BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.08.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.438 of 2020
and
W.M.P(MD).No. 8398 of 2020

S.Rajesh Mahadevan ... Petitioner

Vs.

1.The Insurance Ombudsman
Tamil Nadu & Puducherry
Fathima Akdhar Court, 4th Floor
Annasalai, Teynampet, Chennai 600 018

2.SBI Life Insurance Company Ltd.,
Represented by its Manager
M.V.Road and Western Express Highway Junction
Andheri (E) Mumbai – 400 069

3.SBI Life Insurance Company Ltd.,
Represented by its Manager
No.6A, 4th Floor, Centennial Square
Dr.Ambedkar Road, Kodambakkam
Chennai 600 024 ... Respondents

(Respondent Nos.2 and 3 are amended as per order dated 13.08.2020 in W.M.P(MD).No.8398 of 2020)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned award order in Award No.IO/CHN/A/LI/0078/2019-20 on the file of the first respondent and quash the same and further directing the respondents to settle the insurance claim amount of Rs.6,00,000/- to the petitioner within the time frame fixed by this Court.

For Petitioner : Mr.R.Maheswaran
For R1 to R3 : Mr.P.Arun Jayatram

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O R D E R

Heard the learned counsel for the writ petitioner and the learned counsel for the respondents.

2. The petitioner states that he had taken a SBI credit card No.4317575075229774. He also states that he obtained add-on credit card for his father A.Sathanathan (Credit Card No.5264685314769702).

It is his further contention that not only himself but his father was also covered by the Insurance Policy. He would also state that the premium was deducted from his account. While so, his father met with an accident and died on 03.02.2007. When the petitioner lodged a claim before the second respondent, the same was repudiated. Questioning the same, the petitioner went before the Insurance Ombudsman. The Insurance Ombudsman also did not admit the petitioner's complaint. Aggrieved by the same, this writ petition came to be filed.

3.The learned counsel for the petitioner submitted that the award of the Insurance Ombudsman rests on two grounds i) premium was not paid to the respondent/Insurance Company ii) the claim is barred by time.

4.The petitioner's counsel drew my attention to the endorsement made in certificate of Insurance issued by the respondents in which the petitioner's father name A.Sathanathan is also mentioned. He also took me to the statement of account for the month of February-2007 which indicates deduction of premium amount. The learned counsel would further contend that Article 44 of the Limitation Act 1963, states that the limitation would start running from the date when the policy was repudiated. According to the petitioner's counsel since repudiation has taken place only in the year 2019, the claim is well within time. I have been spared the trouble of considering the contentions of the learned counsel for the writ petitioner, in view of the simple objection taken by the learned counsel for the respondents 2 and 3.

5. The categorical stand of the respondents 2 and 3 is that they did not receive any premium in respect of the petitioner's father and that therefore, the question of honouring the policy would not arise.

6.The learned standing counsel for the respondents/ Insurance Company would contend that if only the petitioner had arrayed, the company which according to him had deducted the premium as a party respondent before the Insurance Ombudsman, certainly the issue could have been resolved. I find considerable force in the said objection.

7.The case on hand involves three parties namely
a) the policy holder
b) the company which issued the card
3) the insurer.

8.The liability of the insurer would commence, if the insurer had been paid premium in respect of the said account. If no premium had been paid, obviously the insurer would not have any liability. In the case on hand, the insurer alone has been made as a party both before this Court as well as before the Insurance Ombudsman. Hence, the assertion made by the petitioner cannot be tested. Therefore, on this sole ground, I decline to grant relief to the petitioner herein. I make it clear that I have not gone into the issue of limitation. I further make it clear that if the company that issued the card to the petitioner had deducted the premium from the petitioner's account but not remitted to the insurer, then though the insurer may not be liable, the company which deducted the premium would certainly be liable. It would be guilty of deficiency in service. Therefore, this is an issue that has to be necessarily fought out before the Consumer Forum. Therefore, leaving open the rights of the writ petitioner to move the Consumer Forum, this writ petition is dismissed. I once again reiterate that the issue of limitation has not been decided.

9.With this observation and giving liberty to the petitioner, this Writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.P. ARUN JAYATRAM, Advocate (SR-14159[F] dated 17/08/2020)

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and
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13.08.2020

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