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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 1178 of 2021

Smt. Kamalika Ghosh
Vs.
Life Insurance Corporation
of India & Ors.

Mr. Debdutta Basu
...for the petitioner

Ms. Soma Roy Chowdhury,
Ms. Payel khanra
...for the LICI

1. The petitioner is the niece and nominee of a deceased policy-holder with the respondent Insurance Company. Upon the demise of the said policy holder (life assured), the petitioner made her claim with regard to the policy, which was refused. There were previous rounds of litigation and ultimately the matter was relegated back to the Life Insurance Corporation of India (LICI), whereupon the Zonal Manager, by the impugned decision, refused to honour the policy primarily on three grounds.

2. First, it was stated in the refusal that there was mala fide intention to defraud the LICI as the policy was taken out on the life of one Palash Ghosh, financed by his brother as the life assured with his own meagre income from supplying books to

schools could not afford the premium payable under the policy for a sum assured of Rs.10 Lakh. Secondly, as per the Death Certificate issued by Dr. P.K. Ray Chowdhury, the deceased life assured was suffering from heart disease, not keeping good health and was not able to perform his normal activities. The Zonal Manager relied on the principle of utmost good faith embodied in the doctrine of *Uberrima Fides*. Hence, it was observed that the contract is void *ab initio*.

3. The third ground of refusal was that the present petitioner, Kamalika Ghosh, was the brother's daughter of the deceased, who stood as nominee, despite the mother of the deceased life assured being alive at the time of taking out the policy.

4. It was observed by the Zonal Manager of the LICI that all the above indicates that the deceased life assured was a name lender and he had no insurable interest in the policy.

5. Learned counsel for the petitioner argues that the petitioner was mentioned as a niece in the policy, although in the application for opening the policy, the relationship was erroneously mentioned as wife. It is argued that at the end of the day the petitioner remains the niece of the deceased but was the named nominee in the policy and, as such,

is entitled under Section 39 of the Insurance Act, 1938 to have the claim.

6. Secondly, it is argued that the Death Certificate, which is also annexed to the writ petition, does not at any place disclose that the deceased was suffering from heart ailment. In any event, the heart attack suffered by the deceased, which was the immediate cause of his death, could not be a relevant consideration in that regard.

7. Learned counsel for the Insurance Company submits that in one of the communications the petitioner had claimed that the amount was to be disbursed keeping in view the plight of the widow of the deceased, thereby giving an impression that the petitioner was the widow. That apart, in the application form for opening the policy, the relationship of the petitioner was mentioned as widow and not niece.

8. Although the petitioner has relied on the insurance policy itself, annexed at page 25 of the writ petition, learned counsel for the Insurance Company points out that the original document indicated the relationship to be wife but the same was subsequently interpolated at the behest of the petitioner.

9. It is submitted that Section 45 of the 1938 Act empowers the Insurance Company up to three

years from opening of the policy to scrutinize as to whether any misrepresentation was made or any wrong information was furnished to the insurer. Only about five months had elapsed between the opening of the police and the demise of the life assured. As such, it was well within the jurisdiction of the Insurance Company to scrutinize the documents and refuse the claim.

10. Upon hearing learned counsel for the parties, it transpires that two documents in addition to the writ petition have come before this Court, from the petitioner and the LICI respectively. Both of those pertain to the policy opened in the name of the life assured. One of those indicates a signature countersigning the interpolation with regard to the relationship of the petitioner with the deceased. Hence, the Court shall proceed on the premise that there might have been some error in mentioning the relationship between the petitioner and the deceased both at the time of filing the application and, subsequently, during issuance of the policy.

11. Even proceeding on such premise, Section 39 of the 1938 Act does not stipulate as to the relationship between the deceased and the nominee. The law of insurance is quite liberal and wide, naturally, on such aspect since it is the whims and fancy of the life assured to nominate

whoever he or she deems proper as the nominee of the policy and there cannot be any fetter to such independent right of the policy-holder.

12. Even Section 39 of the 1938 Act casts no fetter in that regard.

13. Hence, the petitioner, even if the niece of the deceased, was fully entitled to be a nominee.

14. Upon query of Court, it transpires that it is nobody's case that the life assured had a wife alive at the juncture when the policy was opened. As such, even if there was an error in the nomenclature of relationship, the same could not have deprived the actual wife of the life assured from setting up a claim on the amount to be disbursed. In any event, the nominee is the receiving hand as per law and, as such, there cannot be any quarrel on such count.

15. The Insurance Company has put up an objection on the premise that the erroneous mention of relationship of the nominee in the application for opening the policy and/or the policy was fatal to the policy itself. However, a misstatement, to come within the purview of Section 45 of the 1938 Act, has to have a direct nexus with the policy or the health of the life assured at the relevant juncture.

16. Only those facts which are germane for the purpose of opening a policy, such as the physical and mental condition of the life assured, can come within the purview of statements, which, if wrongly made, would have a direct bearing on the policy.

17. In the present case, the mere erroneous mention of relationship of the nominee with the life assured is not at all germane for the purpose of the policy and, as such, cannot be construed as a "misstatement" within the contemplation of Section 45 of the 1938 Act.

18. That apart, the very premise of the LICI growing wiser in that regard after the demise of the life assured is suspect and is squarely deprecated. The attitude does not befit an insurer, who is to provide a protective cover to the next of kin/nominee of the deceased and not create unnecessary hindrances in disbursing the claim.

19. The other peculiar premise of rejection is that, the life assured was allegedly suffering from a heart disease at the relevant juncture.

20. The Death Certificate issued by the concerned doctor, which was the premise of such observation in the refusal, clearly indicated that the deceased life assured was (obviously till the juncture when the death certificate was issued) under the doctor's checkup for acute heart attack.

21. Hence, it is quite evident that the period for which the deceased was under the treatment of the said doctor was between the time when he suffered the heart attack and his demise.

22. The said time-frame has no connection whatsoever with the previous point of time when the policy was opened in the first place. Obviously, a person having suffered an acute heart attack may not be able to perform his normal activities and can be under the treatment of a doctor till his demise. The Death Certificate, thus, only indicates that the life assured died of the heart attack for which he was under the treatment of a doctor concerned.

23. However, the same has nothing to do with the life assured having suffered from heart disease previously at the juncture or when the policy was opened. Hence, the said ground of refusal is patently perverse and is not tenable in the eye of law or on facts.

24. The most peculiar ground of refusal to honour the policy is the first ground taken by the Zonal Manager of the LICI. The said ground is that the life assured was apparently a *benamdar*. The exact reason given is that the policy was taken on the life of the deceased Palash Ghosh, who was financed by this brother, since the life assured could not with his own meagre income from supplying books to

schools afford the premium payable under the policy.

25. Such ground is probably unheard of in the annals of insurance.

26. It is not at all the lookout of the LICI or its Zonal Manager as to how the life assured financed his policy.

27. The financer of the policy has nothing to do with any misstatement, which is germane for opening the policy. The LICI was happy enough to accept the premiums, which were financed by the brother of the life assured. That apart, the LICI also undertook appropriate medical examination, alternatively accepted the medical report furnished by the life assured, at the time of policy to have issued the policy to the said life assured in the first place. Having been so satisfied, in the absence of any subsequent change of circumstance, there arose no question of the policy being called in question, particularly after the demise of the deceased when the time to pay arrived.

28. In any event, since it has been observed above that none of the alleged irregularities was germane for the purpose of the policy, there could not have been any justified reason for the LICI to have refused to honour the policy.

29. In such view of the matter, W.P.A. No. 1178 of 2021 is allowed on contest, thereby setting aside the refusal of the claim of the petitioner as nominee of the insurance policy in the name of her uncle Palash Ghosh.

30. The respondents shall immediately disburse the entire claim of the petitioner on the demise of the life assured on the basis of such policy, with interest at the rate of 12 percent per annum payable from October, 2015, when the claim was first made, till the date of payment of such amount to the petitioner.

31. It is expected that such insensitive and palpably unlawful attitude shall not be displayed by the LICI in future while honouring the claims of indigent persons, whose relatives opened the policy with the expectation that the same would be honoured on his/her demise.

32. There will be no order as to costs.

33. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)