IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23725 of 2021
and WMP.Nos.24974 and 24976 of 2021

Bharti Axa Life Insurance Company Ltd.,
Rep. By its Authorized Signatory,
Ms.Snehal Sawant, Having Office at
Unit No.1904, 19th Floor, Parinee Crescenzo,
G Block, Bandra Kurla Complex,
BKC Road, Opposite MCA Ground, Bandra East,
Mumbai-400 051. ... Petitioner

Vs.

1. The Insurance Ombudsman,
State of Tamil Nadu & Puducherry,
Fatima Akhtar Court, 4th Floor,
453, Old No.312, Anna Salai,
Teynampet, Chennai-18.

2. V.Sharin Sheela Mary

3. PNB Housing Finance Company Ltd.,
Rep. By its Branch Manager, 3rd Floor,
Sudarshan Building,
No.14, Whites Road,
Royapettah, Chennai-14.
(R3 impleaded vide order dated
14.03.2024 in WMP.No.3887 of 2024
in WP.No.23725/2021 by this Court) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned award bearing No.IO/CHN/A/LI/0147/2020-21, dated 31.03.2021, passed by the first respondent, in Ref. No.CHN-L-008-2021-0493 made by the second respondent and quash the same.

For Petitioner	:	Mr.Abhinav Parthasarathy
For Respondents	:	Mr.S.Silambanan – Sr.C. For M/s.Daisy John R2 R1 – No appearance Mr.T.Saikrishnan R3

O R D E R

The Writ Petition has been filed seeking to quash the impugned award bearing No.IO/CHN/A/LI/0147/2020-21, dated 31.03.2021, passed by the first respondent, in Ref. No.CHN-L-008-2021-0493 made by the second respondent

2. The case of the petitioners is that the petitioner is the insurance company and the deceased husband of the second respondent applied for two life insurance policies with the petitioner herein under Bharti AXA Life Supreme Protect Loan Secure Plan for which he was provided the certificate of insurance. After taking insurance of two year and nine months, the second respondent husband died on 11.03.2019 due to Metastatic Soft tissue sarcoma pulmonary mastectomy. As per Section 45 of the Insurance Act, the petitioner was entitled to investigate the veracity of the claim. Upon investigation, it came to know that the insured have admitted in Apollo Hospital during the year 2010 and 2018. The life assured had suppressed the material facts and the policy has

been obtained by way of misrepresentation. The second respondent, upon obtaining the claim repudiation letter, dated 20.09.2019, had approached the first respondent herein by filing a complaint seeking to provide the documents submitted at the time of proposal for subject policies. Without considering the entire fact, the first respondent passed the impugned order by directing the petitioner to pay a sum of Rs.30 lakhs to the second respondent as a settlement of subject claim with applicable interest. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the second respondent's husband at that time of taking insurance policy with the petitioner, he suppressed the materials fact that he has already suffered heart ailment and in the year 2010, while taking the insurance policy, the ailment was not disclosed in the application. After the death of the second respondent's husband, it came to the knowledge of the petitioner that the petitioner has suppressed the entire fact and without considering the said suppression, the first respondent awarded huge compensation which is not sustainable. In support of his contention, the learned counsel relied upon the decision rendered by the Hon'ble Apex Court reported in 2019 6 SCC 175.

4. The learned Senior Counsel appearing for the second respondent submitted that admittedly the second respondent husband has obtained a insurance policy with the petitioner on 30.04.2016. At that time of taking policy, the second respondent husband subjected for medical examination by the Doctor referred by the petitioner and the Doctor have not diagnosed the ailment suffered to the second respondent husband. After conducting medical examination and upon satisfaction, the policy was provided to him. Subsequently, the second respondent husband passed away in the year 2019. The said issue was elaborately discussed by the insurance ombudsman and awarded compensation, which cannot be interfered with.

5. Heard the learned counsel for the petitioner and the learned Counsel appearing on behalf of the respondents and perused the materials available on record.

6. Considering the totality of the facts and circumstances in this case and the evidence adduced on both the sides, it is clear that the deceased took two policies and after his death, respondent's claim was unjustly denied by the petitioner insurance company. Though the petitioner has set out suspicion with regard to the cause of death of the second respondent's husband and forgery of proposal forms, none of these grounds have been satisfactorily proved before the Ombudsman as well as this Court. Therefore,

this impugned order passed by the first respondent is well reasoned order and hereby confirms the same and therefore, this petition is dismissed. No costs.

7. It appears that at the time of admission, the petitioner has already been paid a sum of Rs.15/- lakhs to the second respondent. The petitioner is directed to pay the remaining award amount with applicable interest to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

02.09.2024

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To

The Insurance Ombudsman,
State of Tamil Nadu & Puducherry,
Fatima Akhtar Court, 4th Floor,
453, Old No.312, Anna Salai,
Teynampet, Chennai-18.

M.DHANDAPANI,J

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W.P.No.23725 of 2021

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