BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated :07.09.2018
CORAM
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD)No.1171 of 2017

E.Saraswathi .. Appellant/Petitioner

Vs.

1. The Chief Post Master General,
   Tamil Nadu Circle,
   Chennai – 02.

2. The Assistant Divisional Manager,
   PLI (Post Life Insurance),
   Tamil Nadu Circle, Chennai -02.

3.Mrs.K.Pandeeswari .. Respondent/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent, to call for the records and set aside the order passed in W.P(MD) No.11243 of 2014 on 12.09.2014 in respect of directing the 2nd respondent to retain the remaining amount and pay it to the third respondent as and when she appears before them and allow this writ appeal.

Prayer in WP(MD)NO. 11243 OF 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, to direct the 2nd respondent to disburse the Postal Life Insurance amount paid by deceased Karathick (Policy NO. TN 487863-CS) within the stipulated period.

For Appellant	:	Mr.G.Marimuthu
For R-1 – R-2	:	Mr.S.Jeyasingh
For R-3	:	No Appearance

JUDGMENT

[Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.]

The appellant herein had originally filed a writ petition in W.P(MD)No.11243 of 2014, for issuance of a Writ of Mandamus, directing the third respondent to disburse the postal life insurance amount paid by her deceased son Karthick.

2. The appellant / writ petitioner is the mother of the deceased Karthick and the third respondent is his wife. Due to certain illness, the said Karthick died on 12.01.2011. Thereafter, a succession O.P. was filed in O.P.No.3 of 2012 on the file of the Sub-Court, Theni. As the said O.P was not contested by the third respondent, an order was passed on 16.03.2012 issuing a succession certificate to the appellant authorising her to collect the securities, debts, credits, interest and dividends.

3. It is stated that the third respondent does not have issues through the deceased Karthick. Therefore, only the appellant and the third respondent being the mother and wife respectively are the Class-I legal heirs and are entitled for any benefits equally. Now, the dispute is with respect to the claim of insurance policy amount in respect of policy No.TN-487863-CS for Rs.2,00,000/- in the name of the deceased Karthick, which is lying with first and second respondents.

4. It appears that the appellant had produced a legal heir certificate issued by a Tahsildar mentioning her as the only legal heir of the deceased Karthick. The said certificate may not be correct as the third respondent is also a legal heir, which has been suppressed by the appellant before the Tahsildar. Therefore, the said certificate cannot be relied on.

5. It is now stated by the learned counsel appearing for the appellant that despite service of notice, the third respondent has not appeared and she now got married to one Prabhakaran and is leading a comfortable life. Whereas the appellant being a old woman having lost her husband and son is penny less. It is also admitted that 50% of the Insurance Policy amount viz., Rs.1,00,000/- payable to the appellant is already received by the appellant. Now, the remaining 50% amount, which should go to the wife of the deceased Karthick viz., the third respondent is lying with the first and second respondents.

6. The learned counsel appearing for the appellant says that as the third respondent got already re-married and other than that, she is not interested in taking the amount. If she is not interested in taking the amount, such share also go to the appellant, who is the mother of the deceased.

7. The said argument cannot be countenanced because the third respondent has not relinquished her share in favour of the appellant, who is her mother-in-law. Therefore, the said amount can be received only by her and not by anybody else. Merely because the appellant is a widow and incapable of earning money, the same will not entitle her to get remaining 50% of the amount belonging to the third respondent.

8. The learned counsel appearing for the appellant also brought to the knowledge of this Court the agreement between the third respondent and the appellant, wherein the third respondent has given an undertaking that she will not claim any death benefits including the compassionate appointment etc., due to the death of her husband Karthick. However, the said agreement does not specifically mention that she is giving up the right in the policy taken with the respondents 1 and 2 ie., Policy No.TN-487863-CS.

9. Now, the question is whether the appellant is entitled for the remaining 50% of the policy amount or not.

10. Earlier, the notice issued to the third respondent was served, but she has not entered appearance either in person or through counsel. Therefore, we directed the first and second respondents to issue a notice to the third respondent once again to ascertain her willingness. Despite such direction, they have not taken any private notice.

11. It is stated that the first and second respondents are retaining 50% of the policy amount payable to the third respondent. Though the appellant has received her share of the policy amount, she has now filed the present appeal for receiving the balance of 50% amount also, contending that the wife of the deceased/her daughter-in-law is not interested in receiving the amount. If that is so, it is open to the appellant to take her daughter-in-law along with her, to the office of the respondents 1 and 2, to receive the balance amount and get the amount from her or it is open to the appellant to get a release deed or authorisation from the third respondent, which should be acceptable to the first and second respondents, for withdrawal of remaining 50% amount. The respondents 1 and 2 also after verification of the authenticity of such deed, may release the amount in favour of the appellant.

12. It is made clear that this Court is not giving any direction to the first and second respondents to release the amount in favour of the appellant. However, recommends that in the event the third respondent is not willing to take the amount, the same may be disburse to the appellant by following appropriate procedure applicable for the same.

13. With the above observations, the writ appeal is disposed of. No Costs.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Chief Post Master General,
   Tamil Nadu Circle,
   Chennai – 02.

2. The Assistant Divisional Manager,
   PLI (Post Life Insurance),
   Tamil Nadu Circle, Chennai -02.

+1cc to Mr.S.Jeyasingh, Advocate Sr.No.82924

PM

VB/RSK/SAR4/10.10.2018/4P/4C

Judgment made in
W.A(MD)No.1171 of 2017
07.09.2018