BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.8333 of 2020
and
W.M.P.(MD).No.7738 of 2020

Ramadass ... Petitioner

Vs

1.The Insurance Ombudsman,
The State of Tamil Nadu and Puducherry,
Fathima Aktar Court,
4th Floor, No.453, Anna Salai,
Tenampet, Chennai 18.

2.HDFC Standard Life Insurance Company Ltd.,
Lodha Excelus,
13th Floor, Apollo Mills Compound,
N.M.Joshi Marg,
Mahalaxmi, Mumbai 400 011.

3.Cholamandalam Investment and Finance Company Ltd,
Dare House, No.2,
NSC Bose Road,
Parrys, Chennai 1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus, calling for the records relating to the proceedings of the 1st Respondent made in Award

No. Impugned Order/CHN/A.L1/0095/2019-2020, dated 26.11.2019 and quash the same and consequently direct the 2nd Respondent to settle the claim towards the Master Policy No.PP000053 dated 26.10.2017.

For Petitioner : Mr.M.Suresh Kumar

For Respondents : No Appearance

O R D E R

This Writ Petition has been filed challenging the order passed by the first respondent through impugned proceedings dated 26.11.2019 and for a consequential direction to the second respondent to settle the claim towards Master Policy No.PP000053, dated 26.10.2017.

2. The case of the petitioner is that his son named Sathish Kumar obtained a housing loan from the third respondent to the tune of Rs.10,13,260/- (Rupees Ten Lakhs Thirteen Thousand Two Hundred and Sixty only) for construction of a house. The property was also mortgaged as a security for the housing loan. The petitioner stood as a guarantor for the loan obtained by his son. The third respondent while granting the loan, insisted that the petitioner's son must get an Insurance cover from the second respondent. As per this Policy, the loan amount that was taken by the petitioner's son was covered for a period of ten years from

26.10.2017. One time premium was also paid. After the loan amount was released, a residential house was also constructed and it was completed during February 2018.

3. The petitioner's son suffered heavy fever during December 2018 and as per the advice of the Doctor, he was admitted in the Vellamal Medical College Hospital at Madurai during the third week of December 2018. He took treatment as an in-patient from 19.02.2018 to 31.12.2018 and he was discharged. Thereafter, once again his health condition deteriorated and he was admitted on 07.01.2019 and unfortunately, he died on 09.01.2019. As per the discharge summary that was given by the Hospital, the petitioner's son was diagnosed to have suffered from Boop, Viral Pneumonia, Acute Intersitital Pneumonia, Lymphoma.

4. After the above incident took place, the third respondent advised the petitioner to make the insurance claim from the second respondent so as to settle the loan amount. Accordingly, the petitioner made a claim before the second respondent and the second respondent through letter dated 22.03.2019 rejected the claim made on the ground that

the petitioner's son was suffering from Diabetes Mellitus and this was concealed at the time when the Policy was issued and therefore, the petitioner is not entitled for settlement of the claim.

5. Aggrieved by the rejection of the claim made by the second respondent, the petitioner filed a complaint before the first respondent. The first respondent after enquiring all the parties came to the conclusion that there is no ground to interfere with the decision taken by the second respondent and the complaint was disposed of through impugned proceedings in Award No. Impugned Order/CHN/A.L1/0095/2019-2020, dated 26.11.2019. Aggrieved by the same, the present Writ Petition has been filed before this Court.

6. Heard the learned counsel appearing for the petitioner. The respondents have been served with notice and there is no representation either in person or through counsel.

7. The short issues that arises for consideration in the present Writ Petition are as follows:

"(a). Whether this Writ Petition is maintainable as against the rejection of claim made by a private Insurance Company?

(b). Whether the claim made by the petitioner is liable to be repudiated on the ground that the petitioner's son had concealed his health condition at the time of taking policy from the second respondent Insurance Company?"

8. Insofar as the first issue is concerned, it was dealt with by the Division Bench of this Court in W.A.(MD).No.157 of 2019 dated 17.10.2019 and it was held as follows:-

> "*10. In the instant case, the appellant admittedly is not a Government Undertaking Company, but a Private Insurance Company, which has the approval of IRDA. The order impugned in the writ petition was not an order passed by the appellant / Insurance Company, but an order passed by the Insurance Ombudsman, who exercised the powers under the provisions of the Insurance Act and the other related provisions. The Insurance Ombudsman has been created so as to provide remedy to the insured in*

the event of they are aggrieved by any action of the Insurance Company in not settling the claim amount. Furthermore, the Insurance Ombudsman exercises the powers under the Redressal of Public Grievances Rules, 1998. Therefore, the power of the Insurance Ombudsman is a trapping of the Tribunal and accordingly, a full-fledged hearing was granted and the insurer, namely, the appellant was represented by its Manager (Legal) and the complainant, namely, the first respondent appeared in person before the Insurance Ombudsman. Therefore, the bar for entertaining a writ petition cannot be applied to the facts of the present case and to that extent, the decision in the case of G.Ponmani (supra) does not support the case of the appellant Insurance Company."

9. On a careful reading of the above order, it is seen that the facts of the present case is almost similar to the facts that was dealt with by the Division Bench. In that case, the private Insurance Company was involved and they had repudiated the claim made under the Policy. In view of the same, a complaint was made before the Insurance Ombudsman. When the Ombudsman also rejected the complaint, it was put to challenge in the Writ Petition. In view of the same, it was held that the Insurance

Ombudsman has the trapping of a tribunal and if they had also conducted a full-fledged enquiry and passed an order, as against that order, a Writ Petition is maintainable.

10. The Division Bench specifically took note of the Judgment in the case of ***G.Ponmani Vs. The Life Insurance Corporation of India and another*** reported in ***(1993) AIR (Madras) 343*** and held that the said decision will not apply to the facts of the case, since the rejection of the complaint by the Insurance Ombudsman was the one that was put to challenge and therefore, the Writ Petition was held maintainable. In view of the same, this Court holds that the present Writ Petition is maintainable and the first issue is answered accordingly.

11. Insofar as the second issue is concerned, the second respondent Insurance Company had rejected the claim mainly on the ground that the petitioner's son was suffering from Diabetes Mellitus and this was not informed to the Insurance Company when the Policy was taken. On going through the materials, it is seen that there was absolutely no pre-condition that the insured must undergo a medical examination and

submit a certificate at the time of taking the Policy. The second respondent has come to the conclusion that the petitioner's son was suffering from Diabetes Mellitus and they came to know of the same when they made their private investigation. On this ground, the second respondent proceeded to reject the claim made by the petitioner.

12. This Court does not want to enter into the dispute as to whether the petitioner's son was suffering from Diabetes Mellitus or not. Even assuming that he suffered from such a disease, it must be seen as to whether the demise of the petitioner's son had any direct nexus with the so-called ailment that was suffered by the petitioner's son.

13. It is seen from the discharge summary that the petitioner's son had died due to Boop, Viral Pneumonia, Acute Intersitital Pneumonia, Lymphoma. This pertains to an infection that was caused to the lung. On going through the entire discharge summary, it is seen that the petitioner's son was treated only for this ailment and unfortunately, he died on 09.01.2019 at about 07.55 P.M. Therefore, it is not fair on the part of the second respondent Insurance Company to reject the claim made by the

petitioner, just because, the petitioner's son did not inform that he had Diabetes Mellitus. If Diabetes Mellitus is a ground to reject the claim, then most of the claims will have to be rejected, since more than half of the population suffers from Diabetes Mellitus. The second respondent was only attempting to find a ground to reject the claim and unfortunately, the first respondent did not appreciate the same and closed the complaint given by the petitioner.

14. Even on going through the impugned proceedings of the first respondent, the first respondent has observed that in the repudiation letter dated 23.03.2019, the insurer has not disclosed the details of the evidence which they obtained in order to prove the so-called non-disclosure. Therefore, it is quite clear that there was no evidence available to substantiate as to whether there was an intentional non-disclosure on the part of the petitioner's son. After rendering such a finding, the first respondent proceeds to advice the second respondent that in future they must properly incorporate those particulars in the repudiation letter in order to confirm with the provisions of the Insurance Act.

15. In the Division Bench Judgment that was referred supra, a similar reason was given for rejecting the claim made and the Division Bench dealt with the same as follows:

> "*13. With regard to the pre-ailments, there is nothing on record to show that the appellant Insurance Company directed the insured to undergo a medical examination. It is the case of the appellant Insurance Company that subsequent to the claim petition, when they made investigation, they came to know that the deceased was suffering pre-existing ailments. The cause of death is an accidental fall. A criminal case was registered and after performing autopsy, the body was handed over. Therefore, even assuming that there were certain pre-existing ailments, that would not be a cause for the death of the first respondent's father and hence, the appellant Insurance Company cannot take umbrage of the same.*"

16. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the impugned proceedings of the first respondent in Award No. Impugned Order/CHN/A.L1/0095/2019-2020, dated 26.11.2019 and accordingly, the

same is hereby set aside. There shall be a direction to the second respondent Insurance Company to immediately settle the claim towards the Master Policy No.PP000053 dated 26.10.2017.

17. The learned counsel appearing for the petitioner submitted that the petitioner in order to avoid any default had settled the entire housing loan to the third respondent.

18. In view of the same, the claim amount shall be settled by the second respondent directly to the petitioner. This process shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

19. In the result, this Writ Petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG

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