IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P(C) No.33604 of 2021
(Through hybrid mode)

Gangadhar Mishra	....	***Petitioner***
		Mr. M. R. Dhal, Advocate

-versus-

Asst. Manager, Canara Bank and others	....	***Opposite Parties***

Mr. A. Das, Advocate for O. Ps.1 to 3

Mr. R. C. Sahoo, Advocate for O.P.4

CORAM: JUSTICE ARINDAM SINHA

ORDER
11.07.2022

Order No.

06. **1.** Mr. Dhal, learned advocate appears on behalf of petitioner. He submits, his client's son wanted to become an engineer and availed education loan from opposite party nos.1 to 3 (bank). The loan was sanctioned on 16th July, 2012. Though Rs.6,00,000/- was sanctioned but only Rs.5,41,000/- was directly paid in aggregate to Birla Institute of Technology and Science (BITS) Pilani, in Rajasthan. The loan was to be repaid with effect from one year after the completion of course or six months of securing employment, whichever was earlier. Equated Monthly Installments (EMIs) fixed by the bank was

Rs.10,997/-. He submits, premium for the bank to take insurance for repayment of the loan was deducted from his client's account. His client's son died by accident on 21st August, 2020. Till then his client had paid regularly, the EMIs, as they fall due, then being deducted from his savings bank account. Opposite party no.4 (insurance company) had insured repayment of the loan against, inter alia, the contingency of the borrower dying. However, the bank continued to demand repayment from petitioner and the insurance company has obstructed adjudication of the writ petition by claiming first, it had no information and second, it had not issued the policy.

2. Mr. Das learned advocate appears on behalf of the bank and on query from Court submits, in the additional affidavit dated 10th May, 2022 it has been stated that on 18th February, 2013 amount received Rs.1854/- was debited from account of the deceased towards insurance charges. He submits, that amount along with other insurance premium amounts, collected from borrowers, was remitted by Demand Draft (DD) on 16th March, 2013 to the insurance company. The DD was for Rs.49,287/-. The insurance company liquidated the DD on 20th March, 2013. In spite of several requests and demands the insurance company did not issue policy copy in respect of the deceased.

3. Mr. Sahoo learned advocate appears on behalf of the insurance company and draws attention to page 18 of said counter affidavit of the bank. He relies on annexure thereto bearing silent features of the policy and the manner, in which premium is to be paid and policy issued, as provided in, inter alia, clause-(g), reproduced below.

> ***"**It is proposed to issue separate polices in respect of each loan from the date of receipt of premium amount to their account. Insurance Premium shall be worked out for each loan and the same shall be taken into account as an eligible expense for arriving at the quantum of eligible finance. A consent letter as per **Annexure-**7 shall be obtained for all the future loans. In order to cover all the loans sanctioned during a particular month, the branches have to send details of the loans in the proposal form (**Annexure-4**) in duplicate to the respective ROs by the 5th of the succeeding month along with the consolidated premium amount. The premium in each case should be debited to the respective loan account. ROs, on consolidating the proposals, shall send one copy to the branch office of UIICo. Ltd. at Bancassurance Division (D O. 12), Bangalore along with the names of the Branches pertaining to the proposals vis-a vis applicable premium amount before 10th of the succeeding month.*
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> *The premium received from the Branches shall be properly reconciled at RO with reference to the proposals received and remitted online through CBS mode to Malleshwarm 18 Cross Branch towards the credit to A/c.*

*No.**04241010003960** of UIICo, Bangalore. The Insurance Company will issue policy documents immediately after receipt of proposals and premia and send them to the respective ROs. ROs are required to forward the policy documents to the branches concerned for keeping along with the loan papers.”*

4. Submissions made on behalf of petitioner stand reflected in, inter alia, paragraph 3 to 6 in the petition. There is clear averment regarding sanction, disbursement, debit of insurance premium amount, repayment and death of the borrower. In paragraph 4 of the petition there is statement that petitioner’s son died on 21st August, 2020 and EMIs have been paid up to February, 2020 on regular debit from his savings bank account. In paragraph 6 petitioner stated, inter alia, insurance premium of Rs.1854/- stood debited from his son’s savings bank account on 18th February, 2013.

5. The bank, as aforesaid filed, inter alia, counter. There is confirmation that insurance premium amount of Rs.1854/- was debited to savings bank account of the deceased on 18th February, 2013. The bank held out that petitioner, however, neither produced copy of the death certificate nor copy of the policy. In paragraph 8 of the counter there is assertion that the insurance company received the DD on 18th

March, 2013. The bank did not deny, let alone specifically, statements in paragraph 4 of the petition. About paragraph 6 in the petition, the bank only said in paragraph 9 of its counter as reproduced below.

> ***"****That the submissions and allegations made in paragraph 6 are false and also travesty of real facts and are wholly misconceived. An attempt has been made to distort the correct facts for prejudicing the Hon'ble Court.* ***"***

6. Contentions of the insurance company appears to be that there was memorandum of understanding between the bank and itself, inter alia, on calculation, payment of premium and issuance of policy to cover the loans granted. There is no doubt that following the agreement between the bank and the insurance company, Rs.1854/- was debited in savings bank account of the deceased. So far as the deceased is concerned, repayment of the loan he had taken stood insured.

7. Procedural short comings or laches on part of the bank or the insurance company or both cannot affect benefit of the policy to the insured deceased, from whom premium was deducted. The young person died and there is no dispute or denial in the counter filed by the bank that he had paid EMIs fallen due, during his lifetime.

8. Opposite party nos.1 to 3 are restrained from recovering outstanding education loan sanctioned and disbursed to petitioner's son. Said opposite parties will find their remedy against the insurance company, if available in law.

9. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant