IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.12871 of 2015
and
M.P.Nos.1 & 2 of 2015

V.Ashraf ... Petitioner

Vs

1.The Insurance Ombudsman,
Tamil Nadu & Pondicherry
Fathima Akhtar Court,
4th Floor, 453 Anna Salai,
Teynampet, Chennai – 600 018.

2.Star Union Da-ichi Life Insurance Co Ltd,
11th Floor, Raghuleela Arcade,
IT Park, Sector 30-A
Opp Vashi Railway Station,
Vashi, Navi Mumbai – 400 703,
Maharashtra.

3.Repco Home Finance Ltd,
Rep by its Branch Manager,
Having Off at 9 Katpadi Road,
Thottapalayam,
Vellore – 632 004, Vellore District.

4.Insurance Regulatory and Development
Authority (I.R.D.A),
3rd Floor, Parisrama Bhavan, Basheer Bagh,
Hyderabad – 500 004.
Telangana State (INDIA). ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned order dated 17.09.2014 bearing Award No.IO (CHN)/A/L1/041/2014-15 on the file of the 1st respondent and quash the same and consequently direct the 2nd respondent to settle the loan amount with the 3rd respondent obtained by the deceased Mr.Jani Basha in settlement of the claim of the Master Policy No.GT/00000021.

For Petitioner : Mr.P.Kishore

For Respondents : No Appearance for R1 & R4
Ms.S.Indrapriyadharshini
for Mr.N.Kishore Kumar for R2
Mr.R.Gopinath for R3

**ORDER**

The petitioner has filed this writ petition for a Writ of Certiorarified Mandamus to call for the records of the first respondent dated 17.09.2014 bearing Award No.IO/CHN/A/LI/0041/2014-2015 and to consequently direct the second respondent insurance company to settle the loan taken by the petitioner's father with the third respondent, Repco Home Finance Limited.

2.The specific case of the petitioner is that the petitioner's father late Mr.Jani Basha had obtained housing loan form the third respondent, Repco Home Finance Limited. At the time of taking loan from the third respondent Bank, he was obligated to take insurance policy from the second respondent insurance company. In the said insurance policy, the petitioner has been nominated as the beneficiary.

3.The petitioner's father gave a declaration in connection with the insurance policy stating that he was not suffering from any disease or any ailment including diabetes, hypertension (high blood pressure), heart attack and chest pain etc,. The petitioner's father, however died on 03.12.2012 after survicing the loan for a period of one year and eight months.

4.Under these circumstances, the petitioner as a beneficiary under the policy given by the second respondent insurance company made a claim and the said claim was rejected by the second respondent insurance company on the ground that the petitioner's father had suppressed material facts regarding his health condition.

5.It is submitted that the hospital records indicate that the petitioner's father was suffering from cardiac ailment including hyper tension and that he was taking treatment for five years contrary to the declaration made at the time of taking policy with the second respondent insurance company.

6.The petitioner therefore preferred an appeal before the first respondent who by the impugned award has rejected the claim of the petitioner. The impugned order is assailed by the learned counsel for the petitioner on behalf of the petitioner stating that the insurance policy was forced upon the petitioner's father and that the petitioner's father was illiterate and that he signed the same unaware of the content of the declaration.

7.It is therefore submitted that the petitioner cannot be put to a disadvantage particularly in the light of the fact that the respondent had collected the one time policy premium of Rs.28,828/- from the petitioner's father.

8.It is submitted that the order of the first respondent rejecting the claim of the petitioner is unsustainable and therefore, the second respondent should be directed to settle the named amount directly to the third respondent bank from whom the petitioner's father had taken a loan for Rs.6,00,000/- on 31.03.2011.

9.The writ petition is opposed by the learned counsel for the second respondent on the ground that the impugned order of the first respondent, Insurance Ombudsman is well reasoned and requires no interference.

10.The learned counsel for the second respondent has drawn attention to the document filed by the petitioner's father, wherein there is a clear suppression of fact in as much as there is a categorical declaration that the petitioner's father did not suffer from any ailment. However, the medical records obtained from the hospital shows that the petitioner's father was undertaking treatment for the past five years in connection with heart ailment, hypertension (high blood pressure), and chest pain etc, and therefore it is submitted that the order of the first respondent dated 17.09.2014 cannot be interfered with.

11.The learned counsel for the respondent submits that the contract of insurance is *uberrima fides* meaning contract was entered with utmost faith.

12.It is submitted that the insurance policy obtained is extended based on the self declaration of the insured, therefore, if there is any mis-declaration which amounts to suppression of fact, the insurance company is entitled to repeal the claim arising out of the contingency specified in the specification policy.

13.The learned counsel for the second respondent has placed reliance on the following decisions:-

i. **Mithoolal Nayak** Vs. **Life Insurance Corporation of India,** AIR 1962 SC 814;
ii. **Satwant Kaur Sandhu** Vs. **New India Assurance Company Ltd**, AIR 2009 SCC 316;

14.I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

15.The insurance obtained by the petitioner's father late Mr.Jani Basha from the 2nd respondent/Star Union Da-ichi Life Insurance Company appears to be based on a tie up between the 2nd and 3rd respondents. The petitioner's father ought to have declared correct medical status, at the time of obtaining loan from the 3rd respondent/Repco Home Finance Ltd. However, it appears the details were filled up either by the officers of the 2nd respondent or by the officers of the 3rd respondent. The contract is based on the declarations in the application for the policy.

16.Considering the fact that there is a mistake in the details furnished, the second respondent cannot be directed to pay the claim amount to the petitioner directly.

17.In case, it is the case of the petitioner that the details were filled up by the second or third respondent at the time when the policy was issued, it is for the petitioner to proceed against them in the manner known to law.

18.*Prima facie*, it appears that there was a mistake or mis-representation at the time when the policy was issued to the petitioner's father. The contract of insurance was therefore voidable at the option either of the parties to it, depending upon the facts.

19.The second respondent may be justified in rejecting the claim of the petitioner, if there was mis-representation by the petitioner's father. This can be established only in civil suit after trial.

20.The second respondent insurance company is at liberty to refund the premium collected from the petitioner's father, if seeks avoid its liability without prejudice to rights of the either parties.

21.In view of the above discussion, I do not find any merits in the present writ petition. The second respondent is given liberty to refund the premium collected from the petitioner's father together with interest thereon to the petitioner as the legal heirs of the petitioner's father while liberty is given to the petitioner to initiate appropriate proceedings in the manner known to law.

19.This writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

**12.10.2022**

Index : Yes/No
Speaking/Non-Speaking Order
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**C.SARAVANAN, J.**

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