IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2020

Pronounced on :07.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.13080 of 2019
and
W.M.P.No.13204 of 2019

M/s.Reliance Nippon Life Insurance Co.Ltd.,
Having its Branch Office at:
5-7-29, Opp.Municipal Office,
Gandhi Chowk,
Siricilla, Andhra Pradesh - 505 301.
(and having registered office at:
Reliance Centre, 5th Floor,
Off.Western Express Highway,
Santacruz East,
Mumbai,
Maharastra - 400 055.
... Petitioner

..Vs..

1.The Insurance Ombudsman,
State of Tamil Nadu & Puducherry,
Office of the Insurance Ombudsman,
Fatima Akhtar Court,
4th Floor, 453 (Old No.312),
Anna Salai,
Teynampet,
Chennai - 600 018.

2.R.Uma ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, directing to call for the records from the 1st respondent and quash the Award No.IO/CHN/A/LI/0115/2018-2019, dated 20.12.2018 passed by the 1st respondent.

For Petitioner : Mr.R.Bharath Kumar

For R1 : Mr.M.B.Raghavan

For R2 : Mr.S.B.Murugesan

ORDER

This Writ Petition has been filed in the nature Writ of Certiorari, to call for the records from the 1st respondent, the Insurance Ombudsman, State of Tamil Nadu & Puducherry and quash the Award No.IO/CHN/A/LI/0115/2018-2019 dated 20.12.2018.

2. In the affidavit filed by the Senior Manager – Legal of the writ petitioner M/s.Reliance Nippon Life Insurance Company Limited, having its Branch Office at Sircilla, Andhra Pradesh and Registered Office at Mumbai, Maharastra, it is stated that the 2nd respondent Ms.R.Uma residing at Ambattur, Chennai, had filed the complaint bearing No.CHN-L-036-1819-0017 against the petitioner before the 1st respondent namely, the Insurance Ombudsman, State of Tamil Nadu and Puducherry at Chennai. The 1st respondent had allowed the complaint by order dated 20.12.2018. It is stated that the 2nd respondent was a nominee of the Life Assured, R.Sundara Mahalingam, who had brought the Life Insurance Policies bearing No.52571109, 52593539, 52585938 and 52520975 dated 18.03.206, 25.03.2016, 21.03.2016 and 30.01.2016 respectively for a yearly premium of Rs.25,100/-, Rs.20,000/-, Rs.25,100/- and Rs.92,000/- respectively, for a period of 10 years and the Life Assured had paid a total premium of Rs.3,08,768/-. The Life Assured died in an accident on 15.06.2017. A claim was made by the 2nd respondent on 17.07.2017. The petitioner company claimed that when they were processing the claim, they found that the Life Assured had not disclosed materials regarding his income and that he had already taken policies worth Rs.1.04 Crores with an other Insurance Company, namely, ICICI Prudential Life Insurance. Claiming that this was material concealment and non-disclosure on the part of the life assured, the petitioner repudiated the claim vide Repudiation Letter dated 29.08.2017 under Section 45 of the Insurance Act, 1938. The claim benefits got ceased and the premiums paid under the policies amounting Rs.3,08,768/- were refunded to the 2nd respondent. The 2nd respondent then filed a complaint before the 1st respondent and an Award dated 20.12.2018 had been passed allowing the claim of the 2nd respondent. The petitioner was directed to settle the claim for Rs.19,98,110/- as per the terms and conditions of the policies, subject to adjustment of Rs.3,08,768/- being the premium already

refunded. It was further directed the amount payable shall carry interest as per Rule 17(7) of the Insurance Ombudsman Rules, 2017. Aggrieved by the said award, the present Writ Petition had been filed.

3. A counter affidavit had been filed by the 2nd respondent. She was the mother of the deceased / Life Assured, R.Sundara Mahalingam who died on 15.06.2017. It was stated that at the time of taking the policy by the Life Assured, the policies taken earlier with ICICI Prudential Life Company had lapsed. It was also stated that the details were filled up by the agent Sundaravadivelu, who had also introduced the Life Assured. It was stated that the agent had not properly filled up the forms. It was further stated that it was never disclosed that the Life Assured should not have any earlier policies. It was stated that there was no deliberate suppression of material fact. It was also stated that non-disclosure of all the earlier policies was immaterial. At any rate, it had been further stated that the Insurance Ombudsman had been set up by the insurers themselves as an Alternative Disputes Redressal Forum and the award passed by the 1st respondent cannot be questioned and it is binding in nature. It was therefore stated that the Writ Petition itself not maintainable.

4. Heard arguments advanced by Mr.R.Bharathkumar learned counsel for the petitioner and Mr.M.B.Raghavan learned counsel for R1 and also Mr.S.B.Murugesan learned counsel for R2.

5. It is a fact that the son of the 2nd respondent R.Sundara Mahalingam had taken four policies with the petitioner herein. The details are as follows:

SL.NO.	Particulars	Details
1.	Name of Policy Holder	Sh.R.Sundara Mahalingam
2.	Policy Number	52571109, 52593539, 52585938 & 52520975
3.	Policy Issue Date	18.03.2016, 25.03.2016, 21.03.2016 & 30.01.2016
4.	Premium Amount	Rs.25,100/-, Rs.20,000/-, Rs.25,100/- & Rs.92,000/-
5.	Total Premium Paid	Rs.3,08,768/-
6.	Premium Paying Term	10 Years
7.	Policy Term	10 Years
8.	Mode	Yearly

6. The Life Assured R.Sundara Mahalingam, died in an accident on 15.06.2017. The petitioner had repudiated the claim of the 2nd respondent on the ground that there was non-disclosure of a material fact and non-disclosure of the fact that the Life Assured had taken out earlier policies with ICICI Prudential Life Insurance. It was stated that the Life Assured was over insured as his income was only Rs.3,50,000/-. The petitioner repudiated the claim.

7. The 2nd respondent had filed an application before the 1st respondent namely, the Insurance Ombudsman, for the State of Tamil Nadu and Puducherry at Chennai. The Insurance Ombudsmam, 1st respondent had been established under the provisions of the Redressal of Public Grievances Rules, 1998 (RPG Rules), notified by the Ministry of Finance, Government of India, in exercise of its powers under Insurance Act, 1938. Insurance Ombudsman Rules, 2017 notified by the Ministry of Finance, Government of India in exercise of its powers under Insurance Regulatory Development Authority of India, Act 1999 replaced the Redressal of Public Grievances Rules, 1998. Bima Lokpal (Insurance Ombudsman) is a quasi-judicial forum formed under the Insurance Ombudsman Rules, 2017 (formerly RPG Rules, 1998). Insurance Ombudsman Rules, 2017 notified by the Government of India are the governing rules in the matter. In terms of the powers vested on him, the Insurance Ombudsman acts as a mediator after obtaining written consent from both the parties and resolves entertainable disputes between the insurers and complainants after hearing both the parties.

8. Under the Insurance Ombudsman Rules, 2017 "personal lines" has been defined as an insurance policy taken or given in an individual capacity.

9. Rule 7 of the Insurance Ombudsman Rules, 2017, is as follows:

> Rule.7.Insurance Ombudsman:-
>
> 1).There shall be established such number Insurance Ombudsman for such territorial jurisdiction as the Executive Council of Insurers may specify, for discharging the duties and functions prescribed under these rules.
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> 2).An Ombudsman shall be selected from amongst persons having experience of the insurance industry, civil service, administrative service or judicial service.
>
> 3).An Ombudsman shall be selected by a Selection Committee comprising of;
>
> (a)Chairperson of the IRDAI, who shall be

the Chairman of the Selection Committee;

(b)one representative each of the life Insurance Council and the General Insurance Council from the Executive Council of Insurers – members;

(c)A representative of the Government of India not below the rank of a Joint Secretary or equivalent, in the Ministry of Finance, from the Department of Financial Service- member.

4).The Executive Council of Insurers shall prepare a panel through an open process by inviting applications from amongst the eligible candidates and the selection process shall be in accordance with the selection criteria finalized by the Executive Council of Insurers with the approval of the Central Government in the Ministry of Finance.

5).An Ombudsman shall be appointed after satisfactory vigilance clearance from the immediate previous employer and medical fitness report from an authorised doctor.

10. Rule 13 provides the duties and functions of the Insurance Ombudsman and reads as follows:

"13. Duties and functions of Insurance Ombudsman.— (1) The Ombudsman shall receive and consider complaints or disputes relating to—

(a) delay in settlement of claims, beyond the time specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999;

(b) any partial or total repudiation of claims by the life insurer, General insurer or the health insurer;

(c) disputes over premium paid or payable in terms of insurance policy;

(d) misrepresentation of policy terms and conditions at any time in the policy document or policy contract;

(e) legal construction of insurance policies in so far as the dispute relates to claim;

(f) policy servicing related grievances against insurers and their agents and intermediaries;

(g) issuance of life insurance policy, general insurance policy including health insurance policy which is not in conformity with the proposal form submitted by the proposer;

(h) non-issuance of insurance policy after receipt of premium in life insurance and general insurance including health insurance; and

(i) any other matter resulting from the violation of provisions of the Insurance Act, 1938 or the regulations, circulars, guidelines or instructions issued by the IRDAI from time to time or the terms and conditions of the policy contract, in so far as they relate to issues mentioned at clauses (a) to (f).

(2) The Ombudsman shall act as counsellor and mediator relating to matters specified in sub-rule (1) provided there is written consent of the parties to the dispute.

(3) The Ombudsman shall be precluded from handling any matter if he is an interested party or having conflict of interest.

(4) The Central Government or as the case may be, the IRDAI may, at any time refer any complaint or dispute relating to insurance matters specified in sub-rule (1), to the Insurance Ombudsman and such complaint or dispute shall be entertained by the Insurance Ombudsman and be dealt with as if it is a complaint made under rule 14."

11. Rule 17 of the Insurance Ombudsman Act, 2017, relates to award and reads as follows:

"17. Award.— (1) Where the complaint is not settled by way of mediation under rule 16, the Ombudsman shall pass an award, based on the pleadings and evidence brought on record.

(2) The award shall be in writing and shall state the reasons upon which the award is based.

(3) Where the award is in favour of the complainant, it shall state the amount of compensation granted to the complainant after deducting the amount already paid, if any, from the award:

Provided that the Ombudsman shall,— (i) not award any compensation in excess of the loss suffered by the complainant as a direct consequence of the cause of action; or (ii) not award compensation exceeding rupees thirty lakhs (including relevant expenses, if any).

(4) The Ombudsman shall finalise its findings and pass an award within a period of three months of the receipt of all requirements from the complainant.

(5) A copy of the award shall be sent to the complainant and the insurer named in the complaint.

(6) The insurer shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman.

(7) The complainant shall be entitled to such interest at a rate per annum as specified in the regulations, framed under the Insurance Regulatory and Development Authority of India Act, 1999, from the date the claim ought to have been settled under the regulations, till the date of payment of the amount awarded by the Ombudsman.

(8) The award of Insurance Ombudsman shall be binding on the insurers."

A perusal of the Rule 17, it is evident that the award of the Insurance Ombudsman is binding on the insurers.

12. The petitioner having participated in the proceedings, cannot turn around and question the award.

13. It is seen that the petitioner herein had invoked Section 45 of the Insurance Act, 1938 and had repudiated the claim on the ground that non-disclosure of earlier policies is the suppression of a material fact. However, Section 45 of the Insurance Act, 1938, is as follows:

"Sec 45. Policy not to be called in question on ground of mis-statement after two years.— No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer

> on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement 1[was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made] by the policy-holder and that the policy-holder knew at the time of making it that the statement was false 2[or that it suppressed facts which it was material to disclose]: 2[Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.]"

14. Section 45 of Insurance Act, 1938 can be invoked on the ground of fraud and Sub-Section 2 or on the account of the non-disclosure or misrepresentation of material facts relating to life expectancy under Sub Section (4).

15. Here, there is no allegation of fraud. There is no material fact relating to life expectancy. Therefore, I hold that the decision of the insurer to repudiate the claim is not in accordance with Section 45(4) of the Insurance Act, 1938. Moreover, under Rule 17(6) of the Insurance Ombudsman Rules 2017, the insurer shall comply with the award within thirty days of the receipt of the award and intimate compliance of the same to the Ombudsman. Moreover, under Rule 17(7) of the Rules, the complainant shall be entitled to such interest at a rate per annum as specified in the regulations. Finally under Rule 17(8) of the Rule, the award of Insurance Ombudsman shall be binding on the insurers.

16. It is thus seen that the writ petitioner is agitating an issue after submitting to the jurisdiction of the 1st respondent. In view of these facts, the claim of the petitioner seeking interference of this Court into the award passed has to be negatived.

17. The learned counsel for the petitioner had relied on the judgment of the Honourable Supreme Court in Civil Appeal No.4261 of 2019, (SLP.(C) No.14312 of 2015), Reliance Life

Insurance Co. Ltd v. Rekhaben Nareshbhai Rathod (dated 24.02.2019). The facts in that case are different. In that case, the Life Assured had entered into a cover for life with another insurance company just two months prior to the contract of insurance with the appellant. It was stated that the said fact should have been disclosed at the time of taking out the policy. However, in the present case, the 2nd respondent had clearly, stated that the policies with ICICI Prudential Life Insurance had lapsed and were not in force at the time, the Life Assured had taken a policy with the petitioner herein. In view of that distinguishable fact, I hold that the averments in writ petition cannot be countenanced by this Court and accordingly, this Writ Petition is dismissed. No order as to costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To,

The Insurance Ombudsman,
State of Tamil Nadu & Puducherry,
Office of the Insurance Ombudsman,
Fatima Akhtar Court,
4th Floor, 453 (Old No.312),
Anna Salai,
Teynampet,
Chennai - 600 018.

+2cc to Mr.S.B.Murugesan, Advocate Sr.16357 [04/03/2020]
+1cc to Mr.R.Bharath Kumar, Advocate Sr.10820[12/03/2020]

W.P.No.13080 of 2019

srg 07/02/2020