IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.02.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.26128 of 2016

1. Lakshminarayanan (Minor)
2. Pavadarini (Minor)

Minors represented by their guardian and next friend
P.V.Masilamani
No.22, Kammala Street,
Palaiya Seevaram Post
Kancheepuram District. ... Petitioners

Vs

1. ICICI Lombard GIC Ltd.
   84 & 85, Arihant Plaza, Wall tax Road, Parrys, Chennai – 600 003.
   (Formerly Bharathi AXA General Insurance Company Ltd.)

2. The Insurance Ombudsman
   O/o Insurance Ombudsman
   Fathima Akthar Court
   No.453 (Old No.312) Anna Salai
   Teynampet, Chennai – 18.

3. ICICI Lombard GIC Ltd.
   84 & 85, Arihant Plaza, Wall tax Road, Parrys, Chennai – 600 003.
   (Formerly Bharathi AXA General Insurance Company Ltd.)

4. M/s.Fastcare Multiservices Private Ltd.,
No.155, Dhanavikar Complex, Nehru Street,
Erode – 638 001.

(R4 Suo motu impleaded vide order dated 11.01.2023)
(R1 and R3 has been amended vide this order)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to settle the claim amount of Rs.5,00,000/- to the petitioners as per Group Personnel Accident Policy No.10704229 and his claim No.C0205528 for a sum of Rs.5,00,000/-.

For Petitioners : Ms.Devisri Monica
for Mohd. Aseef

For Respondents : Mr. Mohd. Arshad
for Mr.B.Siva Kolappan – R1 & R3
Ms.C.Harini
for Mr.M.B.Gopalan - R2

ORDER

In light of memo of R1 and R3 dated 14.11.2022 to the effect that Bharathi AXA General Insurance Company Ltd. has transferred its General Insurance business to ICICI Lombard General Insurance Company Limited by way of demerger pursuant to a scheme of arrangement under Companies Act, 2013, Insurance Act, 1938 and the Rules made thereunder, the description of R1 and

R3 shall read as '*ICICI Lombard General Insurance Company Limited*' instead of '*Bharathi AXA General Insurance Company Ltd.*'

2. In 2016, when this Writ Petition was filed, the petitioner was aged 63 years old. He is presently 72 years. He represents 2 minors, being his grand children, through his son, one M.Govindaraj. The son had met with an accident on 27.02.2012 and had passed away leaving behind his wife as his legal heir and nominee.

3. The petitioner's daughter-in-law duly supported by the petitioner made a claim before the respondents for settlement of insurance in the name of M.Govindaraj Group Personal Accident Policy bearing No.10704229 (claim No.C0205528) for a sum of Rs.5.00 lakhs. Pending consideration of that claim, the daughter-in-law passed away on 01.07.2014 and the minor children are now in the custody and care of their grand parents.

4. This mtter has been hanging fire since its inception. When it had come up before this Court on 22.12.2022, the maintainability of the Writ Petition was questioned by the counsel appearing for the Insurance Company, presently, ICICI Lombard General Insurance Company Limited, since the claim for insurance is unaccompanied by any primary document, such as the insurance policy itself.

5. This Court, noting that the writ affidavit contained the Group Personal Accident Policy number and the claim number, directed the learned counsel to proceed on the basis of that information and obtain written instructions or file a counter. The respondents were specifically directed to confirm the particulars of beneficiary under policy bearing No.10704229 and claim No.C0205528.

6. Learned counsel for the Insurance Company sought some time on 11.01.2023 and this Court granted final opportunity directing the company to positively verify its records and ascertain the veracity of the policy and the claim as aforesaid. Respondent counsel circulated, on the next occasion, a copy of the Group Personal Accident Policy and sought some time to ascertain whether the deceased was a beneficiary under that policy.

7. In the meanwhile, the employer was also impleaded as R4 and notice was issued through the petitioner privately. Learned counsel for the petitioner confirms through an affidavit of service that service is incomplete as the notice has been returned with the endorsement 'left with no forwarding address'.

8. On 06.02.2023, learned counsel for the Insurance Company, very fairly, I must say, confirmed to the Court that the Group Personal Accident Policy for the period 04.11.2011 to 03.11.2012 had covered the liability of various beneficiaries including M.Govindaraj.

9. Thus, he submits while in principle, the Insurance Company would have no quarrel settling the claim, documents, such as, KYC, Death Certificate, Post Mortem Report, Employment particulars, Pay slip and confirmation from the insured are necessary.

10. The Court directed the learned counsel to reduce his submissions to writing, such that they are on record and memo dated Nil, received on 07.02.2023 has been filed. The said memo reads as follows:

This Respondent begs to submit as follows:

1. It is most respectfully submitted that upon instructions from this Hon'ble court, this Respondent had scrutinized their records and identified the Policy No. 10704229, and also a detailed search has been carried out to identify claim, if any, reported under claim No.C0205528.
2. This Respondent admits the Group Personal Accident Policy No. 10704229 issued in favour of Fast Care Multi Services India Private Ltd for the period from 04/11/2011 to 03/11/2012, covering the liability of the various beneficiaries named thereunder and one such beneficiary being Deceased M.Govindaraj.
3. This Respondent submits that the said Policy of insurance issued by this respondent is subject to the terms, conditions, exceptions and limitations thereof and the confirmation of the compliance of 64 VB of the Insurance Act, 1938 and claim arising under such policy is subject to the terms and conditions envisaged therein and bound by limitations.
4. This Respondent submits that the Repudiation of Claim of the Petitioners by this respondent is due to Non-Submission of the mandatory documents viz., KYC, Death Certificate, Post Mortem

Report, Employment Particulars, Pay Slip and confirmation from the Insured.

5. It is most humbly submitted that this Hon'ble Court may be pleased to direct the petitioners to provide the aforesaid documents to the Respondents for processing of the Claim of the Petitioners, subject to the terms and conditions of the Policy.

11. This Court is of the considered view that employment particulars, pay slip and confirmation from the insured may be exempted in this case, seeing as there is no dispute that the individual, who had passed away, was, admittedly, an employee of Fast Care Multi Services Private Ltd./R4. Let the Insurance Company obtain indemnity in this regard from the petitioner as deemed necessary.

12. The narration in the preceding paragraphs would show the unfortunate turn of events in the lives of the minors as well as the senior citizens, who are caring for the minors presently. The insurance company has been fair to admit to the entitlement of the petitioners under Group Personal Accident Policy as well as the coverage provided thereunder to M.Govindaraj. Let them not stand on technicalities in light of the trajectory of events in this case.

13. In light of the aforesaid, the claim of the petitioners shall be processed and paid over by R1 and R3 within a period of eight (8) weeks from date of receipt of a copy of this order.

14. This Writ Petition is allowed. No costs.

15. List on 07.04.2023 under the caption 'for reporting compliance'.

07.02.2023

Sl
Index : Yes / No
Speaking Order
Neutral Citation:Yes
<u>Note: Registry is directed to make necessary amendments in the cause title.</u>

Dr.ANITA SUMANTH,J.

Sl

W.P.No.26128 of 2016

07.02.2023