



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2020

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.16818 of 2015

M.Kismath Begum

... Petitioner

vs.

The Branch Manager,
Life Insurance Corporation of India,
Sivagangai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondent to grant the accident benefits for the Policy No.742600323, dated 15.12.2003 to the petitioner by considering the petitioner's representation, dated 04.02.2013 within the time period stipulated by this Court.

For Petitioner :Mr.A.Haja Mohideen

For Respondent : Mr.C.Godwin

O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus to direct the respondent to grant the accident benefits for the Policy No.742600323, dated 15.12.2003 to the petitioner by considering the petitioner's representation, dated 04.02.2013 within the time period stipulated by this Court.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.The petitioner is the widow of Late.Mohammed Salim. While the petitioner's son was in service in Electricity Board, he has taken a life insurance policy in 2003. Though the policy itself was taken on 15.12.2003, it is unfortunate to note that the petitioner's son met with a fire accident on 24.04.2004 and subsequently, died on 01.05.2004. Stating that the premium for the policy was not paid beyond two months, the second respondent did not pay the assured amount as per the policy. Therefore, the petitioner has filed a consumer case in C.C.No.48 of 2005 on the file of the Sivagangai District Consumer Disputes Redressal Forum against the Electricity Board, the employer and the respondent. Though the Consumer Forum dismissed the petition, the petitioner preferred an appeal in F.A.No.299 of 2010 before the Tamil Nadu State Consumer Disputes Redressal Commission. The petitioner's appeal was allowed and the respondent was directed to pay a sum of Rs.1,00,000/- towards the insurance claim, after deducting the premium dues payable by the petitioner's son. The respondent has also paid the amount as per the award of State Commission through a cheque dated 28.04.2012.



4. After receiving a sum of Rs.99,230/-, the petitioner stated that she realised her entitlements towards accidental benefit. Since the petitioner's son died due to fire accident, it is stated that the petitioner is entitled to accidental benefit. It was only after the settlement of previous claim, the petitioner has come forward with an independent representation before the respondent on 04.12.2013. Thereafter, the petitioner has approached this Court with the present Writ Petition.

5. The petitioner has raised a dispute for settlement of insurance amount as per the policy. When her claim was rejected on the ground of non payment of premium beyond two months, the petitioner has filed consumer cases and got an award for a sum of Rs.1,00,000/-. After getting the amount as per the award of State Commission, the petitioner has once again claimed further amount towards accidental benefit. No particular clause of policy is referred to by the petitioner to show that the Insurance Company has to pay an additional amount towards accidental benefit as per the policy. No other provision of the statute or the scheme is produced by the petitioner to justify her claim. Apart from that, the petitioner, who has not claimed any amount under the head of accidental claim in the earlier petition, cannot now raise a new claim, which she had never raised before any Forum. The principles of constructive *res judicata* is applicable in this. The petitioner's claim after 15 years is not maintainable and her claim is also barred by limitation and the Writ Petition is liable to be dismissed on the ground of delay and laches.

6. Having regard to the fact that the petitioner never raised a claim before the Consumer Forum earlier by making an independent claim under this head immediately after the death of her son, the petitioner cannot be permitted to raise this in a Writ Petition, that too after a period of 12 years. For all these reasons, this Writ Petition is dismissed with a cost of Rs.500/- payable to the Bubbles Day Care, being run by the Women Lawyers Association, Madurai Bench of Madras High Court, Madurai, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar (CS)



copy to

1.The Office Incharge,
The Bubbles day care,
being run the Women Lawyers Association,
Madurai Bench of Madras High Court, Madurai.

2.The Branch Manager,
Life Insurance Corporation of India,
Sivagangai.

+1 CC to Mr.C.GODWIN, Advocate (SR-4613[F] dated 04/02/2020)

+1 CC to Mr.A.HAJA MOHIDEEN, Advocate (SR-4686[F] dated
04/02/2020)

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