BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD) No.157 of 2019
and
C.M.P.(MD) No.1216 of 2019

The Royal Sundaram Alliance
Insurance Co. Ltd.,
Rep.by its Manager
VishranthiMelaram Towers
No.2/319, Rajiv Gandhi Salai (OMR)
Karapakkam
Chennai-600 097 ... Appellant/Petitioner

-vs-

1.S.Rajesh Mahadevan

2.The Insurance Ombudsman
Chennai ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 03.08.2018, passed in W.P.(MD) No.20894 of 2017, on the file of this Court.

Prayer in WP(MD). 20894/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records on the files of the 1st respondent pertaining to 1st award No.10(CHN)G/69/2008-09 dated 19.12.2008 and to quash the same and consequently direct the respondents to settle the insurance claim amount of Rs.10,00,000/- to the petitioner within the time frame that may be stipulated by this Honble Court.

For Appellant : Mr.M.Jerin Mathew

For Respondents : Mr.S.C.Herold Singh for R1
No appearance for R2

J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

This writ appeal by the Insurance Company is directed against the order dated 03.08.2018 in W.P.(MD) No.20894 of 2017.

2. The writ petition was filed by the first respondent challenging the order dated 19.12.2008, passed by the Insurance Ombudsman / second respondent, whereby the Insurance Ombudsman rejected the claim of the first respondent and sustained the order of repudiation of the insurance policy granted in favour of the first respondent's father Late.A.Sathanantham. The first respondent also sought for a consequential direction upon the appellant Insurance Company to settle the claim of Rs.10,00,000/-, within a time frame. The writ petition has been allowed by the impugned order and aggrieved by the same the Insurance Company is before this Court.

3. We have heard Mr.M.Jerin Mathew, learned counsel appearing for the appellant and Mr.S.C.Herold Singh, learned counsel appearing for the first respondent.

4. The challenge to the impugned order is on three grounds. It is contended by the learned counsel appearing for the appellant that the Writ Court ought to have seen that even prior to the date of death of the insured, he had crossed the age of 70 years. The second ground raised by the learned counsel for the appellant is that pre-existing ailments were not disclosed by the insured and this is a good reason to repudiate the insurance policy. Thirdly, it is submitted that the insured as well as the claimant had guilty of suppression of material facts, falsification of records and tampering of records etc., which were not considered by the Writ Court. Therefore, the impugned order calls for interference of this Court.

5. In support of his contentions, the learned counsel appearing for the appellant placed reliance upon the decision in the case of ***G.Ponmani vs. The Life Insurance Corporation of India and another***, reported in ***(1993) AIR (Madras) 343***.

6. Further, by referring to Regulation No.4(4) of Insurance Regulatory and Development Authority (Protection of Policy-Holders' Interest) Regulations, 2002, it is submitted that if the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover, then the Insurance Company is entitled to repudiate the insurance policy.

7. Further, the learned counsel appearing for the appellant has referred to the counter affidavit filed by the appellant Insurance Company before the Insurance Ombudsman and referred to the sequence of events to show that the order of repudiation of the insurance policy was well justified.

8. We have heard Mr.S.C.Herold Singh, learned counsel appearing for the first respondent, on the above submissions.

9. The first issue, which we wish to take up for consideration is with regard to the decision in the case of ***G.Ponmani*** (supra). Admittedly, the insurer in the said case is a Government Undertaking Company, namely, Life Insurance Corporation of India. Furthermore, in the said case, the husband of the claimant had taken a life insurance policy for a sum of Rs.50,000/-. In terms of the schemes of the policy, it was found that the insured was not eligible for the amount covered in the policy and the repudiation of the policy was therefore upheld. When this order was put to challenge before the Writ Court, it was held that the writ petition is not maintainable and therefore, the same was dismissed.

10. In the instant case, the appellant admittedly is not a Government Undertaking Company, but a Private Insurance Company, which has the approval of IRDA. The order impugned in the writ petition was not an order passed by the appellant / Insurance Company, but an order passed by the Insurance Ombudsman, who exercised the powers under the provisions of the Insurance Act and the other related provisions. The Insurance Ombudsman has been created so as to provide remedy to the insured in the event of they are aggrieved by any action of the Insurance Company in not settling the claim amount. Furthermore, the Insurance Ombudsman exercises the powers under the Redressal of Public Grievances Rules, 1998. Therefore, the power of the Insurance Ombudsman is a trapping of the Tribunal and accordingly, a full-fledged hearing was granted and the insurer, namely, the appellant was represented by its Manager (Legal) and the complainant, namely, the first respondent appeared in person before the Insurance Ombudsman. Therefore, the bar for entertaining a writ petition cannot be applied to the facts of the present case and to that extent, the decision in the case of ***G.Ponmani*** (supra) does not support the case of the appellant Insurance Company.

11. The second ground, on which we hold that the decision in the case of ***G.Ponmani*** (supra) does not support the case of the appellant Insurance Company, is on the basis of the nature of policy, which was involved in the instant case. Admittedly, the first respondent's father did not approach the appellant Insurance Company to avail the policy as in the case of ***G.Ponmani*** (supra). But, the appellant Insurance Company was keeping on soliciting the first respondent to avail the policy, because he has obtained SBI credit card. Thus, the decision in the case of ***G.Ponmani*** (supra) is not applicable to the facts and circumstances of the case on hand.

12. With regard to the age of the deceased, the learned counsel appearing for the appellant vehemently contended that the investigation shows that false information have been given with regard to the age of the deceased. The other argument was that the insurance policy can cover only the persons in the age group of 18-70 years. Admittedly, the insurance cover was given to the first respondent's father based on a scheme, which was evolved by the State Bank of India, to obtain certain benefits. Thus, the entire data, which was shared by SBI, would be available with the appellant Insurance Company and the appellant Insurance Company would very well know about the age of the deceased. Therefore, to now come and state before the Writ Court for the first time that the deceased furnished false age is a position, which cannot be accepted. If the appellant Insurance Company had not done any due diligence in this regard nor verified the contents of the information given in the proposal form, considering the nature of the policy involved and the type of solicitation, which was done, it is too late for the appellant Insurance Company to now raise a ground that the insurance policy was repudiated.

13. With regard to the pre-ailments, there is nothing on record to show that the appellant Insurance Company directed the insured to undergo a medical examination. It is the case of the appellant Insurance Company that subsequent to the claim petition, when they made investigation, they came to know that the deceased was suffering pre-existing ailments. The cause of death is an accidental fall. A criminal case was registered and after performing autopsy, the body was handed over. Therefore, even assuming that there were certain pre-existing ailments, that would not be a cause for the death of the first respondent's father and hence, the appellant Insurance Company cannot take umbrage of the same.

14. The learned counsel for the appellant Insurance Company elaborately referred to the counter affidavit filed by the appellant Insurance Company before the Insurance Ombudsman to describe the chain of events. The chain of events has no relevance to the instant case, because the death was due to accidental fall in the bathroom and there was nothing to show that the fall was on account of any pre-existing ailments. The first respondent, in the affidavit filed in support of the writ petition, has stated that his father was hale and healthy and he was having neither diabetic nor blood pressure. Thus, for all the above reasons, we are of the opinion that the reasons assigned by the Writ Court are perfectly valid and fully justified.

15. In the result, the writ appeal fails and it is dismissed. The appellant Insurance Company is directed to settle the claim amount to the first respondent, as directed by the Writ Court, within a period of four weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

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+2 CC to M/s.C.HEROLD SINGH, Advocate SR-92859 & SR-92738.
+1 CC to M/s.M.E.ILANGO, Advocate SR-93083.

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