IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2356 OF 2018

Ashwin Liladhar Shah, Advocate and Solicitor, residing at A/5, Kirti Mandir, Second Floor, 106, L. J. Road, Mahim, Mumbai 400 016	]	..	Petitioner.
v/s.			
1 Life Insurance Corporation of India having its office at Yogakshema Jeevan Bima Marg, Mumbai 400 021.	]		
2 The Ld. Insurance Ombudsman Jeevan Seva Annexe, Third Floor, S. V. Road, Santacruz (W), Mumbai 400 054.	]		
3 Insurance Regulatory and Development Authority of India Mumbai Regional Office, Royal Insurance Building, 12, J. Tata Road, Ground Floor, Mumbai 400 020 Near Churchgate	]	..	Respondents.

Mr. Mayur Khandeparkar with Mr. Umesh Tawari, Mr. Kunal Kamath, Ms. Hetal Vithlani and Mr. Hrishikesh Mastikar i/b.Ms. Trisha Yelve, for the Petitioner.
Ms. Pooja P. Joshi, for Respondent No.1.
Mr. Durgaprasad Sabnis, for Respondent No.3.
Mr. Shriniwas Bhave with Ms. Sunayana Kashid i/b. Bhave & Co., for Respondent No.3.

CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.
RESERVED ON : 28th MARCH, 2019.
PRONOUNCED ON : 4th APRIL, 2019.

JUDGMENT (Per M. S. Sanklecha,J.):-

This Petition under Article 226 of the Constitution of India, seeks a writ of mandamus to Respondent No.1- Life Insurance Corporation of India (LIC), directing it to honour the LIC Policy (the said Policy) issued to late Ms. Bharati Bheda. The late Ms. Bheda,the assured had during her life time nominated the Petitioner as the beneficiary of the said policy. Therefore, in terms of the record of the LIC, it be directed to make over the amounts due including interest thereon under the said policy to the Petitioner as the nominee of the assured i.e. the late Ms. Bharti Bheda.

2 This Petition came up for consideration on 15th March, 2019 at which time, we passed the following order:-

> *"1. Heard the learned Counsel for the petitioner and the learned Counsel appearing appearing for the first respondent.*
>
> *2. Considering the limited controversy involved in this petition, the same deserves to be disposed of finally at the stage of admission. For that purpose, the petition shall be listed High on Board on 25th March, 2019.*
>
> *3. The advocates appearing for the respondents waives service.*
>
> *4. We make it clear that if the first respondent is willing to pay the amount payable under the Policy to the petitioner, it is always open for the first respondent to pay the amount to the petitioner during the pendency of this petition.*
>
> *5. At this stage, the learned Counsel appearing for the first respondent on instructions from Mr. Dilip Shirbhate, Mr. Sri. Narayanan and Mrs. Kaur of LIC of India, states that the first respondent will pay the amount covered by the Policy to the petitioner within a period of one week from today. We accept the said statement."*

3 Consequent to the above, on 28th March, 2019 when this Petition came up for consideration, we were informed by the Counsel for the Respondent No.1-LIC that it had in terms of its statement made on 15th March, 2019 paid the amount of Rs.45.43 lakhs (inclusive of interest) after deduction of tax at source under the said policy to the Petitioner. On the aforesaid facts being pointed out, we thought that the grievance of the Petitioner stood resolved.

4 However, Mr. Khandeparkar, learned Counsel appearing for the Petitioner states that the interest has not been paid fully on the amount due under the said policy. Thus, leading to a loss to the estate of the assured, the late Ms.Bheda. It was pointed out that interest has been paid only w.e.f. 2nd December, 2018 up to 21st March, 2019. Thus, there has been a short payment of interest on account of late payment of the amounts due under the said policy. In support, our attention was invited to the Insurance Regulatory Development Authority of India (Protection of Policyholders' Interest) Regulations, 2017 (Regulations) which mandates the manner and the time frame within which a claim under the Insurance Policy has to be dealt with/ disposed of by the Insurer such as Respondent No.1-LIC. It also provides for interest payable in case there is any delay in making the payment to the nominee of the insurance policies issued by the Insurer.

5 In particular, our attention is invited to Regulation 14 of the said Regulation which reads as under:-

> *"14:- Claims Procedure in respect of a Life Insurance Policy*
> *(1) A life insurer, upon receiving a death claim, shall process the claim without delay. Any queries or requirement of additional documents, shall be raised all together and not in a piece-meal*

manner, within a period of 15 days of the receipt of the claim.
(2) (i) A death claim under a life insurance policy shall be paid or be rejected or repudiated giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and required clarifications. However, where the circumstances of a claim warrant an investigation in the opinion of the insurer, it shall initiate the same at the earliest and complete such investigation expeditiously, in any case not later than 90 days from the date of receipt of claim limitation and the claim shall be settled within 30 days thereafter.
(ii) If there is delay on the part of Insurer beyond the timelines mentioned in sub regulation (i) above, the insurer shall pay interest at a rate, which is 2% above bank rate from the date of receipt of last necessary document.
(iii) to (v) …. …. …. …. …. …. ….
(vi) The interest payments referred above in sub regulations (ii), (iii), (iv), (v) shall be paid by the Life Insurer suo moto without waiting for specific demand from the insured/claimant."

6 Mr. Khandeparkar, points out that the Petitioner had made a claim on 19th January, 2018 as a nominee in terms of the said policy with the LIC. This claim was consequent to the death of the assured Ms. Bheda on 29th December, 2017. Thereafter, the information called for by LIC in the prescribed forms were duly submitted on 5th February, 2018 to the LIC. In terms of the above Regulation, the claim has to be settled at the highest within a period of 135 days from the date of making the claim even in case where investigation is to be done. Therefore, in case, there is any delay beyond the timeline prescribed in Regulation 14(2) (i) of the Regulation, then in terms of Regulation 14 (2) (ii) of the Regulation, the insurer i.e. Respondent No.1-LIC is liable to pay interest at the rate which is 2% above bank rate from the date of the receipt of the last necessary documents to enable the LIC to honor its commitment in terms of the policy. In this case, admittedly, the last document which was required by LIC was furnished on 5th February, 2018. Thus, the Respondent No.1-LIC

as a Life Insurer has to grant interest suo moto to the Petitioner on account of delay without waiting for any specific demand being made by the assured or his nominee as provided in Regulation 14 (2)(vi) of the said Regulations.

7 Ms. Pooja Joshi, learned Counsel appearing for Respondent No.1-LIC contends that any interest in excess of that already paid is not payable to the Petitioner. She points out that the delay in settling the claim arose on account of the fact that this Petition was pending in this Court since June, 2018. It was further submitted that the delay took place only because the Petitioner had not submitted all the documents in the first instance on 19th January, 2018 while making his claim as a nominee of the assured the late Ms. Bharati Bheda. She submitted that in view of a Circular dated 10th May, 2006 issued by the Central Office of Respondent No.1 nomination of a policy should be in favour of a close relative. In this case, as the Petitioner is not related to the assured Ms. Bheda coupled with the fact that the brother of the assured Ms. Bheda had also made a claim, seeking the benefit of the said policy as a relative of the deceased that the delay took place. It was in the above circumstances, that the LIC insisted on an Indemnity Bond from the Petitioner (which he has not given) leading to a delay in making payment to the Petitioner under the policy. Thus, this delay was attributable to the Petitioner and, therefore, interest as paid is sufficient re-compense for the delay, if any. She also placed reliance on the Supreme Court 's decision in the case of ***Vishin N. Khanchandani & Another v/s. Vidya L. Khanchandnani & Another [2000] 6 SCC 724*** to support her case that no further interest is payable by the Insurer-LIC to the Petitioner.

8 We have considered the rival submissions. We note that the principal amount due under the said policy to the assurer's nominee i.e. Petitioner herein has been paid by the Respondent No.1-LIC. This payment has been made during the pendency of this Petition. Therefore, the controversy in this Petition is now restricted only to the quantum of interest payable by LIC for the alleged delay in meeting its commitment under the said policy. We note that the Respondent No.1-LIC have already paid interest on the delayed payment of the principal sum due under the said policy to the Petitioner at 6.12% for 110 days i.e. from 2nd December, 2018 to 21st March, 2019. We specifically asked Ms. Joshi, learned Counsel for the LIC to what was the event on 2nd December, 2018 which triggered the payment of interest from that date to the Petitioner. However, she was unable to point out any particular event and/or that the completion of the claim by the Petitioner on a specific date which led to the computation of interest from 2nd December, 2018. It is not the case of LIC that all the documents necessary to make the payment under the policy was submitted only on 1st December, 2018. Thus, we note that there is no basis for the LIC to pay interest from 2nd December, 2018 till the date of payment of the principal on 21st March, 2019.

9 We note that under Section 39 of the Insurance Act, 1938, a nominee of a policy holder is entitled to be paid by the Insurer in the event of the death of the policy holder. The Respondent No.1-LIC does not dispute that the payment under the said policy is due to assured Ms. Bheda's nominee – Petitioner herein. It is also not disputed before us that the claim made by the Petitioner was completed on 5th February, 2018. The timeline provided in Regulation 14 of the said Regulation would commence from 6th February, 2018. The delay, thereafter, on account of

the Respondent No1.-LIC seeking an Indemnity Bond from the Petitioner was completely unwarranted as there is no such requirement under the said policy, nor under the Insurance Act or the guidelines framed by Respondent No.1-LIC and/or Respondent No.3- Insurance Regulatory and Development Authority of India. This demand was thus without any basis, as is evident from the fact that the LIC has honoured the said policy by making the payment to the Petitioner without insisting upon an Indemnity Bond. In fact, in terms of Regulation 14 of the said Regulation, the obligation of the insurer on receipt of the claim is to the process the same without delay. Questions/ clarification, if any by the LIC should be asked within 15 days of the receipt of the claim. Therefore, the amounts due under the policy should be paid within 30 days of the receipt of all relevant and supporting papers from the claimant. In case, any investigation is warranted, same has to be initiated at the earliest and completed within 90 days from the date of the receipt of the claim and thereafter, the claim shall be settled within 30 days thereafter. In this case, nothing has been shown to us which could warrant any investigation of the part of the insurer-LIC before it could honour the claim made by the nominee of the assured. The reliance upon the LIC Circular dated 10th May, 2016 does not assist the Respondent No.1-LIC as the condition therein are to be applied at the time when the policy is taken by the assured and has no application while honouring the said policy and making payment to the nominee of the assured in terms of the policy. In any case, the aforesaid Circular now stands superseded by the said Regulation which clearly provide the manner in which the claim of an assured and/or the nominee of the assured has to be processed by Respondent No.1-LIC. Thus, there is no justification warranting the LIC delaying the payment under the said policy. Thus, it is liable to pay interest in terms of the Regulation 14 of the said Regulations.

10 Ms. Joshi, the learned Counsel appearing for the LIC placed reliance upon the decision of the Supreme Court in Vishin N. Khanchandani (supra). It is a case dealing with a right of the nominee under the Government Saving Certificate Act, 1959, to receive the amount due under the Saving Certificate after the death of original holder. The Court held that, the nominee would receive and hold the amounts received in trust for all those who are entitled to the funds under the certificate under the laws of Succession. Therefore, the aforesaid decision has no bearing with the controversy at hand i.e. the obligation to pay interest on delayed payment.

11 In the above view, non-payment of interest after 30 days of making complete claim i.e. 5th February, 2018 as in this case would lead to a loss to the estate of the deceased assured. Thus, Respondent No.1-LIC is obliged to pay interest at 2% higher then the bank rate. The bank rate being defined under the said Regulation as rate fixed by the Reserve Bank of India at the beginning of the Financial Year. The Respondent No.1-LIC would compute the interest payable to the Petitioner in terms of Regulation 14 of the Regulations and pay interest to the Petitioner till 1st December, 2018. This as the interest thereafter has been paid from 2nd December, 2018 up to 21st March, 2019 when payment was made to the Petitioner as a nominee of the Assured. However, in case of any short fall in the interest paid from the period 2nd December, 2018 to 21st March, 2019, the Respondent No.1-LIC will make good the short fall, if any, along with the interest payable for the period ending 30 days after 5th February,

2018 till 1st December, 2018. The Respondent No.1-LIC are directed to make payment of interest due to the Petitioner within a period of four weeks from today.

12 Accordingly, **Petition allowed** in the above terms.

(M.S.SANKLECHA,J.) **(A.S.OKA,J.)**