IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.17766 of 2022
& WMP.No.17056 of 2022

Latha .. Petitioner

vs

1.The Ombudsman,
The Office of the Insurance Ombudsman,
Fatima Akbar Court, 4th Floor,
453, Anna Salai, Teynampet, Chennai – 600018.

2.The Manager,
ICICI Prudential Life Insurance Co Ltd,
Unit No.1 A & 2A, Raheja Tipco Plaza &
Rani Sati Marg, Malad (East),
Mumbai – 400097.

3.Mrs.Hemalatha .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus seeking to call for the impugned Award having reference no IO/CHN/A/LI/0179/2021-2022 dated 28-03-2022 passed by the 1st respondent and to quash the same as arbitrary and illegal and further, to issue an order/direction against the 3rd respondent to pay fifty percent of the settlement claim amount to the court which the petitioner is entitled to as a Class-I Legal heir and also be consequently paid to the petitioner on the basis of his rival claim to the 2nd respondent.

For Petitioner	:	Mr.Bharanidaran for Ms.Shobana Ramasubramanian
For Respondents	:	Ombudsman (R1) O/o Insurance Ombudsman Ms.M.Sandhya, for M/s.Rank Associates for R2 Ms.G.S.Thilagavathi, for R3

ORDER

The petitioner is the mother of one Mr.S.Thangarajan (hereinafter referred to as '*insured*') who had unfortunately passed away on account of cardiac arrest caused by covid-19 on 20.05.2021. The insured had been employed with Infosys Private Limited and had taken a policy bearing No. 28447594 with an assured value of Rupees One Crore (hereinafter referred to as 'policy'/'insurance policy') with ICICI Prudential Life Insurance Company Limited (hereinafter referred to as 'company' or 'R2').

2. The third respondent is the widow of the insured (hereinafter referred to as 'R3') and she had made a claim on the basis of the aforesaid insurance policy. The petitioner had initiated legal action in response to the claim of R3 believing herself to be the legitimate beneficiary under the policy. R2 issued a reply on 09.09.2021 repudiating the claim of the petitioner.

3. The Petitioner then made a representation before the

Ombudsman / R1, aggrieved by the repudiation of her claim and followed it up with W.P.No.24049 of 2021 seeking consideration of her representation. That writ petition was ordered on 30.11.2021 directing R1 to hear the parties and to consider representation dated 28.09.2021 appropriately and pass orders on the same in accordance with law.

4. The petitioner has in fact misinterpreted the order of this Court dated 30.11.2021 insofar as at paragraph 7 of the writ affidavit, she claims that this Court had directed R1 to disburse the assured amount to herself and to R3 equally. Such a direction was never given.

5. The impugned order thereafter has come to be passed after hearing the parties, adverse to the petitioner. Hence this writ petition. Heard Mr.Bharanidharan, learned counsel for the petitioner, Ms.M.Sandhya, learned counsel for R2 and Ms.G.S.Thilagavathi, learned counsel for R3. Though service is complete on Ombudsman / R1, there is no appearance on their behalf.

6. The submissions of the petitioner are to the effect that she is a Class - I legal heir under the Hindu Succession Act, 1956 (in short 'Succession Act') and thus her claim for the policy amount would supersede that of a nominee. She would even dispute the

factum of nomination claiming that there was no nomination that had been made and hence only the priority of legal heirs as set out under the Hindu Succession Act would be applicable.

7. For the above purpose, the petitioner would rely on a statement issued by NSDL for the period between 01.01.2020 and 31.12.2020, which according to her, reveals that there is no nomination registered. She relies on a decision of the Madurai Bench of this Court in the case of *K.R.Sakthi Murugeswari v The Divisional Manager, Divisional Office, Life Insurance Corporation of India and another* [W.P.(MD) No. 11044 of 2021 dated 16.10.2023], which she says supports her claim.

8. Per contra, learned counsel for R2 and R3, both sailing together, would maintain that the insured had, in the claim form, filled in the name of R3 as nominee and this would take precedence over all other claims.

9. Learned counsel for R2 was asked to produce the original policy in order for the Court to ascertain whether there had been a nomination, and if so, of whom. The Original policy has been produced, which contains the nominee's name as *'Mrs. Hemalatha Mohan'*. The application for the Policy has been made online as per the extant regulations. Thus, there is no dispute on the factual aspect that the insured had made a nomination in favour of his

wife/R3, in the policy.

10. There has been a shift in the law as regards nominations under the Insurance Act with the amendment made in 2015. Section 39 of the Insurance Act, 1938 (in short 'Act') refers to nominations of the policy holder and sub-section (1) states that the holder of a policy of life insurance on his own life, may, when taking the policy, or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

11. Sub-section (7) as it stood prior to the 2015 amendment reads as follows:-

> *"The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (3 of 1874) applies or has at any time applied"*

12. In a slew of judgments commencing from the judgment in *Sarbati Devi and another v Usha Devi* [(1984) 1 SCC 424] in regard to the validity of nomination, the specific question considered was whether the beneficial interest conferred by nomination under Section 39 was in regard to mere collection of the proceeds of the policy for onward transmission to the legal heirs of the insured, or a legal entitlement to such proceeds.

13. The question was answered to state that the amounts can

be claimed by the heirs of the insured in accordance with law of Succession and the nomination was only to select and name the person who would collect the proceeds of the policy for disbursal in accordance with law of succession.

14. The above issue was discussed by the Law Commission of India and para 7.1.2 of the 190th report of the Law Commission, has this to say:

> *"The Law Commission's views:-*
>
> *7.1.12 There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and*

the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to S.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended."

15. The recommendations of the Law Commission in this regard were as under:-

"(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.
(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer"s liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.
(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.
(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed."

16. The recommendations were partly applied, albeit in a modified form. Section 39 entitled 'Nomination by policy-holder' originally reads as follows:-

> *"The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (3 of 1874 applies or has at any time applied:*
>
> *Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy."*

17. Legislature has recast Section 39 to read as follows:-

> *"Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee."*

18. Thus sub-section (7) of Section 39, as amended, makes it clear that where the holder of a policy of insurance nominates his

parents/spouse/children/spouse and children, then such named individuals shall be treated as beneficial nominees. The sole exception to this rule is that the holder of the policy must hold title sufficient to confer beneficial title to the named nominee. The exception does not come into play in this case.

19. The present policy is of the year 2018 and the provisions of Section 39 post amendment would apply and thus R3, the spouse, must be treated as beneficial nominee entitled to the sum assured.

20. Mr.Bharanidharan, appearing for the petitioner would draw attention to para 9 of the decision in *Sakthi Murugeswari*, particularly the following lines *".....since it was a dispute between the wife and the mother-in-law and both of them are entitled to be treated as beneficiary nominees under Sub Section 7 to Section 39 of the Insurance Act, 1938".*

21. He would thus attempt to persuade that both petitioner and R3 must be treated as beneficial nominees in this case. This submission has immediately to be rejected. Though theoretically Section 39(7) entitles both spouse and mother to be beneficial nominees, it is only the one/ones selected and named in the insurance form as nominee who can claim such status.

22. Sub-section (7) is categoric that only the parents/spouse/

children/spouse and children can be beneficial nominees. It is for this reason that this Court in *Sakthi Murugeswari's* case rejected the claim of the brother as such relationship does not fall within the enumerated categories under Section 39(7).

23. There are some grievances expressed by the petitioner in regard to the procedure followed in this matter, specifically that the amount had been disbursed by the Insurance Company even pending the grievance petition before the Ombudsman. This is explained by R2 to state that pendency of representation before the Ombudsman was not known to R2.

24. Though the company had been were arrayed as party in W.P.No. 24049 of 2021, no notice was issued to them while disposing the writ petition. That writ petition was disposed on 30.11.2021 and the disbursal of the claim was on 17.01.2022. A copy of the notice fixing the hearing of the grievance petition before the Ombudsman is not available and hence this Court is not in a position to appreciate whether the disbursal was made in haste when the notice was received.

25. In any event, it is unnecessary to go into those questions as the conclusion of the Ombudsman is found to be correct. The Court also records the submission of R2 that there is a statutory obligation to settle R3's claim within a fixed time frame. As it is, R3

had remitted the amount to R3 belatedly along with interest.

26. In light of the discussion as aforesaid, this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

23.02.2024

Index:Yes
Neutral Citation:Yes
ssm

To
1.The Ombudsman,
The Office of the Insurance Ombudsman,
Fatima Akbar Court, 4th Floor,
453, Anna Salai, Teynampet, Chennai – 600018.

2.The Manager,
ICICI Prudential Life Insurance Co Ltd,
Unit No.1 A & 2A, Raheja Tipco Plaza &
Rani Sati Marg, Malad (East),
Mumbai – 400097.

DR. ANITA SUMANTH,J.

ssm

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