IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-12-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.14261 of 2008

Mr.Vadapalli Srinivas,
S/o.V.M.Somayajulu,
SBI Life Insurance Co. Ltd.,
Central Processing Centre,
Kapas Bhavan,
Plot No.3-A, Sector-10,
CBD Belapur,
Navi Mumbai – 400 064,
Represented by its Manager. .. Petitioner

vs.

1.Mr.M.Jayakumar (Died)

2. The Ombudsman,
Office of the Insurance Ombudsman,
Fathima Akthar Court, 4th Floor,
No.453, Anna Salai,
Teynampet,
Chennai – 600 018.

3.Ms.Lavanya
(R-3 substituted as legal heir of the deceased
R-1 as per order of Court dated 19.08.2019
made in WP No.14261 of 2008) .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the order dated 27.02.2008 passed by the Hon'ble Ombudsman, Chennai in Complaint No.I.O (CHN) 21.002.2512/2007 in Award No.10 (CHN) L-080/2007-08 and quash the same as arbitrary and illegal.

For Petitioner : Mr.S.Sethuraman

For Respondents : No Appearance

O R D E R

The writ on hand has been instituted questioning the order passed by the Ombudsman in Award No.10 dated 27.02.2008.

2. The State Bank of India Life Insurance Company Limited is the petitioner. Mrs.A.Loganayagam was working as a Nurse in ESIC Hospital at K.K.Nagar. She had taken a Housing Loan for a sum of Rs.13.40 lakhs from the State Bank of India. She had also taken a policy for Life Insurance under the Group Insurance Scheme for a sum of Rs.12.95 lakhs. As per the scheme, she had submitted necessary Application Form along with the declaration of good health dated 27.01.2005 duly filled up and signed.

3. In the declaration of good health, she had declared that "I declare that I am in sound health, do not have any physical defect/deformity, perform my routine activities independently and, that I have never suffered or have been suffering, or have been hospitalised for any critical illness or a condition requiring medical treatment for a critical illness, as on date".

4. The critical illness is also defined under those circumstances. The said Smt.A.Loganayagam was also included as a member under the Group Insurance Scheme. Unfortunately, during February 2007, the first respondent, who is the husband of Smt.A,Loganayagam, submitted the Claim Form stating that his wife passed away on 21.11.2006 in the hospital and requested claim for settlement. Along with the Claim Form, the first respondent had enclosed the Death Certificate of his diseased wife and other documents.

5. Considering the Claim Form, the petitioner-Company on 15.02.2007 called for 'Employer Certificate' along with sick leave from 2002 to 2005 with all medical details of reimbursement details for the leaves taken etc. As regards verification of the records, the petitioner-Insurance Company found that the said Smt.A.Loganayagam suppressed her medical illness and furnished false declaration for the purpose of insurance claim. Thus, the petitioner-company proceeded and invoked the repudiation clause and rejected the claim petition. Challenging the said rejection order, the first respondent-husband of the deceased wife filed a petition before the Insurance Company Ombudsman at Chennai.

6. The Insurance Company Ombudsman adjudicated the issues and directed the petitioner-Company to settle the ex-gratia payment of 50% of the sum assured in full and final settlement. Thus, the petitioner is constrained to move the

present writ petition.

7. The learned counsel appearing on behalf of the petitioner mainly contended that when the suppression of material information was established by the petitioner-Insurance Company, there is no reason whatsoever to award any ex-gratia payment and therefore, the Ombudsman has committed an error in appreciating the facts and circumstances as well as the declaration signed by the deceased wife of the first respondent.

8. The findings of the Ombudsman and the relevant paragraph 10 of the Award dated 27.02.2008, reads as under:-

> "No doubt the assured suppressed material information at the time of proposal. However, the company's authorised Doctor failed to give due importance to this valid point in both the instances (at the time of medical examination and while taking ECG). Blame cannot be put squarely on the insured alone. She gave adequate opportunity for the company to check this important information. Therefore, keeping the above deliberations in mind, I direct the insurer to allow the claim on an ex-gratia basis and to pay 50% of the sum assured in full and final settlement of the claim under the policy."

9. There is no dispute in respect of the facts as narrated by the petitioner. The wife of the first respondent was a member of the Group Insurance Scheme and the premium for the same was also paid. The deceased signed a declaration form and the contents of the declaration form unambiguously states that the declarant, at the time of signing, was in sound health and do not have any physical defects or deformities. It is further proceeds by stating that the declarant has never suffered or having been suffering or have been hospitalised for any critical illness or a condition requiring medical payment for critical illness. The critical illness is also defined and various chronic diseases are incorporated under the definition of 'critical illness'.

10. This being the factum, the Ombudsman, in its finding, categorically held that "no doubt, the Assured suppressed material information at the time of proposal. Thus, the Ombudsman has found that the Assured Smt.A.Loganayagam suppressed medical information regarding her health condition, but the Ombudsman proceeded on the footing that the petitioner-company's authorised Doctor failed to give due importance to

this valid point in both the instances i.e., at the time of medical examination and while taking ECG. Fixing contributory negligence on the part of the petitioner-Insurance Company, while conducting medical examination of the assured, the Ombudsman formed an opinion that 50% of the sum assured is to be settled in full and final settlement in favour of the claimant.

11. This Court is of the considered opinion that the question of considering the contributory negligence would not arise in this case. The right to check up/physical examination independently by the petitioner-Insurance Company that of the Doctor would not be sufficient for the purpose of forming an opinion that the Assured is suffering from any medical illness. In respect of medical illness, the proper medical examination is required and those examinations will not be conducted by the Insurance Company and the general fitness is examined and considered by the petitioner-Company and therefore, the medical examination conducted by the petitioner-company would not be a bar for the petitioner-Insurance Company to invoke the repudiation clause in the event of suppression of material facts by the assured, more specifically, in group Insurance Schemes, where hundreds of persons are members.

12. The Doctor's examinations are conducted in random, mostly general examinations, which will not cover the medical examination in depth, so as to find out medical illness of the person. Therefore, mere medical examination by the petitioner-Insurance Company, in general, would not be a bar for invoking the repudiation clause on the ground that the declaration of giving a false Declaration Form submitted by the applicant. In the event of declarant furnishing any information about the illness or medical treatment, then the Company would be in a position to conduct further examination.

13. In the present case, the deceased wife of the first respondent in clear terms declared that she was not suffering from any illness or otherwise. Therefore, the question of conducting any further medical examination would not have arisen during the relevant point of time.

14. This being the facts and circumstances established, the Ombudsman has committed an error in forming an opinion that 50% of the sum assured must be settled in favour of the first respondent and the contributory negligence aspect is taken has no basis and the mere general medical examination would not be a bar for the Ombudsman to invoke the repudiation clause, as it was invoked based on the suppression of material facts by the Assured duly signing the declaration.

15. This being the factum, the order passed by the

Ombudsman is infirm and not in consonance with the principles of law. Consequently, the order passed by the second respondent-Ombudsman in proceedings Complaint No.10 (CHN) 21.002.2512/2007 in Award No.10 (CHN) L-080/2007-08 dated 27.02.2008 stands quashed.

16. According, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Svn

To

The Ombudsman,
Office of the Insurance Ombudsman,
Fathima Akthar Court, 4th Floor,
No.453, Anna Salai,
Teynampet,
Chennai - 600 018.

+1cc to Mr.S.Sethuraman, Advocate, S.R.No.68235

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SSI(CO)
CT/03/01/2022