

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WP(C).No. 25481 of 2015 (I)

PETITIONER(S) :

**LIFE INSURANCE CORPORATION OF INDIA,
HAVING ITS DIVISIONAL OFFICE AT
JEEVAN PRAKASH, P.B.NO.1133, M.G.ROAD, ERNAKULAM,
REPRESENTED BY ITS MANAGER (LEGAL & HPF).**

**BY ADVS.SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH**

RESPONDENT(S) :

- 1. A.THRESIAMMA
THUMBASSERY, MUDAVOOR P.O.,
MUVATTUPUZHA - 686 669.**
- 2. THE INSURANCE OMBUDSMAN, PULINAT BUILDING, 2ND FLOOR,
OPP. COCHIN SHIPYARD, M.G.ROAD, COCHIN - 682 015,
REPRESENTED BY ITS SECRETARY.**

R1 BY ADV. SMT.SHERLY THOMAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-11-2015, THE COURT ON 17-11-2015 DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE DELEGATION OF POWER IN FAVOUR OF
MANAGER (L & HPF) EXECUTED BY THE ZONAL MANAGER, LIFE
INSURANCE CORPORATION OF INDIA.**

**EXHIBIT P2: TRUE COPY OF THE COMPLAINT SUBMITTED BY
THE 1ST RESPONDENT BEFORE THE 2ND RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE COMMUNICATION DATED 12.03.2014 ISSUED
BY THE PETITIONER TO THE 2ND RESPONDENT.**

**EXHIBIT P4: TRUE COPY OF THE LETTER DATED 28.11.2014 ISSUED BY
THE PETITIONER TO THE 1ST RESPONDENT.**

**EXHIBIT P5: TRUE COPY OF THE AWARD IN NO.10/KOC/A/LI/0608/2014-15 IN
COMPLAINT NO.10/KCH/LI/21-001-935/13-14 DATED 20.03.2015.**

**EXHIBIT P6: TRUE COPY OF THE POLICY BEARING NO.774389174 IN THE NAME
OF THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R1(A): THE TRUE COPY OF MR PASS BOOK ALONG WITH
DISABILITY CERTIFICATE.**

**EXHIBIT R1(B): THE TRUE COPY OF THE ACCOUNTS STATEMENT ISSUED
BY THE PETITIONER TOWARDS THE PAYMENT.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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Dated this the 17th Day of November, 2015

J U D G M E N T

The petitioner-life Insurance Corporation of India has approached this Court challenging an award passed by the Insurance Ombudsman, Cochin in a complaint filed by the first respondent. Ext.P5 is the said order.

2. The first respondent has a mentally retarded child. She took a Jeevan Aadhaar Policy on 09/03/2003. This policy is mainly meant for the benefit of handicapped dependants. The premium amount will have to be paid for ten years. She paid the entire premium amount. She approached the Insurance Company for payment of Rs.7000/- every month based on the policy conditions or to grant the surrender value of the policy.

3. As per the conditions in the policy, the benefit is payable on happening of the events stipulated in the policy. In the policy, the benefits payable are on the following conditions:

“Benefits payable and events on the happening of which they are payable:

If the policy is in force for full Sum Assured in the event of death of the Life Assured Twenty percent of the amounts

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comprising of the Basic Sum Assured, Vested Guaranteed Additions and Terminal Addition if any, such amounts being hereinafter referred to as the Notional Sum Assured, will be payable in lump sum and the balance Eighty percent of the said Notional Sum Assured will be utilised to provide an annuity for 15 years certain and for life thereafter on the life of the handicapped dependent, based on the age last birthday of the said handicapped dependent on the date of claim.”

4. The policy terms as above, would clearly show that the petitioner would be entitled for the amount only on the happening of the events referred above.

5. It appears that the learned Ombudsman passed Ext.P5 order on the premise that the policy does not offer any real relief, as the benefit is payable only on the death of any one i.e, the life assured or the handicapped nominee. The learned Ombudsman passed the following order:

“6. Considering that the policy was brought out for the benefit of the handicapped dependent, in reality this policy does not offer any real relief. Any benefit is payable only on death of any one i.e., life assured or the handicapped nominee. With the advances in the living standards, longevity has increased, however the costs have also drastically increased. The premium payment is usually at higher ages and both the proposer and the dependent require more

medical and other help. Moreover, the guaranteed additions stop when the proposer attains age 65. If, for example, the life assured lives to 70 and the dependent also lives, then the total fund earns nothing after the proposer attains age 65 which, considering the plan features is an irony. The insurer may be right in reiterating that the policy does not carry either a maturity value or surrender value, however there seems to be grave miscarriage of justice.”

6. The issue before this Court is whether the Insurance Ombudsman has any power to grant any reliefs, *de hors* the conditions in the contract. The learned counsel for the petitioner, Shri B.S.Kalkura citing the judgment in **Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co.Ltd. [2010(4) KLT Supp.116(SC)** argued that the terms of the contract of insurance had to be strictly construed and no exception can be made on ground of equity. In the above judgment the Hon'ble Supreme Court held as follows:

“It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have to be strictly construed, and no exception can be made on the ground of equity. "The terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not

intended." In construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. Since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret the words in which the contract is expressed by the parties."

7. On the other hand the learned counsel for the first respondent would submit that the first respondent has severe financial constraints and she is unable to maintain her handicapped son.

8. As seen from the award itself, the claim of the first respondent has been allowed by the Insurance Ombudsman not in terms with respect to the contract but on an equitable ground. The redressal of grievance before the Insurance Ombudsman under the Redressal of Public Grievances Rules, 1998 stands only if there exists any violation of the contractual terms entered into between the parties. It is beyond the scope of the Insurance Ombudsman to interfere with the policy outside the ambit of the contract. The power of the Insurance Ombudsman is enumerated under Rule 12 of the Redressal of Public Grievances Rules, 1998 as follows:

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“12. Power of Ombudsman.- (1) The Ombudsman may receive and consider .-

- (a) Complaints under Rule 13;
- (b) any partial or total repudiation of claims by an insurer;
- (c) any dispute in regard to premium paid payable in terms of the policy;
- (d) any dispute on the legal construction of the policies in so far as such disputes relate to claims;
- (e) delay in settlement of claims;
- (f) non-issue of any insurance document to customers after receipt of premium.

(2) The Ombudsman shall act as counsellor and mediator in matters which are within his terms of reference and, if requested to do so in writing by mutual agreement by the insured person and insurance company.

(3) The Ombudsman's decision whether the complaint is fit and proper for being considered by it or not shall be final.”

The complaint would clearly indicate that grievances would not fall under Rule 12 quoted as above.

9. In the light of the above discussion, this Court is of the view that Ext.P5 award is unsustainable and is liable to be quashed. However, this will not stand in the way of the first respondent in working out any relief based on the terms of the contract of insurance with the petitioner. It is

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also made clear that if the first petitioner is able to establish that she is deprived of livelihood and has no means to support the life of the handicapped person, she is at liberty to approach this Court to seek relief to protect the life of the handicapped under Article 226 of the Constitution. With the above liberty, the writ petition is disposed of by quashing Ext.P5 award.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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