THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.9986 & 9989 of 2020
and
W.M.P.Nos.12141 & 12136 of 2020

S.Parimala ...Petitioner in both WPs

Vs.

1.The Insurance Ombudsman,
O/o. The Ombudsman Tamil Nadu and Puducherry,
Fathima Akthar Court, 4th Floor,
No.453, Anna Salai,
Teynampet, Chennai – 600 018.

2.M/s.HDFC Life Insurance Company Limited,
13th Floor, Apollo Mills Compound,
NM Joshi Marg, Mahalakshmi,
Mumbai – 400 001.

3.The Branch Manager,
M/s.HDFC Life Insurance Company Limited,
No.37/34, ASVN Ramana Towers,
Venkatanarayana Road, T.Nagar,
Chennai – 600 017. ..Respondents in both WPs

Prayer in W.P.No.9986 of 2020: Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's Award

No.IO/CHN/A/LI/0098/2019-2020 dated 27.11.2019 under Policy No.IF000114 and to quash the same and consequently direct the 2nd respondent to pay the benefits claimed by the petitioner under Police No.IF000114.

<u>Prayer in W.P.No.9989 of 2020:</u> Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's Award No.IO/CHN/A/LI/0097/2019-2020 dated 27.11.2019 under Policy No.19873317 and to quash the same and consequently direct the 2nd respondent to pay the benefits claimed by the petitioner under Police No.19873317.

For Petitioner in both WPs : Mr.G.P.Nandagopal
For Respondents in both WPs : Mr.V.Vijayakumar for R2 & R3
M/s.M.B.Gopalan Associates for R1

<u>COMMON ORDER</u>

These two Writ Petitions have been filed by the petitioner herein, aggireved by two different orders, which are both dated 27.11.2019 by which, the 1st respondent namely, the Office of the Insurance Ombudsman (Tamil Nadu and Puducherry) having Office at Chennai had examined two separate orders of a complaint given with the Insurance Ombudsman relating to Policy No. IF000114 with respect to W.P.No.9986 of 2020 and Policy No.1987337 with respect to W.P.No.9989 of 2020.

2.Both the Writ Petitions have been filed by S.Parimala, a widow whose husband R.Selvamani, had unfortunately died on 07.01.2019. He died in Ramachandra Hospital. He was an impatient at the time of his death. When he died, the Ramachandra Medical College and Research Institute had given a death report, which had been signed by S.Mallikesan, Medical Superintendent and also signed by another Doctor by name Dr.Viswanathan. They had given the diagnosis and the cause of death but very unfortunately, they had put a question mark before the reason for the death.

3.I am unable to comprehend how medical professionals can certify a death and then put a question mark relating to the cause of death when they had a dead body before them. The person was an impatient in their hospital. They should have been definite about the reason for the death. It could even be owing to their medical negligence. It could be owing to infection in any vital part of the patient and therefore, causing death. But, giving a reason for the death and then putting a question mark next to it, indicates that either they are ignorant of their own profession or they have not examined the body thoroughly or they had a doubt about their own medical service rendered to the patient. At any rate, in the death report, as produced in both the Writ Petition, it had been stated as follows:-

> *"systematic hypertension, chronic kidney disease and hypertensive retinopathy."*

4.This very ambiguous reason for the death has given material for the respondent herein to repudiate the policy and the claim made by the petitioner herein seeking the amount paid by the late husband while taking the Insurance Policy.

5.In W.P.No.9986 of 2020, the husband of the petitioner, R.Selvamani had taken an Insurance Policy with the respondents in the Group Term Insurance Plan – Group Credit Protect Plus with the 2nd respondent on 18.12.2017 for a death sum which was assured for

Rs.7,50,000/-. The annual premium payable was Rs.6,473/-. There is no issue raised that till the death the annual premium was actually paid. He had paid two installments.

6.With respect to W.P.No.9989 of 2020, the late husband of the petitioner, R.Selvamani had taken an Insurance Policy, Pro-Growth Flexi (ULIP) policy with the 2nd respondent on 18.12.2017 for a death sum assurred of Rs.50,00,000/- at an annual premium of Rs.5,00,000/- for 10 years period. He had paid two installments and then, as stated, he died in the Hospital.

7.These policies are taken to provide a security for his wife, if she survives him. There was a definite expectation that the respondents would honour their commitments. At the time when the policies were taken, the respondents have not raised any objections. The normal process of filing the medical reports had been undergone. The respondents accepted the annual instalments paid towards the policies. Naturally, they were under a compulsion to honour their undertaking and commitment given under the policies.

8.It is also surprising to note that they placed reliance on a death report given by the Ramachandra Medical College and Research Institute, which had a question mark next to it. They had not referred the medical reports of the petitioner to any expert body or to any other medical professional and sought an independent opinion before coming to a conclusion that the petitioner herein had withheld information that he was suffering from hypertension or from Kidney related problems. It reflects total non-application of mind. There has only been intention to repudiate the policy and a refusal to honour the commitment. This is very evident on the face of the record.

9.The respondents, if they had been bonafide, could have the medical records submitted to a team of medical professionals and come to an independent conclusion whether the late husband of the petitioner had withheld information from them. They had not taken that particular stand. They had only gone according to the records produced. Even the inividual who went through the records was not medically qualified. They had no authority to examine those records and repudiate the policies on the basis of the records produced. The orders stand vitiated.

10.In the counter affidavit filed by the respondent they had sought to justify the orders stating that the husband of the petitioner had given a false declaration in the policy proposal application. The fact that they had come to that particular conclusion is not based on an opinion given by any qualified medical profession but rather was opinion expressed by a private investgator. It is not indicated that the private investigator has studied medical course and was qualified to give an opinion on medical records.

11.In view of the above reasons, the order is set aside. The order is certainly prejudicial to the petitioner and there is a definite indication that the respondents have already decided to refuse to honour their commitment under the policies. Both the Writ Petitions are allowed. The respondents are directed to honour their commitment under the policies and pay the necessary amounts to the petitioner herein within a period of four weeks from the date of receipt of a copy of this order. I restrain from imposing costs , I hope that the respondents would atleast pay the amounts which are payable under the policies to the petitioner herein. Consequently, connected miscellaneous petitions are closed.

09.01.2023

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To:-

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C.V.KARTHIKEYAN, J.

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