BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.1163 of 2008

and

M.P.(MD)No.1 of 2008

J.Kannan ... Appellant

Vs.

Manager (Legal),
Life Insurance Corporation,
Gandhiji Road,
Thanjavur. ... Respondent

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.82 of 2007, dated 25.02.2008, on the file of the Additional Subordinate Court, Thanjavur, reversing the judgment and decree in O.S.No.65 of 2005, dated 14.07.2006, on the file of the District Munsif, Thanjavur.

For Appellant : Mr.V.Chandrasekar
For Respondent : Mr.P.R.Balasubramanian

JUDGMENT

The defendant in the suit is the appellant in this second appeal. The respondent/Life Insurance Corporation of India filed O.S.No.65 of 2005 on the file of the District Munsif Court, Thanjavur, seeking to recover a sum of Rs.36,540/- together with interest. The case of the plaintiff is that the defendant/J.Kannan had taken Ex.A.1/policy in the year 1983 under salary savings scheme. The appellant/defendant was a bank officer. As per the terms of the policy, the maturity amount was Rs.25,000/-. The monthly premium payable was Rs.45/-. A clause in the policy provided for conversion of the same into an endowment assurance policy with profits on the expiry of five years from the date of commencement of the policy. Originally, the policy was to mature only in the year 2018. The case of the plaintiff is that the period of maturity was shortened and it matured in the year 2003 itself. The plaintiff would further claim that only the period was reduced but then the policy was not to carry any profits. After the policy matured, a sum of Rs.36,404/- was paid to the defendant. Later during audit, it was found out that a sum of Rs.31,200/- was paid in excess and that same has to be recovered. Therefore, the plaintiff sent Ex.A4/letter dated 09.05.2003. The same was acknowledged by the defendant. Since no response was forthcoming, Ex.A6/legal notice dated 28.12.2004 was issued. The defendant replied vide Ex.A.7 dated 06.01.2005. The defendant declined to concede the plaintiff's demand. The plaintiff was left with no other option but to institute O.S.No.65 of 2005 before the District Munsif Court, Thanjavur. On the side of the plaintiff, an official was examined as P.W.1. Exs.A.1 to A8 were marked. On the side of the defendant, defendant examined himself as D.W.1. Exs.B1 and B2 were marked. The learned Trial Munsif by judgment dated 14.07.2006 dismissed the suit. Aggrieved by the same, the plaintiff/corporation filed A.S.No.82 of 2007 before the Additional Sub Court, Thanjavur. The Appellate Court vide judgment and decree dated 25.02.2008 allowed the appeal and decreed the suit. Questioning the same, this second appeal came to be filed.

2.Though the second appeal is of the year 2008, till date it has not been admitted. Only a direction to the plaintiff to produce the relevant records was issued.

3.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds. He called upon this Court to admit this second appeal as substantial questions of law have arisen for consideration. His pointed contention is that the duty squarely lay on the plaintiff to prover their case. The plaintiff has not at all established their case. In the plaint, in paragraph No.3, it has been claimed that the policy was converted into an endowment assurance policy with profits based on the request of the defendant. According to the appellant's counsel, this averment found in paragraph No.3 is patently incorrect. The defendant at no point of time called upon the plaintiff/corporation to convert the policy into an endowment assurance policy with profits. He would even go the extent of saying that the defendant was only paying the original premium and even the enhanced premium of Rs.100/- was not paid. The learned counsel would also submit that even if this Court comes to the conclusion that an excess amount was paid, this Court may not direct refund of the same, because there is no mistake on the part of the appellant. The learned counsel would rely on the decision reported in ***2013 SCC Online SC 1235 (Yesyem Arecanut Company and Others Vs. State of Kerala and Others).***

4.Per contra, the learned standing counsel for the corporation submitted that no substantial question of law really arises for consideration and that the second appeal may be dismissed at this stage itself. He would also point out that since entire evidence is before this Court, this Court may ignore the faulty pleading found in paragraph No.3. He pressed for dismissal of the second appeal.

5.I carefully considered the rival contentions and perused the evidence on record. There is no dispute that the appellant/J.Kannan had taken an insurance policy in the year 1983. The policy was known “convertible whole life assurance policy without profits”. However, it was open to the defendant to convert the same into an endowment policy with or without profits at the end of five years. Though the plaintiff had erroneously pleaded that the policy was converted into an endowment policy with profits, the evidence clearly indicate that no such conversion was ever made. As per the original terms, the policy was to mature only in the year 2018. The fact remains that the settlement amount was paid in the year 2003 itself. Therefore, this Court can safely conclude that only due to some understanding between the parties, the period of maturity was shortened and it was advanced from the year 2018 to the year 2003. When the period of maturity is shortened, obviously the premium amount must be correspondingly enhanced. Therefore, there is high probability that instead of Rs.45/-, the defendant was paying a sum of Rs.100/- from the year 1983. But the appellant's counsel would continue to maintain that the appellant never made any request and he was remitting the premium of Rs.45/-. Whether the appellant paid an enhanced premium or not, the fact remains that the policy remained one without profit and it was never converted to endowment policy with profit. Once there is clarity on this aspect of the matter, then it is not difficult to determine as to whether excess amount was paid or not.

6.Ex.B.8 is the accounts statement filed by the respondent/corporation. The sum assured was Rs.25,000/-. Even in the written statement, the defendant admits that he had taken loan. The loan amount is mentioned in Ex.B.8. It was Rs15,710/-. Obviously, it carried interest. That came to Rs.4,086/-. Therefore, while settling the sum assured, reduction of Rs.19,796/- ought to have been made and the defendant was only entitled to be paid only a sum of Rs.5,204/-. But what was actually paid to him was Rs.36,404/-. This erroneous computation was made because the official, who made the computation was under the impression that the policy carried profits. When the policy did not carry any profit and when the defendant had already availed loan of Rs.15,710/-, I fail to understand as to how the defendant could even receive the amount of Rs.36,404/-. The defendant was not an illiterate villager. He was a bank official. He was receiving policy amount, not lottery prize. He knew that he could not have received even a single rupee above Rs.25,000/-, when the policy did not carry any profit clause. When he availed loan, obviously the same ought to have been deducted from the sum assured. Therefore, the Lower Appellate Court correctly analyzed the entire evidence on record and came to the conclusion that the suit has to be decreed against the defendant. I do not find any substantial question of law arising in this second appeal and the same stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (T & P)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

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To:

1.The Additional Sub Court,
Thanjavur.

2.The District Munsif Court,
Thanjavur.

Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.M.RAJKUMAR, Advocate (SR-16144[F] dated 17/04/2021)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-16441[F] dated 19/04/2021)

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KK(19.05.2021) 4P 7C