IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.03.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.26072 of 2014

R.Sudha .. Petitioner

Vs

1. The Insurance Ombudsman
   Fathima Akktar Court
   4th Floor, Teynampet
   453, Anna Salai, Chennai 600 118.

2. Life Insurance Corporation of India
   Yogakrishna
   Jeevan Bima Marg
   Mumbai 400 001.

3. The Zonal Manager
   Life Insurance Corporation of India
   LK Building, 153, Anna Salai,
   Chennai 600 002.

4. The Senior Divisional Manager
   Life Insurance Corporation of India
   Jeevan Prakash, Arcot Road
   Vellore, Vellore District.

.. Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records from the first respondent relating to the order made in Complaint No.CHN/LO29/1415/0029, dated 29.04.2014, and quash the same and direct the respondents 2 to 4 to pay the petitioner the assured sum of Rs.7,00,000/- towards settlement of the claim of the petitioner payable to her consequences on the death of her husband under the Life Insurance Policy bearing No.736307285 dated 10.08.2011, taken by him and award costs.

For petitioner .. Mr.S.Ayyathurai

For Respondents .. R1- Court – Insurance Ombudsman

Mr.M.B.Gopalan – R2 to R4

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O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.S.Ayyathurai, learned Counsel appearing for the petitioner and Mr.M.B.Gopalan, learned counsel for the respondents 2 to 4.

3.The petitioner is the wife of late Mr.R.Ramesh, and she has filed this Writ Petition challenging the order passed by the first respondent/Insurance Ombudsman dated 29.04.2014, who held that the life assured alone is responsible for suppressing the material information regarding his health condition in the proposal is not justified and while rejecting the claim of the petitioner directed the Insurer to pay an ex-gratia of Rs.50,000/- to be paid to the petitioner/claimant in full and final settlement.

4.During the pendency of the Writ Petition, the respondent Insurance Company could not settle the amount in the light of specific embargo under Rule 16(5) and 17 of the Redressal of Public Grievance Rules, 1998. The reason assigned by the respondent Insurance Company for repudiating the Policy is on account of the fact of suppression of the pre-existing health condition of the petitioner's husband. The respondent Insurance Company stated that the petitioner's husband was suffering from Psychosis and Poly Substance Abuse for which he had consulted the Doctors, was taking treatment in a Hospital and was consuming alcohol and smoking habits for more than ten years prior to death and he has not disclosed the same at the time when the Policy was taken. Further, the learned counsel for the respondent Insurance Company produced before this Court the Medical Records given by the Hospital, which also states that the petitioner's husband was drug dependence, etc.

5.Therefore, unless and until the petitioner establishes that there was no suppression of materials facts that at the time of taking Insurance Policy, the question of interfering with the Award passed by the Ombudsman does not arise. Further, such exercise cannot be done in a Writ Petition, since the facts are seriously disputed and the respondent Insurance Company would rely upon the medical records produced by the Hospital in which the petitioner's husband was treated for drug dependence. However, with regard to the amount of ex-gratia which has been ordered to be paid, there can be no difficulty for this Court to direct the same to be paid to the petitioner. Though there is embargo on the Insurance Company to release the amount in terms of Rule 16(5) and Rule 17 of the Redressal of Public Grievance Rules, 1998, such Rules cannot prevent this Court from issuing appropriate directions to the Ombudsman to consider the claim made by the petitioner and record a finding that the petitioner is entitled for an ex-gratia of Rs.50,000/- However, it is made clear that this amount which has been paid to the petitioner should be adjusted as against any future amounts which the petitioner may obtain in the event of her success before the appropriate forum.

6.In the light of the above, the Writ Petition is disposed of by directing respondent Insurance Company to pay a sum of Rs.50,000/- as ex-gratia to the petitioner as per the orders passed by the first respondent Insurance Ombudsman and with regard to the other benefits, it is open to the petitioner to approach the appropriate forum and in such an event, it is open to the respondent Insurance Company to raise all contentions which are available to them under law. The above amount of Rs.50,000/- shall be payable to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

rpa

-s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

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   Life Insurance Corporation of India
   Jeevan Prakash, Arcot Road
   Vellore, Vellore District.

+ 1 cc to Mr.S.Ayyathurai, Advocate SR 18219

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 18123

br(co)
prk10/4