IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 21499 of 2010 (J)

PETITIONER(S):

BAJAJ ALLIANZE LIFE INSURANCE COMPANY LIMITED,
REPRESENTED BY ITS SENIOR DIVISIONAL MANAGER,
3RD FLOOR, RAVI'S ARCADE, M.G.ROAD,
ERNAKULAM-35.

BY ADVOCATES SRI.V.PREMCHAND
SRI.SIJU RAJAN

RESPONDENT(S):
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1. THE INSURANCE OMBUDSMAN,
   PULINAT BUILDING, 2ND FLOOR, OPPOSITE COCHIN SHIP YARD,
   M.G.ROAD, ERNAKULAM-682 035.

2. SHEELA BHASKARAN,
   ASWATHY NIVAS, CHALIKKAVATTOM, VENNALA P.O.,
   KOCHI-682 028.

3. THE SYNDICATE BANK,
   REPRESENTED BY ITS MANAGER, PERUMANOOR BRANCH,
   ERNAKULAM-682 015.

R2 BY ADVS. SRI.MANOJ RAMASWAMY
SMT.MERIL MUTHU P.JOHN
R3 BY ADV. SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 21499 of 2010 (J)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1: TRUE COPY OF THE CLAIM PETITION DATED 29.06.2009 FILED BY THE 2ND RESPONDENT BEFORE THE INSURANCE OMBUDSMAN KOCHI.

EXHIBIT.P2: TRUE COPY OF THE REPLY DATED 10.03.2010 BY THE PETITIONER.

EXHIBIT P3: TRUE COPY OF THE LETTER DATED 20.12.2005 ISSUED BY THE PETITIONER.

EXHIBIT.P4: TRUE COPY OF THE AWARD DATED 12.04.2010 ISSUED BY THE INSURANCE OMBUDSMAN KOCHI.

RESPONDENT'S EXHIBITS:

EXHIBIT R2(a): TRUE COPY OF THE STATEMENT OF ACCOUNTS OF THE DECEASED FOR THE PERIOD FROM 01.05.2005 TO 01.12.2005

//TRUE COPY//

P.S. TO JUDGE

LPD

K. VINOD CHANDRAN, J.

W.P.(C) No.21499 of 2010-J

Dated this the 13th day of July, 2015.

<u>JUDGMENT</u>

The writ petition is filed by an Insurance Company against Ext.P4 award of the Insurance Ombudsman. The short facts to be noticed are that the 2nd respondent's husband applied for a loan from the 3rd respondent Bank, while he was in employment at the Cochin Shipyard. It has also come out on record that many of the employees, in the Cochin Shipyard, had so applied for Housing Loans and had also taken out an Insurance Policy from the petitioner, to cover the risk of the death of the borrower. The Insurance Company, the petitioner herein, was to indemnify the loss caused to the Bank on the death of the borrower, by satisfaction of the amounts outstanding in the loan Account, as on the date of death.

2. The Bank had also recovered a one-time premium, deducted from the Housing Loan Account itself, which is

indicated as Rs.43,564/- in the case of the petitioner. These transactions took place in the year 2005. More specifically Ext.R2 (a), the Housing Loan Account, indicates the deduction of the one-time premium being made on 21.11.2005. After five years, on 11.01.2009, the 2nd respondent's husband expired. The refusal of the petitioner Company to pay the amounts outstanding in the loan Account, resulted in the 2nd respondent approaching the Insurance Ombudsman, who passed the impugned award.

3. Ext.P4, after detailing the facts, records the evidence of each side. The 2nd respondent had approached the Ombudsman obviously on the refusal of the petitioner Company to indemnify the loss caused to the Bank, for reason of the death of the original borrower. The coverage in fact was applied for by a group of employees of the Cochin Shipyard and the situation of no policy having been issued, was revealed to each one of them, only when the 2nd respondent's claim was denied. The petitioner Insurance Company, in fact took several adjournments, before they filed their version. They admitted to the fact that a proposal was submitted and the premium was collected through the Bank.

It was the Bank, who issued assignment letters to the customers for getting policy, even according to the petitioner Company. The policy is also one issued to the Bank and not to the borrower. The terms of the policy hence would be to indemnify the loss caused to the Bank, by reason of the death of a borrower and the risk covered is the death of the borrower. The Bank had deducted the one-time premium from the housing loan account of the borrower and had deposited it with the petitioner Company by a Demand Draft. So much is admitted by the Insurance Company. However, it is the contention of the Insurance Company that, later the borrower was asked to go for a medical examination and on the borrower having not gone for such medical examination, the policy was rejected and the amounts were sent by post to the borrower itself.

4. At the outset, it is to be noticed that the cheque, which is said to have repaid the one-time premium, was in favour of the borrower and it is said to have been not delivered, but returned. The Insurance Company itself admits that the cheque, which was sent as refund of the one-time premium, had never been

encashed. Hence, the Insurance Company had the benefit of the premium althrough the lifetime of the 2nd respondent's husband.

5. Further, the policy having been taken out by the Bank, necessarily a rejection also had to be sent to the Bank. Admittedly, there is no rejection intimated to the Bank. The borrower, as well as the Bank, went under the belief that there was an insurance coverage to the home loan. Moreover, the specific case of the insurer, the petitioner Company, was that the refund cheque was returned undelivered. Then necessarily the insurer should have taken steps to atleast intimate the Bank about the coverage under the policy not been extended to the specific borrower.

6. This Court does not find any reason to interfere with the findings of the Insurance Ombudsman. There is no perceivable fault on the part of the petitioner nor the Bank. The insurer had also retained the premium money till the death of the borrower.

7. In such circumstance, considering the confined jurisdiction under Article 226, wherein this Court is sitting in review of the order passed by the Insurance Ombudsman, this

Court does not find any irregularity in the award passed. In any event, going by the evidence, as also the admitted case of the insurer, the policy ought to have been satisfied by the insurer.

The writ petition would stand dismissed. It is declared that the 2nd respondent cannot be proceeded against for any amounts due under the loan account. The respondent Bank has to be satisfied with the entire loan account, if not already satisfied, by the Insurance Company.

Sd/-

K. VINOD CHANDRAN,
JUDGE

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