

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.8716 of 2019 and

W.M.P.No.9279 of 2019

(Heard through VC)

1.R.Saranya .. Petitioners

2.Minor Yogendra

3.Minor Sanjay

(The minor petitioners are represented by their next friend and Guardian, the first petitioner)

Vs.

1.The Manager .. Respondents

Life Insurance Corporation of India
Chengalpattu Branch, Jeevan Jyothi
Guntur Church Road
Chengalpattu - 603 001.

2.G.Dhanasekar

Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the 1st respondent to release the insured amount under Policy Nos.707057293, 707057415 proportionately in favour of the petitioners.

For Petitioner : M/s.P.Sesubalan Raja

For Respondent-1 : Mr.S.Janarthanam

For Respondent-2 : Not Ready in Notice

ORDER

Petitioner has sought for a writ of mandamus, to direct the first respondent to release the insured amount under Policy Nos.707057293 and 707057415 proportionately in favour of the petitioners.

2. The wife and children of one Mr. Ramakrishnan, who died, on 25.08.2018, are the petitioners. The writ petition is filed seeking a mandamus to the first respondent, who is the Life Insurance Corporation of India Ltd, to release the insured amount under two of the policies taken by the first petitioner's husband in their favour.

3. According to the petitioners, during the life time of the deceased Ramakrishnan, he had taken two insurance policies bearing Nos. 707057293 and 707057415 with the first respondent. He had been paying the premium till his death. As the first petitioner is inexperienced and was not well-educated, her husband had appointed the second respondent, who is his paternal uncle's son, as nominee in the said policies.

4. However, after the death of the first petitioner's husband, the second respondent is trying to appropriate the entire insurance amount taking advantage of the nomination made in his favour. Though a legal notice was issued to the first respondent, the first respondent has not yet settled the amount in favour of the petitioners.

5. It is a well settled principle that a nominee is only a Trustee holding the amount on behalf of the actual beneficiaries and does not have any vested right or interest in the same. Already the first petitioner has lost her husband and is struggling with her minor children, if the above amounts are not released in her favour and the second respondent is allowed to appropriate the same, she will be put to serious prejudice. Therefore, the above writ petition has been filed seeking a direction to the first respondent to release the amount directly in favour of the beneficiaries i.e. the petitioners.

6. The prayer of the petitioners has been resisted by the first respondent by filing a counter affidavit contending that they have not acted anything detrimental to the interest of the beneficiaries and has not shown any undue haste in releasing the amounts under the policies.

7. Heard both sides and perused the materials placed before this court.

8. The amount that may be received by the nominee would form part of the estate of the deceased and the same should be distributed as per the rule of succession, to which, the parties are governed. This has been settled as early as in 1984 in **Smt. Sarbati Devi and another vs. Smt. Usha Devi** reported in **AIR 1984 SC 346**. In the said judgment, the conflict between the law of succession and the right of the nominee under Section 39 of the Insurance Act, 1938, has been discussed. In paragraph 12 of the said judgment, it has been held as follows:

"12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauza Singh case [AIR 1978 Del 276] and in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

9. As held by the Hon'ble Apex Court in the above decision, when the nominee is only an authorised person to receive the amount and distribute in accordance with the law of succession, the second respondent, who is a nominee, cannot have any right over the said amount.

10. It is also not in dispute that the petitioners, under the law of succession, which governs them, are entitled to an equal share in the estate of the deceased. The Policy amount receivable is a part of the estate of the deceased and the petitioners are entitled to equal share.

11. It is also pertinent to note that in the affidavit filed in support of the writ petition, in paragraph 5, it has been stated that the second respondent is attempting to appropriate the entire insurance amount by colluding with first petitioner's mother in law. Be that as it may, if the mother in law of the first petitioner, who is the mother of the deceased, is alive, she is also entitled to an equal share in the policy amount as clause I heir of the deceased. The second respondent, is only a nominee, who is authorised to receive the insurance amount in trust and distribute among the legal heirs as per law of succession. The petitioners have specifically alleged that the second respondent is attempting to deny the lawful entitlement of the petitioners. Therefore, it would be appropriate to direct the first respondent to directly release the amount in favour of the petitioners.

12. For the reasons stated above, the writ petition is allowed directing the first respondent to release the insurance amount payable under the Policy Nos.707057293 and 707057415 taken in the name of the deceased, directly to the petitioners and also the mother-in-law of the first petitioner, whose name is not known. No costs. Consequently, the connected writ miscellaneous petition is closed.

-sd/-

Assistant Registrar (cs)

//True Copy//

Sub Assistant Registrar

Asr

To

The Manager
Life Insurance Corporation of India
Chengalpattu Branch, Jeevan Hyothi
Guntur Church Road
Chengalpattu - 603 001

+1 C.C.to MR.P.SESUBALAN RAJA, Advocate SR.NO.39920

+1 C.C.to MR.S.Janarthanam, Advocate SR.NO.39711

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GJ (CO)
UMY (19/12/2020)