IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17510 of 2022

D.Santhanam ... Petitioner

-Vs-

1.The Chairman & Managing Director,
The New India Assurance Company Ltd.,
New India Assurance Building,
87, M.G.Road, Fort,
Mumbai-400 001

2.The Regional Manager,
The New India Assurance Company Ltd.,
Dewa Towers, 3rd Floor,
770-A, Anna Salai,
Chennai-600 002.

3.The Senior Divisional Manager,
The New India Assurance Company Ltd.,
Kanchipuram Divisional Office (DO 712000),
No.57, Nellukara Street,
Kanchipuram-631 501. ... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the respondents to disburse withheld agent commission amount of Rs.1,89,545.45/- with due interest at the rate 12% per annum for the said belated payment to the petitioner within time limit prescribed.

For Petitioner : Mr.P.Manoj Kumar

For R1 to R3 : Mr.S.Dakshnamoorthy

ORDER

This Writ Petition has been filed for a direction directing the respondents to disburse the agent commission to the tune of Rs.1,89,545.45/- with applicable interest.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner is working as Life Insurance Corporation Agent (hereinafter referred as "LIC") from the year 1974. His agency was renewed periodically. He had also registered himself with the New India Assurance Company Limited and he was engaged as an agent and providing business to the said company for the past 40 years. However, from 01.10.2006, he was not paid his agent commission on the ground that he did not pass the test conducted by the IRDA. He was informed that possession of LIC agent license was sufficient and he did not undergo any test. The LIC license was issued by the Insurance

Regulatory and Development Authority under the Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations, 2000. However, the petitioner was continuously providing business to the respondents. Therefore, the petitioner submitted a detailed representation seeking disbursement of his agent commission. However, the said request was not considered so far. Hence, this writ petition.

4. In the year 2016, the petitioner had appeared in the pre-recruitment test for insurance agents conducted by the Insurance Institute of India, Mumbai and came out successful. Insurance agency license dated 11.01.2017 was issued. Once again, the petitioner submitted a representation on 27.03.2018 before the third respondent for disbursal of his commission amount which was withheld. The third respondent, by its communication dated 09.08.2019, addressed to the second respondent quantified the commission amount payable to the petitioner to the tune of Rs.1,89,545.45/- and sought for approval. The second respondent, by its communication dated 16.03.2020, placing reliance on Financial Standing Order 2016 informed the third respondent to take appropriate action on the Divisional Office level for payment of the pending commission. However, no action has been taken by the third respondent so far to

disburse his commission amount. Hence, the petitioner was constrained to file a complaint before the Insurance Ombudsman on 24.03.2021. However, it was not considered. Aggrieved by the same, the petitioner approached this Court by way of writ petition in W.P.No.19697 of 2021. This Court, by an order dated 17.09.2021, directed the respondents to consider the representation submitted by the petitioner. However, no order has been passed so far.

5. A perusal of the counter filed by the respondents reveals that the agents are governed by the erstwhile Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations, 2000, which was prevailing till the supersession of Insurance Regulatory and Development Authority of India (Appointment of Insurance Agents) Regulations, 2016, which came into effect from 01.04.2016. Section 42 of the Insurance Act and the erstwhile regulation prevailing during the relevant point of time would explicitly mandate that they cannot procure business unless they obtain license as per the procedure prescribed under the regulations.

6. Regulation 3 of Insurance Regulatory and Development

Authority (Licensing of Insurance Agents) Regulations, 2000, prescribes the criteria for issue or renewal of licence. The pre-requisites *inter alia* are (i) posses the practical training as specified under Regulation 5 (ii) has passed the examination as specified under Regulation 6 and (iii) has furnished the application complete in all respects. Therefore, the petitioner did not pass the examination as specified under the Regulation Act. The petitioner is not entitled for any commission for the period, the period during which he did not have a valid licence.

7. A perusal of the records reveals that by the communication of the third respondent dated 03.07.2019 is very clear that new procedure was introduced in renewal of agency license. As per this, agents had to undergo training for two weeks and pass the written examination. However, the petitioner was not able to attend the training program to renew the license due to his serious illness and he also produced discharge summary. But the petitioner continued to give business to the respondents Company since his agency license was not in force, agency commission was kept pending. Now in the year 2017, he renewed his license based on the assurance given to him that his commission may be considered for payment and has been giving business

to the Company.

8. Further, the communication dated 09.08.2019 also reveals that the commission pertaining to premium booked under new code is only paid to the petitioner till now. The respondents confirmed the balance amount of Rs.1,89,545.45/- remains unpaid. The petitioner and his son were giving commendable premium and contributing towards the growth of the respondents. Therefore, the respondents expected more premium. Hence, they recommended for approval of Rs.1,89,545.45/- to the petitioner. Therefore, admittedly, the petitioner continued to give business to the respondents. When the respondents accepted the business of the petitioner without renewal of his licence, they ought to have paid the amount. They cannot deny the commission on the ground that the agency licence was not renewed. Admittedly, the business was accepted from several subscribers and the commission amount to the tune of Rs.1,89,545.45/- is kept pending in his account.

9. In view of the above, the contention raised by the respondents cannot be accepted and the petitioner is entitled for the commission of Rs.1,89,545.45/-.

10. In view of the above, the respondents are directed to

disburse the commission amount to the tune of Rs.1,89,545.45/- to the petitioner forthwith. It is made clear that the petitioner is entitled for interest only from the date of renewal of his licence. Accordingly, the respondents are directed to calculate the interest for the said amount at the rate of 6% per annum from the date of renewal of his licence and disburse the same.

11. With the above direction, this Writ Petition stands disposed of. No costs.

05.04.2024

Internet : Yes
Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To

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87, M.G.Road, Fort,
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G.K.ILANTHIRAIYAN, J.

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