BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNCED ON : 28.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.20049 of 2021 and
W.M.P.(MD)No.16754 of 2021

Rajeswari ... Petitioner

Vs.

1.The Branch Manager,
Shri Ram Life Insurance Company
Limited, Muthupettai,
Pattukkottai Taluk,
Thanjavur District.

2.The General Manager,
Shri Ram Life Insurance Company
Limited, No.42, Thalayari Street,
Pattukkottai Taluk,
Thanjavur District.

3.The General Manager,
Shri Ram Life Insurance Company
Limited, No.23, Pudukkottai Road,
Sethurama Pillai Colony,
Kallukuli, Trichy.

4.The Manager,
The Officer in Charge Group Insurance Department,
Shri Ram Life Insurance Company Limited,
Plot no.31 and 32,
Ramky Selenium Financial District,
Gachi Bowli, Hyderabad.

5.Shri Ram General Insurance,
2nd Floor, Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai-600 004.

6.Insurance Regularity and Department
Authority of India,
3rd Floor, Paris Ram Bhavan,
Basheer Bagh, Hyderabad-500 004.

7.Insurance Ombudsman State of Tamilnadu
and Puducherry,
Chennai-600 018.

8.The Manager of Shriram City Finance Limited,
Muthupettai Branch,
Thiruthuraipoondi Taluk,
Tiruvarur District. ... Respondents

(R8 is suo motu impleaded vide Court order, dated 24.07.2023, in W.P.(MD)No.20049 of 2021)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus,*** to direct the respondents Nos.

1, 2, 4 to pay the petitioner the amounts payable under the Life Insurance Policy of her husband Late.Azhagiri in certificate of Insurance No. 004800031644275 and amount payable under General Insurance Policy taken by the petitioner's husband on his coconut business and prawn farm business concerns.

For Petitioner	: Mr.N.Balakrishnan
For R1 to 4	: Mr.A.Sivasubramanian
For R5	: Mr.N.Shyllappa Kalyan
For R6	: Mr.S.Anwar Sameem
For R7	: Mr.B.Prasanna Vinoth
For R8	: Mr.J.Barathan

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O R D E R

This writ petition is filed for issuance of a writ of ***Mandamus,*** to direct the respondents Nos.1, 2, 4 to pay the petitioner the amounts payable under the Life Insurance Policy of her husband Late.Azhagiri in certificate of Insurance No.004800031644275 and amount payable under General Insurance Policy taken by the petitioner's husband on his coconut business and prawn farm business concerns.

2. The brief facts are that the petitioner's husband Late.Azhagiri applied to the 1st respondent for loan amount of Rs.20 Lakhs/- for his coconut wholesale and prawn farm/culture business and the same was sanctioned after executing registered simple mortgage deed dated 25.09.2018 and the loan agreement No.MTPE2TF1809290004, dated 29.09.2018. The said amount was disbursed thorough cheque dated 29.09.2018 to the tune of Rs.19,13,300/- after deducting the balance amount towards the following charges.

1.Rs.6000 towards SGIC,

2.Rs.14,000 towards SLIC,

3.Rs.47,200 towards processing fee and GST at the rate 2.35%,

4.Rs.19,200 towards upfront deduction,

5.Rs.300 towards stamp charges.

As per the direction of the 1st respondent the petitioner's husband has taken Life Insurance policy for the assured amount of Rs.20 Lakhs/- with the second respondent which is a sister concern and single premium of Rs.14,000/- was deducted by the first respondent on the date of sanctioning of loan. Subsequent to the said insurance, the petitioner's husband died due to heart attack on 27.12.2018 which was informed to the first respondent who had visited the petitioner's house and directed the petitioner to apply for death certificate and legal heir certificate so that the petitioner might claim death benefit from the first respondent. As per the directions, the petitioner had applied in the month of April 2019 then a Surveyor namely Christopher enquired the death and directed to produce death certificate, legal heir certificate, Aadhar card, passport and assured to disburse the benefit. Again, the respondents deputed two persons namely Karunanidhi from Kanchipuram and Ramakrishnan from Vijayawada and enquired about the petitioner's husband's death.

3. The petitioner submitted that the proposal form and policy bond of the petitioner's deceased husband were not furnished for ten months from the date of death of the petitioner's husband but received a letter dated 30.07.2019 from Group Insurance Department, Hyderabad, where it was found that the claim forms A, B and C were attached to the said letter. The petitioner after

filling the forms sent the forms on 01.08.2019 through registered post requesting to send the original policy bond and the proposal form. In consequence to the same, the officer in charge has sent a letter dated 20.08.2019 and directed to send the filled forms A, B and C without furnishing the original policy form and policy bond. Then the officer in charge has sent an email stating that sum assured amount is Rs.11,35,718/- for the entire cover and therefore, this will be the death benefit. The petitioner replied vide email on 30.08.2019 requesting to send the original form and original policy bond, thereafter, the petitioner through message dated 30.08.2019 claimed Rs.20 Lakhs/- as a sum assured and the petitioner received the email message dated 31.08.2019 to contact the phone number. However, without sending the proposal form and policy bond the respondents had directed to contact only the office of the insurance company. Again, the petitioner sent an email message dated 12.09.2019 claiming original proposal form and original policy bond. However, the respondents have replied that the same cannot be shared to the petitioner and but, directed the petitioner to send the passport of the petitioner's husband and the claim form B through email dated 12.09.2019, the officer in charge has stated that he has sent a certificate of insurance instead of sending the original proposal form and the policy bond. The officer in charge informed that the petitioner may approach any forum for the grievance. Again on 30.09.2019, the petitioner was directed to send the filled-up claim forms A, B and C along with other documents. On 04.10.2019, the petitioner had received a reply notice through an Advocate of the first respondent stating the petitioner had received SLIC bond and they are ready to give the death benefits and he has also stated that the petitioner has refused to sign the claim forms, which is ill-conceived. The petitioner has not received any such policy bond so far. The officer in charge has issued the certificate of insurance only on 26.10.2019 and as per the life insurance policy the petitioner is entitled to Rs.20 lakhs/- as a sum assured. The certificate of insurance claimed by the officer-in-charge appears to be a created one in order to wriggle out the responsibilities to pay the assured amount. The fourth respondent studiously avoided direct reply and sent email message asking to contact a person by giving land line number.

Since the respondents had not issued the benefit and the bond, the petitioner preferred a complaint to the sixth respondent wherein the sixth respondent has passed an order dated 05.03.2020 wherein the petitioner was directed to move a fresh application to concerned forum to ventilate the grievance. Hence, the petitioner submitted a claim application to the second respondent on 24.12.2020 through a registered post but the first respondent did not take any steps. But subsequently it was Covid-19 period, hence, the papers were not moved. Hence, the petitioner issued a legal notice dated 23.12.2020 for which the third respondent replied on 05.02.2021 wherein it is stated that the petitioner's deceased husband has taken General Insurance Policy and Life Insurance Policy wherein it is claimed that Shriram Life Insurance Company Limited and Shriram City Union Finance Limited are two separate corporate entities. The contention of the petitioner is that the same is legally not correct but on the contrary the Shriram Insurance Companies are connected with one another. In order to wriggle out the responsibilities of the insurance companies, the respondents claim that they are different entities.

4. The petitioner submitted that the first respondent has given a certificate of insurance in a Member Policy No.MN181024031644275 as per the said certificate, the period covers from 29.09.2018 to 28.09.2022 and the petitioner's husband died on 27.12.2018, subsequent to the commencement date. The petitioner submitted at least the petitioner is entitled to the cover amount of Rs.11,35,718/- even though the petitioner may not be entitled to Rs. 20 Lakhs/- which is the assured amount. Apart from the above life insurance policy, the petitioner's husband has insured his business of coconut and prawn farm business for an amount of Rs.40 Lakhs/- towards standard fire and special perils policy schedule in Policy No.421010/11/19/026436, dated 11.10.2018 for a period of one year from 01.10.2018 to 30.09.2019 for which a single premium of Rs.6000/- was already levied by the first respondent. During the said period, the outbreak of Gaja cyclone annihilated the entire coconut and prawn business and the damage caused was brought to the knowledge of the first respondent and the respondent official visited and surveyed the damage and has estimated the damage to the tune of Rs.36 Lakhs/- and it was informed that the insured

amount of Rs.40 lakhs would be given at the earliest. While that being so, in the month of October 2019, the Manager of Shriram City Finance Limited, Muthupettai Branch of Thiruthuraipoondi Taluk of Tiruvarur District came and got signature from the petitioner stating the aforesaid insured amount of Rs.40 Lakhs/- would be disbursed. But only a part of Rs.7,16,263/- was credited on 26.11.2019 to the bank of Shriram City Union Finance Limited. It is pertinent to note that the said amount was straight away credited to the account of Shriram City Union Finance Limited without giving the aforesaid amount to the petitioner directly. Considering, the overreaching aspect, the first respondent is liable to pay Rs.20 Lakhs/- for the Life Insurance Policy much less he is liable to pay Rs.11,35,718/- as a "cover amount" as per the certificate of Insurance schedule claimed by him as the Insurance Policy bond. And the fourth and fifth respondents are liable to pay the remaining amount of Rs.32,83,737/- out of the insurance amount Rs.40 Lakhs/- towards damages caused by Gaja cyclone.

5. As per the direction of the first respondent the petitioner had applied to get death certificate and legal heir certificate, but due to outbreak of Covid-19 the processing was delayed. On 25.05.2019 the surveyor namely Christopher from Chennai came and enquired about the death, received the Death Certificate, Legal Heir Certificate, Aadhar Card and Passport assuring to arrange for early disbursal of amounts. Due to Gaja cyclone the business was shattered, due to death of the petitioner's husband's the life was shattered and the petitioner is financially crippled struggling to meet both the ends meet and is suffering with two college going daughters. Hence, the petitioner at a last resort submitted the forms on 04.07.2019, but the petitioner's attempt was miserably failed and the petitioner filed a complaint to the 7th respondent and he directed to file fresh representation. Hence, she filed fresh representation on 02.12.2020. Thereafter, due to Covid-19, the petitioner could not process the same. Again, the petitioner filed a fresh application on 23.12.2020 and 24.12.2020 to the first respondent. After receiving the aforesaid the 3rd respondent replied vide letter dated 05.02.2021 wherein it is admitted that the

petitioner's husband had taken an insurance policy from Shriram General Insurance Company and another insurance policy from Shriram Life Insurance Company. It is also claimed that the petitioner's husband was not in India at the time of joining Group Insurance Scheme and hence, he could not have signed the declaration of Good Health Form. But the same is self-contradictory because having admitted the aforesaid policy signed by the deceased husband, when the loan agreement has also been signed by him and the loan amount of Rs.19,13,300/- has been received by the petitioner's husband on 29.09.2018, the 4th respondent now say that the petitioner's husband was not in India on the date of Life Insurance and General Insurance Policy. However, no action was taken on the petitioner’s fresh application. The contention of the petitioner is that when the 4th respondent had accepted that the petitioner’s deceased husband availed loan amount as per Agreement No.MTPE2TF1809290004, dated 29.09.2018, cheque was received on 29.09.2018, then the 4th respondent is estopped from saying that the petitioner’s deceased husband was not in India on the date of the aforesaid policies. It is also submitted that in the arbitration proceedings initiated by the Head Officer of the 1st respondent in TF No. 049/2020 dated 05.11.2020 before the sole arbitrator Mr.Muthukrishnan has not stated anything with respect to non-availability of the deceased husband on the date of aforesaid policies.

6. It is further submitted that when the petitioner is contenting the arbitration proceedings and also the petitioner's petition seeking payment of Life Insurance amount of Rs.20 lakhs or coverage amount of Rs.11,35,718/ was pending, the 1st respondent had sent a notice dated 14.02.2020 claiming 21,02,525/-, then claims Rs.35,28,799 in the arbitration proceedings, then in I.A.No.2/2021 connected to ACP No.49/2020, the 1st respondent claims Rs. 22,92,221/- which is miscalculation and the petitioner is not liable to pay. Further the petitioner submitted that the respondents 1 to 4 are sister concerns interrelated with one another. The petitioner is financially crippled and devastated due to death of her husband and adverse impact of Gaja cyclone. At this juncture, the respondents 1 to 4 are trying to bring the house for sale for

realizing the loan. The petitioner has stood as guarantor to the said loan. At the same time, the respondents did not realize the responsibility to pay Rs.20 Lakhs/- for the life of the petitioner's husband and Rs.40 Lakhs/- for the business insurance. If those amounts are paid, then the petitioner would not be liable to pay any amount which the respondents are claiming under loan. If the respondents had settled the insurance claim, the same would be used for paying the loan claim of the respondents, but the respondents are not responding to the insurance claim. Hence, the petitioner issued a notice to the arbitrator on 13.01.2021 through an Advocate stating the aforesaid facts and also sent a notice to the arbitrator on 04.02.2021 stating that he cannot try more than three cases to the claimant within a year. The petitioner claims that the only residential house which belongs to them was offered as security of loan but the first respondent threatens to sell the residential house. Hence, the petitioner is before this Court.

7. The General Manager representing the respondents 1 to 5 had filed counter affidavit stating the respondents are doing business of providing life insurance. Further submitted that the present the writ petition is not maintainable for non-joinder of necessary parties and also the writ petition is premature. The petitioner has not made the Shriram City Union Finance Limited as party to the proceedings with whom the petitioner's husband had applied for loan and mortgaged the property. The Shriram City Union Finance Limited (SCUF) and the Shriram Life Insurance Company are companies incorporated under Companies Act. Though they are sister concerns and they are separate legal entities doing different business. The Shriram General Insurance Company Limited (SGIC) is also incorporated as a separate entity doing general insurance business. The petitioner’s husband had become a member of Group Policy held by Shriram City Union Finance Limited under the master policy, wherein the risk cover commenced from 29.09.2019 to 28.09.2022 for a cover amount of Rs.11,35,718/- with a single premium amount of Rs.11,864/-. On receipt of the death claim, the respondents have conducted

regular enquiry and have discovered that the Deceased Life Assured was not in India at the time of joining the Group Insurance Scheme, hence, he could not have signed the Declaration of Good Health Form. Hence in order to ascertain the true facts, the Company had addressed a letter to the petitioner (nominee) which the petitioner had received on 10.10.2019, wherein copies of Certificate of Insurance, Member Enrolment cum Declaration Form and the Borrower's Declaration was enclosed and directed the petitioner to submit requisite documents along with the passport of the deceased. While the matter was pending, the respondents have sent the Declaration of Good Health Form, PAN card, ITR of the deceased person for forensic testing wherein the respondents have got proof that the Declaration of Good Health Form was not signed by the deceased. The claim is only pending due to non-submission of claim forms and additional documents such as passport of the deceased. Earlier, the petitioner has approached the Insurance Ombudsman and suffered an order on 05.03.2020, wherein the petitioner was directed to comply with the claim requirement called by the Insurance Company. The petitioner instead of furnishing required documents filed the present writ petition which is a premature and also amounts to forum shopping. The insurance company neither allowed the claim nor repudiated the claim and the same is pending for want of documents, hence the present writ petition is premature. The petitioner has not even furnished the copies before this Court as well. These respondents have issued Life Insurance Policy which is a Group Life Protector Plan SP as against the loan obtained by the deceased person and since the deceased obtained loan from Shriram City Union Finance who is a proper and necessary party to the present proceedings. Clause 3 of the policy speaks of payment of death benefits and the same is extracted hereunder:

> *"Clause No.3: PAYMENT OF DEATH BENEFITS: The claim payment shall be made in the name of the nominee/beneficiary/legal heir even if the claim cheque is sent to the group policy holder for administrative convenience. The nominee will be paid with an amount left after deducting the loan outstanding of the member to be made towards the group policyholder".*

Unless the petitioner furnishes the required information, the petitioner is not entitled to the claim. Moreover, it is confirmed through the forensic report that the signature in the Declaration of Good Health Form is not tallying with the admitted signatures of the deceased. Hence, there is no contractual obligations between the parties. When the insured claim is repudiated raising a serious dispute, then the writ petition cannot be entertained and the respondents relied on the judgment rendered by the Hon'ble Supreme Court in the case of ***Life Insurance of India Vs. Asha Goel*** reported in ***AIR 2001 Supreme Court 549.*** Moreover, the respondents are not carrying out constitutional function and cannot be stated as State, hence, Article 226 cannot be invoked. The petitioner had relied on a judgment for invoking Article 226 and the same can be distinguished based on the facts. Moreover, the said judgment is rendered by Single Judge and it is only persuasive and not binding precedent. The respondents are doing business of providing Life Insurance Policy and not doing business of issuing loans. Hence the petitioner applying for any loan with the respondent company and the respondent sanctioning loan does not arise and the petitioner is confused. Except to the extent of issuing Life Insurance Policy rest of the allegations are denied. Infact, the sum assured under the policy is Rs. 11,35,718/- for the single premium of Rs.11,864.63. Since the loan amount is Rs.20/- lakhs, the petitioner cannot presume that the insurance claim is Rs.20/- lakhs, when the insured amount is only for Rs.11,35,718/-. And for issuing the same the petitioner is bound to submit the passport and other relevant documents, but the petitioner had failed to submit the same. Hence, the respondents 1 to 5 prayed to dismiss the writ petition.

8. The 6th respondent has filed counter affidavit stating the 6th respondent is only a regulatory authority to protect the interest of holders of the insurance policy. Further, it is submitted that the respondents 1 to 5 ought to resolve the grievance by virtue of their mutual agreements and this respondent only plays a facilitative role and discharges his duties in regulatory and supervisory functions. It is further submitted that the insurer in the resolution dated 11.3.2020 informed the petitioner that since they have not heard anything

from the petitioner during the defined eight weeks time, they have closed the complaint. There is no complaint registered against M/s.Shriram General Insurance Company Limited from the petitioner. Hence, as per available records there is no further role for 6th respondent and the 6th respondent prayed to dismiss the writ petition as far as the 6th respondent is concerned.

9. Heard Mr.N.Balakrishnan, learned Counsel appearing for the petitioner, Mr.A.Sivasubramanian, learned Counsel appearing for respondents 1 to 4, Mr.N.Shyllappa Kalyan, learned Counsel appearing for 5th respondent, Mr.S.Anwar Sameem, learned Counsel appearing for 6th respondent, Mr.B.Prasanna Vinoth, learned Counsel appearing for 7th respondent and Mr.J.Barathan, learned Counsel appearing for 8th respondent and perused the records.

10. Since the respondents 1 to 5 have taken a specific stand that the petitioner has not impleaded the Shriram City Finance Limited, this Court suo

motu impleaded the Shriram City Finance Limited as 8th respondent, vide order, dated 24.7.2023 and issued notice. Thereafter, the said company appeared through Advocate and submitted that once a loan is disbursed, their role is completed. As far as insurance is concerned it has to be decided by the respondents 1 to 5 and the 8th respondent has no role in the said allegations. Hence this Court is of the considered opinion that the respondents 1 to 5 ought to substantiate their case. Further the contention of the respondents 1 to 5 that the petitioner has not impleaded necessary party no longer exists.

11. The next contention raised by the respondents 1 to 5 is that the petitioner has not produced the passport, hence, the claim of the petitioner could not be processed. Therefore, pending writ petition, in order to resolve the issue, this Court directed the petitioner to produce the passport to the respondents. Based on the direction the petitioner had produced the same. Thereafter the respondents 1 to 4 filed had additional affidavit wherein it is stated that the deceased was possessing two passports in his name and the

details are as follows:

Passport Number	Validity
M2198810	19/09/2014 to 18/09/2024
S0084892	26/02/2018 to 25/02/2028

After perusing the two passports, the respondents submitted that the deceased was having two passports and it is not known why second passport was issued when the earlier passport was valid until 18.09.2024. In other words, the first passport was issued which is valid from 2014 to 2024 and the second passport was issued which is valid from 2018 to 2028. This court is of the considered opinion that the respondents 1 to 5 are not empowered to scrutinize why two passports are issued. The appropriate authority is the passport issuing authority who has to look into why two passports are issued, hence such plea of the respondents 1 to 5 cannot be entertained. Moreover, at this juncture, after the demise of the petitioner's husband, the said plea cannot be entertained.

12. The next contention of the respondents 1 to 5 are that the signatures of the deceased Azhagiri in KYC documents are not matching with

the signature on the Declaration of Good Health Form, dated 29.09.2018. The Declaration of Good Health Form is the basic document for obtaining the group insurance from the borrowers. Since the signature differs, consequently there is no existence of valid contract between the deceased and the company. Hence the company is constrained to reject the claim vide claim rejection letter dated 22.09.2023 due to mismatch of signature of member life assured Azhagiri and no claim is payable under Member Policy No. MN181024031644275 and the respondents are not mandated under the contract to pay the amount. After hearing this submission this Court has given its anxious consideration. The respondents suspects that the said Azhagiri was not available in India and he was in abroad at the time of executing the insurance documents, hence the respondents sought passports to ascertain the fact whether the deceased was available in India or was in abroad. This Court perused the records especially the passports. On scrutiny of the passport entries, it is seen that the deceased was travelling abroad in the year 2015, 2016, 2017 only. In the year 2018 and 2019 no entries are available. Hence in the years 2018 and 2019 the deceased was very much available in India and the respondents' plea ought to be rejected.

13. When it was proved the deceased was very much available in India during 2018 and 2019, the respondents are taking a plea that the signature affixed in the Declaration of Good Health Form is not matching the other admitted signatures in PAN card, passport and other KYC forms. It is seen while affixing signature in the loan applications, the deceased had signed the "Declaration of Good Health Form" also. In such circumstances, it is not known on what basis the respondents are raising such a plea. When the other signatures in the loan applications are acceptable to the respondents, the signature affixed in "Declaration of Good Health Form" alone is not acceptable to the respondents. Such a plea is absurd and therefore, this plea of the respondents cannot be entertained.

14. The next contention of the respondents it that there is discrepancy in the surname of the deceased Azhagiri. It is seen that the

deceased Azhagiri is in the habit of writing RP Azhagiri. In the first passport the surname is stated as “Pothiappan” whereas in the second passport it has been stated as “Ramalingam Podhiyappan”. Therefore, the respondents are doubting the passport of the deceased. When the deceased Azhagiri is referred as “RP Azhagiri” the expansion of RP is Ramalingam Podhiyappan. Of course, there is a spelling difference, while in first passport it is written as “Pothiappan”, whereas in the second passport it is written as “Podhiyappan”. This Court is at loss why such plea is raised after executing the loan application, after execution of “Declaration of Good Health Form” etc. These queries ought to have been raised at the time of execution of Master Policy No. MN181024031644275 or prior to the execution of the Master Policy. Definitely not at the time of when the nominee of the insurer is claiming to pay the insured amount. Therefore, this Court is not inclined to entertain such pleas of the respondents.

15. Interestingly, it is seen that the Shriram General Insurance

Company Limited had admitted the claim and has disbursed an amount to the tune of Rs.7,16,263/-, which is the claim for the said Rs.40/- lakhs General Insurance due to Gaja Cyclone. In fact, both the insurances were executed during the same period i.e. the Life Insurance was executed on 29.09.2018, whereas the General Insurance was executed on 11.10.2018. The General Insurance policy was acted upon and the said amount is paid by the Shriram General Insurance Company. But the Shriram Life Insurance Company is refusing to pay the insurance amount. In such circumstances, raising the plea that there is discrepancy in the signature of "Declaration of Good Health Form" and KYC is unacceptable and cannot be entertained. If the plea of the respondents is accepted as far as Life Insurance is concerned, then the petitioner would not be entitled to the insured amount under General Insurance also. But the respondents are not contending that the petitioner is not entitled to General Insurance. In fact, the respondents had disbursed Rs.7,16,263/- under General Insurance for Gaja Cyclone. When the respondents had already disbursed the General Insurance amount, then there is no legally valid reason to withhold the Life Insurance. Therefore, the respondents are liable to pay the insurance amount of Rs.20 Lakhs/-.

16. From the above narration of facts, it is evident that the insurance premium amount was received by the insurance company on 29.09.2018. The borrower had died on 27.12.2018. The policy was not rejected until the death of the borrower till 27.12.2018. 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."

Hence when the policy is alive, then the petitioner is entitled to the policy amount and the reasons stated by the respondents cannot be accepted as stated supra.

17. It is seen that the 8th respondent (impleaded respondent) is taking active steps to recover the loan along with interest. The Shriram Group of Companies is recovering the loan on one hand but is refusing to disburse the insurance on the other hand, thereby, the petitioner is put to hardship. The petitioner is under the verge of losing the residential property which is the only property available to the petitioner as per the affidavit. This action of the

respondent Nos.1 to 8 (except respondent No.6) is nothing but total harassment. Hence the petitioner is entitled to interest at the rate of 6% per annum from the date of death of the insurer i.e. from 27.12.2018 until the payment is made to the petitioner.

18. For the reasons stated supra, the order passed by the respondents pending writ petition, dated 22.09.2023 is hereby quashed. The respondents are directed to pay the insurance amount of Rs.20,00,000/- with interest at the rate of 6% from 27.12.2018 until the payment is made to the petitioner. The 8th respondent is directed to appropriate the loan and the balance amount, if any shall be paid to the petitioner. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

19. With the above observations and directions, the writ petition is allowed on above terms. No costs. Consequently, connected miscellaneous

petition is closed.

28.12.2023

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

Tmg

S.SRIMATHY, J.

Tmg

W.P.(MD).No.20049 of 2021

28.12.2023