

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.22234 of 2016

and W.M.P.Nos.18968 of 2016 and 26265 of 2018

Jasmine Ebenezer Arthur

.. Petitioner

Vs.

1. HDFC ERGO General Insurance Company Limited,
Shop No.A, Ground Floor, Kalyani Block,
Doshi Symphony, Velacherry-Tambaram Main Road,
Pallikaranai,
Chennai-600 100.

2. HDFC Bank Ltd.,
Shop No.A, Ground Floor, Kalyani Block,
Doshi Symphony, Velacherry-Tambaram Main Road,
Pallikaranai, Chennai-600 100.

3. Insurance Regulatory and Development Authority
of India, 3rd Floor, Parisrama Bhavan,
Basheer Bagh, Hyderabad-500 004.

.. Respondents

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent herein to honour the claim of Rs.36,45,813/- made by the petitioner in respect of Health Insurance Policy availed by petitioner's husband in Policy No.2918200650184900000 dated 31.12.2013 without insisting for any further documentations or particulars.

For Petitioner : Mr.S.R.Raghunathan

For Respondents : Mr.S.Manohar for R1

Mr.K.J.Parthasarathy for R2

No appearance for R3

O R D E R

This writ petition has been instituted by the petitioner seeking a Writ of Mandamus directing the first respondent herein to honour her claim of Rs.36,45,813/- in respect of Health Insurance Policy availed by her husband in Policy No.2918200650184900000 dated 31.12.2013 without insisting for any further documentations or particulars.

2. The case of the petitioner, as has been culled out from the affidavit and the typed set of papers, runs infra :

2.1. The petitioner and her husband applied for a Home Loan with the second respondent for the property located at Plot No.19, Survey No.371/6A2, Srikrishna Nagar, S.Kolathur, Chennai. An offer letter dated 31.07.2013 bearing File No.609270480/DE107 was issued in favour of the petitioner's husband, whereby, a sum of Rs.35,00,000/- was sanctioned to them, which has to be repaid in 120 Equated Monthly Installments of Rs.47,522/- each. Home Loan Agreement dated 16.12.2013 was also entered into between the parties.

2.2. The petitioner stated that her husband was advised to avail insurance coverage for the Home Loan called Home Suraksha Plus stating that the said insurance policy, inter alia, covers Critical Illness Diagnosis as well. Section 3(c) of the Policy also provides coverage for "Myocardial Infarction". He took the policy bearing No.2918200650184900000 dated 31.12.2013, by paying a premium of Rs.1,45,812/- covering the period upto 30.12.2018.

2.3. The couple were residing in Abu Dhabi. On the fateful day, when the petitioner's husband was proceeding to his office by driving the car, he suffered massive cardiac arrest and was rushed to Mafrqa Hospital. It was diagnosed that he suffered from cardiac arrest and he went through ventricular fibrillation. However, he breathed last on 06.04.2015 in Abu Dhabi, where, no post-mortem could be conducted.

2.4. The petitioner filed a claim petition on 20.04.2015, which was assigned No.C291815000056. Since there was inaction on the part of the first respondent, she lodged a complaint with the grievance cell, thereupon, she was told on 13.10.2015 that the document with respect to the "cause of Ventricular Fibrillation and Cardiac Arrest from treating Doctor" was required. She received the same on 22.11.2015 from Mafrqa Hospital and submitted it with the first respondent on 24.11.2015, which was received by them on the very next day, i.e., on 25.11.2015. As per the report, the cause of the death of her husband was "acute coronary artery syndrome".

2.5. The petitioner was informed during January, 2016, that her claim had been repudiated on the ground that the cause of

death of her husband was not covered under 'Major Medical Illness". Aggrieved by such repudiation, the petitioner lodged a complaint with the grievance cell on 03.03.2016, which did not yield any positive response. Hence, she filed a complaint with the Insurance Ombudsman, Chennai, on 15.04.2016, which was dismissed vide Award dated 15.05.2016.

2.6. In such a backdrop, the petitioner is before this Court with the aforesaid prayer.

3. The first respondent filed a counter-affidavit dated 07.01.2019 refuting the allegations. It is claimed that the first respondent is not a "State" within the meaning of Article 12 of the Constitution and hence, by merely impleading the third respondent as a party, the writ petition seeking Mandamus against the first respondent is not maintainable in law. Since the petitioner and the first respondent only have a contractual relationship, she cannot maintain this writ petition and she should have approached appropriate forum to ventilate her grievance, by placing reliance on oral and documentary evidence. The cardiac arrest suffered by the petitioner's husband is not Myocardial Infarction and thus, not covered under the policy and hence, she cannot stretch the policy to include the uninsured risks or derive any extraordinary benefits and they have not denied any lawful right covered under the policy. To substantiate this claim, it is stated that they have referred the case to a medical expert, who too opined that the cause of death did not fall within cover. Placing reliance on the award passed by the Insurance Ombudsman dismissing the claim of the petitioner, the first respondent prayed for dismissal of this writ petition.

4. A counter-affidavit dated 23.02.2018 was filed by the second respondent seeking dismissal of the writ petition almost on the same grounds that were raised by the first respondent. It is also stated that they being the secured creditor is entitled to take recourse to legal remedies for recovery of dues with respect to the home loan. It is further stated that since the rejection of the claim of the petitioner was upheld by the Insurance Ombudsman as early as on 06.05.2016, which was not put to challenge before the appropriate forum, this writ petition is nothing, but abuse of process of Court and on this sole ground, it deserves to be dismissed.

5. Learned counsel for the petitioner contended that the first respondent is a registered insurance entity with the third respondent and hence, this writ petition is maintainable in law, though the prayer is for the enforcement of the claim covered under the contract of insurance. It is submitted that the first respondent is playing with jugglery of words to deny the rightful claim of the petitioner. Learned counsel relied upon

the judgment of the Hon'ble Apex Court in Life Insurance Corporation of India and Others V. Asha Goel and Another, (2001) 2 SCC 160, to drive home the point that the writ petition to enforce a contractual right is maintainable.

6. Heard the learned counsels appearing on behalf of the respondents 1 and 2 on the above submissions and perused the materials placed before this Court.

7. The question that arises for consideration is whether the writ petition is maintainable to enforce a contractual right in the given facts and circumstances of the case ?

8. The basic object of the Insurance Act was to ensure the vast power concentrated in the hands of insurance companies was not abused and the policyholders' money was safely invested. However, in spite of regulations by the law, there is much abuse of the Trust by the private insurers, which lead to nationalization of insurance sector. Thereafter, the insurance business was conducted through the Corporations of the Central Government under Life Insurance Corporation of India and General Insurance Corporation, etc.,.

9. Today, in the modern world, there are numerous socio-economic activities to be performed by the State. This resulted in sharing some of the obligations to the other bodies, while retaining certain level of control over them. This gave an impetus to the public and private bodies to acquire major concerns and started exercising monopoly power over its activities, which are close to State functions. By allowing these governmental functions to the private bodies, the fundamental rights of the citizens are being strained. Therefore, to protect the rights from the clutches of the Legislature, Executive, public and private agencies, the Courts have to extend their power under Article 226 of the Constitution of India, which is usefully extracted hereunder :

"226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High

Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32."

10. A reading of Article 226 makes it clear that it can be invoked not only for infringement of fundamental rights, but also for any other purpose. Therefore, as stated above, the question that requires determination is whether the private bodies performing public duties can be brought within the purview of judicial review. If a private body is brought within the purview of Article 12, then it will be subject to constitutional limitations. As happened in this case, lack of effective control has made the private bodies acquire more power similar to public authorities. The public monopoly power is replaced by private monopoly power. Hence, it becomes necessary that the private bodies should be made accountable to judiciary within the judicial review. If any private body has a public duty imposed on it, the Court has jurisdiction to entertain the writ petition.

11. At this juncture, it is relevant to note that the Hon'ble Apex Court in LIC V. Escorts Ltd., reported in AIR 1986 SC 1370 considered the activities of the LIC, which comes within the public law domain and made the following observations :

"101. It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary. The learned counsel relied on the decisions of this Court in Sukhdev Singh [Sukhdev Singh v. Bhagatram, (1975) 1 SCC 421, Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248], International Airport Authority [R.D. Shetty v. International Airport Authority, (1979) 3 SCC 489] and Ajay Hasia [Ajay Hasia v. Khalid Majib Sehravardi, (1981) 1 SCC 722]. The learned Attorney-General, on the other hand, contended that actions of the State or an instrumentality of the State which do not properly belong to the field of public law but belong to the field of private law are not liable to be subjected to judicial review. He relied on O'Reilly v. Mackman (1982) 3 All ER 1124, Davy v. Spelthorne (1985) 3 All ER 278, I Congress del Partido, (1981) 2 All ER 1064 R.v. East Berkshire Health Authority (1984) 3 All ER 425 and Radhakrishna Agarwal v. State of Bihar (1977) 3 SCC 457.

xxxxxxx While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution, we do not construe Article 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

102. For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law

character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder."

12. It is argued by the respondents 1 and 2 that it is not performing any statutory function or obligations. According to the first respondent, the dispute has to be effectively decided only based on evidence and merely because Insurance Regulatory and Development Authority of India (in short, "IRDAI") is arrayed as the third respondent, Article 226 of the Constitution cannot be made applicable. The question whether writ petition was maintainable depends on the fact that the facts had an analogy with public law issues. It is apt to refer to the following portion of the judgment of the Hon'ble Apex Court in *M.C.Mehta V. Union of India*, AIR 1987 SC 1086, wherein, it was held as follows :

"30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the raison d'etre of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private

entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoists that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in R.D.Shetty case (1979) 3 SCC 489, brought public sector corporations within the scope and ambit of Article 12 and subjected them to the discipline of fundamental rights. Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on December 15, 1986 and we are called upon to deliver our judgment within a period of four days, on December 19, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so."

13. Even though law seems to be clear in constituting a balance between the insuring party and insured, in reality, there is no equality between the two as insurer is the richest corporation and the individual is an ordinary individual. In fact, in many cases, the individual has no legal knowledge about the ambiguous language used in the company's policy with an intention to waive them from the liability to pay the injured on happening of an agreed event. Many a times the companies willfully neglect reimbursing the insured, who instead of getting their amount from the company have to pay the Courts for getting their rights enforced. The case on hand is the classic example of the same.

14. In India, there should be more transparency and accuracy of the facts before the contract comes into force. This reduces

chances of confusion later, when the claim is made under the insurance policy. The malpractice and arbitrary use of power by the insurance companies must be restrained by incorporating provisions to reduce the chances of ambiguity at a later date. Or else, the insurer would continue to take advantage of the insured by falsely repudiating the claims made by the insured.

15. In the case on hand, the illness, due to which the death occurred, is in dispute. Great care must be taken in deciding what would constitute illness or material change in health. Otherwise, there is a great chance of one being taken for the other by the insurance companies. Therefore, this Court has taken due care in identifying the said fact, on which the first and second respondents are tending to repudiate the claim, as to whether it is of material nature or not before deciding the claim.

16. The petitioner had made her claim after her husband's death under the head "major medical illness" with all relevant documents. However, it was intimated to her that the only missing document was "cause of Ventricular Fibrillation and Cardiac Arrest from treating Doctor". The petitioner again obtained a report from Mafraq Hospital, dated 22.11.2015 as per which, the cause of death was "acute coronary artery syndrome". As per Section 3 of the Policy in question the medical event of "Myocardial Infarction" was covered under the Policy. Though the cardiac arrest suffered by the husband of the petitioner falls under the abovesaid medical event, the first and second respondents are denying the rightful claim to the insurance cover.

17. In view of the doubt raised by the first and second respondents, this Court was desirous of obtaining a medical report from the Experts clarifying the above referred terms "Acute Coronary Syndrome (ACS)" and "Myocardial Infarction (MI)". Accordingly, a report from Expert Cardiologist was sought for through the Dean of Rajiv Gandhi Government General Hospital, Chennai, for which, learned counsel for respondents 1 and 2 has no objection. An opinion was obtained from Dr.M.Nandakumaram, M.D. D.M.(Cardio), Professor of Cardiology (C-VI Unit), Madras Medical College and Rajiv Gandhi Government General Hospital, on 07.03.2019, which reported as follows :

"Hence, I am of the opinion and report that ACUTE CORONARY SYNDROME (ACS) includes MYO-CARDIAL INFARCTION (MI). The Cause of Death in MI can be due to VENTRICULAR FIBRILLATION (VF). If the patient had died of ACS & VF the cause of Death can be considered due to MYO-CARDIAL INFARCTION (MI)."

From the above, it is very clear and evident that the cause of death of the insured is well within the defined medical events

prescribed in the policy.

18. The third respondent/IRDAI is the governing body that considers all aspects of the insurance sector. It takes keen interest in the formation and operation of all insurers and has strict guidelines, which they must follow. The said rules and guidelines, admittedly, apply to both private and public insurance companies. In this case, the petitioner's husband/insured availed home loan and at the inducement of the second respondent, he subscribed to the insurance cover offered by the first respondent against the aforementioned housing loan called "Home Suraksha" by paying premium. The policy in the name of the petitioner's husband covered "Major Medical Illness" and procedures stated under Section 3 of the Policy. The heart attack suffered by the petitioner's husband by no stretch of imagination could be stated as NOT a major medical illness. The repudiation of the same by the first and second respondents would result in losing public faith in the private insurance companies.

19. At this juncture, it is to be stated that most of the people give high priority to security of their investments, though the present scenario in the insurance sector offer many high return, but risk-involved policies. Therefore, the insurance companies should focus on educating their customers about their financial backing. Such propagation and education should not only be in the form of issuing pamphlets, booklets, etc. to the customers, but also providing them with audio and visual forms, such as informative slides, conversational videos educating about the Frequently Asked Questions (FAQs), etc., which could be given either via CDs or e-mails, in bilingual. The reason being even the educated professionals of the large portion of the population are unaware of various insurance plans and the risk involved in them. The insurance companies cannot wash their hands by merely contending that every minute information has been given in the offer documents and the insured accepted those conditions by affixing their signature in the documents, as those information were never noticed by the insured. The companies should concentrate on factors like right mix of flexibility, risk and return, which will suit the customer.

20. The foregoing discussion would lead to the only irresistible conclusion that the petitioner is entitled to succeed in this writ petition. Accordingly, this writ petition is allowed and the first respondent is directed to honour the claim made by the petitioner in respect of Health Insurance Policy availed by her husband in Policy No.2918200650184900000 dated 31.12.2013 without insisting for any further documentations or particulars in accordance with law. The said

exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

Insurance Regulatory and Development
Authority of India,
3rd Floor, Parisrama Bhavan,
Basheer Bagh, Hyderabad-500 004.

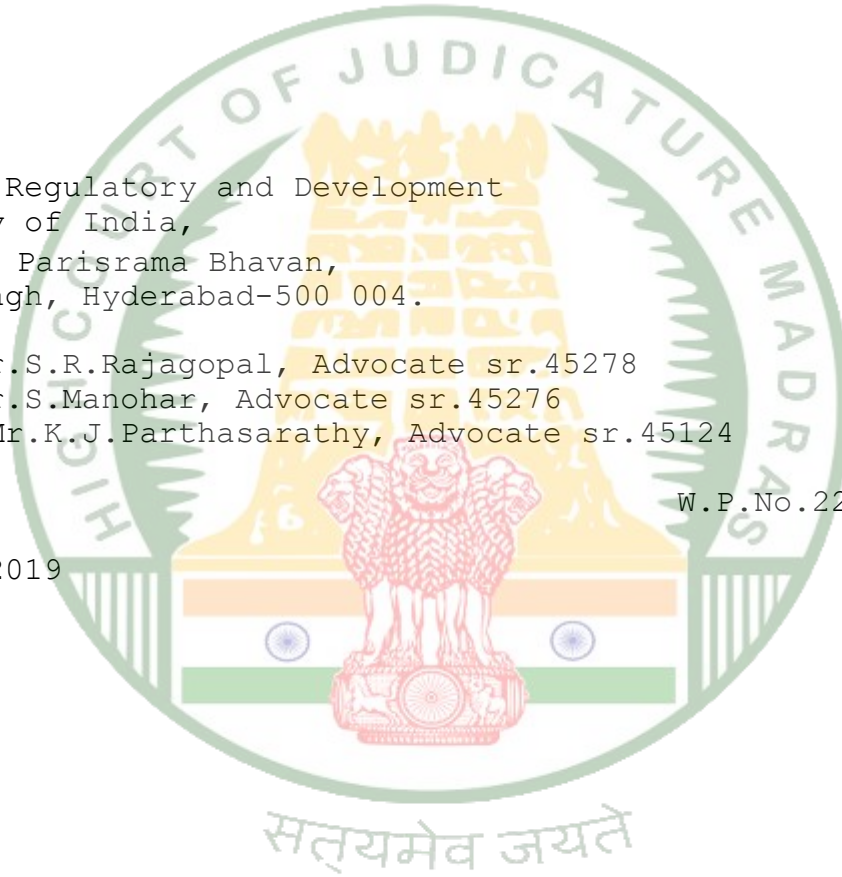
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W.P.No.22234 of 2016

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