



W.P.(MD)No.11044 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.11044 of 2021

and

W.M.P.(MD).No.8674 of 2021

K.R.Sakthi Murugeswari

... Petitioner

Vs.

1.The Divisional Manager
Divisional Office,
Life Insurance Corporation of India,
Tiruvandrum Road,
Palayamkottai, Tirunelveli- 627 002.

2.The Branch Manager,
Life Insurance Corporation of India,
Unit-I, Trivandrum Road,
Palayamkottai, Tirunelveli- 627 002.

3.S.Muthuvel Raj

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the 2nd Respondent herein in his proceedings dated 24.06.2021 and quash the same and consequently direct the 1st and 2nd Respondents to disburse the assured claim amount arising from LIC policy



W.P.(MD)No.11044 of 2021

No. 321878120 to the Petitioner and her son as legal heirs of deceased S.Arul.

For Petitioner : Mr.P.Karthick

For Respondents : Mr.C.Karthick
(R-1 & R-2)

: Mr.Mahoob Athiff
(For R-3)

ORDER

This Writ Petition has been filed challenging the impugned communication dated 24.06.2021 of the second respondent informing the petitioner that the insurance claim amount will be paid only in favour of the nominee and for a consequential direction to the first and second respondents to disburse the assured claim amount to the petitioner and her son, who are the legal heirs of the deceased S.Arul.

2. The case of the petitioner is that she got married to late S.Arul in the year 2016 and through this marriage, they had a son named Aswath. The husband of the petitioner was infected with Covid-19 and unfortunately, he died on 13.05.2021. The husband of the petitioner had subscribed a LIC policy with the second respondent for the sum assured at Rs.3,00,000/- (Rupees Three Lakhs only). After the demise of the



W.P.(MD)No.11044 of 2021

husband, the petitioner made a claim for the sum assured. On receipt of the communication from the petitioner, the second respondent through impugned letter dated 24.06.2021 informed the petitioner that the deceased had nominated his brother, viz., the third respondent / S.Muthuvel Raj as the nominee and therefore, the claim will be paid only in favour of the nominee. Aggrieved by the same, the present Writ Petition has been filed before this Court. The first and second respondents have filed a counter affidavit. For proper appreciation, the relevant portions in the counter affidavit are extracted hereunder:

“4) I submit that as the policy is in force on the date of death of the assured Mr.S.Arul, Rs. 3,00,000/- + the bonus of Rs.2,02,500/- totally Rs. 5,02,500/- is payable under the policy if the claim is admitted after receipt of all requirements. Since the nominee has applied for the policy amount by producing the original policy and the claim papers, our Insurance Company was not considered the claim of the Writ petitioner and to that effect we have sent a letter dated 16.06.2021 to the writ petitioner by stating that "as a valid nominee exists under the given policy, we are in order to consider the claim in favour of the nominee only. This is for your kind information."



W.P.(MD)No.11044 of 2021

In the meantime the 3rd Respondent has received back the original policy along with the other papers submitted for the claim from our Branch office as referred above.

5) I submit that since there are two claims for this policy amount i.e. one by the 3rd Respondent and the other by the writ petitioner as referred above, we are not in a position to take a decision in respect of the policy amount payable to whom. In any way we are ready to abide by the order of this Hon'ble Court in paying the policy amount with the Bonus to the person/persons as ordered by this Hon'ble Court, If the claim is in order and admitted on our side.”

3. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for respondent Nos.1 and 2 and the learned counsel appearing for the third respondent.

4. The short issue that arises for consideration in this Writ Petition is as to whether the impugned communication of the second respondent requires the interference of this Court and this Court has to



W.P.(MD)No.11044 of 2021

issue a consequential direction to the first and second respondents to pay the assured claim amount to the petitioner and her son.

5. There is no serious dispute on the facts of the case and therefore, the facts does not require any reiteration. The law as it stood before the coming into force of the Amendment Act, 2015, was that the nominee merely receives the assured sum from the Insurance Company in his or her capacity as a collector nominee and insofar as the claim over the sum assured, the parties are relegated back to the personal law which governs them. Therefore, in many cases, the collector nominee merely retains the amount in trust, subject to working out the final claim between the parties before the competent Court. An amendment was brought to the Insurance Act, 1938 in the year 2015. By virtue of this amendment, the line that was drawn between a beneficiary nominee and collector nominee stood almost obliterated. The nominee about whom Section 39 of the Insurance Act, 1938, talks about is considered to be a beneficiary nominee and the concept of collector nominee has been done away with. To properly understand the position of law, it will be appropriate to extract Sub Sections 7 to 10 of Section 39 of the Insurance Act, 1938, hereunder:



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W.P.(MD)No.11044 of 2021

“39.Nomination by Policy holder:-

(1)...

(7). Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the



W.P.(MD)No.11044 of 2021

holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

.....”

6. The above change that was brought in through the 2015 Amendment Act was dealt with by the Delhi High Court in the case of ***Shweta Singh Huria and others Vs. Santhosh Huria and another*** reported in ***AIR 2021 Delhi 121***. The relevant portions in the Judgment are extracted hereunder:

“18. It was submitted that amendment to Section 39 was made pursuant to 190th Report of the Law Commission, wherein the judgment in Sarbati Devi vs. Usha Devi (1984) 1 SCC 424 was also considered. In the said decision, the Supreme



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W.P.(MD)No.11044 of 2021

Court held that nomination would not confer any beneficial interest on the nominee and it is a mere authorization to receive the insurance amount, which can be claimed by the legal heirs of the assured in accordance with law of succession, governing the parties. The judgment has been followed successively by various High Courts in a long line of cases, holding that mere nomination effected under Section 39 shall not deprive the legal heirs to the amount under the Insurance Policies. However, as per Ms. Gambhir, the said judgments would be of no avail to Respondent No. 1 as the said decisions are based on the unamended Section 39, while the present case relates to policies which have matured in 2018, post the 2015 Amendment.

19. Learned counsel for the Appellants relied upon the judgement of Rajasthan High Court in Ramgopal & Ors. vs. General Public & Ors., S.B. Civil Misc. Appeal No. 27/2018 decided on 05.04.2019, wherein according to her, judgement in Sarbati Devi (supra) was distinguished in view of the 2015 Amendment and Court held that wherever the provisions of amended section 39 will be applicable, beneficial



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W.P.(MD)No.11044 of 2021

nominee shall be entitled to the benefits under the insurance policies, to the exclusion of any other legal heir, who is not a nominee.

20. *Per contra, Mr. Rakesh Wadhwa learned counsel for Respondent No. 1 opposed the appeal and submitted that the partial decree has been rightly passed by the Trial Court on an application under Order XII Rule 6 CPC. Drawing the attention of the Court to the said provision, learned counsel argued that based on admission of facts in the pleadings or otherwise, orally or in writing, it is open to the Court, at any stage of the suit, without waiting for determination of any other question between the parties, to make such order or give a judgment, having regard to the admissions. Appellant No.1 admitted in the written statement that she had received a sum of Rs. 2,48,53,000/- as well as money under two policies as a nominee of the deceased. Being the mother, Respondent No. 1 is a Class-I legal heir and entitled to 1/4th share and there is no infirmity in the order of the Trial Court, as the admissions were clear and unambiguous.*



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W.P.(MD)No.11044 of 2021

21. *It is argued that reliance of the Appellants on the Insurance Act, 1938 as amended by Insurance Laws (Amendment) Act, 2015 is misplaced in view of the settled law that a nominee does not have an absolute right over the estate of the deceased, as nomination is not a 'Will'. Several Courts have held from time to time that a nominee in an insurance policy only acts as a receiver on behalf of the legal heirs of the deceased policy holder and once the money is received by the nominee, disbursement under the policy, has to follow the testamentary disposition under the law of succession, which cannot be overridden by the Insurance Act, 1938, even after the said amendment. No judgment has been cited by the counsel for the Appellants which denies a legal heir the right to claim the amounts payable under the Insurance Policy and on the contrary it has been held that a policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no interest during the lifetime of a policy holder. On the death of a policy holder, the amount payable under the policy becomes a part of his estate and will be disbursed in accordance with the law of succession, either testamentary or intestate.*



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W.P.(MD)No.11044 of 2021

Nomination is only for the benefit of the insurer so that he gets a valid discharge of its liability under the policy and is not embroiled in the litigations inter-se the legal heirs of the insured. Reliance was placed by Mr. Wadhwa on the following judgments to support his contentions.

i. Smt. Sarbati Devi & Anr. Vs. Smt. Usha Devi (1984) 1 SCC ii. Shipra Sengupta Vs. Mridul Sen Gupta & Ors. (2009) 10 SCC 680.

ii. Shipra Sengupta Vs. Mridul Sen Gupta and others(2009) 10 SCC 680:(AIROnline 2009 SC 408).

iii. Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors. Appeal No. 313 of 2015 decided by Bombay High Court on 01.12.2016.

iv. Smt. Rampali Vs. The State Govt. of NCT of Delhi & Ors.FOA No. 184/2017 decided by Hon'ble High Court of Delhi on 24.04.2017.

v. Khushboo Gupta Vs. The Life Insurance Corporation of India & Ors. CWJC No. 12012 of 2018 : (AIROnline 2019 PAT 1526) decided on 25.09.2019.



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W.P.(MD)No.11044 of 2021

vi. *Oswal Greentech Ltd. Vs. Mr. Pankaj Oswal & Ors. CA No.410 of 2018 decided by National Company Law Appellate Tribunal, Delhi on 14.11.2019.*

vii. *S. Shafeek & Ors. Vs. State of Kerala 2020 SCC Online Ker 636.*

viii. *Smt.Ramayee Vs. the Principal Comptroller of Defence and others. W.P. (MD).No.18544 of 2016 decided on 17.02.2020."*

27. *The proposition of law laid down by the Supreme Court in Sarbati Devi (supra) and relied upon by counsel for the Respondent cannot be disputed and is a binding dictum. The Supreme Court held that nomination would not confer any beneficial interest on the nominee under an insurance policy and a nominee is only an authorized hand to receive the insurance amount, which is subject to be disbursement amongst the legal heirs under the law of succession, governing the parties. In fact, the said judgment has been followed subsequently in a long line of judgments not only by this Court but different High Courts from time to time. Relevant paras of Sarbati Devi (supra) are as under:-*

"5. We shall now proceed to analyse the



W.P.(MD)No.11044 of 2021

provisions of Section 39 of the Act. The said section provides that a holder of a policy of life insurance on his own life may when effecting the policy or at any time before the policy matures for payment nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death. If the nominee is a minor, the policy- holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation or change is notified to the insurer if he makes the payment bona fide to the nominee already registered with him, the Patna High Court CWJC No.12012 of 2018 dated 25-09-2019 insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee



WEB COPY



W.P.(MD)No.11044 of 2021

or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy-holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy-holder. If that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in para 16 of the decision of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more



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W.P.(MD)No.11044 of 2021

pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules Patna High Court CWJC No.12012 of 2018: (AIR Online 2019 pat 1526) dated 25-09-2019 governing the testamentary succession is not relaxed even where wills are registered.

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8. We have carefully gone through the judgment of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi



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W.P.(MD)No.11044 of 2021

High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(kb) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the



W.P.(MD)No.11044 of 2021

right of a creditor of the estate of the assured to attach Patna High Court CWJC No.12012 of 2018 dated 25-09-2019 the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in Karuppa Gounder v. Palaniamma [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] and in B.M. Mundkur v. Life Insurance Corporation of India [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . The relevant part of the decision of the Delhi High Court in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11) "10. In Karuppa Gounder v. Palaniamma [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , K had nominated his wife in the insurance policy. K died. It was held that in virtue of the nomination, the mother of K was not entitled to any portion of the insurance amount.



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W.P.(MD)No.11044 of 2021

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12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in Fauza Singh case [AIR 1978 Del 276] and in Uma Sehgal case [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the



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W.P.(MD)No.11044 of 2021

meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the Patna High Court CWJC No.12012 of 2018 dated 25-09-2019 insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

28. However, the contention of the Appellant is that Section 39 of the Insurance Act, 1938 was amended by The Insurance Laws (Amendment) Act, 2015 which has come into force w.e.f 26.12.2014 and by virtue of amended sub-section (7) of Section 39, nominee has a beneficial interest in the amount payable under the Life Insurance Policy, on the death of the assured and no longer remains a mere receiver nominee, whose rights under the unamended Section were subject to rights and claims of the legal heirs



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W.P.(MD)No.11044 of 2021

under the law of succession.

29. In order to appreciate the legal nodus that arises, it is imperative to compare and contrast relevant provisions of the unamended and amended Sections 39, respectively, which are extracted hereunder for ready reference:-

Unamended Section 39:-

"39. Nomination by policy-holder.--(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:



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W.P.(MD)No.11044 of 2021

Amended Section 39:

39. (1) *The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.*

(6) *Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.*

(7) *Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under subsection (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.*



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W.P.(MD)No.11044 of 2021

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

30. Section 39 was amended by the amending Act No. 5 of 2015 and was pursuant to the recommendations of 190th Report of the Law Commission of India, relevant passages from which are as under:-

The Law Commission's views:-

7.1.12 There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the



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W.P.(MD)No.11044 of 2021

contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to S.45 ZA as in the Banking Regulation Act, 1949 should be adopted.



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W.P.(MD)No.11044 of 2021

7.1.13 The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to Section 39:-

7.1.14 After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.

(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.



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W.P.(MD)No.11044 of 2021

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested Amendment of Section 39:-

"7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

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(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of



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W.P.(MD)No.11044 of 2021

them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

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(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance



WEB COPY



W.P.(MD)No.11044 of 2021

maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/ are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation: For the purposes of this sub-section the expression "beneficiary nominee" means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression "collector nominee" means a nominee other than a beneficiary nominee."

31. As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between 'beneficiary



WEB COPY



W.P.(MD)No.11044 of 2021

nominee' and 'collector nominee' and Section 39 of the Insurance Act, 1938 was amended accordingly, adding sub-Section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of Section 39 was carefully and cautiously drafted and the words used by the legislature are 'beneficial interest'."

7. A careful reading of the above Judgment brings to light the fact that the dictum of the Hon'ble Apex Court in Sarbati Devi case to the effect that a mere nomination would not confer any beneficial interest on the nominee under an insurance policy, has undergone a change by virtue of the amendment that was brought in by the Parliament to Section 39 of the Insurance Act, 1938. Before this amendment was brought in, the Law Commission had also submitted its views and the Law Commission wanted to specifically carve out the distinction between the beneficiary nominee and the collector nominee. However, when the legislature amended Section 39 of the Insurance Act, 1938 and brought in Sub Sections 7 and 8, the very concept of collector nominee has been done away with. This



W.P.(MD)No.11044 of 2021

was taken into consideration by the Delhi High Court and considering the facts and circumstances of that case, the nominee, who was appointed under the Policy was held to be a beneficiary nominee and was hence, entitled to appropriate the entire sum assured.

8. There is yet another reason as to why this Court has to hold that the nominee takes the sum assured absolutely. For this purpose, Sub Section 8 to Section 39 of the Insurance Act, 1938, becomes relevant. This provision states that even if in case the nominee dies, the legal heirs / legal representatives of the nominee will be entitled to the sum assured absolutely. This gives a clear indication that the nominee, who is nominated by the policy holder takes the sum assured absolutely and for all purposes, he is treated as a beneficiary nominee.

9. The facts of the case before the Delhi High Court did not pose any difficulty for the Court to arrive at a conclusion, since it was a dispute between the wife and the mother-in-law and both of them are entitled to be treated as beneficiary nominees under Sub Section 7 to Section 39 of the Insurance Act, 1938. In the instant case, the third



W.P.(MD)No.11044 of 2021

respondent is the brother of the deceased and the petitioner is the wife of the deceased. Therefore, the question is whether the brother / the third respondent can be fit in as a beneficiary nominee by disregarding the right of the wife, by virtue of Section 39 (7) of the Insurance Act, 1938.

10. The learned counsel for the petitioner submitted that the nominees who have been dealt with under Section 39(7) of the Insurance Act, 1938, have been specifically identified and hence, in order to be a beneficiary nominee, the party has to necessarily fall within the scope of Section 39(7) of the Act.

11. Per contra, the learned counsel appearing for the third respondent submitted that the provision does not specifically deal with the concept of collector nominee and this concept has been done away with and therefore, any person, who has been nominated will have to be necessarily considered only as a beneficiary nominee and the so-called restriction under Section 39 (7) of the Act will not in any way deprive the third respondent from receiving the sum assured from the Insurance Company.



W.P.(MD)No.11044 of 2021

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12. A beneficiary nominee means a nominee who is entitled to receive the entire sum assured under the insurance policy absolutely. On the other hand, a collector nominee means a nominee other than a beneficiary nominee. It is true that on a plain reading of Section 39(7) of the Act, this distinction has been done away with. However, the legislature was careful enough to identify who all will fall within the category of nominees who in law will be considered as a beneficiary nominee. While categorizing those persons, the legislature was careful enough to bring in the parents, spouse, children, spouse and children or any of them. If the legislature had thought it fit to make everyone as a beneficiary nominee, there was no need for the legislature to specifically prescribe those persons who will fall within the ambit of Section 39 (7) of the Insurance Act, 1938. The fact that such a conscious description of persons, who fall under Section 39(7) of the Act has been prescribed by the legislature, shows that the legislature only wanted those persons who are closely related to the deceased policy holder alone to be treated as beneficiary nominees. In the instant case, the third respondent is admittedly the brother of the deceased policy holder and the third respondent cannot be brought within the scope of Section 39(7) of the Act. If the third respondent cannot be brought



W.P.(MD)No.11044 of 2021

within the scope of Section 39(7) of the Act, it would only mean that he will be treated as a collector nominee. The Insurance Company cannot deal with the inter-se rights and the claim between the petitioner and the third respondent and the company has to entrust the sum assured to someone who has been nominated under the policy. By handing over the sum assured to the nominee, the job of the Insurance Company comes to an end. Thereafter, it is not the concern of the Insurance company to see as to who has the rightful claim over the sum assured and whether it actually goes into their hands as per the personal law governing the parties. Therefore, the concept of nomination is only to ensure that the Insurance Company does not get into the area of dispute and the Company washes of its hands by handing over the sum assured to the nominee. If the nominee falls within the scope of Section 39(7) of the Act, those persons described therein automatically takes it as a beneficiary nominee. If the person does not fall within the scope of Section 39(7) of the Act, he can only be treated as a collector nominee and he has to hold the money in trust subject to the claims made by the legal representatives who are entitled to a share in the sum assured. This position continues even after the amendment made to the Insurance Act in the year 2015. If every nominee is brought within the



W.P.(MD)No.11044 of 2021

scope of Section 39(7) of the Act, this Court will be doing violence to the plain language used in the said provision and it will be certainly beyond the scope of the said provision.

13. In the light of the above discussion, this Court holds that the third respondent as a nominee can only collect the sum assured from the Insurance Company and hold it in trust and it will be subject to the claims made by the legal heirs of the deceased under the personal law governing them. This Court cannot find fault with the impugned communication issued by the second respondent dated 24.06.2021, in this regard.

14. The last issue to be taken up is as to whether the petitioner and her son will have to once again go through the process of initiating recovery proceedings against the third respondent, if in case, the third respondent does not hand over the sum assured to them. In the instant case, as between the petitioner and the third respondent, it is the petitioner and her son who are entitled to receive the sum assured as Class-I legal heirs. The Hindu Succession Act that governs the parties makes it very



W.P.(MD)No.11044 of 2021

WEB COPY

clear that the Class I legal heirs will be entitled to take the share absolutely to the exclusion of the other heirs. The third respondent, who is the brother of the deceased falls under the category Class-II legal heir and therefore, he is excluded from succeeding to the sum assured. Hence, in the absence of any dispute on the status of the parties, this Court in order to render substantial justice, directs the second respondent to hand over the entire sum assured to the petitioner. It is brought to the notice of this Court that the original policy is with the third respondent. The third respondent shall resubmit the original policy to the second respondent within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent shall hand over the sum assured to the petitioner and her son within a period of two (2) weeks thereafter subject to the petitioner fulfilling all the other formalities.

15. This Writ Petition is disposed of with the above directions.

No costs.

16.10.2023

NCC:yes
Index:yes
Internet:yes
tsg



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W.P.(MD)No.11044 of 2021

N.ANAND VENKATESH, J

tsg

W.P.(MD)No.11044 of 2021

16.10.2023