IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.10766 of 2021

Senbagaselvi ...Petitioner
(Petitioner name amended vide order made in
W.M.P.No.1607 of 2022 dated 19.06.2024 by GKIJ)

-Vs-

1. The Manager,
Dewan Housing Finance Corporation Limited,
Kaipalathika Towers, New No.36, Old No.24,
Dr.Ambedkar Road, Kodambakkam,
Chennai-600 024.

2. The Manager,
DHFL Pramerica Life Insurance Co Ltd.,
4th Floor, No.9, Tower-B, Cyber City Phase-III,
Gurgaon, Haryana.

3. The Office of the Insurance Ombudsman,
Fathima Akthar Court, 4th Floor,
453, Anna Salai, Teynampet,
Chennai-600 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent relating to his impugned order in award No.IO/CHN/A/L1/0139/2019-20 dated 28.01.2020 and quash the same and consequently direct the 2nd respondent to give death claim of Mr.Marikumar policy No.GC000033.

For Petitioner	:	Mr.K.Krishnan
For Respondent 1	:	Mr.M.Arunachalam
For Respondent 2	:	Mr.V.Samuthira Vijayan
For Respondent 3	:	Mr.M.B.Gopalan for Mr.M.B.Gopalan Associates

ORDER

This Writ Petition has been filed challenging the order passed by the 3rd respondent dated 28.01.2020 thereby confirmed the repudiation of insurance claim made by the petitioner for the death of her husband.

2. The petitioner's husband availed Home Loan from the first respondent to the tune of Rs.19,56,569/-. It has to be repaid within 180 equated monthly installments. Accordingly, loan agreement was entered

between the first respondent and the husband of the petitioner. On instruction and advise of the 1st respondent, the petitioner's husband availed deceased Life Insurance with the 2nd respondent under the Group Insurance Policy, "Group Credit Life Scheme" for the death, the sum assured to the tune of loan availed by him by paying single premium of Rs.24,334.24 for a term of three years. While being so, the petitioner's husband was suddenly suffered from the Cardiac arrest and got admitted in Saveetha Medical College & Hospital, Thandalam, Chennai for treatment on 16.01.2019 and he died on the same day. Thereafter, the petitioner had claimed the policy money from the 2nd respondent as the nominee. However, her claim was rejected by the 2nd respondent by communication dated 30.07.2019 on the ground that the petitioner's husband had suppressed his pre-proposal illness and has not disclosed the same at the time of submitting proposal. During the investigation the 2nd respondent found that the petitioner's husband had a history of Diabetes Mellitus and Hypertension. He was also chronic alcoholic. Aggrieved by the same, the petitioner lodged complaint before the 3rd respondent, the 3rd respondent also confirmed the rejection of insurance claim passed by the 2nd respondent.

3. The 2nd respondent filed counter and submitted that the petitioner's husband filled and signed for insurance policy along with all the required documents. As per the said form the deceased had declared that he was not suffering with Diabetes or Hypertension. Though he declared that he is an alcoholic, he stopped alcohol intake for the past ten years. Immediately, after his demise, on enquiry it was found that the deceased was suffering from Diabetes and Hypertension for the past three years and he was also an alcoholic. Therefore, the claim made by the petitioner was rightly rejected. He also submitted the proposal form which shows that he declared that he was not suffering from Diabetes or Hypertension. Admittedly, the petitioner's husband never approached the 2nd respondent for insurance policy for his life. Only on due advise and instructions of the first respondent while availing housing loan the deceased submitted proposal form to get insurance for his life, that too only to the tune of the loan amount i.e., Rs.19,56,569/- and paid single premium of Rs.24,334.24 for a period of three years. Unfortunately, within a period of 11 months from the date of availing loan he suffered with sudden cardiac arrest and died on 16.01.2019. The reasons stated for the rejection of the insurance claim is that the

deceased was suffering from Diabetes Mellitus and Hypertension from the month of January 2017, which was prior to the date of commencement of policy. The facts were not disclosed by the deceased at the time of enrolling insurance policy. Though, the second respondent specifically contended that the deceased was taking treatment from January 2017 for Diabetes Mellitus and hypertension absolutely there is no record to show that he was taking treatment from the Month of January 2017 for Diabetes Mellitus and Hypertension. Insofar as this writ petition is filed against the private insurance namely the second respondent. It is relevant to rely upon the judgement of this Hon'ble Division Bench of this Court in ***W.A.(MD).No.157 of 2019 dated 17.10.2019*** in which the Hon'ble Division Bench of this Court held that :

> *"10. In the instant case, the Appellant admittedly is not a Government undertaking company, but a Private Insurance Company, which has the approval of IRDA. The order impugned in the Writ Petition was not an order passed by the Appellant/Insurance Company, but an Order passed by the Insurance Ombudsman, who exercised the powers under the provisions of the Insurance Act and the other related provisions. The Insurance Ombudsman has been created so as to provide*

remedy to the insured in the event of they are aggrieved by any action of the Insurance Company in not settling the claim amount. Furthermore, the Insurance Ombudsman exercises the powers under the Redressal of Public Grievances Rules, 1998. Therefore, the power of the Insurance Ombudsman is a trapping of the Tribunal and accordingly, a full-fledged hearing was granted and the insurer, namely, the Appellant was represented by its Manager (Legal) and the complainant, namely, the First Respondent appeared in person before the Insurance Ombudsman. Therefore, the bar for entertaining a Writ Petition cannot be applied to the facts of the present case and to that extent, the decision in the case of G.Ponmani (supra) does not support the case of the Appellant-Insurance Company."

Therefore, the present writ petition is very much maintainable since the 2nd respondent is a private insurance company, it repudiated the claim of the petitioner and as such the 3rd respondent is being insurance ombudsman, the petitioner lodged complaint before the 3rd respondent. Therefore, the insurance ombudsman had the trapping of a Tribunal and if they had also conducted a full-fledged enquiry and passed an order. Therefore, as against the said order this writ petition is very much maintainable.

4. Further, as stated supra only on condition, the petitioner's husband had taken insurance policy with the 2nd respondent and tied up with the first respondent and disbursed the loan amount. Therefore, there was no insured was not undergone for any medical examination at the time of taking policy. The deceased filled up the forms and submitted before the 2nd respondent and the same was accepted and issued insurance policy. That apart, if Diabetes Mellitus and Hypertension are the grounds to reject the claim, thus, no insurance policy will be issued to anybody, since almost all of the person aged above 40 years are affected with Diabetes and Hypertension. Therefore, in order to repudiated the claim of the petitioner, the 2nd respondent had taken stand that the deceased had suppressed his illness i.e., Diabetes and Hypertension.

5. Normally, the life insurance will be issued only after medial examination to find out the pre-ailments. Though, the 2nd respondent rejected on the ground that the deceased was already under treatment for Diabetes Mellitus and Hypertension, the 2nd respondent failed to produce any medical record to show that the deceased was treated from the month of

January -2017 for Diabetes Mallitus and Hypertension. After demise of the petitioner's husband, the 2nd respondent made investigation and came to know that the deceased was suffering with pre-exist ailments. Whereas the petitioner's husband was admitted for sudden cardiac arrest and admitted at Saveetha medical College and Hospital, Thandalam, Chennai on 16.01.2019. Unfortunately, on the same day he died due to cardiac arrest. Therefore, even assuming that the deceased was suffering from pre-existing ailments that would not be a cause for the death. Therefore, the 2nd respondent cannot take any advantage for the pre-exiting sufferings of the deceased.

6. In view of the above, the repudiation of insurance claim cannot be sustained and liable to be quashed. Accordingly, the impugned order passed by the 3rd respondent dated 28.01.2020 is quashed. The second respondent is directed to disburse the insurance amount to the petitioner with interest at the rate of 6% per annum from the date of claim till the disbursement of insured amount.

7. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

19.06.2024

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
gvn

To

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G.K.ILANTHIRAIYAN,J.
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(1/2)