IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.7.2017

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WRIT APPEAL NO.654 OF 2017

Tmt.R.Sudha ...Appellant/Petitioner

Vs

1. The Insurance Ombudsman,
   Fathima Akktar Court, 4th Floor,
   Teynampet, No.453, Anna Salai,
   Chennai-18.

2. Life Insurance Corporation of India,
   Yogakrishna, Jevan Bima Marg,
   Mumbai-1.

3. The Zonal Manager, Life Insurance
   Corporation of India, LK Building,
   No.153, Anna Salai, Chennai-2.

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

APPEAL under clause 15 of the Letters Patent against the order dated 30.3.2015 made in W.P.No.26072 of 2014.

W.P.No.26072 of 2014:- Petition filed under Article 226 of the constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records from the 1st respondent relating to the order made in complaint in CHN /L029/ 1415/0029 dated 29.4.2014 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 Appellant : Sri.S.Ayyadurai
For Respondents : Sri.M.Vijayaraghavan

JUDGMENT

(Judgment was delivered by NOOTY.RAMAMOHANA RAO,J)

This writ appeal is preferred by a hapless and helpless woman, who, perhaps, has suffered the maximum because of the incorrigible addiction suffered by her husband from out of multi drug abuse.

2. The writ petition is directed against an order passed by the Insurance Ombudsman, who, by his order dated 29.4.2014, directed to pay an ex-gratia amount of Rs.50,000/- to the writ petitioner towards full and final settlement.

3. After having perused the order passed by the Insurance Ombudsman, we are completely in agreement with the conclusions drawn by him. The policy has been secured without faithfully and truthfully disclosing the medical history and the previous round of hospitalization for de-addiction by the insured. Therefore, for very justifiable reasons, the Life Insurance Corporation of India has repudiated the policy.

4. However, the Insurance Ombudsman has considered the fact situation prevailing as warranting to exercise some discretion and accordingly exercised the discretion and ordered for payment of ex-gratia. While ordering payment of ex-gratia, the Ombudsman has adopted a very conservative stance and awarded a paltry sum of Rs.50,000/-.

5. By the current standards of cost of living and the spiralling inflationary rates, a sum of Rs.50,000/- can never be considered to be a reasonable amount of ex-gratia. Even though the ex-gratia amount cannot be claimed as a matter of right and it is purely an act of grace, but nonetheless, when it has been chosen to exercise such discretionary jurisdiction for awarding ex-gratia, the amount to be fixed under the head 'ex-gratia' should be a fair and reasonable one. In the overall given facts and circumstances, which are extremely peculiar to this case, we consider that the Ombudsman would have been far more justified in awarding the ex-gratia amount at Rs.1,00,000/- instead of Rs.50,000/-.

6. Therefore, except only to the extent of revising the ex-gratia amount awarded by the Ombudsman from Rs.50,000/- to Rs.1,00,000/- (Rupees one lakh only), we find no merit in the contention canvassed on behalf of the appellant by the learned

counsel strenuously. We have not found anything erroneous in the action of the Life Insurance Corporation of India in repudiating the contract of insurance. It has been validly and legally repudiated. It is based upon the finding of fact that the insured has fully suppressed the medical history, which he was thoroughly aware of relating to his hospitalization and undergoing treatment for de-addiction prior to taking the insurance policy. He has relapsed into his bad ways of life thereafter again. Therefore, the Insurance Company has not been correctly and faithfully informed of the health condition of the insured when the policy was obtained.

7. We find no reason to interfere with the decision of the Life Insurance Corporation of India to repudiate the contract of insurance. But, however, in the peculiar facts and circumstances, the ex-gratia amount has been enhanced to Rs.1,00,000/-.

8. With this, the writ appeal stands disposed of. Time of 30 days is granted for payment of the differential amount from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

To

1.The Insurance Ombudsman, Fathima Akktar Court, 4th Floor, Teynampet,
No.453, Anna Salai, Chennai-18.

2.Life Insurance Corporation of India, Yogakrishna, Jevan Bima Marg,
Mumbai-1.

3.The Zonal Manager, Life Insurance Corporation of India, LK Building,
No.153, Anna Salai, Chennai-2.

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

+1cc to M/S.M.B.Gopalan, Advocate Sr. 54799
+1cc to Mr.S.Ayyathurai, Advocate Sr. 54956

WA.No.654 of 2017

GP(CO)
VR(18/08/2017)