IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.31700 of 2019

G.Bhargavi ... Petitioner

Vs.

1. Insurance Regulatory and Development Authority of India,
Consumer Affairs Department – Grievance Redressal Cell,
Sy.No.115/1, Financial District,
Nanakramguda, Gachibowli,
Hyderabad – 500 032.

2. Cholamandalam Ms General Insurance Company Limited,
Hari Nivas Towers,
2nd Floor, Thambu Chetty Street,
Parry's Corner, Chennai - 600 001.
Head Office:
2nd Floor, Dare House, 2 NSC Bose Road,
Chennai – 600 001.

3. Dewan Housing Finance Corporation Limited (DHLF),
Registered Office @ 2nd Floor, Warden House,
Sir P.M.Road, Fort,
Mumbai – 400 023.
Branch Office: Plot No.6, Block-A,
Ground Floor & 2nd Floor, Phase-1, Sector 2, Noida,
Uttar Pradesh – 201 301. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the second respondent to honour the claim of Rs.83,00,000/- made by the petitioner in respect of Health Insurance Policy availed by the petitioner's husband in Policy No.2860/00103928/0041/000/01 dated 07.08.2015 without insisting for any further documentation or particulars in accordance with law as expeditiously as possible.

For Petitioner	:	Mr.V.Raghavachari Senior Counsel for Mr.P.Vasanth
For Respondents	:	Mr.M.B.Raghavan for R1 Ms.Gopika Nambiar for Mr.Sharath Chandran for R2 Mrs.M.Nagalakshmi for R3

O R D E R

This Writ Petition has been filed for a direction to the second respondent to honour the claim of Rs.83,00,000/- (Rupees Eighty Three Lakhs only) made by the petitioner in respect of Health Insurance Policy availed by the petitioner's husband in Policy No.2860/00103928/0041/000/01 dated 07.08.2015 without insisting for any further documentation or particulars in accordance with law as expeditiously as possible.

2. The case of the petitioner is that the petitioner's husband had availed housing loan from the third respondent (DHLF) to purchase the property and he was paying the EMI regularly. At the time of availing the loan, her husband had taken a Group Health Insurance Policy, Group Personal Accident Insurance Policy from the second respondent / Insurance Company. Suddenly on 20.07.2017, her husband met with an accident and become unconscious. On account of the accident, he got injured in his head and as a consequence of which, he became paralytic and had developed multiple ailments including cardiac compliant and unfortunately died on 11.11.2018 due to Cardiac arrest. While that being so, the Manager of the third respondent asked the petitioner to process the insurance availed by her husband while availing housing loan and given the particulars of policy. Thereafter, the petitioner filed a claim petition to the second respondent / Insurance Company. On receipt of the same, the officials had assured that the claim amount would be paid to the Bank directly. However, the second respondent / Insurance Company rejected the petitioner's claim petition by referring Clause 1.1 of the Group Personal Accident Insurance Policy on the

ground that the sum insured will be paid if the death of the insured person occurs within a period of twelve months from the date of injury, and such injury be the sole and direct cause of death of the insured person and on the ground that the petitioner's husband died due to Cardiac arrest after a lapse of fifteen months from the date of accident. Therefore, she made a representation to the first respondent on 20.08.2019, but the same has not been considered. Hence, the petitioner has filed the present Writ Petition with the aforesaid prayer.

3. The learned counsel appearing on behalf of the second respondent / Insurance Company would submit that in the Group Personal Accident Insurance Policy, Clause 4.16 provides for an Arbitration Clause. Hence, this Court may relegate the parties to Arbitration by appointing an Arbitrator, so that the issues between the petitioner and the respondents could be arbitrated by the learned Arbitrator.

4. For such a course, the learned Senior Counsel appearing for petitioner also did not have any objection and he fairly conceded to the appointment of an Arbitrator.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. However, the main ground on which the Writ petition is sought to be countered by the second respondent is that, there is an Arbitration Clause which provides for Arbitration in case dispute arise between the petitioner and the respondents.

7. This Court has perused the Group Personal Accident Insurance Policy and in Clause 4.16 of the said policy, Arbitration is provided for, which reads as follows:

*"**4.16 Arbitration***

a. Any dispute or difference between the Insurer and the Insured Person or the policy holder will be resolved in *accordance with Arbitration & Conciliation Act 1996 or any modification or amendment of it. The arbitration proceedings shall be conducted in the English language.*

b. It is agreed as a condition precedent to any right of action or suit on this policy that a final arbitration award shall be first obtained.

c. If this arbitration clause is held to be invalid in whole or in part, then all disputes shall be referred to the exclusive jurisdiction of Chennai Courts."

8. In view of the fact that the policy itself provides for Arbitration, this Court without entering into intricacies of the issue, deems it fit to appoint an Arbitrator to conduct Arbitration between the petitioner and the respondents to settle the issue amicably.

9. In view of the fair stand taken by the learned counsel on either side, this Court is inclined to pass the following order :-

(i) **Hon'ble Mr.Justice N.KIRUBAKARAN, (Retd.)** is appointed as the Arbitrator to arbitrate the issue between the petitioner and the respondents.

(ii) The learned Arbitrator shall fix his remuneration, which shall be borne by either side equally. The parties shall raise all the disputes before the learned Arbitrator by filing material documents.

(iii) Upon completion of the Arbitration proceedings, it is open to either parties to work out their remedy in the manner known to law, if they are otherwise aggrieved by the award in the arbitration proceedings.

10. Registry is directed to forward a copy of this order to the learned Arbitrator, who shall cause notice to the parties by fixing a particular day for appearance for proceeding with the arbitration.

11. With the above directions and observations, the Writ Petition is disposed of. No costs.

23.06.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

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   Authority of India,
   Consumer Affairs Department – Grievance Redressal Cell,
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M.DHANDAPANI, J.

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