BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.26319 of 2019 and
WMP(MD) No.22745 of 2019

M.Marimuthu : Petitioner

Vs

1.Union of India
Represented by its Secretary,
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg,
New Delhi - 110 001.

2.The Chairman,
Universal Sompo General Insurance Co.Ltd.,
Plot No.EL-94, TTC Industrial Area,
MIDC, Mahape,
Navi Mumbai - 400 710.

3.The Branch Head,
Universal Sompo General Insurance Co.Ltd,
1st Floor, No.10/20 Bye Pass Road,
Madurai.

4.The Branch Manager,
Pandian Grama Bank,
Vembar, Tuticorin District.

5.The Senior Manager,
Pandian Grama Bank,
Tuticorin District. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, directing the respondents herein to call for the records pertaining to the impugned proceedings dated 18.12.2018 of the second respondent in rejecting the insurance claim of the petitioner's deceased wife Mrs.Anthoniyammal in respect of Policy No.3336/57262185/00/005 and quash the same and direct the respondents herein to settle the claim amount with interest for the belated period within a period fixed by this Court.

For Petitioner : Ms.Lakshmi Gopinathan for
M/s.Polax Legal Solutions.

For Respondents : For R1 - Mr.S.Sivakumar
For R2 &R3 - Mr.S.Srinivasa Raghavan
For R4 &R5 - Mr.N.Dilip Kumar

O R D E R

Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents 1 & 2.

2. The petitioner's wife went to attend a funeral function on 05.10.2017. According to him, when she was waiting with a few others in a nearby shelter, lightning and thunder struck near the said place, due to which, the petitioner's wife as well as other women fell unconscious. They were rushed to the Hospital. The petitioner's wife Anthoniammal had died due to shock. In this regard, Crime No.329 of 2017 was registered on the file of Paramakudi police station under Section 174 of Cr.P.C. Post mortem was also done. The State Government had disbursed a sum of Rs.4,00,000/- as exgratia payment. The petitioner states that his wife had maintained an account under Pradhan Manthri Suraksha Bhima Yojana(PMSBY). As an account holder under Pradan Manthri Suraksha Bhima Yojana (PMSBY) and Pradhan Manthri Jeevan Jothi Bhima Yojna (PMJJBY), the petitioner's wife was insured under the scheme run by the respondents 2 &3. The petitioner would state that since his wife had died due to lightning strike, he is also entitled for the settlement of the insurance policy amount. Since the said request was negatived by the second respondent by the impugned order dated 18.12.2018, the petitioner was constrained to file this Writ Petition.

3.The petitioner seeks quashing of the impugned communication and wants this Court to direct the respondents to settle the claim amount with interest. The stand of the petitioner was strongly opposed by the learned counsel for the insurance company. The petitioner's counsel would draw my attention to the fact that a criminal case was registered for the death of the petitioner's wife and Post Mortem also conducted. The petitioner drew my attention to the Post Mortem Certificate issued by the Assistant Surgeon, Government Head Quarters Hospital, Ramanathapuram. The said doctor had opined that the cause of death was due to “Myocardial necrosis and cardiac arrest due to lightening strike about 18 to 22 hours before post mortem.”

4.The petitioner's counsel also drew my attention to the statement given by the local Village Administrative Officer. Though the counsel for petitioner had placed *prima facie* materials before this Court in support of her contention that the deceased

Anthoniammal died only due to lightning strike, I must note that this is disputed by the insurer.

5.The learned counsel for the Insurance company took me to the report given by their investigation team. The stand of the insurer is that there is no material to indicate that she died due to lightning. According to the insurer, no such effects were observed on the body of the deceased. If the petitioner's wife had died due to lightning, there would have been some injuries on the body of the deceased. But, in this case, no such effects could be seen. Thus, before me, the cause of death is seriously contested and disputed. It is to be noted that the same is not clarified in the Post Mortem Certificate.

6. Certainly, the Insurance Company is at liberty to challenge the veracity and contents of the Post Mortem Certificate. In order to prove the same, the petitioner has to examine the doctor, who issued the Post Mortem Certificate and in turn the doctor has to be cross examined by the Insurance company. Since a disputed question of fact has arisen before me, I am not in a position to straight away give relief in this Writ proceeding.

7. The Hon'ble Supreme Court in the decision reported in ***(2000) 4 SCC 543 (Tamil Nadu Electricity Board vs. Sumathi and Ors.)*** held that when disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. Of course, if there is negligence on the face of it and infringement of Article 21 is there, then public law remedy is available. Such is not the case here. The insurer seriously challenges the version projected by the petitioner. Therefore, I am of the view that it may not be possible for this Court to grant remedy to the petitioner in writ proceedings.

8. By following the aforesaid judgment of the Honourable Supreme Court, I dismiss this Writ Petition. I make it clear that I decline only because a contest has arisen before me. The petitioner is at liberty to move either the Civil Court or the Consumer forum. If the petitioner moves the Consumer Forum, the petitioner will be entitled to examine witnesses on his side. If the petitioner files a suit or a complaint before the appropriate forum, within a period of eight weeks from the date of receipt of a copy of this order, the concerned Court or Forum will entertain the suit/complaint without reference to limitation. Since the occurrence had taken place in the year 2017, if a suit or complaint is filed within the above said period, the concerned Court or Forum will dispose of the claim of the petitioner within a period of six months thereafter. I once again reiterate that the dismissal of this writ petition will not in any way cast any cloud on the petitioner's claim. The Court/Forum will decide the petitioner's claim independently on its own merits.

9. With the aforesaid liberty observations and directions, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// 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

The Secretary,
Union of India
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg,
New Delhi – 110 001.

+1 CC to M/s.POLAX LEGAL SOLUTIONA, Advocate SR-14337[.
+1 CC to Mr.N.DILIP KUMAR, Advocate SR-14341.
+1 CC to Mr.S.SIVAKUMAR, Advocate SR-14354.
+2 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate SR-14378.

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