BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.11.2023**

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THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

**W.P.(MD)No.2164 of 2021**
**and W.M.P(MD)Nos.1810 and 1812 of 2021**

R.Vasantha Kumari (Died)
1.P.V.Himlar
2.P.V.Jimlar ...Petitioners

(P1 and P2 are substituted vide court order dated 17.11.2023 in W.M.P(MD)No. 5152 of 2023 in W.P(MD)No.2164 of 2021 by NAVJ)

**/Vs./**

1.The Branch Manager,
Canara Bank,
Colachel Road,
Monday Market,
Neyyoor – 629 802

2.United India Insurance Company Ltd.,
1/45B-6, 2nd Floor, J.P.C.Building,
Colachel Road,
Monday Market,
Nagercoil, Kanyakumari District – 629 802 ...Respondents

PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 2nd respondent United India Insurance Company dated 10.11.2020 (received on 11.11.2020), quash the same and further direct the 1st respondent bank to refund the amount of Rs.8,92,762/- which was paid by the petitioner towards the housing loan after the death of her husband on

15.12.2015 with interest and to close the loan in A/c.No.61807740000131 by issuing a 'no dues certificate'.

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| For Petitioners | : Mr. K.Ragatheesh Kumar<br>for M/s Isaac Chambers |
| For R1 | : Mr.C.Deepak |
| For R2 | : Mr.I.Suthakaran |

## ORDER

This Writ Petition has been filed challenging the impugned communication of the 2nd respondent dated 10.11.2020 made to the 1st respondent refusing to entertain the claim made under the policy and for a consequential direction to the first respondent bank to refund the amount that was paid by the petitioner towards the housing loan after the demise of her husband on 15.12.2015 with interest.

**2.** The case of the petitioner is that she was married to one Prince Yesudhasan on 24.02.1993 and through the wedlock, two children were begotten in the year 1993 and 1997 respectively. The husband of the petitioner went to Saudi Arabia in search of employment and started working as a Plumbing Contractor from September 2002 onwards.

**3.** The husband of the petitioner had availed a housing loan from the 1st respondent bank to the tune of Rs.15 lakhs on 17.06.2011. The petitioner stood as a guarantor for the said loan. While availing the loan, the husband of the petitioner has also parallelly insured his loan under Uni Home Care Policy with the 2nd respondent. This policy covers the period of insurance from 03.02.2012 to 02.02.2022 and the sum assured is towards fire and personal accident to the tune of Rs.20 lakhs. Towards this policy, a one time payment was also made to the tune of Rs.8,844/- on 02.02.2012.

**4.** Further case of the petitioner is that her husband met with a fatal road accident on 15.12.2015 at Saudi Arabia and he died on the same day. With very great difficulty, his body was brought to India on 27.01.2016. The petitioner continued to re-pay back EMI to the 1st respondent bank since she was not aware of the insurance policy that covered the loan amount. At a later point of time, the petitioner came to know that the loan amount is covered under the policy and hence, she enquired the bank in this regard. The bank also provided details to the 2nd respondent insurance company and the 2nd respondent insurance company through the impugned communication dated 10.11.2020, informed the 1st respondent bank that the death intimation was made beyond the period that was prescribed under the condition of the policy and hence, the 2nd respondent is not in a position to entertain the claim and accordingly, the 2nd respondent insurance company refused to pay the insurance amount, which covered the loan that was taken by the petitioner's husband. Aggrieved by the same, the present Writ Petition was filed before this Court. During the pendency of this Writ Petition, the petitioner also died and in her place, her children have been substituted by an order dated 17.11.2023.

**5.** The 1st respondent has filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

> 8. I humbly submit that the averments made in Para No.5 are false and the same is denied. The Petitioner is put to the strict proof of the same. I submit that it is true that the policy has been availed by the said Prince but the 1st Respondent was not aware of the death and the reason of the death. It is worthwhile to inform that as per bank's records, we did not get information regarding Mr.Prince's death till 30/09/2020 (by Mrs. Vasantha kumari's letter for tenure extension)
>
> 9. I humbly submit that there were no written communication or request from the original writ petitioner and the present writ petitioner. The 1st Respondent specifically denies the allegations made in Para No. 9. The writ petitioner has alleged that the "on 30.11.2016, my husband's loan account was classified as Non-Performing Bank. Even after that, the Respondent Bank has refused to even furnish a copy of the insurance policy or give any details in that regard. I further submit that the writ petitioner has cleverly not furnished the full facts in this regard. It is true that the loan was classified as Non - Performing Asset (NPA) on 30/11 / 2016 and the same was upgraded on 27/03/2017 again the loan was

classified as Non Performing Asset (NPA) on 31/05/2018 and upgraded on 20/07/2018 and at present Loan was again classified as Non - Performing Asset (NPA) on 1/12 / 2020 and the same is continuing till date. The writ petitioner has neither produced any letter or representation to prove the same. The original writ petitioner was also one of the signatories of the loan documents but the writ petitioner is make unjust allegations against the 1st Respondent.

10. I humbly submit that the allegations in Para No. 10 and 12 are partly facts and partly true. The 1st Respondent submits that As per Bank records, Original writ petitioner had requested for tenure extension on 30/09/2020 after completion of COVID extension from Government. I further submit that the Original writ petitioner has informed the demise of Prince and the cause of death. So we have obtained a letter from Mrs.Vasanthakumari/Original Writ petitioner regarding insurance claim on 01/10/2020. Further bank had forwarded insurance claim to the 2nd Respondent which was not considered.

11. I humbly submit that the allegations made in Para No. 13 are false and the same is denied. As per our records, bank had immediately responded to claim the insurance amount after known about death on 30/09/2020. I further submit that the Original writ petitioner was also signatory to the loan documents and even the Original writ petitioner can make claim to the 2nd Respondent but the writ petitioner without making any request or mail or representation is making allegations against the 1st Respondent.

**6**. The 2nd respondent has filed a counter affidavit and the relevant portions are extracted hereunder:

4. I respectfully submit that one Y.PRINCE from Kodumutty, Bethelpuram Post, Kanyakumrai District, Tamil Nadu-629803 was insured under the UNI HOME CARE POLICY with the 2nd respondent for his Building constructed under the Loan Account No.6180-774-131 availed with the 1st respondent (formerly functioned as Syndicate Bank, subsequently amalgamated with the ---------1st respondent). The above policy covers period of insurance from 03.02.2012 to 02.02.2022 and sum assured for Fire and Personal Accident is Rs.20,00,000/ and it's 091681/46/11/90/00000208. The above policy is a contractual one and it's terms and agreements binds both the parties (the insurer and the insured) and we are bound to act as per the terms and agreement of the policy.

5. I respectfully submit that as per the Section II (2) of the Policy Conditions, In case of death (by accident), written notice also of the death must, unless reasonable cause if shown, be so given before internment/cremation and in any case within one calendar month after the death. Hence, the 2nd Respondent, Insurance Company under policy number: 91681/46/11/90/00000208 issued to the Insured Y PRINCE is not at all liable for any compensation on this ground.

6. Further, it is submitted here that as per conditions applicable to Section I (point(4) under the policy Number: 091681/46/11/90/00000208 issued to the Insured Y PRINCE is not at all liable for any compensation on the ground that NO CLAIM under this policy shall be payable unless terms of this condition have been complied with.

7. I respectfully submit according to the writ petitioner insured Y.Prince was died in the Road accident on 15.12.2015 and whereas the intimation about the death of the insured was received by the 2nd respondent company only on 09.11.2020, after a lapse of 5 years period which is beyond reasonable time and particularly lapse of statutory period for a claim of Insurance even in the common law. Again, we reiterate the 2nd Respondent, Insurance Company under policy number: 091681/46/11/90/00000208 issued to the Insured Y PRINCE is not at all liable for any compensation on this ground.

8. I respectfully submit that the averments made by the writ petitioners in Para 1 to Para 4 are matter of records and Para 5 to 10 are statements making allegations against the 1st respondent about non-disclosure of existing insurance policy for her deceased husband even after her repeated demand after death of her husband and we have no knowledge about it. But contra, we have received Letter dated 06.11.2020 in Ref No/ CB 6180/OCT/INSCL/001 from the 1st respondent stating that the delay occurred on the side of the writ petitioner. Hence, it is a disputed facts between the writ petitioner and the 1st respondent and we cannot be expected to comment on it, outset we can say only that the disputed facts cannot be decided in the writ jurisdiction.

9. I respectfully submit that the present writ petition challenges the repudiation of claim made on behalf of the writ petitioner. We repudiated the claim since it is in violation of the policy condition and it is barred by limitation, even on the common law, because it was claimed after 5 years from the death of the insured. The said rejection cannot be challenged by

way of writ petition and the remedy for the writ petitioner is elsewhere and it is pertinent to note that the same also aware of the writ petitioner and it is reflected in Para 13 and 14 of the affidavit, wherein the writ petitioner admitted that the 1st respondent committed deficiency service to her by non-informing the existence of the insurance policy to her husband's loan and they approached the consumer forum at Nagercoil and not prosecuted further for the reason best known to them.

**7.** The short issue that arises for consideration in the present Writ Petition is as to whether the 2nd respondent insurance company is liable to satisfy the claim made by the petitioner towards the insurance policy that was taken to cover the loan that was availed by the petitioner's husband under the Uni Home Care Policy.

**8.** The relevant conditions under the policy are extracted hereunder:

Section-II PERSONAL ACCIDENT: Subject to the terms, exclusions, definitions and conditions contained herein or endorsed or otherwise expressed hereon the Company will pay the insured as herein after mentioned.

If at any time during the currency of this policy the Insured's borrower shall sustain bodily injury resulting solely and directly from the accident caused by external violent and visible means, then the company shall pay to the insured or the borrower's legal personal representative(s) as the case may be, the sum herein after set forth, that is to say: If such injury within Twelve(12) calender months of its occurrence be the sole and direct cause of the death of the insured's borrower, the Capital sum insured stated in the schedule hereto.

CONDITIONS APPLICABLE TO SECTION - II

Upon the happening of any event which may give rise to Claim under this Policy, written notice with full particulars must be given to the company, immediately. In case of death, written notice also of the death must, unless reasonable cause if shown, be so given before internment/cremation and in any case within one calendar month after the death.

**9.** In the instant case, there is no dispute with regard to the fact that the loan that was availed by the petitioner's husband was covered under a policy and a one time premium was also paid and this policy covers the period of insurance from 03.02.2012 to 02.02.2022. The sum assured covers both the fire accident as well as personal accident. In the case on hand, the claim made by the petitioner falls within the claim for personal accident. The policy states that upon the happening of a personal accident, which gives rise to a claim under the policy, written notice with full particulars must be given to the insurance company immediately and it should not be later than one calender month after the death.

**10.** In view of the above clause, the insurance company has taken a stand that the death took place in the year 2015 and whereas information was received by the insurance company only in the year 2020 and therefore, as per the terms and conditions of the policy, the insurance company is not liable to pay the compensation. That apart, further stand has been taken to the effect that after the period of 5 years, after the demise of the petitioner's husband, the claim itself lapses. In view of the same, the insurance company has denied the liability

**11.** So far as the 1st respondent bank is concerned, they have taken a stand that the petitioner has informed them in writing about the demise of her husband in an accident only in the year 2020 and she enquired about the insurance policy and thereafter, the 1st respondent bank through communication dated 06.11.2020 informed the 2nd respondent insurance company about the same and also explained the difficulty faced by the petitioner in re-paying back the loan amount and requested the 2nd respondent insurance company to settle the personal accident insurance claim. Therefore, the 1st respondent bank has also taken a stand to the effect that they were informed about the demise of the husband of the petitioner only on 01.10.2020 i.e much later after the death of the husband of the petitioner on 15.12.20215. It is also placed on record that the housing loan was availed for a sum of Rs.15 lakhs and an amount of Rs.17,36,197/- was paid through EMI by the petitioner's husband and on his demise by the petitioner. As per Section 13(2) notice issued by the 1st respondent bank under SARFAESI Act, a total sum of Rs.12,28,386.82/- is the amount due and payable as on 04.03.2023. It is also brought to the notice of this Court that as on date the loan amount that is due and payable is Rs.15,08,345/-.

**12.** The specific case of the petitioner is that she was not aware about the bank loan being covered under the policy and that is the reason why she continued to pay the loan amount even after the demise of her husband in the year 2015. It is only at a later point of time in 2020, she came to know about the insurance policy and the same is evident from her letter dated 01.10.2020 that was addressed to the 2nd respondent insurance company. On receipt of this letter, the 1st respondent bank had also issued a communication dated 06.11.2020 to the 2nd respondent insurance company and sought for the settlement of the insurance claim in order to close the loan amount.

**13.** It must be borne in mind that the insurance policy had covered the loan account in order to meet exigencies that take place due to the demise of borrower in a fire accident or personal accident. There is no dispute with regard to the fact that the policy covered the period of insurance from 03.02.2012 to 02.02.2022. Therefore, if the exigency takes place during this period, the policy will have to necessarily cover the loan amount. It is quite unfortunate that the petitioner was not even aware that an insurance policy was availed to cover the loan amount after the demise of her husband. Therefore, she was innocently re-paying back the loan amount to the 1st respondent bank. This conduct on the part of the petitioner in re-paying back the loan amount even after the demise of her husband clearly demonstrate the fact that she was not aware about the insurance policy, which covered the loan taken by her husband. The misunderstanding regarding the nature of cover that was provided by the policy is evident from the affidavit filed in support of the Writ Petition, wherein the petitioner has stated that she along with her family members had approached the 1st respondent bank after the demise of her husband and when she enquired the bank, she was informed that there was an insurance policy covering the loan account, which will apply only if the death is caused due to fire accident. In view of the same, the petitioner continued to pay the loan amount to the 1st respondent bank.

**14.** It is evident from the facts and circumstances of the case and also the averments made in the affidavit filed in support of the Writ Petition that the petitioner was not aware about the purport of the policy that covered the loan amount and as a result, she continued to pay EMI to the 1st respondent bank.

**15.** The petitioner became aware about the policy and the coverage given under that policy even for a personal accident during the year 2020. Immediately, thereafter, she made a claim both to the bank as well as to the insurance company during the month of October 2020.

**16.** On carefully going through the terms and conditions of the policy, it can be seen that the claim of the assignee under the policy is only the bank and therefore, the amount that is covered under the policy goes directly to the bank, if the claim is settled by the insurance company. The bank has taken a stand that they were informed in writing about the demise of the petitioner's husband only in the year 2020. Therefore, this Court can safely presume that only in the year 2020 the petitioner had informed both the bank and the insurance company about the demise of her husband in an accident.

**17.** It is also seen from the records that the petitioner was parellelly making her claim for the blood money on account of the demise of her husband due to the road accident by making representations to the Counsel General of India. These representations were going on from the year 2018 onwards. The Counsel General of India had informed that the blood money that was claimed by the petitioner can be granted only by a Public Court by making a claim either in person or through a power of attorney. Ultimately, it is seen that nothing came out of the claim made by the petitioner seeking for compensation through blood money. These materials go on to show that the petitioner's husband had, in fact, died only due to a traffic accident at Khamis Mushyt on 15.12.2015.

**18.** As per the policy issued by the 2nd respondent insurance company, the claim should be made immediately after the death and not later than 1 month. This clause is provided in the policy to ensure that a delayed claim is not made at some future point of time and it becomes very difficult for the insurance company to ascertain the real cause of death. In the considered view of this Court, the period that has been fixed under the policy must be taken only to be directory and not mandatory. When a genuine claim was made with delay, it can also be considered, if the insurance company is able to satisfy themselves that the claim is covered under the policy. It is true that the condition in the policy is a contract between the parties. However, in a case of this nature, the policy itself is taken to ensure that the family does not suffer and is put to irreparable loss and hardship due to the untimely demise of the breadwinner of the family and therefore, the delay in making the claim should not defeat the claim made by the legal heirs, if ultimately, they are able to establish that the death was caused due to personal accident and the accident had taken place during the period of policy. In the instant case, the accident and the resultant death had happened well within the period of policy.

**19.** The insurance policy that covers the loan that was taken by the petitioner's husband, is meant for coming to the aid of the family, which loses their breadwinner due to a fire accident or a personal accident and at the same time, the loan amount is also settled to the bank under the claim. There is an element of public interest involved in the policy since the bank is dealing with public funds and if ultimately the legal heirs of the bread winner are not able to re-pay bank the amount, the policy will have to necessarily cover the loan and the amount must be settled to the bank. By doing this, both the interest of the family, which loses its bread winner as well as the interest of the bank, which deals with the public funds is taken care of. Hence, giving a strict interpretation to the time period fixed under the policy, should not be taken to its extremities and thereby the very object and purpose of the insurance coverage on the loan amount should not be defeated.

**20.** In the facts and circumstances of this case, this Court is convinced that the demise of the petitioner's husband took place all of a sudden in the year

2015 due to a road accident. The petitioner had to take care of her 2 children and at the same time, she must also take care of the house that was built in the property and therefore, she, not being aware about the nature of the insurance claim, continued to pay EMI diligently to the 1st respondent bank. Therefore, in the instant case, the delay that is attributable against the petitioner cannot be considered as deliberate and wanton and it was caused only due to lack of clarity on the insurance coverage that was available on the loan amount taken from the 1st respondent bank. Unfortunately, the petitioner is also dead and now, the loan amount has fallen upon her children.

**21.** In the light of the above discussion, this Court is inclined to interfere with the impugned communication dated 10.11.2020 made by the 2nd respondent insurance company to the 1st respondent bank and the same is hereby set aside. There shall be a direction to the 2nd respondent insurance company to entertain the claim and to pay the balance amount that is due and payable as on date directly to the 1st respondent bank. This process shall be completed by the 2nd respondent insurance company within a period of **3 months** from the date of receipt of a copy of this order.

**22.** So far as the 2nd limb of the relief that has been sought for by the petitioner, this Court is not inclined to grant such relief considering the facts and circumstances of the case.

**23.** The recovery proceedings that has been initiated by the 1st respondent bank shall be kept in abeyance till the claim amount is settled by the 2nd respondent insurance company.

**24.** In the result, this Writ Petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

**27.11.2023**

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
CM

To,
1.The Branch Manager,
Canara Bank,
Colachel Road,
Monday Market,
Neyyoor – 629 802

2.United India Insurance Company Ltd.,
1/45B-6, 2nd Floor, J.P.C.Building,
Colachel Road,
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Nagercoil, Kanyakumari District – 629 802

**N.ANAND VENKATESH, J.**

CM

Order made in
**W.P.(MD)No.2164 of 2021**
**and W.M.P(MD)Nos.1810 and 1812 of 2021**

Dated:
27.11.2023