BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2023

CORAM:

THE HONOURABLE MS.JUSTICE B.PUGALENDHI

W.P.(MD) No.3421 of 2015

Eswari ... Petitioner

Vs.

1.The Secretary to Government of Tamilnadu,
Department of Home,
Fort St. George,
Chennai-06.

2.The Superintendent of Police,
District Police Office,
Korampallam,
Thoothukudi.

3.The Branch Manager,
Life Insurance Corporation of India,
LIC Buildings,
58, Beach Road,
Thoothukudi. ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the third respondent/ Life Insurance Corporation of India to pay the claim amount of Rs.1,62,500/- being the death claim of the petitioner's husband under policy No.320490507 and 321195067 along with appropriate interest from the date of claim made by the petitioner dated nil till the date of realization.

For Petitioner	:	Mr.S.Siva Ilayaraja
For R1	:	Mr.P.Thiraviam Government Advocate
For R2	:	Mr.Thanga Aravindh Government Advocate(Crl.Side)
For R3	:	Mr.S.Anwar Sameem

ORDER

This petitioner has approached this Court for a Mandamus, directing the third respondent/ Life Insurance Corporation of India to pay a sum of Rs.1,62,500/- towards the claim amount for the death of his husband under policy Nos.320490507 and 321195067 along with interest from the date of claim till the date of realization.

2. The petitioner's husband, namely, Balamurugan was served as Grade-I constable. In the month of December 2011, he has suffered certain ailments and admitted in the hospital and died on 31.12.2010. During his service, he took two policies from the third respondent/Life

Insurance Company bearing Nos.320490507 and 321195067 for Rs.1,00,000/-(Rupees one Lakh only) and Rs.62,500/- respectively. The period of policy was commencing from 17.07.2009 and 28.12.2009. The monthly premium was at rate of Rs.1087/- for policy No.312295067 and Rs.255/- for policy No.320490507. The premium was paid by deducting the amount from the salary of her husband, for which, the third respondent has given an authorization to the second respondent. The petitioner's husband became ill and was suffering from frequent headache and consequent to that, he was constrained to avail medical leave from time to time. The petitioner's husband has duly informed the medical leave to the second respondent well in advance along with the doctor certificate.

3. Due to his ill-health, the petitioner's husband was on medical leave from 14.09.2010 to 29.12.2010. The second respondent made deduction of policy premium and paid to the third respondent except for a period of November, December 2010. This fact was not brought to the knowledge of the petitioner's husband and there was no communication from the third respondent/Insurance Company that the premium amount has not

been paid for the month of November and December 2010. The third respondent has refused to pay the claim amount for the death of the petitioner's husband due to non-payment of premium for November and December 2010. Hence, the present writ petition has been filed.

4. The learned counsel for the third respondent submitted that the petitioner is not entitled for the policy amount, since the policy was not alive on the date of death (i.e) on 29.10.2010. Therefore, the third respondent is not liable to pay any amount to the petitioner. He further submitted that the petitioner's husband has not applied for leave and only through the information, which was provided in the Right to Information Act, it appears that he was on unauthorised leave.

5. The learned counsel for the second respondent submits that the petitioner's husband was absent from 14.09.2010 to 29.12.2010 and therefore, the respondents have not collected the amount and paid the dues to the Insurance Company. He further submits that the petitioner's husband was unauthorisedly absent from September 2010 to December 2010 and therefore, he was not provided salary for the above said month and thereby, the premium amount was also not deducted.

6. In reply, the learned counsel for the petitioner submitted that the second respondent has not taken any disciplinary proceedings as against this petitioner's husband, since he was on authorised leave. He further submitted that the petitioner's husband was on leave, during the relevant period, it is a mistake on the part of the second respondent in deducting the amount and paying the insurance amount in time to the Insurance Company. Similarly, the Insurance Company has not made any claim to the petitioner for the default payment of the monthly due to the petitioner's husband.

7. The learned counsel for the petitioner has relied upon *the Judgment of Hon'ble Supreme Court reported in* ***2005 6 SCC*** *in the case of* ***Chairman, Life Insurance Corporation and others Vs. Rajiv Kumar Bhasker*** *and the relevant paragraphs are extracted as follows :*

> *" 22.An agency can be created expressly or by necessary implication. It may be true that the employers in response to the proposal made by the Corporation stated that they would act as agents of their employees and not that of the Corporation. But, the expression "agent" in such circumstances may not mean to be one within the meaning*

of the Life Insurance Corporation of India (Agents) Regulation, 1972 made in terms of Section 49 of the Act; but would mean an agent in ordinary sense of the term. An employer would not be an agent in terms of the said Regulation on the premise that it was not appointed by the Corporation to solicit or procure life insurance business. The employers had no duty to discharge to the Corporation either under the Act or the rules and regulations framed thereunder but keeping in view the fact that the Corporation did not make any offer to the employees nor would directly make any communication with them regarding payment or non-payment of the premium or any other matter in relation thereto or connected therewith including the lapse of the policy, if any, it cannot be said that the employer had no role to play on behalf of the Corporation.

23. In a plain and simple contract of insurance either the Corporation or the agent, on the one hand, and the insured, on the other, is liable to comply with their respective obligations thereunder. In other words, when a contract of insurance is entered into by and between the insurer and the insured no third party would have any role to play, but the said principle would not apply in a case of this nature. In a scheme of this nature, the employers were to make all endeavours to improve the service conditions of the employees and discharge its social obligations towards *them. So far as the employees are concerned, they could not approach the insurer directly, and, thus, for all intent and purport they were to treat their employers as 'agents' of the Corporation. The Scheme clearly and unequivocally demonstrates that not only the contract of insurance was entered into by and between the employee and the insurer through the employer but even the terms and conditions of the policy were to be performed only through the employer.*

26. The definition of 'agent' and 'principal' is clear. An agent would be a person employed to do any act for another, or to represent another in dealings with third parties and the person for whom such act is done or who is so represented is called the principal. It may not be obligatory on the part of the Corporation to engage an agent in terms of the provisions of the Act and the rules and regulations framed thereunder, but indisputably an agent can be appointed for other purposes. Once an agent is appointed, his authority may be express or implied in terms of Section 186 of the Contract Act.

27.For creating a contract of agency, in view of Section 185 of the Indian Contract Act, even passing of the consideration is not necessary. The consideration, however, so far as the employers are concerned as evidenced by the

Scheme, was to project their better image before the employees.

28.It is well-settled that for the purpose of determining the legal nature of the relationship between the alleged principal and agent, the use of or omission of the word "agent" is not conclusive. If the employee had reason to believe that his employer was acting on behalf of the Corporation, a contract of agency may be inferred.

29. In Basanti Devi (supra), this Court stated the law thus:

"Formation of the contract of insurance is between LIC and the employee of DESU. Scheme has been introduced by LIC purely on business considerations and not for any particular benefit of insurance conferred on the employee working in an organisation. Though in the pro forma letter written by DESU to LIC it is mentioned that DESU would be an agent of its employee and not that of LIC but this understanding between LIC and DESU was not communicated or made known to the employee. As far as the employee is concerned he is told that premium will be deducted from his salary every month and remitted by DESU to LIC under an agreement between LIC and DESU. For the employee of DESU, therefore, DESU had implied authority as an agent of LIC to collect premium on its behalf and then pay to LIC.

There is nothing on the record to show that Bhim Singh was ever made aware of the fact that DESU was not acting as an agent of LIC. Rather in the nature of the Scheme, the employee was made to believe that it is the duty of the employer though gratuitously cast on him by LIC to collect premium by deducting from the salary of each employee covered under the Scheme every month and to remit the same to LIC by means of one consolidated cheque. Now it could be said that DESU would not be liable as an agent of its principal, i.e., LIC and also it was rendering service of collecting the premium and remitting the same to LIC free of any cost to the employee. As to what is the arrangement between LIC and DESU the employee is not concerned. In these circumstances DESU cannot perhaps be held liable under the Act"

32. The Scheme clearly provides that in the event of cessation of employment the employee concerned if continues his employment under a new employer, the former employer has to inform the Corporation thereabout. Furthermore, upon retirement or in situations other than taking up of any job with any other employer, the employee would be entitled to continue with the policy but therefor, he will have to pay a higher premium. Even at that stage, the Corporation would have a duty to inform the employee *concerned towards his right. Even in case of non-payment of premium for any reason whatsoever, in view of the object the Scheme seeks to achieve, it was the duty of the insurer to inform the employee about the consequences of non-receipt of such premium from the employer. The Corporation has failed or neglected to do so. In that view of the matter, we do not find any reason to take a different view.*

33. In terms of the Scheme, significantly the employee for all transactions was required to contact his employer only. In view of our findings aforementioned, the Corporation, thus, cannot be permitted to take a different stand so as to make the employee suffer the consequences emanating from the default on the part of the employer. If for some reasons, the employer is unable to pay the salary to the employees, as for example, its financial constraints, the employee may be held to have a legitimate expectation to the effect that his employer would at least comply with its solemn obligations. Such obligations having been undertaken to be performed by the employer at the behest of the Corporation, as its agent having the implied authority therefor, the Corporation cannot be permitted to take advantage of its own wrong as also the wrong of its agent. In any event, the employer was obligated to inform the employee that for some reason, he is not in a position to perform his obligation whereupon the *latter could have paid the premium directly to the Appellant herein."*

8. The learned counsel for the third respondent has already pointed out that this petitioner was admitted in the hospital in the year 2009 for taking treatment for Brain Tumor. However, without informing the health condition, the petitioner's husband took the second policy. Therefore, he is not entitled for any amount, through the second policy.

9. Considering the rival submissions and also considering the facts and circumstances of this case, this writ petition is disposed of directing the third respondent to pay 50% of the first policy amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. With regard to the second policy, the petitioner has not entitled to receive any amount. No Costs.

13.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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B.PUGALENDHI,J

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