



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.12438 of 2010

M.Parvathi

... Petitioner

-Vs-

1. The Divisional Manager,
The India Assurance Co. Ltd,
Division Office : 350 200,
S.C.O.104-106, Sector 34-A,
Chandigarh-160 022.
2. The Manager (Customer Satisfaction),
Swaraj Mazda Ltd., S.C.O.204- 205,
Sector 34-A, Chandigarh-160 022.

3. Sathish Kumar

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in respect of the letter issued by the 1st respondent dated.15.4.2010 and quash the same and consequently direct the respondents 1 and 2 to pay a sum of Rs.5 Lakhs under the scheme of 'DRIVER ON WHEELS' within an appropriate time.

For Petitioner : Mr.R.Nalliyappan
For R-2 : M/S. M.B.Raghavan

O R D E R

This writ petition has been preferred by the legal heirs of one Mohan who was working as a driver under the 3rd respondent.

2. On 11.05.2006, while the husband of the 1st petitioner was driving the vehicle bearing Registration No. TN21-M-8788 belonging to the 3rd respondent met with an accident. The said vehicle was purchased by the 3rd respondent from the 2nd respondent, the manufacturer, on 31.12.2005. The 2nd respondent provided a special insurance under the scheme called 'DRIVER ON WHEELS', through which the 1st respondent and 2nd respondent would pay the sum of Rs.5,00,000/- (Rupees Five Lakhs only) in the event of death of the driver of insured vehicle at wheel at the time of accident. The petitioner's husband died due to the



accident happened on 11.05.2006. However, they made a request to the 1st respondent Insurance Company to pay the benefits of the scheme of 'DRIVER ON WHEELS' ie., a sum of Rs.5,00,000/- (Rupees Five Lakhs only) . It was rejected on 15.04.2010 on the ground that the application was made beyond the limitation period specified under the contract. Aggrieved over the same, the petitioner has approached this Court. (impugned order reads as under)

"This has reference to your letter dtd. NIL received by us on 06.04.2010 on the subject cited above. On perusal of the claim papers, it is observed that the said case pertains to May'2006. We would like to inform you that neither the same was reported to us earlier nor any documents submitted. In the absence of any intimation, it is not possible for us to entertain the claim at this stage. We therefore, express our inability to entertain the same as per policy condition No.1 given below:

Upon the happening of any event which may give rise to a claim under this Policy, written notice with all particular must be given to the Company immediately. In case of death, written notice also for the death must, unless reasonable cause is shown, be so given before internment cremation, and in any case, within one calendar month after the death, and in the event of loss of sight or amputation or limbs, written notice thereof must also be given within one Calendar month after such loss of sight or amputation. This letter is issued without prejudice and without admission of liability."

3. From the reading of the above impugned order it is noted that the 1st respondent has rejected it as it does not confirm to the terms and conditions of the policy. The application should have been filed within one calendar month after the death. Whereas it is claimed after a period of 5 years. Therefore, the application itself cannot be entertained.

4. The learned counsel appearing for the petitioner would vehemently contend that the availability of the special policy which is directly payable to the 'DRIVER ON WHEELS' was not within their knowledge. Had they known about the special scheme 'DRIVER ON WHEELS', they would have made the claim immediately.

5. Heard the submissions.



6. Admittedly, the 3rd respondent ie., the owner of the vehicle purchased the vehicle from the 2nd respondent. The 2nd respondent and the 1st respondent have jointly issued the special scheme called 'DRIVER ON WHEELS' by which the driver of the 3rd respondent who suffer death in a vehicle accident, will be paid Rs.5,00,000/-(Rupees Five lakhs). However, it is relevant to note that the employee can claim the benefits whatsoever, only through the employer. There is no privity of contract between the petitioner and 1st and 2nd respondents, or in other words between an employee and the insurance company. Whatever to be claimed should be claimed only through the employer. Therefore, the claim made directly to the 1st respondent insurance company is not maintainable. The petitioner has to work out his remedy in accordance with law.

7. The writ petition does not merits any consideration. Accordingly this writ petition stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sha/kpr

To

The Divisional Manager,
The India Assurance Co. Ltd,
Division Office : 350 200,
S.C.O.104-106, Sector 34-A,
Chandigarh-160 022.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.11013
+1cc to M/S. S.P.Chockalingam, Advocate, S.R.No.11399

W.P.No.12438 of 2010

KG(CO)
CT 09/03/2022