

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

CORAM :

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4035 of 2019

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

vs.

1.Jasmine Ebenezer Arthur

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

Appeal filed under Clause 15 of the Letters Patent against the order dated 06.06.2019 passed in W.P.No.22234 of 2016 on the file of this Court.

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 the claim of Rs.36,45,813/- made by petitioner in respect of Health Insurance Policy availed by petitioners Husband in Policy No. 2918200650184900000 dt 31.12.2013 without insisting for any further documentations or particulars.

For Appellant : Mr.V.T.Gopalan
Senior Counsel
for M/s.G.P.Bhargavi

For Respondents : Mr.S.R.Raghunathan
for respondent No.1

JUDGMENT
(Delivered by SUBRAMONIUM PRASAD, J.)

By way of instant writ appeal, the appellant - HDFC ERGO General Insurance Company Limited, seeks to challenge the judgment and order dated 06.06.2019 passed in W.P.No.22234 of 2016, whereunder the learned Single Judge has allowed the writ petition filed by the first respondent/writ petitioner and has directed the appellant to honour the claim made by the first respondent/writ petitioner in respect of Health Insurance Policy availed by her husband without insisting for any further documentations or particulars. The learned Single Judge has directed that the said exercise should be completed within a period of eight weeks from the date of receipt of the copy of the order.

2. The first respondent/writ petitioner and her husband applied for home loan with the second respondent - HDFC Bank Limited, Chennai-100. A sum of Rs.35.00 lakhs was sanctioned by the second respondent Bank, which was to be repaid in 120 Equated Monthly Installments of Rs.47,522/- per month.

3. The first respondent/writ petitioner and her husband availed the insurance coverage for the home loan called as "Home Suraksha Plus" in Policy No.2918-2006-5018-4900-000 from the appellant. Under the said insurance policy, the insured was insured against Major Medical Illness during the currency of the loan.

4. At the relevant point of time, the first respondent/writ petitioner and her husband were residing at Abu Dhabi and the policy was for a period from 31.12.2013 to 30.12.2018. On 06.04.2015, the first respondent's husband Thanasekar Samuel Chellam, while driving to his office, suffered a massive cardiac arrest. He was immediately taken to Mafrag Hospital, but he passed away. On 22.11.2015, Mafrag Hospital gave an opinion "cause of collapse and initial rhythm of ventricular fibrillation was acute coronary artery syndrome".

5. The first respondent/writ petitioner filed a Claim Petition with the appellant Insurance Company. The claim was repudiated by the appellant Insurance Company stating that as

per the case summary received from Mafrag Hospital, the first respondent's husband died due to Cardiac Arrest, Ventricular fibrillation. It is stated that these ailments do not fall within the purview of the policy. It is also stated in the repudiation letter dated 06.01.2016 that the following are the diseases covered under Major Medical Illness:

- (i) Cancer;
- (ii) Kidney Failure;
- (iii) Multiple Sclerosis;
- (iv) Major Organ Transplant;
- (v) Heart Valve Replacement;
- (vi) Coronary Artery Bypass Graft;
- (vii) Stroke;
- (viii) Paralysis
- (ix) Myocardial Infarction.

It is also stated in the repudiation letter that the diagnosis for the Myocardial infarction has been evidenced by the following:

- An episode of typical chest pain.
 - The occurrence of a typical new acute infarction changes (ST-T elevation) on the electrocardiograph and progressing to development of pathological Q waves.
 - Elevation of Cardiac Troponin (T or I) to at least 3 times the upper limit of normal reference range or on elevation in CPK-MB to at least 200% of the upper limit of the normal reference range.
- But excluding non-STEMI with elevation of Troponin I or T. Other acute coronary syndromes including but not limited to angina or chest pain are excluded from this definition.

According to the appellant, the case of death is not covered under the policy. Clause(s) 3.a and Clause 3.c as stated in the policy, reads thus:

SECTION 3. MAJOR MEDICAL ILLNESS & PROCEDURES:

Insured even: For the purposes of this Section and the determination of the Company's liability under it, the Insured Event in relation to the Insured, shall mean any illness, medical event or surgical procedure as specifically defined below whose signs or symptoms first commence more than 90 days after the commencement of Period of Insurance and shall only include:

a. First Diagnosis of the below-mentioned illness more specifically described below:

1. Cancer
2. End Stage Renal Failure
3. Multiple Sclerosis; or

4. Benign Brain Tumor
5. Parkinson's Disease before the age of 50 years
6. Alzheimer's Disease before the age of 50 years
7. End Stage Liver Disease

.....

c.Occurrence for the first time of the following medical events more specifically described below:

1. Stroke
2. Paralysis
3. Myocardial Infarction
4. Major Burns
5. Loss of Speech
6. Deafness
7. Coma

.....

The following are excluded:

- Non-ST-segment elevation myocardial infarction (NSTEMI) with only elevation of Troponin I or T
- Other acute Coronary Syndromes
- Any type of angina pectoris

6. The first respondent/writ petitioner, thereafter, approached the office of the Insurance Ombudsman. By its Award dated 06.05.2016, the Insurance Ombudsman, dismissed the claim/complaint submitted by the first respondent/writ petitioner.

7. The first respondent/writ petitioner, thereafter, approached this Court by filing W.P.No.22234 of 2016 praying a Writ of Mandamus directing the first respondent 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.

8. The first respondent/writ petitioner claimed that the illness due to which her husband passed away is covered under the category of Major Medical Illness. It is stated that the husband of the first respondent suffered a massive cardiac arrest and this would fall under the heading Myocardial Infarction, which is covered under the policy in question.

9. The appellant filed counter-affidavit, wherein they have taken preliminary objection that the writ petition should not be entertained in view of adequate alternate remedy available before the Civil Court/Consumer Forum, where the present dispute can be decided by leading Expert evidence, which is required to determine the validity of the claim. The appellant also reiterated their stand taken in the repudiation letter.

10. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India and others v. Asha Goel (Smt) and another, reported in (2001) 2 SCC 160, the learned Single Judge held that the High Court can entertain a writ petition filed for enforcing the insurance contract without asking the writ petitioner to approach a Civil Court or any other Forum or Consumer Forum. The learned Single Judge, after quoting Article 226 of the Constitution of India, held that Article 226 of the Constitution can be invoked not only for infringement of fundamental rights, but also for any other purpose. The learned Single Judge did not accept the plea of the appellant that it is not an instrumentality of the State under Article 12 of the Constitution of India and held that the appellant is performing public duty and is, therefore, amenable to the writ jurisdiction under Article 226 of the Constitution of India. Reliance was also placed by the learned Single Judge in the case of LIC v. Escorts Limited, reported in AIR 1986 SC 1370.

11. In view of doubts raised by the appellant, the learned Single Judge, by an order dated 18.02.2019, directed the Dean, Madras Medical College/Rajiv Gandhi Government General Hospital, Chennai, to get an opinion regarding the cause of death of the first respondent's husband. The order was passed with the consent of both the parties.

12. Pursuant to the order of this Court, 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, Chennai, on 07.3.2019. The opinion of the Doctor reads as under:

"the cause of death in Myo-cardial Infarction can be due to Ventricular Fibrillation and if the patient had died of Acute Coronary Syndrome and Ventricular Fibrillation, the cause of death can be considered due to Myo-cardial Infarction".

Based on this medical opinion/report, the learned Single Judge allowed the writ petition, which is under challenge before us.

13. Learned Senior Counsel, Mr.V.T.Gopalan, appearing for the appellant Insurance Company would contend that the writ petition under Article 226 of the Constitution of India is not maintainable. He would submit that an effective alternate remedy is available to the first respondent/writ petitioner. According to the learned Senior Counsel, the first respondent/writ petitioner ought to have approached the Civil Court or the Consumer Forum, wherein, the parties had an opportunity of letting in evidence and cross-examining witnesses.

14. The learned Senior Counsel would state that this

dispute could not be adjudicated upon only on the basis of affidavit evidence. The learned Senior Counsel further contended that the cause of death given by the Doctor of Madras Medical College/Rajiv Gandhi Government General Hospital, Chennai, is in the form of opinion and is not acceptable and that since the matter was being taken up by the High Court by entertaining the writ petition, the appellant had been denied opportunity of cross-examining the Expert to rebut the said report/opinion.

15. During the course of arguments, learned Senior Counsel for the appellant has also placed reliance on the opinion given by Dr.C H Asrani and stated that the deceased had passed away due to Ventricular Fibrillation due to Acute Coronary Artery Syndrome and the appended claim does not conform to policy.

16. On the other hand, Mr.S.R.Raghunathan, learned counsel for the first respondent/writ petitioner would rely on the judgment of Asha Goel (supra) and submit that the first respondent/writ petitioner can approach the High Court under Article 226 of the Constitution of India for the relief claimed by her and that the learned Single Judge has rightly allowed the writ petition.

17. Paragraphs 10 and 11 of the judgment of the Hon'ble Supreme Court in the case of Asha Goel (supra), read as under:

"10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extra-ordinary jurisdiction. It is left to the discretion of the High Court. Therefore it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court

to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The Courts have consistently taken the view that in a case where for determination of the dispute raised it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to by-pass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Courts have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; Mohd. Hanif v. State of Assam, (1969) 2 SCC 782; Banchhanidhi Rath v. State of Orissa, (1972) 4 SCC 781; Rukmanibai Gupta v. Collector, Jabalpur, (1980) 4 SCC 556; Food Corpn. of India v. Jagannath Dutta, 1993 Supp (3) SCC 635 and State of H.P. v. Raja Mahendra Pal, (1999) 4 SCC 43.

11. The position that emerges from the discussins in the decided cases is that ordinarily the High Court should not entertain a writ petition filed under Article 226 of the Constitution for mere enforcement of a claim under a contract of insurance. Where an insurer has repudiated the claim, in case such a writ petition is filed the High Court has to consider the facts and

circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the civil court it will cause serious prejudice to the claimant/other beneficiaries of the policy. The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a bona fide one which requires oral and documentary evidence for its determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy."

18. A perusal of the judgment, in the case of Asha Goel (supra), would show that the Hon'ble Supreme Court has held that Article 226 of the Constitution of India is very wide and expansive and that the Constitution does not place any fetters on exercise of the extraordinary jurisdiction. The Hon'ble Supreme was also of the opinion that it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution of India to enforce a claim under a life insurance policy. But, however, in paragraph 11, the Hon'ble Supreme Court has stated that ordinarily, the High Court should not entertain a writ petition filed under Article 226 of the Constitution of India for mere enforcement of a claim under a contract of insurance. The Hon'ble Supreme further held that where an insurer has repudiated the claim and in case such a writ petition is filed, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the questions raised. The pros and cons of the matter in the context of the fact-situation of the case should be carefully weighed and appropriate decision should be taken.

19. In the instant case, the learned Single Judge has referred the matter for opinion of the Experts Cardiologists from Madras Medical College/Rajiv Gandhi Government General Hospital, Chennai, which is not a private hospital. The credibility and expertise of Dr.M.Nandakumaram, M.D. D.M. (Cario), Professor of Cardiology (C-VI Unit), Madras Medical College/Rajiv Gandhi Government General Hospital, Chennai, who had given opinion/report is not doubted. The opinion of the Doctor was sought for by the order of the Court in the presence and after getting the consent of both the counsel. The said order dated 18.02.2019 was not challenged by the appellant.

20. There is nothing on record to show that the opinion/report of the Dr.M.Nandakumaram has been challenged by the appellant Insurance Company. Had the appellant raised any challenge to the opinion of Dr.M.Nandakumaram before the learned Single Judge, it was still open to contend that the learned Single Judge ought not to have exercised the jurisdiction under Article 226 of the Constitution of India for the reason that the parties would have to prove their claim by adducing evidence and by examining the Expert witnesses on their respective sides. In the absence of anything to show that the appellant had challenged the report of the Expert Doctor, this Court would not like to relegate the first respondent/writ petitioner to approach the Civil Court. The husband of the first respondent was 39 years when he passed away. The first respondent/writ petitioner is a widow and has to look after her small children.

21. The report obtained by the appellant from Dr.C H Asrani cannot be taken into account for the reason that the same was issued after the order of the learned Single Judge and has been produced first time before this Court.

22. Taking into consideration the over all circumstances and in view of the fact that there was no objection to the Expert opinion/report given by Dr.M.Nandakumaram, this Court does not intend to interfere with the findings of the learned Single Judge and the appeal of the appellant is liable to be dismissed.

23. In the result, the appeal is dismissed. No costs. Consequently, C.M.P.No.25306 of 2019 is closed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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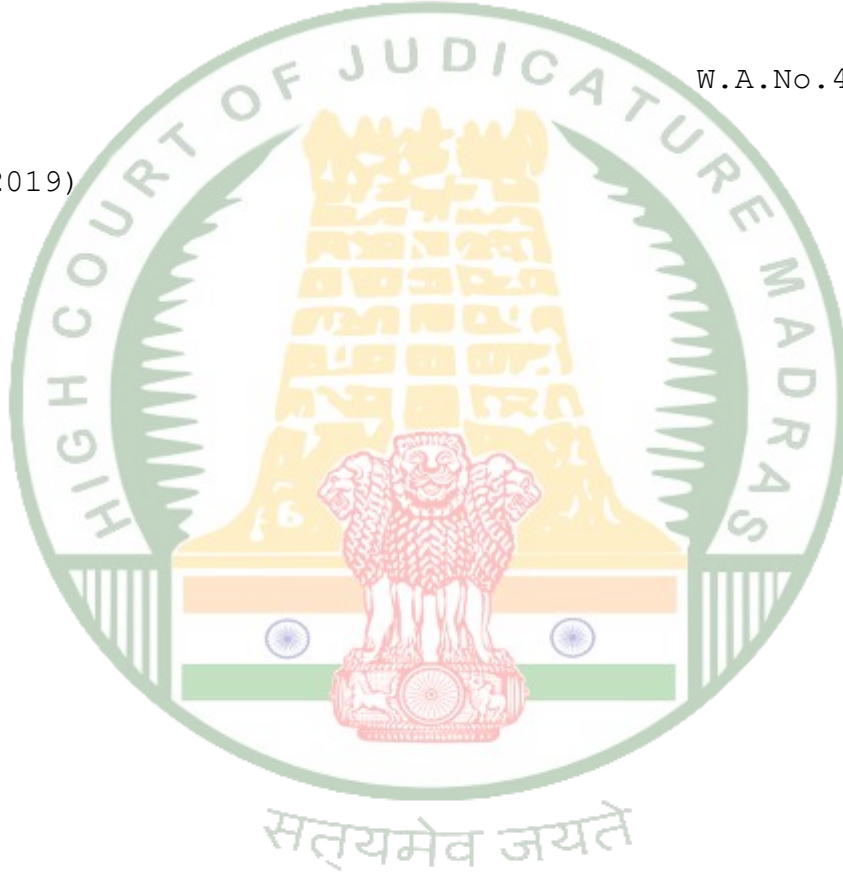
TO

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+1cc to Mr.G.P.Bhargavi, Advocate, S.R.No. 100194
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W.A.No.4035 of 2019

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