BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.09.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.8721 of 2020

N.Jeyaram Sidharth ... Petitioner

Vs.

1.The National Insurance Company Limited,
Representation by its General Manager,
[Division III],
2nd Floor, 35. 1st Main Road,
Gandhi Nagar, Adayar,
Chennai.

2.Bar Council of Tamil Nadu & Puducherry,
Represented by its Secretary,
High Court Campus,
Chennai - 104. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the first respondent's impugned letter dated 08.11.2019, quash the same and consequently, directing the first respondent to release the bonafide insured amount payable to the petitioner.

For Petitioner	:	Mr.RM.Arun Swaminathan
For 1st Respondent	:	Mr.J.S.Murali Standing counsel
For 2nd Respondent	:	Mr.Niranjan S.Kumar Standing counsel

O R D E R

Heard, the learned counsel appearing for the writ petitioner, learned Standing counsel appearing for the first respondent / Insurance Company and the learned Standing counsel appearing for the Bar Council of Tamil Nadu and Puducherry.

2.The petitioner is a practising lawyer. His Enrolment Number is Ms.1353 /2016. He has registered himself with the second respondent. The second respondent announced a Group Insurance Police for the practicing Lawyers. The premium amount was fixed as Rs.900/-. The case of the petitioner is that he has remitted the premium amount on 17.07.2018.

3.The petitioner met with an accident on 14.12.2018. Unfortunately his big and second toe were hewn on the spot. In this regard, Crime No.351 of 2018 was registered on the file of Traffic Investigation Wing - II, Madurai. The petitioner took treatment in

MIOT hospital, Madurai. Later he underwent further treatment at Stanely Hospital, Chennai. Surgery was performed and he had to spend nearly Rs.3,50,000/-.

4. The petitioner suffered amputation of right leg big toe and second toe. The petitioner applied to the respondents seeking compensation. The petitioner made an Insurance Claim. Unfortunately, the same was rejected. This is because when the first respondent took up the matter with the second respondent, it was stated that there is no coverage for the petitioner. Therefore, in the impugned communication dated 08.11.2019, the first respondent took the stand that the petitioner's claim is inadmissible due to "No Coverage". It was also noted that the claim was not preferred immediately. There was an inordinate delay on the part of the petitioner in intimating the claim. The policy states that the claim must be intimated within 15 days or a maximum of 30 days. Though the accident had taken place on 14.12.2018, the claim documents were received by the first respondent only on 27.05.2019.

5.This rejection has been put to challenge in this writ petition.

6.The learned counsel appearing for the Insurance Company reiterated the stand taken in the rejection order.

7.The second respondent has also filed their counter affidavit. The stand of the Bar Council is that though the petitioner had remitted a sum of Rs.900/- towards the premium amount, the petitioner had failed to enclose the filled-in application. Therefore, the petitioner name was not included in the list of advocates covered by the Group Insurance policy.

8.I carefully considered the rival contentions and went through the materials on record.

9.It is not in dispute that the Bar Council had called upon the lawyers to enrol themselves under the Group Personal Accident Insurance Policy, for the period 2018 to 2020. It has been established beyond doubt that the petitioner herein had remitted a sum of Rs.900/- towards the said account on 17.07.2018. The payment details are as under :-

A/c Name	:	Bar Council of Tamil Nadu Group Insurance Scheme
A/c.No.	:	V004813532016
IFSC	:	IDIB000M157
Branch	:	Indian Bank, High Court Branch, Chennai
Date	:	17.07.2018

10.The only question that has to be considered is whether the petitioner had submitted the filled-in application along with payment receipt.

11.The stand of the Bar Council is that the petitioner did not enclose the filled-in application along with payment receipt.

12.The petitioner herein was attached to the Office of Shri.RM.Arun Swaminathan. Along with the petitioner, there were two other colleagues were working in the same office. All the four of them, had remitted the premium amount in the aforesaid account on the same day. It is the case of the petitioner is that all the four applications along with the four payment receipts were sent in a single postal cover.

13.The stand of the Bar Council is that they received the application of Shri.RM.Arun Swaminathan, alone. But the petitioner's counsel draws my attention to the from address written on the postal cover. It is seen that it contains the names of all the four lawyers namely, Shri.RM.Arun Swaminathan, P.Thoothai Muniasamy, N.Jeyaram Sidharth and Abul Kalam Azad. Since the "from address" contains all the four names, the petitioner's version that all the four applications were enclosed in a single cover appears to be more probable. This is not a criminal case. Therefore, the petitioner need not prove his case beyond reasonable doubt.

14.In fact, this being an Insurance claim, I should apply the probability standard. Applying the probability standard, I am clearly of the view that the petitioner's case that he had enclosed the filled-in application also along with the payment receipt is more probable. When for four advocates premium amounts were remitted and when the from address of the postal cover reveals the names of all the four advocates, I find it difficult to believe that the postal cover would have contained the application of one advocate alone. Therefore, the respondent ought to proceed on the footing that the petitioner had also been duly covered by the aforesaid policy.

15.The materials on record convincingly show that the petitioner did meet with an accident and he had also suffered amputation on his toes, Criminal case was registered and the same also ended in conviction. Therefore, I am fully satisfied that the petitioner case is genuine. Hence, it should not be thrown out merely on the ground of delay.

16.The learned counsel appearing for the petitioner draws my attention to the circular bearing Ref.IRDA/HLTH/MISC/CIR/216/09/2011, dated 20.09.2011. It states that the delay ought not to be the standard or mechanical ground of rejection.

17.Inasmuch as, I have held that the petitioner case should be considered as covered under the Insurance Policy and inasmuch as the accident had actually occurred, the respondents ought to honour the claim as per the terms of the policy.

18.In this view of the matter, the impugned communication stands quashed and the writ petition is allowed and the first respondent is directed to pay the petitioner in terms of the aforesaid policy. The petitioner's counsel on instructions, states that he will not make any claim regarding interest. The first respondent shall release the Insured amount within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is directed to make a fresh application by enclosing this order copy to the first respondent.

19.This Writ Petition stands allowed on these terms. No costs.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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.

To

1.The National Insurance Company Limited,
Representation by its General Manager,
[Division III],
2nd Floor, 35. 1st Main Road,
Gandhi Nagar, Adayar,
Chennai.

2.Bar Council of Tamil Nadu & Puducherry,
Represented by its Secretary,
High Court Campus,
Chennai - 104.

+1 CC to M/s.J.S. MURALI, Advocate (SR-17596[F] dated 21/09/2020)

W.P(MD)No.8721 of 2020
18.09.2020

VR(CO)

KK(28.09.2020) 4P 4C