THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 23593 of 2021

B. Preethi .. Petitioner

Versus

1. The Chairman (IRDA)
   Office of the IRDA
   Insurance Ombusman
   Office of the Insurance Ombudsman Fatima
   Akhtar Court, 4th Floor
   453, (oe 312) Anna Salai
   Teynampet, Chennai - 600 018

2. M/s. HDFS ERGO General Insurance Company Limited
   Represented by its Chief Executive Officer
   Registered office at
   1st Floor,HDFC House
   165/166 Backbay Reclamation
   H.T. Parekh Mard, Mumbai - 400 020

3. The Branch Manager
   M/s. HDFS ERGO General Insurance Company Limited
   New No. 528, Old No. 559
   2nd Floor, Anna Salai
   Teynampet, Chennai - 600 018

4. M/s. Housing Development Finance
   Corporation Limited
   Represented by its Regional Manager
   Second Floor, ITC Centre
   760 Anna Salai,
   Chennai - 600 002 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to consider the representation of the petitioner dated 21.09.2021 seeking for direction to the 2nd and 3rd respondents to issue the claim insured amount of Rs.11,38,486/- (Rupees Eleven Lakhs Thirty Eight Thousand Four Hundred and Eighty Six Only) and eligible bonus or other benefits in respect of Insurance Policy covered to the Housing Loans A/c. No.

612031646, 620768097 and 639916913 adjust the same against the Housing Loan Outstanding as on 07.05.2021 (ie., date of death of the principal borrower) and consequently return the title deeds within a time limit.

For Petitioner : Mr. N. Umapathy

ORDER

Considering the nature of the relief sought for in this writ petition, this case is taken up for final disposal at the admission stage itself.

2. According to the petitioner, her husband availed a housing loan from the fourth respondent to the tune of Rs. 15,00,000/- by deposit of title deeds. When the loan was subsisting, the petitioner's husband also subscribed to an Insurance Policy on 28.02.2019 with the second and third respondents with an insured amount of Rs. 11,38,486/- covering risk factors such as fire and allied perils, earthquake, terrorism, burglary, house breaking, theft, major medical illness, personal accident and loss of job. According to the petitioner, her husband periodically remitted the loan amount to the fourth respondent and he has paid a total a sum of Rs.11,58,557/- by way of 82 monthly instalments out of 240 instalments. Further, her husband had availed resident top up loan for a sum of Rs. 5,00,000/- and paid 59 monthly instalments out of 180 months. While so, on 07.05.2021 her husband passed away due to Covid-19 infection, leaving behind her, their minor children and her mother in law.

3. It is further stated that after the death of the husband of the petitioner, the fourth respondent issued a notice on 30.06.2021 demanding payment of Rs. 12,45,555/- towards the housing loan. The fourth respondent also threatened the petitioner to vacate the property and surrender the vacant possession. Feeling resentful, the petitioner sent an e-mail to the second respondent dated 24.07.2021 claiming disbursement of critical illness claim No. RR-CI21-12479061 on the death of her husband. However, the second respondent rejected it on the ground that the insured died due to Covid-19 positive and the said ailment is not covered under critical illness enlisted in Section 3 - major medical illness & procedures of policy terms and conditions. Aggrieved by the same, she made a representation dated 21.09.2021 to the first respondent to direct the

respondents 2 and 3 to sanction the death benefits as per the claim under the insurance policy and the same is pending without consideration till date. In such circumstance, the petitioner has come up with this Writ Petition.

4. The learned counsel for the petitioner contended that major illness covers Cancer, End Stage Renal Failure, Multiple Sclerosis, Major organ transport, heart valve replacement, coronary artery bypass graft, stroke, paralysis, myocardial infarction. In the present case, the petitioner's husband passed away owing to Covid-19 infection, which is virtually a deadly respiratory disease within the term Critical Illness. While so, the non-consideration of the claim of the petitioner for payment of the amount covered under the Insurance Policy, by the respondents 2 and 3, is unreasonable and arbitrary. The petitioner also submitted a representation dated 21.09.2021 to the first respondent seeking to issue appropriate direction to the respondents 2 and 3 to disburse the claim amount. However, the said representation dated 21.09.2021 is pending. Therefore, the learned counsel for the petitioner prays for issuing appropriate direction to the first respondent.

5. Admittedly, during the life time of the petitioner's husband, he had subscribed to an Insurance Policy with the respondents 2 and 3. After the death of her husband, the petitioner submitted a representation to the respondents 2 and 3 for sanction of the death benefits as per the insurance policy. However, the respondents 2 and 3 rejected the claim on the ground that the petitioner's husband died due to Covid-19 infection and it is not covered under the policy. Aggrieved by the same, the petitioner submitted a representation dated 21.09.2021 to the first respondent to issue appropriate direction to the respondents 2 and 3 to sanction and disburse the death benefits covered under the policy. It is stated that the said representation dated 21.09.2021 is pending on the file of the first respondent.

6. Considering the above, this court, without going into the merits of the case, directs *** the Insurance Ombudsman is directed to consider the writ petitioner's representation dated 21.09.2021 and pass appropriate orders, on merits and in accordance with law, after affording reasonable opportunity of hearing to her and the respondents 2 and 3, within a period of eight weeks from the date of receipt of a copy of this order.**

7. With the aforesaid direction, this Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-IX)
dated: 24.11.2021

//True Copy//

*** Modified as per Order dated 20.04.2022 made in WMP.No.5231 of 2022 in WP.No.23593 of 2021**
Sd/-
Assistant Registrar (CS-IX)
dated:06.05.2022

Sub Assistant Registrar

dhk/rsh

To

1. The Chairman (IRDA),Office of the IRDA
   Insurance Ombusman,
   Office of the Insurance Ombudsman Fatima
   Akhtar Court, 4th Floor
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3. The Branch Manager
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4. The Regional Manager
   M/s. Housing Development Finance
   Corporation Limited, Second Floor, ITC Centre
   760 Anna Salai, Chennai – 600 002

*** To be substituted to the order copy already despatched on 21.12.2021**

+1cc to Mr.N.Umapathi, Advocate, S.R.No.27278

BR(CO)
SB(29/11/2021)
SU(09/05/2022)