8
19.02.2024
Court No. 35
D.Hira

WPA 26994 of 2017

Bhabani Nayak
Vs.
New India Assurance Company Limited & Ors.

Mr. Sandeep Prasad Shaw,
Mr. Raju Baroi,
Mr. Amar Kumar Singh.
... for the petitioner

Mr. Arnab Chakraborty,
Ms. Pragga Bhowmick,
Mr. Prasenjit Saha.
... for the respondent nos. 6 & 7

Mr. Prolay Kar,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.
.... For the respondent nos. 1 to 3

1. The writ petitioner is the widow of a person, whose life was insured with the respondent no. 1 in a group insurance scheme namely, "Janata Personal Accident Policy" (in short "J.P.A."). The policy number is 4751220001799/E No.47-30615. The insurance was taken by the respondent no. 6 namely, Golden Trust Financial Services with risk covered for an overall capital sum insured of Rs.5 lakhs. The insurance policy as above was taken on 08.01.2000 by the respondent no. 6 and the benefits were extended by the same to the investors, family member of the investors, field workers, family members of the field workers and friends of the respondent no. 6.

2. The petitioner states that her husband namely, Dharani Dhar Nayak had died in a road accident on 07.04.2010. After death of her husband she has approached respondent no. 6/Golden Trust Financial Services for recovery of the sum insured, vide the said insurance policy.

3. According to the petitioner, a letter was written by the respondent no. 6 to the respondent no. 1/New India Assurance Company Limited requesting early settlement of her claim but to no avail. The writ petitioner being the nominee of the said deceased person, who had earlier purchased the insurance policy on 08.01.2000, had, thereafter, wrote letter to the respondent no. 1. However, her grievance has so far remained unresolved and the claim of herself as the nominee of the deceased policyholder has remained unpaid till date.

4. In the facts and circumstances as stated above, the writ petitioner has prayed in this case, inter alia, that a direction be made upon the concerned respondent to disburse to her, the policy amount as against the policy no. 4751220001799/E No.47-30615 amounting to Rs.5 lakhs with admissible interest, forthwith.

5. Mr. Sandeep Prasad Shaw, learned counsel is appearing for the writ petitioner in this case. He has relied on the insurance policy document dated 08.01.2000 as annexed with the writ petition to submit that the insurance was purchased by the husband of the writ petitioner and the writ petitioner is the nominee of the same. He has pointed out to the fact that on 07.04.2010, the husband of the writ petitioner had died pursuant to a road accident. He says that since thereafter, in spite of several letters being written to the respondent no. 1 by the respondent no. 6 as well as the writ petitioner, the claim of the writ petitioner has remained unsettled till date and thus, the writ petitioner is aggrieved due to gross inaction on the part of the respondent no. 1, in performance of its obligation. Hence, this writ petition and writ petitioner prays for the relief as mentioned above.

6. Mr. Prolay Kar, learned counsel is appearing for the respondent nos. 1. On behalf of respondent no. 1/New India Assurance Company Limited, three fold grounds have been agitated, to controvert the contentions and prayers of the writ petitioner.

7. Firstly, Mr. Prolay Kar, learned counsel for the respondent no. 1 has stated that the insurance policy of the group insurance scheme would be applicable in case of the investors, workers and their family members of the respondent no. 6 who is the purchaser of the policy for those persons.

8. He submits that the deceased husband of the present writ petitioner would not fall within the category as above. He was an outsider and as such, the benefit of the insurance policy cannot be extended to the present writ petitioner as his nominee, since the same is beyond the terms and conditions of the policy itself.

9. Secondly, Mr. Prolay Kar, learned counsel has submitted by referring extensively to a decision of the Hon'ble Coordinate Bench of this Court in Writ Petition being W.P. No. 1144 of 1999 Golden Trust Financial Services & Ors. vs. Union of India & Ors. (with W.P. No. 2146 of 2002 in Safiuddin & Ors. vs. Union of India & Ors. with G.A. no. 524 of 2018 W.P. No. 2343 of 2002 in Golden Trust Financial Services & Ors. vs. Union of India & Ors.) that the legality and validity of the order dated 01.08.2002, issued by the respondent no. 1/Insurance Company, canceling the policy of insurance of long term certificate of more than five lakhs/period of insurance for more than five years – has been upheld by the Hon'ble Coordinate Bench of this Court.

10. It is submitted that much before death of husband of the present writ petitioner in the year 2010, the long term policies as it is involved in the present case, has been cancelled by the Insurance Company and the said policy decision, when assailed before the Court was upheld by the Court, by dint of the said judgment.

11. It is submitted that in view of the same and that since the claim of the writ petitioner has emerged much after date of cancellation of the long term insurance policies, her such claim cannot be maintainable in the eye of law.

12. It is further submitted that though the policy was issued to the respondent no. 6 on good faith, for the benefit of the person as categorized to be the scheduled beneficiaries as per the memorandum of understanding signed between the parties, it has subsequently come to the knowledge of the respondent Insurance Company, that respondent no. 6 has extended benefits to outsiders also. The husband of the writ petitioner is one of them, who would not be covered within the category of beneficiaries, as enumerated in the memorandum of understanding.

13. It is submitted that any deviation with the terms and conditions of the memorandum of understanding would devolve only upon the respondent no. 6, as a group insurance policy holder.

14. As a matter of fact, he says, that in this case while making investigation before disbursement of the claim amount, such deviation on part of the respondent no. 6 emerged that the concerned person, that is the husband (deceased) of the writ petitioner was not a person connected with respondent no. 6, to whom the policy as above, could be extended validly.

15. Under such circumstances, the respondent no. 1 virtually has shrugged off any liability for payment of the insurance claim, as made by the writ petitioner.

16. Mr. Prolay Kar, learned counsel has also relied on the respective order of the Hon'ble Supreme Court passed in Special Leave to Appeal (C) No. 7732/2016, to say that the case is now pending before the Hon'ble Supreme Court challenging the orders of the Consumer Fora, and not yet finally decided, to specifically ascertain regarding the liability, if any, of the respondent no. 1 to pay the claim amount as sought for by the writ petitioner in this case.

17. On all these grounds he has stated that the writ petition is not maintainable and the same may be dismissed.

18. Ms. Pragga Bhowmick, learned counsel appears for the respondent no. 6. She has very strenuously argued that the respondent no. 6 has duly and validly extended benefit of the insurance policy to the deceased husband of the present writ petitioner, pursuant to the memorandum of understanding entered into between her client and the respondent no. 1.

19. She has pointed out to the concerned clauses of the memorandum of understanding as annexed with the affidavit-in-opposition filed by the respondent no. 6, to say that the "field workers" of respondent no. 6 and their family members were duly covered under the said group insurance policy, issued in favour of respondent no. 6 by the respondent no. 1 and the deceased husband of the writ petitioner would fall within that category.

20. She has further argued that since inception, that is, the date of grant of policy in favour of that person, the respondent no. 1 has never agitated regarding the entitlement of the husband of the writ petitioner of the benefit of the policy and now at the time of reimbursement of the claim amount, the respondent no. 1 is estopped from raising any such plea, which according to Ms. Bhowmick, is only frivolous.

21. She has further relied on orders of the Hon'ble Supreme Court as mentioned above and relied on by the respondent no. 1 that 50% of the sum insured had already been directed to be submitted with the authorities by the respondent no. 1. She says that such order has been complied with by the respondent no. 1.

22. She has further relied on a Division Bench Judgment of this Court, that is, dated 27th July, 2023 A.P.O.T. no. 120 of 2019 wherein, she says that the Court has directed the respondent no. 1 to consider claim of each of the concerned beneficiary on its individual merits and disburse the amount accordingly.

23. She has further submitted that after acceptance of the one time premium for the policy, concerned respondent cannot subsequently revert back from its obligation to comply with the terms and conditions of the policy and paying the claim amount, in an appropriate case.

24. She says that the premium amount has been collected from the concerned person by her client that is the respondent no. 6 and has been remitted to the office of respondent no. 1 with whom the beneficiaries are insured.

25. On the basis of the facts and circumstances as above, she has prayed for necessary order for grant of the claim amount by the respondent no. 1 to the writ petitioner, to be passed by this Court, in this case.

26. The writ petitioner has been the wife of Dharani Dhar Nayak (since deceased) and the nominee of him, is not a disputed fact in this case. The said person having died on 07.04.2010 due to road accident, is also an admitted fact in this case.

27. There is no apparent dispute as regards the facts that as the nominee of the said deceased person the present writ petitioner has raised claim before the respondent no. 1 by herself and also through respondent no. 6.

28. In such factual background the respondent no. 1 has come up with a case firstly that the deceased husband of the writ petitioner would not belong within the category of persons, who would be generally covered under the said group insurance policy, in terms of memorandum of understanding between itself and respondent no. 6.

29. Secondly, to controvert the case of the writ petitioner the respondent no. 1 insurance company has come up to say that any long term policy has been cancelled and there would not be any existence of a valid policy on the date of death of the concerned person, in so far as, such long term policies were cancelled back in the year 2002 vide order dated 01.08.2002.

30. Curiously enough this Court looks into the order dated 01.08.2002 the relevant portion thereof may be extracted as hereinbelow:-

"The refund vouchers for the unexpired period will be forwarded to you

on expiry of the notice period w.e.f. 1st August, 2002 which may kindly be noted.

It is further decided that henceforth no long term certificate with S.I. of more than 5 lacs/ period of insurance for more than 5 years will be issued under the above policy."

31. Therefore, from the same it appears that effect of the letter dated 01.08.2002 is only prospective in nature, that no such long term certificate will be issued under the policy of "Janata Personal Accident Policy", in future, from the said date. There is no stipulation as regards the policies already in existence.

32. The language of the letter/order dated 01.08.2002, would clearly and unequivocally suggest that issuance of the long term policies prospective to the date of the said letter, has been cancelled. Effect of the said letter cannot be stretched retrospectively, to be made applicable in case of the existing policies too. So far as the existing policies are concerned, there would not be any change contemplated vide the said letter dated 01.08.2002. Therefore, the submissions made on behalf of the respondent no. 1, in this regard, regarding applicability of the stipulations in letter dated 01.08.2002, in case of the writ petitioner, appears not to be based on any firm logic.

33. No doubt, a public authority, even in case of a private contract, should be just and maintain fairness. Unfairness and arbitrariness when explicitly apparent, should vitiate its action.

34. Secondly, it is further noticeable that the authorities decided to issue refund vouchers for the unexpired period. However, undeniably, no such refund as above has been made by the authorities, as yet.

35. On the discussion as above, this Court is constrained to find that the policy decision taken by the authorities dated 01.08.2002 have no bearing whatsoever in case of the present writ petitioner who claims insurance in terms of a policy issued on 08.01.2000, much before the date when long term policies were cancelled on 01.08.2002.

36. The Division Bench Judgment dated 27th July, 2023, in A.P.O.T. no. 120 of 2019, has decided that the respondent no. 1 would entertain and decide of the individual claims on its own merit regarding the policies undertaken before 01.08.2002, i.e., the date of cancellation of the long term policies.

37. Being guided by the same and in the factual background of the present case, this Court finds that the prayer of the writ petitioner would be legible to be allowed.

38. On the ground as above, the writ petition being W.P.A. No. 26994 of 2017 is allowed.

39. Let the respondent no. 1 entertain and decide the claim of the present writ petitioner on its own merit and release the amount, alongwith the interest at the rate, applicable to a saving account in a nationalized bank, from the date of claim, till the date of actual payment made.

40. The writ petition being W.P.A. No. 26994 of 2017 is disposed of without any order as to costs.

41. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rai Chattopadhyay, J.)