

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.09.2019

PRONOUNCED ON: 01.06.2020

CORAM

THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 8397 of 2019

P. Subramanian

... Petitioner

-vs-

1. The Insurance Ombudsman,
4th Floor, 453 (Old No. 312),
Anna Salai,
Teynampet,
Chennai - 600 018.
2. The Executive Director,
CRM Department,
LIC of India Central Office,
5th Floor (Link), Yogakshema Jeevan Bima Marg,
Mumbai - 400 021.
3. LIC of India,
Rep. By its Manager,
City Branch - II,
No. 25, Mamatha Complex, Whites Road,
Royapettah,
Chennai - 600 014.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to proceedings of the First Respondent dated 06.02.2019 in Ref. No. CHN-L-029-1819-0703 and quash the same and direct the Second and Third Respondents to pay maturity sum of Rs.62,50,000/- (Rupees Sixty Two Lakh Fifth Thousand only) as per the policy document in Policy No. 705158949.

For Petitioner : Mr. Sundar Mohan

For Respondents: Mr. M.B. Raghavan for
M/s. M.B. Gopalan Associates(R2 & R3)

O R D E R

Heard Mr. Sunder Mohan, Learned Counsel for the Petitioner and Mr. M.B.Raghavan of M/s. M.B.Gopalan Associates, Learned Counsel appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had been issued with 'Jeevan Saral' policy bearing No. 705158949 by the Third Respondent on 28.03.2010 and it is accepted that he had been paying the premium at the rate of Rs.31,153/- every month from the time of its commencement on the due dates till July 2018. While so, the Third Respondent by letter dated 12.07.2018 informed the Petitioner that it had been noticed in the policy document issued that there had been inadvertent typographical error in the 'Maturity Sum Assured', which has been shown as blank and that as per the plan condition, the correct amount of 'Maturity Sum Assured' is Rs.14,92,250/- and that all other terms and conditions remain unaltered, and the Petitioner was requested to send the original policy document to make endorsement with the corrected maturity value and in the event of his failure to submit the same, the correct amount of 'Maturity Sum Assured' of Rs.14,92,250/- will only be payable at the time of maturity. In response to that letter dated 12.07.2018 received from the Third Respondent, the Petitioner by e-mail dated 29.08.2018 objected to the proposal of correcting the originally agreed 'Maturity Sum Assured' value from Rs.62,50,000/- to Rs.14,92,250/- and contended that having paid the total premium of Rs.31,77,606/- from 28.03.2010 till then on monthly basis, it was totally illogical and unfair to unilaterally propose to reduce the same by citing the flimsy ground of typographical error, which was unacceptable and the Third Respondent was required to withdraw the said letter dated 12.07.2018 and confirm the original maturity value of Rs.62,50,000/- as per the original policy document. Thereafter, the Third Respondent by letter dated 10.09.2018 claimed that Rs.62,50,000/- is the 'Death Benefit Sum Assured' and not the 'Maturity Sum Assured' which column has been left blank in the policy document. The Petitioner by another letter dated 06.12.2018 restated his objection for the change of the amount in the 'Maturity Sum Assured' and further contended that in terms of Section 45 of the Insurance Act, 1938, any change in the policy condition ought to have been informed to him within three years from the date of the policy, in which event he would have stopped paying the premium and opted for better insurance and investment options and called upon the Third Respondent to pay the 'Maturity Sum Assured' as per the policy, failing which he would have to resort to legal proceedings. The Third Respondent by letter dated 21.12.2018 repeated that the 'Maturity Sum Assured' of Rs.14,92,250/- conveyed earlier was

correct and that the sum of Rs.62,50,000/- claimed by the Petitioner was the 'Death Benefit Sum Assured' as per the plan conditions.

3. Aggrieved by the aforesaid action of the Third Respondent, the Petitioner complained to the First Respondent on 25.01.2019 invoking the Insurance Ombudsman Rules, 2017, to declare and hold that the 'Maturity Sum Assured' is Rs.62,50,000/- in respect of the aforesaid policy and to direct the Second and Third Respondents to pay the said maturity benefits along with loyalty addition and Rs.20,00,000/- as compensation for mental agony and trauma caused to him.

4. The First Respondent by letter dated 06.02.2019 informed the Petitioner that the Insurance Ombudsman is a quasi-judicial body governed by the Insurance Ombudsman Rules, 2017, with a definite mandate and that the said rules do not envisage that Forum to intervene in requests like correction in 'Maturity Sum Assured' to be effected in the policy document and that the Petitioner may take up the matter with any other Forum and or Court as he may deem fit.

5. In that backdrop, the Petitioner has filed this Writ Petition challenging the aforesaid letter dated 06.02.2019 received from the First Respondent on the ground that the First Respondent has failed to exercise the jurisdiction vested under Rule 13(1)(e) of the Insurance Ombudsman Scheme, 2017, to consider disputes relating to legal construction of insurance policies in so far as the dispute relates to claim, and to consequently direct the Second and Third Respondents to pay the 'Maturity Sum Assured' of Rs.62,50,000/- as per the policy document.

6. In the Counter-Affidavit filed on behalf of the Second and Third Respondents, while questioning the maintainability of the Writ Petition on the ground that the First Respondent in the impugned order has not decided any right of the Petitioner and that he has been only relegated to seek remedy before any other forum which does not cause any prejudice to him, it is emphasized that the insurance policy did not mention Rs.62,50,000/- as 'Maturity Sum Assured' and it was actually the 'Death Benefit Sum Assured', apart from the sum of Rs.44,00,000/- towards 'Accident Benefit Sum Assured'. According to the Second and Third Respondents, it was due to misalignment of the computer printer while filling up the blank columns in the Policy Schedule that the figures had not been properly entered in the relevant columns, as would be evident from the various other details that have been erroneously made. It is

reiterated that the column for 'Maturity Sum Assured' was left blank and in order to endorse the same, the Petitioner was required to produce the original policy document. That apart, the Second and Third Respondents have buttressed their contentions by pointing out certain aspects of economic viability on the value of the 'Maturity Sum Assured' if the contention of the Petitioner has to be accepted.

7. The scope and extent of jurisdiction of the High Court under Article 226 of the Constitution has been concisely explained by the Hon'ble Supreme Court of India in State of Uttar Pradesh - vs- Johri Mal [(2004) 4 SCC 714] as follows:-

"30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can reappraise the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian administrative law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker."

Viewed from that perspective, it would be useful to notice the relevant columns in the Policy Schedule in order to have better understanding of the exact nature of dispute that has arisen between the contesting parties. A cursory glance of the same would reveal that the entries made with the computer printer in the specified columns in the Policy Schedule for 'Maturity Sum Assured', 'Death Benefit Sum Assured', 'Accident Benefit Sum Assured' and 'Term Rider Sum Assured' have been apparently

misaligned and as a matter of fact, there are only two entries as against those four columns required to be filled up, with the remaining two columns left blank. It cannot be disputed that the 'Maturity Sum Assured' is an essential matter of fact which is fundamental to create a valid contract of life insurance between the parties. While the Petitioner claims that the 'Maturity Sum Assured' has to be Rs.62,50,000/-, which is one of the two figures entered in the Policy Schedule, and the Second and Third Respondents assert that it should be Rs.14,92,250/-, neither of them have produced any material that was contemporaneously in existence and brought to the notice of the other party before the policy document was issued on 28.03.2010 to substantiate their conflicting versions. It cannot also be lost sight of the fact that the correction in the value of the 'Maturity Sum Assured' has been sought to be made by the Third Respondent only after a period of eight long years, by which time the Petitioner has made periodical payments of premium of Rs.31,153/- every month aggregating to a substantial sum of Rs.31,77,606/- without even raising any query about the blanks in some of the columns in the Policy Schedule, which reflects that both of them do not appear to have acted with due diligence. The only possible inference that could be drawn from this incontrovertible fact situation is that the Petitioner and the Third Respondent had not been at consensus ad idem on an essential term of the agreement relating to the exact value of the 'Maturity Sum Assured' at the time of inception of the policy. This would obviously mean that there has been mutual mistake rendering the agreement itself void ab initio in terms of Section 20 of the Indian Contract Act, 1872, which reads as follows:-

"20. Agreement void where both parties are under mistake as to matter of fact:-

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.--An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact."

The resultant implication is that it would be futile now to remit the matter to the First Respondent to examine the question as to whether the claim made by the Petitioner falls under Rule 13(1)(e) of the Insurance Ombudsman Rules, 2017, as wanted by him. Having due regard to the aforesaid peculiar features involved in this case, it is also hastened to clarify that no view has been expressed by this Court on the correctness or otherwise of the reasoning of the First Respondent that the Insurance Ombudsman Rules, 2017, does not envisage that Forum to

intervene in any request like correction in 'Maturity Sum Assured' to be effected in the policy document.

8. Having found that the agreement entered between the Petitioner and the Third Respondent is void ab initio, as its corollary, the sequel relief that the Petitioner would be entitled, has to be determined. In this context, reference may be made to Section 65 of the Indian Contract Act, 1872, which is extracted below:-

"65. Obligation of person who has received advantage under void agreement, or contract that becomes void:-
When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

Accordingly, the Second and Third Respondents are bound to restore all benefits that has been derived from the Petitioner under the void agreement by refunding the amounts collected from him in monthly instalments towards insurance premium from the time of its commencement. This course of action followed draws support from the ruling of the Hon'ble Supreme Court of India in Usha Kumari Ranawat -vs- Life Insurance Corporation of India [(2011) 13 SCC 196].

9. However, mere refund would not suffice, inasmuch as the Second and Third Respondents had received the unintended monetary advantage at the cost of divesting the Petitioner of the use of his legitimate money during that period. In South Eastern Coalfields Ltd., -vs- State of Madhya Pradesh [(2003) 8 SCC 648], it has been held by the Hon'ble Supreme Court of India as follows:-

"28. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978."

Therefore, in order to compensate the Petitioner for that belated payment, it would be reasonable to award interest at the rate of 7.5% per annum from the respective dates on which each of the instalments had been remitted by the Petitioner till the date of actual refund. The Second and Third Respondents shall work out the amount in this regard and make payment of that entire amount due to the Petitioner accompanied by a statement of accounts showing details of calculation made, and file a report of such compliance before the Registrar (Judicial) of this Court within a period of 60 days from the date of receipt of copy of this order.

10. In fine, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vjt

To

1. The Insurance Ombudsman,
4th Floor, 453 (Old No. 312),
Anna Salai,
Teynampet,
Chennai - 600 018.
2. The Executive Director,
CRM Department,
LIC of India Central Office,
5th Floor (Link), Yogakshema Jeevan Bima Marg,
Mumbai - 400 021.
3. The Manager,
LIC of India,
City Branch - II,
No. 25, Mamatha Complex, Whites Road,
Royapettah,
Chennai - 600 014.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.
2. The Section Officer,
Writ Section,
High Court, Madras.

W.P. No. 8397 of 2019

NRL (CO)
GS (05/06/2020)