BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	Judgment Pronounced On
29.09.2023	**12.12.2023**

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 12200 of 2021
and
W.M.P(MD)Nos. 9597 & 9598 of 2021

Jeyalakshmi ... Petitioner

Vs.

1. The Regional Director,
   The Reserve Bank of India,
   Fort Glacis, No.16, Rajaji Salai,
   Chennai – 1.

2. The District Collector,
   Office of the Collectorate,
   Madurai.

3. The Assistant General Manager,
   State Bank of India,
   Retail Asset Central Processing Centre,
   "Madhuram Complex",
   Dr. Ambedkar Road,
   Madurai - 2.

4. The Branch Manager,
   State Bank of India,
   Vinayaga Nagar Branch,
   Madurai.

5. The SBI Life Insurance Company Limited,
   Central Processing Centre,
   7th Level (D) Wing and 8th Level,
   Seawoods Grand Central,
   Tower II, Plot No. R1 Sector 40,
   Searoutes, Nerulnode,
   Navi Mumbai.
   Pin – 4000706

6. The SBI Life Insurance Company Limited,
   2nd Floor, No.4,
   SS Tower,
   Bye Pass Road,
   Madurai - Pin 625016. ... 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 Impugned Order passed by the 5th Respondent in his proceedings, dated 06.05.2021 and quash the same and consequently directing the respondents 3 to 6 to close petitioner's husband's Home Loan and hand over the original documents to the petitioner within time stipulated by this Court.

For Petitioner : Ms.Chitra Devi,
for Mr.C.Jeganathan

For Respondents : Mr.B.Saravanan,
Additional Government Pleader, for R-2

: Mr.S.Sukumar, for R-3 & R-4

: Mr.P.Arun Jayatram, for R-5 & R-6

ORDER

This writ petition is filed to quash the impugned order, dated 06.05.2021 with a consequential direction to the respondents to close the petitioner's husband Home Loan account and hand over the original documents to the petitioner within a stipulated time that may be fixed by this Court.

2. The petitioner's husband, namely Lakshmanaperumal was working as Junior Engineer Grade-I in Tamil Nadu Electricity Board and had availed Home Loan from State Bank of India, Vinayaga Nagar Branch, for an amount of Rs.19,45,400/- out of which, an amount of Rs.1,45,400/- would be deducted as “Funding of Home Loan Insurance cover” and the balance amount of Rs.18

Lakhs was sanctioned but an amount of Rs.15,18,100/- was disbursed by way of two installments.

3. The contention of the petitioner is that the respondents 3 & 4 had recommended to avail the funding of home insurance cover and believing the said words had agreed for the proposal and an amount of Rs.1,45,400/- was paid to the said scheme. The respondents 3 & 4 had assured that the Policy Bond would be send later through registered post. But the respondents 5 & 6 failed to send the policy Bond. The petitioner's husband repeatedly requested the respondents 3 to 6 to furnish the copy of the Policy Bond. The 6th respondent had replied to the petitioner's husband to wait for some more time until the policy is sent to him.

4. In furtherance to the policy, the petitioner's husband has paid monthly installment of Rs.21,819/- per month from 10.12.2019, regularly. In the meanwhile, the petitioner's husband was infected by COVID-2019 and died on 15.07.2020. Till his death, he had paid the loan amount regularly. The petitioner's husband availed the home loan through a sanctioned letter, dated 19.11.2019 and

accordingly, the home loan was sanctioned along with the insurance by the respondents. Due to death of the petitioner's husband, the petitioner had written a letter to the 4th respondent on 10.08.2020 intimating the death and requested to waive the loan under the insurance cover Policy No.3895083955 and issue a closure certificate along with original documents. The said request was forwarded by the 4th respondent to the respondents 5 and 6 to process the claim. However, to the shock and surprise, the 5th respondent has rejected the claim, vide letter, dated 06.05.2021 on the ground that the petitioner's husband was having Diabetes and Hypertension, even before the policy and owing to the same, the death claim of the petitioner's policy, vide Policy No.70000018311 was rejected. The contention of the petitioner is that the impugned order passed by the 6th respondent is illegal and arbitrary and hence, the petitioner is before this Court.

5. The 4th respondent has filed counter affidavit and stated that it is true that in the year 2019 the petitioner's husband availed Home Loan to the tune of Rs.19,45,400/- and Rs.1,45,400/-was deducted for funding of home loan insurance cover. The borrower has voluntarily obtained the said insurance and the papers relating to the deduction of the amount to the insurance cover was sent to

the 5th respondent for completing their procedure and issue insurance policy cover to the borrower. The 4th respondent further submitted he understand that on receiving the papers and the deduction amount, the 5th respondent noted that the petitioner's husband was suffering from Diabetes Mellitus and Systemic Hypertension and was under the treatment of Coronary Artery disease since 13 years status post Coronary artery bypass grafting 12 years ago prior to the date of proposal i.e., 29.11.2019 and further understand from the impugned order that "no contract of insurance existed on the date of death of the life assured, hence no claim benefit is payable".

6. The 4th respondent further submitted that in the process of sanctioning loan to the borrower, the 4th respondent has sent all the particulars of the loan and the policy cover amount to the 5th respondent for their perusal. It is understood that the policy cover was not issued in the name of the petitioner's husband and the death claim of Late.M.Lakshmanaperumal, State Bank of India Rinn Raksh Home Loan Scheme Lan No.38935697905 in policy No. 70000018311 was rejected on the ground that he suppressed about his pre-existed disease and submitted the documents for insurance cover through the 4th

respondent. It is the duty of the 5th respondent to prove his case that on date of death there is no contract exist in between the petitioner's husband and the 5th respondent insurance company and the respondent company initiated refund of the proposal deposit amount vide direct transfer to Bank account on 10.12.2019. The 4th respondent has not received any refund amount from the 5th respondent company. Hence, for these reasons, this Writ Petition is liable to be dismissed.

7. The 5th respondent has filed counter and stated that the SBI Life Insurance Company Limited was formed as a joint venture between State Bank of India and M/s. BNP Paribas Assurance and incorporated under Companies Act, 1956, for the purpose of transacting life insurance business in India. The Central Government and the State Government do not hold any share in the respondent company and there are no Government Directors on the Board and the Central Government has also classified that the 5th respondent company as a Private Sector Life Insurance Company in contradistinction to Public Sector Insurance Companies, on the basis of legislative understanding. The writ petitioner has raised a disputed question of fact. Hence, the Writ Petition is not maintainable. Moreover, the petitioner is attempting to enforce the contract which is not

available. The Hon'ble Supreme Court has observed in ***Civil Appeal No. 4186-87 of 1988 LIC of India Vs. Smt. Asha Goel,*** in their Judgment, dated 13.12.2000, that the Courts must bear in mind the self-imposed restriction and purely contractual rights and obligations involving disputed question of facts cannot be decided under Article 226 of Constitution of India.

8. The respondents further submitted that the Group Insurance, the privity of contract is between the master policy holder and the insurer. The contract of insurance is entered between group policy holder and SBI life, where under the individual members are covered. As an evidence of contract a Master Policy containing all terms of conditions of the insurance coverage will be issued to the Master Policy holder and the terms and conditions are binding on the insured members as well. The individual members of the Master Policy are issued "Certificate of Insurance" (hereinafter referred as COI) as evidence of their membership of group insurance if they fulfill the eligibility criteria and duly pay the premium. The COI specifically states that the insurance coverage is subject to the terms and conditions of the Master Policy issued to the Group Master Policy holder. The SBI Life Insurance Co. Ltd. has Group Insurance Scheme for the

borrowers of various loans from State Bank of India where under the borrower member is offered insurance subject to the terms and conditions incorporated in the Master Policy which is issued in favour of State Bank of India.

9. The petitioner's husband had applied insurance coverage under SBI Life-Rinn Raksha group insurance policy through membership Form No.7011448638 dated 27.11.2019 under Lan No.38935697905 for a loan amount of Rs.18,00,500/-. The proposal deposit amount under insurance cover was Rs. 1,45,400/-. However, the insurance cover was not granted and the respondent company initiated refund of the proposal deposited amount vide direct transfer to the Bank account on 10.12.2019, however, the transaction failed with a reason 'transaction reversed due to invalid credit account'. A medical examination was also conducted under the proposal. The respondent company was not found satisfied, thereby the policy was not issued in favour of Lakshmanaperumal. The deceased Lakshmanaperumal has signed the declaration form and he has accepted to the terms and conditions of the contract. The said Lakshmanaperumal is reported to have died on 15.07.2020. As no insurance cover was granted to him,

there was no insurance cover as on the date of his death and hence, claim is not payable.

10. The respondents have further submitted that it was decided to assess the claim on receipt of communication regarding the death of Lakshmanaperumal. The membership form is the basis of any insurance cover. In the said membership form, he replied in negative to Question No.5 (iii) Have you ever suffered from/been treated/hospitalized for Chest pain, or other diseases. And the said form contains a warning class to declare the truth. Inspite of the said warning class, the deceased Lakshmanaperumal had replied in negative. During medical examination also the deceased Lakshmanaperumal has replied in negative and the deceased has intentionally suppressed an essential material fact in order to obtain insurance cover fraudulently. As the risk and needs to be assessed while accepting the membership form for insurance cover it is essential that the proposal for the person whose life has to be insured gives answers to the questions in the membership form. The membership form is a Master Policy is the fundamental basis for assessment of risk and answer to each and every question asked for is vital for the underwriter to decide whether the proposed life is to be

insured or not. Thus, the incorrect information stated in the proposal form certainly vitiates the interest of the insurer and hence the insurer is well within their rights to repudiate the claim wherever material facts are suppressed by the life insurer.

11. As per the death summary the past history is noted as "Known case of Systemic Hypertension/Diabetes Mellitus/coronary artery disease since 13 years status post coronary artery bypass grafting 12 years ago". Therefore, through documents above referred, it is clearly established that pre-existing illness of the deceased. Hence there is a suppression of material fact with the fraudulent intention to obtain insurance and there are sufficient record to prove that the deceased has history of Diabetes Mellitus, Systemic Hypertension, coronary artery disease for the past 13 years. The deceased failed in his duties to disclose the material facts in the proposal form. Hence, the contract is void ab initio in terms of Section 17 of Indian Contract Act, 1872. Hence, the claim is not payable as there was no concluded contract as on date of death and suppression of pre- existing history of Diabetes Mellitus, Systemic Hypertension, coronary artery disease for the past 13 years. Moreover, under Clause 14(4) of the Master Policy

clearly states, Whether the person is entitled to any claim, when, there is non-disclosure of material facts. Therefore, the 5th respondent submitted the claim of the petitioner cannot be entertained and prayed to dismiss the writ petition.

12. The petitioner had filed rejoinder and had denied the allegations stated in the counter, wherein it is stated that the SBI holds 76% and BNP Assurance holds 24% share capital. Since Central Government holds 62.3130% of equity shares in SBI and SBI holds 76% of the share of SBI Life, the writ petition is maintainable as held in W.P.No.8879 of 2013 High Court of Allahabad (Lucknow Bench) and RP No.870 of 2017 in W.A. No.1444 of 2017 of Kerala High Court. Further the petitioner submitted that the deceased Lakshmanaperumal was never called for medical examination until his death for coverage of life insurance of deceased. Further the respondents had not stated the same in the impugned order and is trying to improve their case. Until the death of the borrower the insurance company had not communicated the contract was not concluded. Moreover, the bank was collecting the EMI for the insurance amount and these would clearly give presumption that the insurance company had accepted the contract and hence prayed to allow the petition.

13. Heard Ms.Chitra Devi, for Mr.C.Jeganathan, the Learned counsel appearing for the Petitioner, Mr.B.Saravanan, the Learned Additional Government Pleader, appearing for the 2nd respondent, Mr.S.Sukumar, the Learned Counsel appearing for the respondent Nos.3 & 4, Mr.P.Arun ayatram, the Learned Counsel appearing for the respondents 5 & 6 and perused the material documents available on record.

14. The respondents 3 & 4, State Bank of India (SBI) are the nationalized bank carrying on banking business. The 5th and 6th respondents SBI Life along with one PPN Prabhas Assurance are having joint venture company doing insurance business. In short, the nationalized bank SBI is having insurance agreement with SBI Life. It is seen the Central Government holds 62.3130% of equity shares in SBI and SBI holds 76% of the share of SBI Life. This Court following the judgments rendered in W.P.No.8879 of 2013 of High Court of Allahabad (Lucknow Bench) and judgment rendered in RP No.870 of 2017 in W.A. No.1444 of 2017 of Kerala High Court is of the considered opinion that the writ petition is maintainable. Moreover, the petitioner is facing Sarfaesi

proceeding and she may lose her house if the insurance is declined. Hence this Court is entertaining the writ petition.

15. Admittedly the petitioner's husband had availed home loan which was disbursed through sanctioned letter dated 19.11.2019. The Bank had sanctioned Rs.19,45,400/-, out of which Rs.18,00,000/- as loan, Rs.1,45,400/- for insurance policy. The amount Rs.1,45,000/- was paid to the respondents 5 & 6, the insurance company on 27.11.2019. The deceased had paid the EMI of Rs. 20,250/- towards loan and Rs.1,750/- towards insurance amount from 10.12.2019. The following table would indicate the deceased / borrower had paid EMI fixed for both the loan and insurance:

S. No.	Date	Repaid Loan	Repaid Insurance
1	10.12.2019	Rs.20,250/-	Rs.1,750/-
2	10.01.2020	Rs.20,250/-	Rs.1,750/-
3	10.02.2020	Rs.20,250/-	Rs.1,750/-
4	10.03.2020	Rs.20,250/-	Rs.1,750/-
5	10.04.2020	Rs.20,250/-	Rs.1,750/-
6	10.05.2020	Rs.20,250/-	Rs.1,750/-
7	10.06.2020	Rs.20,250/-	Rs.1,750/-
8	10.07.2020	Rs.20,250/-	Rs.1,750/-

Since the bank had received both the EMI for loan and insurance the petitioner and her husband were under the impression that the policy was accepted and the they are entitled to the claim of insurance.

16. But the contention of the insurance company is that even though the amount was deducted from the Bank and paid to the insurance company, the insurance cover was not granted since the contract was not concluded. Infact the insurance company initiated refund of the proposal deposit amount vide direct transfer to bank account on 10.12.2019, however the transaction failed with a reason “Transaction reversed due to invalid credit account”. The contention of Bank is that the said amount was not received by the Bank, in fact the Bank was not intimated and it has no knowledge about the fact that the contract was not accepted and not concluded. The bank was also deducting EMI for insurance amount along with the EMI for loan amount. From the above narration of facts, it is evident that the insurance premium amount was received by the insurance company, even though the insurance company tried to refund the amount on 10.12.2019 but the transaction failed, on subsequent days the insurance company had not tried to refund the amount. The insurance company ought to be have

intimated to the Bank immediately but the insurance company had not intimated, infact in the counter filed by the bank it has been stated that the insurance company ought to prove the same. The borrower had died on 15.07.2020 and until the death of the borrower the amount was not refunded. It means the policy was not rejected until the death of the borrower till 15.07.2020. Rejection of policy must be made within reasonable time as held in D. Srinivas Vs. SBI Life Insurance Company Limited and others reported in (2018) 3 SCC 653 and the relevant portion is extracted hereunder:

> *"11. It is clear from the above that the proposer was willing to join the life insurance coverage from the respondent insurance company subject to his undertaking medical examination and for his willingness he authorized the bank to debit his account for payment of the premium. This clearly implies that medical examination was to take place prior to the premium being debited from the bank account of the proposer. The specific condition in the policy is that in case the loan amount exceeds Rs.7.5 lacs the medical examination was compulsory. If the medical examination was compulsory for such cases it should have been done along with filing of the proposal form before the payment of the premium. If the proposal was not accepted for any reason the premium would*

have been credited to the account of the proposer. The premium has been refunded after 23.2.2011. From this, it is clear that the insurance company had not rejected the proposal before 23.2.2011.

12. Our attention has been drawn to the case of LIC Vs. Raja Vasireddy Komalavalli Kamba and others (1984) 2 SCC 719, wherein this Court has clearly stated that the acceptance of an insurance contract may not be completed by mere retention of the premium or preparation of the policy document rather the acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance.

13. Although we do not have any quarrel with the proposition laid therein, it should be noted that aforesaid judgments only laid down a flexible formula for the court to see as to whether there was clear indication of acceptance of the insurance. It is to be noted that the impugned majority order merely cites the aforesaid judgment, without appreciating the circumstances which give rise to a very clear presumption of acceptance of the policy by the insurer in this case at hand. The insurance contract being a contract of utmost good faith, is a two-way door. The standards of conduct as expected under the utmost good faith obligation should be met by either party to such contract.

14. From the aforesaid clause it may be seen that the condition precedent for acceptance of the premium was the medical examination. It would be logical for an underwriter to accept the premium based on the medical examination and not otherwise.

Therefore, by the very fact that they accepted the premium waived the condition precedent of medical examination.

15. It is an admitted fact that the premium was paid on 29.09.2008. That it was only in 18.01.2011 that the respondent insurance company informed the appellant that the policy was not accepted by them. We are unable to fathom the reason for such excessive delay in informing the appellant, which cannot be excused. We are of the opinion that the rejection of the policy must be made in a reasonable time so as to be fair and in consonance with the good faith standards. In this case, we cannot hold that such enormous delay was reasonable. Moreover, it is borne from the records that the premium was only re-paid on 24.02.2011, after a delay of more than one year five months. If we consider above aspects, it can be reasonably concluded that the insurer is only trying to get out of the bargain, which they had willfully accepted. From the aforesaid circumstances we can easily conclude that the policy was accepted by the insurer.

16. In the circumstances, there is no reason to believe that there was no complete contract. There is clear presumption of the acceptance of the proposal in favour of the proposer. Therefore, the majority view of the Commission would not sustain.

17. In the result, the appeal succeeds and is accordingly allowed. The order of the National Commission dated 22.11.2016 is hereby set aside and the order of the State Commission dated 16.7.2012 is restored."

17. But the respondents submitted that the deceased had not stated the true facts in declaration since the "death summary" states that he had open heart bypass surgery 12 years back. But the claim of the petitioner is that the insurance company did not call for any medical examination and in the rejoinder affidavit the petitioner had categorically stated that "the deceased M.Lakshmanaperuamal was never called for medical examination until his death for coverage of life insurance". On perusal of the counter the respondents only states that the insurance company was not inclined to conclude the contract and had not stated any reasons for the same. It is only after seeing the "death summary" the insurance company has taken a stand that the contract was not concluded because of the deceased's bypass surgery. It is pertinent to state herein that the respondent had produced the medical certificate issued by a doctor. If the deceased had bypass surgery there would be a scare on the chest and on physical examination it would be evident, therefore this Court is of the considered opinion that the medical examination was not carried out and the claim of the petitioner ought to be accepted. When the medical examination was not carried out but when the insurance company had accepted the premium, then it amounts to waiver of medical examination as held in the judgement referred supra.

18. The insurance company had relied on the declaration of the deceased and submitted that the deceased had not stated the true facts especially the fact of bypass surgery. The Learned Counsel for the petitioner submitted that the Master Policy for Home Loan states that the insurance coverage is two crores and since the deceased sought only lesser amount to the tune of 18 lakhs the respondent informed at the time of medical examination the doctor certificate is sufficient and the deceased was waiting for the direction to attend medical examination. Moreover, the deceased died of Covid pandemic and the death is not due to heart ailment and hence the same may be considered as special case. The family of the deceased is facing Sarfaesi proceeding and the house is their only source of their life. The deceased was an employee in TNEB and the petitioner do not have any source of income. After hearing the rival submission this Court is of the considered opinion that the insurance company ought not to have accepted the premium and ought to have carried out medical examination that too by their own panel of doctors. Moreover, in the present case the death is due to Covid. Therefore, the petitioner is entitled to relief.

19. For the reasons stated supra, the impugned order is set aside. Accordingly, the respondent Nos.5 & 6 are directed to pay the insurance amount, within a period of eight weeks from the date of receipt of a copy of the matter.

20. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are also closed.

Index : Yes / No **12.12.2023**
Internet : Yes
KSA

To

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   The Reserve Bank of India,
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