BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23049 of 2015

R.Santhiya ... Petitioner

Vs.

1.Senior Divisional Manager,
L.I.C. of India, Jeevan Prakash,
P.Box No.183, Tirunelveli 627 002.

2.Claims Review Committee,
Zonal Office (Southern),
L.I.C. of India, L.I.C. Buildings,
No.102, Anna Salai, Chennai 600 002.

3.Central Office Claims Review Committee,
L.I.C. of India, C.R.D.Department,
Central Office, Yogu Shema,
5th Floor Link, J.B.Road,
Mumbai 400 021.

4.Insurance Ombudsman,
Fathima Akthar Court,
453, Anna Salai,
Teynampet, Chennai 18. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the order passed by the 4th Respondent dated 21.01.2015 in his reference letter in Ref.(HN) L.029/1415/0742 relating to the LIC Policies Nos. I) 322298550 dated 24.03.2009 ii) 322299545 dated 10.02.2010 and iiii) 322299773 dated 28.03.2010 issued by the 1st Respondent and quash the same as illegal and consequently direct the Respondents to pass suitable order for payment of claim amount to the petitioner under the above said policies.

For Petitioner : Mr.M.C.Swamy

For Respondents : Mr.G.Prabhu Rajadurai

ORDER

Heard the learned counsel on either side.

2.The writ petitioner's husband / K.P.Krishnakumar was employed in TNEB. He passed away on 15.01.2011 due to heart attack. During his life time, he had taken the following three policies :-

Policy Number	Date of policy	Amount
322298550	24.03.2009	Rs.1,00,000/-
322299545	10.02.2010	Rs.1,25,000/-
322299773	28.03.2010	Rs.3,75,000/-

When the petitioner applied to the respondents for honouring the claim, the Senior Divisional Manager, LIC vide communication dated 31.03.2012 repudiated the claim. Aggrieved by the same, the petitioner filed an appeal before the Claims Review Committee. The appeal was also negatived. The decision of the Review Committee was communicated to the petitioner vide letter dated 10.10.2012. Aggrieved by the same, the petitioner filed a further appeal before the Central Office Claims Review Committee. The second appeal was also negatived and this was communicated to the petitioner vide letter dated 26.09.2013. Challenging the same, the petitioner moved the Insurance Ombudsman, Chennai. However, there was delay on the part of the petitioner in moving the Insurance Ombudsman. The Insurance Ombudsman vide order dated 21.01.2015 declined to entertain the appeal. Challenging the same, this writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His foremost ground is that the so-called misstatement attributed to the petitioner's husband while filling up the proposal form ought not come in the way of honouring the petitioner's claim. The learned counsel for the petitioner submitted that filling of the form was done by the insurance agent and that in any event, policy was issued after examination by the panel doctor and that therefore, at the time considering the claim, the corporation ought not to be allowed to plead suppression of fact on the part of the insured. The next contention urged by the learned counsel for the petitioner is that what was alleged to have been suppressed was the fact that the petitioner's husband suffered from Tuberculosis. He had fully recovered from the same. That is evident from the medical fitness certificate issued by the employer's doctors. He had married and begotten two children. That clearly indicates that the petitioner's husband was in good health. The death was due to cardiac arrest and it had nothing to do with the petitioner's husband's earlier tuberculosis. He therefore submitted that the ground of repudiation is incorrect. The learned counsel for the petitioner relied on the following decisions:-

(i) The Life Insurance Corporation of India Vs. S.Anusuya Bai reported in 2010 (1) CTC 192

(ii) Sulbha Prakash Motegaonkar Vs. Life Insurance Corporation of India reported in (2021) 13 SCC 561 and

(iii) The order dated 31.01.2012 made in W.P.(MD)No. 8115 of 2009 (G.Muthupackiam Vs. Life Insurance Corporation of India)

He pressed for setting aside the impugned order and granting relief as prayed for.

4.The respondents have filed counter affidavit and the learned standing counsel took me through its contents. He submitted that in the proposal form for two specific questions, the petitioner's husband had given false answers and that therefore, repudiation is well founded. He pointed out that this was an early claim and that therefore, Section 45 of the Insurance Act, 1938 will have to be applied. He relied on the decision of the Hon'ble Supreme Court reported in ***(2019) 6 SCC 175 (Reliance Insurance Company Limited Vs. Rehkaben Nareshbhai Rathod)***. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The basic facts are beyond dispute. The respondents have filed typed set of papers and the photographs of the proposal forms filled in by the petitioner's husband have been enclosed. To a specific question as to whether the petitioner's husband had ever suffered from tuberculosis, the petitioner's husband had answered in the negative (No). Likewise, to another question as regards his state of health, he had answered as good. Three policies have been taken and in all the three proposal forms, identical answers had been given. It has been established by the respondents that the petitioner's husband suffered from tuberculosis and that he was admitted and treated in hospital from 20.06.2008 to 24.06.2008 (I.P.No.22437 in Vasantham Hospital, Nagercoil). Paragraph Nos.2 and 3 of the counter affidavit read as follows:-

> *“2) With reference to the allegation in Para 2 & 3, I submit that the petitioner's husband Mr.K.P.Krishnakumar during his life time subscribed to 3 Insurance Policies for the sums of Rs.1,00,000/- dated 24.03.09, Rs.1,25,000/- dated 10.02.10 and Rs.3,75,000/- dated 28.03.10. The said policy holder while submitting his Proposal form answered the question relating to his usual state of health as 'Good Health'. Besides he answered the Question Nos.11(a) to (e) in*

negative which includes the questions whether he absented from his place of work on health ground in the past 5 years and whether he had taken treatment for any ailment for a period of more than a week in the past 5 years.

3) I submit that the said policy holder expired on 15.01.11 due to heart attack. As the death was within 2 years from the date of the said 3 policies, this Respondent Corporation conducted an investigating and in the course of such investigation it was found that the deceased was not maintaining good health and that suffering from B/L Pulmonary Koch's he availed Medical Leave for a period of 21 days from 17.06.08 to 07.07.08. It is also found that during the said period of treatment he was admitted in one Vasantham Hospital at Nagercoil from 20.06.08 to 24.06.08. He was treated with ATT (Anti Tubercular Treatment) and other medicines and was certified fit to joint duty only on 08.07.08."

6.The counter affidavit was served on the petitioner's counsel on 28.04.2016 and that no rejoinder has been filed to the effect that the factual stand taken by the respondents is incorrect. In any event, in the typed set of papers, the proposal forms containing the answers given by the petitioner's husband have been enclosed. I am satisfied that the petitioner's husband while taking the policies had not been truthful. It is quite possible that the forms were filed up by the insurance agent. But then, the petitioner's husband was employed in TNEB and having signed the the proposal forms, the consequences flowing therefrom cannot be avoided. Even though the case laws relied on by learned counsel for the petitioner do favour the stand taken by him, I am bound by the latest decision of the Hon'ble Supreme Court reported in ***(2019) 6 SCC 175 (Reliance Insurance Company Limited Vs. Rehkaben Nareshbhai Rathod).*** Paragraph Nos.30 and 31 of the said decision read as follows:-

> *"**30**.It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of*

information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.

31*.The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur (supra) (1766) 3 Burr 1905 "there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance". Each representation or statement may be material to the risk. The insurance company may still offer insurance protection on altered terms."*

7.Since the answers given by the petitioner's husband in the proposal forms are not true, the repudiation of the policies has to be necessarily sustained. I do not find any ground to interfere and the writ petition stands dismissed. No costs.

04.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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