

is not expected or designed.

Literature on the Subject

P Ramanatha Aiyar's law Lexicon<sup>[5]</sup>

defines the expression 'accident' as "an event that takes place without one's foresight or expectation; an event that proceeds from an unknown cause, or is an unusual effect of known cause, and therefore not expected, chances,

causality, contingency. The law Lexicon, relying on *Lovelace v Traveler's Protective Association*<sup>[6]</sup> 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.

The issue whether a disease can be covered has been analysed in *A W Baker Welford's*<sup>[7]</sup> the law related to accident insurance as "the word accident involves the idea of something fortuitous from the 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 the event"

*Colinvaux's law of insurance*<sup>[8]</sup> elucidates on the ambit of the expression accident and which defines it as 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 describes as fortuitous".

### Foreign Judgements

Court denoted the foreign judgments wherein the distinction between the occurrence of a disease which may be considered as an accident and a disease which occurs in the natural course of event. In *Co-Operators Life Insurance Company v Randolph Charles Gibbens*<sup>[9]</sup> 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 that 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."

### Judgement - Insect bite not covered under accident insurance

The Hon'ble Supreme Court heard arguments of both the parties and reliance was placed on 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, wherein it was

placed on record that one out of three people in Mozambique is afflicted with malaria. The Court pronounced the judgement stating that 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. Hence the interpretation

placed on the terms of the insurance policy was manifestly incorrect and that the impugned order of the National Commission is unsustainable.

Conclusion - Insect bite not covered under accident insurance

The law of insurance has developed 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, while any event or happenings which arises in the natural course is not an accident. This is the basis for holding that a disease may not fall under the category of accident, if it was neither unexpected nor unforeseen. Hence, insect bite not covered under accident insurance

Contributed by - Abhishek Bagga

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[1] 2019 SCC

OnLine SC419

[2] 1984 4 SCC 246

[3] 1933 Supp (4) SCC 100

[4] 2006 5 SCC 513

[5] 3rd Edition, 2012

[6] 47Am. St. Rep. 638

[7] 2nd Edition, 1932

[8] 10<sup>th</sup>

Edition by Robert Merkin

[9] 2009 SCC 59

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