IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.23410 of 2013
and M.P.No.1 of 2015

1.Neelavathi @ Chinnaponnu
2.Devaki ... Petitioners

Vs.

1.The Chief Manager
Life Insurance Corporation of India
City Branch VI
New No.15, Old No.38, South Indian Co-operative Bank
Anna Salai
Chennai – 2

2.The Chief Manager
Life Insurance Corporation of India
No.3, 4th Main Road
United India Colony
Kodambakkam
Chennai – 24

3.Rukmani ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in the impugned reply dated 30.07.2013 addressed to the petitioners' counsel and quash the same and consequently directing the respondents 1 and 2 herein to settle the amount due under the policy No.713573720 taken by the deceased Umashankar to the petitioners herein.

For Petitioner : Mr.P.Dinesh Kumar

For Respondents : Mr.A.Paneerchelvam for R1 & R2
No Appearance - R3

ORDER

This Writ Petition is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in the impugned reply dated 30.07.2013 addressed to the petitioners' counsel and quash the same and also consequently direct the respondents 1 and 2 herein to settle the amount due under the policy No.713573720 taken by the deceased Umashankar to the petitioners herein.

2.The 1st petitioner is the wife and the 2nd petitioner is the mother of the deceased Umashankar. The said Umashakar took a policy with the

2nd respondent herein in Policy No.713573720 on 07.02.2003 and the policy was for a sum of Rs.50,000/-. While the facts remain so, the said Umashankar died intestate on 18.04.2013, leaving behind the petitioners herein as his legal heirs to succeed the estate, when the petitioners being the legal representatives of the deceased, sought to get the benefit of policy amount, the respondents 1 and 2 have rejected their claim on the ground that the 3rd respondent, who is the sister of the deceased has been nominated by the deceased as nominee to the policy. Challenging the same, the present writ petition is filed.

3.Despite notice and name printed in the cause list, none appeared on behalf of the 3rd respondent. It is the contention of the 1st and 2nd respondents that as per Section 39 of the Insurance Act, 1938, the policy amount has to be disbursed only to the nominees. As the policy holder has nominated his sister, the 3rd respondent herein as his nominee, they have rightly rejected the claim of the petitioners and there is no dereliction on their part.

4.Learned counsel for the writ petitioners submitted that the petitioners being the class-1 legal heirs of the policy holder, they are entitled to receive the policy amount. Merely because the nominee has been shown in the policy, the nominee will not get any right over the estate of the deceased. Hence seeks to setaside the order of the respondents and direct them to release the policy coverage amount to the petitioners.

5.Learned counsel appearing for the respondents 1 and 2 would submit that Section 39 of the Insurance Act, 1938, makes it clear that the policy amount should be paid only to the nominee. He added that, it is for the petitioners to recover the said amount from the nominee.

6.Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2. Perused all the materials placed on record.

7.There is no doubt that Section 39 of the Insurance Act, 1938 states that the policy amount should be paid only to the nominee when the nominee is appointed by the policy holder. The fact remains that the nominee is only a trustee to the amount and she cannot claim absolute right. Despite service of notice, the 3rd respondent did not appear before this Court. The respondents also not disputed the petitioners relationship with the deceased and the petitioners being the class – 1 legal heirs, certainly are entitled to the amount. Even though, the 3rd respondent is shown as a nominee, since her position would be only a trustee of the amount, she cannot utilize the amount for anything other than she has to receive and pay it to the petitioners.

8.However, considering the pendency of the writ petition for many years and the 3rd respondent is also not appeared before this Court, there is no point in directing the petitioners to approach the Civil Court to realize the policy amount.

9.Such view of the matter, this Court is of the view that instead of directing the 1st and 2nd respondents to wait for the nominee to approach them for the policy claim, the same shall be paid to the petitioners, as they are the class – 1 legal heirs of the deceased and they are fully entitled to receive the policy amount.

10.This Writ Petition stands allowed. The respondents 1 and 2 herein are directed to disburse the policy amount due under the policy No.713573720 taken by the deceased Umashankar to the petitioners herein within a period of two (2) months. Consequently, the connected miscellaneous petition is closed. No costs.

21.09.2022

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Index: yes / no
Internet: yes / no
Speaking / Non speaking

To

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N.SATHISH KUMAR, J.

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