IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.27132 of 2022
and
W.M.P. No. 27132 of 2022

Kotak Mahindra Life Insurance Ltd.,
Office at Kotak Infiniti, 7th Floor,
Zone-I, Building No.21, Infiniti Park,
Off Western Express Highway,
Goregaon Mulund Link Marg,
General A.K.Vaidya Marg,
Malad (E), Mumbai – 400 097. ... Petitioner

Vs

1. P.Ananda Jyothi

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

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of Award No.IO/CHN/A/LI/0133/2021-2022 dated 31.01.2022 passed by respondent and quash.

For Petitioner : Mr.V.Samuthira Vijayan

For Respondents : Mr.V.Murugan (for R1)

No appearance (for R2)

O R D E R

This Writ Petition has been filed challenging the award passed by the second respondent dated 31.01.2022, thereby directing the petitioner to pay a sum of Rs.30,00,000/- on the claim petition made by the first respondent.

2. The husband of the first respondent had opted for a life time policy with the petitioner, viz., Kotak Life Insurance covered under Policy No.09100302, which commenced from 18.01.2019. In fact, the first respondent's husband was earlier working as Senior Manger with the petitioner till September 2017, before shifting his employment with M/s.Equitas Bank. While that being so, her husband complained of sudden chest pain on 14.02.2021 at around 1.00 p.m. and unfortunately, he died on the same day due to cardiac arrest before he could be admitted and treated in the hospital. The first respondent's husband did not have any predisposing

factors like diabetes Mellitus or hypertension or any other medical condition. On his demise, the first respondent made a claim and the petition was declined on the ground that the policy was cancelled by the petitioner on 07.05.2021 on the ground that the first respondent's husband did not make necessary disclosure as contemplated under Section 11.1 of their policy conditions. Therefore, the first respondent claim made before the second respondent. The second respondent considered the made claim by the first respondent and directed the petitioner to pay a sum of Rs.30,00,000/- under the policy, which was taken by the deceased/first respondent's husband. Aggrieved by the same, the present Writ Petition is filed.

3. The learned counsel for the petitioner submitted that the office of the second respondent is under the control of the Council for Insurance Ombudsman, which has been constituted under the Insurance Ombudsman Rules, 2017. The second respondent disregarded the contention of the petitioner that the claim was repudiated on the ground of fraud as per Section 45(2) of the Insurance Act, 1938 (hereinafter referred to as 'the Act' for short) and refund of premium was made purely on humanitarian

grounds. The second respondent applied incorrect application of law by making a presumption that refund of premium will take this case to Section 45(4) of the Act and not under Section 45(2) of the Act, which is the basis of the fact that the premiums were refunded by the Company which is a mandatory requirement under Section 45(4) of the Act. Insofar as the preliminary objections raised by the first respondent is concerned, the Writ Petition itself is not maintainable, for which the learned counsel for the petitioner submitted that under the Rules, no alternative remedy provides as against the order passed by the second respondent. Therefore, except to approach this Court under Article 226 of the Constitution of India, the Petitioner has no other alternative remedy to challenge the order passed by the second respondent.

4. He further submitted that the Customer Declaration Form bears a declaration, whereby the policy holder declares to have disclosed all the information sought in the Digital Proposal Form in true and complete manner and that in event of non-disclosure of material facts, the policy is liable to be void as per the provisions of the Act. The declaration was duly

signed and accepted by the deceased stating fraudulent information. It is also required to mention that had the Company known that the Life Assured/member had not disclosed his correct health status at the time of the issuance of the policy, then the Company would not have accepted the policy at the terms and conditions offered thereon. In the said proposal, the deceased Life Assured answered in negative to the questions sought under clause 11.1 which pertains to his medical history. The first respondent has answered "no" for all the questions about his medical history. For the purpose of issuance of policy, the deceased had undergone medial examination. During the medical interview by the panel doctor, the deceased Life Insured had informed adverse habits of smoking and alcohol and he was also overweight. Besides the proposal form, the deceased Life Insured was specifically asked by the panel doctor, if he was suffering from any time of Anaemia and it was also answered. Therefore, if the deceased disclosed all these facts, he could not have been issued. Hence, the petitioner rightly rejected the claim petition made by the first respondent. Further, the claim duration is less than 3 years and thus, it can be questioned as per Section 45 of the Act. The provisions do not require any payment to be done to the claimant. However, on humanitarian grounds, an amount of Rs.39,234/- was paid to the first respondent.

5. The learned counsel for the first respondent vehemently contended that the Writ Petition itself is not maintainable, since the award passed by the second respondent cannot be challenged by the insurer. He also relied upon the Notification dated 11.11.1998 and thereby issued the Redressal of Public Grievances Rules, 1998. The object of the said Rules is to resolve all complaints relating to settlement of claim on the part of insurance companies in cost effective, efficient and impartial manner. Accordingly, where the complaint is not settled by agreement under Rule 15, the Ombudsman shall pass an award which he thinks fair in the facts and circumstances of a claim. Accordingly, the insurer shall comply with the award within 15 days of the receipt of the acceptance letter under Sub-rule (5) and it shall intimate the compliance to the Ombudsman. Further, as per the Insurance Ombudsman Rules, the award passed by the Insurance Ombudsman shall be binding on the insurers. Therefore, the award passed by the second respondent cannot be challenged by way of this Writ Petition.

6. The High Court of Calcutta in the case of ***Life Insurance Corporation of India -vs- The Insurance Ombudsman*** (Order dated 22.03.2017 in W.P.No.2299 (W) of 2016) held that in order to approach a writ court, an Insurance Company has to have a cause of action. A cause of action will arise if any right of the Insurance Company stands violated. An award passed by an Insurance Ombudsman cannot be construed to violate any right of the Insurance Company. Therefore, they cannot approach a writ Court as a party aggrieved by the award of the Insurance Ombudsman. The Insurance Ombudsman is appointed by the Insurance Companies. The Rules laid down are that the Insurance Ombudsman is set out to decide on the complaint relating to the insurance lodged with the highest of the complainant. Therefore, the Writ Petition itself is not maintainable to challenge the award passed by the Ombudsman.

7. The above said order passed by the learned Single Judge of the High Court of Calcutta was also confirmed by the Division Bench of the High Court of Calcutta in ***Life Insurance Corporation of India -vs- The***

Insurance Ombudsman (Order dated 15.09.2017 in M.A.T 645 of 2017 + CAN 6245 of 2017) and it was held that if the complainant accepts the decision, which has been done in the instant case, the insurer has to comply with the award of the Ombudsman as stipulated by Rule 16(6) of the Rules. The binding character of the recommendation or as the case may be, of an award of the Ombudsman arises only when the complainant has accepted the decision. Further, there has been a fundamental fallacy in the approach of the petitioner to the recommendation of the award of the second respondent. Once the nominees of the deceased has unequivocally accepted the award, the petitioner ought to have treated the said award of the Ombudsman as a binding edict and any attempt on their part to wriggle out of the same, would be derogatory to the scheme framed by themselves and would tantamount to procrastination of the statutory mandate. Therefore, the Writ Petition itself is not maintainable and it is liable to be dismissed.

8. That apart, the second respondent, on a perusal of the documents submitted by the claimant as well as the contentions raised by the petitioner, the first respondent is entitled to claim under the Policy.

Further, the problem of anaemia, which was diagnosed and resolved as early as 2017, has no relevance to the cause of death. He was treated in the year 2017 for anaemia and also had undergone blood transmission, thereby his haemoglobin count would have been normal. Only after field medical report, the deceased was insured with the petitioner. Therefore, the second respondent has rightly allowed the claim petition and awarded the compensation to the tune of Rs.30,00,000/-. Hence, this Court finds no infirmity or illegality in the order passed by the second respondent and it is liable to be dismissed.

9. In the result, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

17.04.2024

Index:Yes/No
Neutral Citation/Yes/No
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To

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

G.K.ILANTHIRAIYAN, J.

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