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W.P.No.631 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.12.2023
Pronounced on	11.01.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**W.P.No.631 of 2020andWMP.No.742 of 2020

P.Suseela

...

Petitioner

Vs.

1. The Regional Director,
Regional Office,
Employees State Insurance
Corporation (ESI) Department,
No. 143, Sterling Road,
Nungambakkam,
Chennai - 600034.

2. The Director,
Coimbatore Sub Regional Office,
Employees State Insurance
Corporation (ESI) Department.
No. 1897, Trichy Road,
Ramanathapuram Post,
Coimbatore.

3. The Dean, E.S.I. Hospital,
Singanallur, Coimbatore. - 15



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4. Suresh

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Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the Respondents 1 to 3 to deposit the petitioner's daughter Nirmala's all monetary benefits to her minor son namely Nirmal.

For Petitioner : Mr.S.Kolandasamy

For Respondents : Mr.K.Prabakar,
Standing Counsel for ESI for RR 1&2

: Mr.T.Chezhiyan, AGP for R3

: Mr.N.Umapathi for R4

ORDER

This Writ Petition has been filed seeking a Writ of Mandamus to direct the Respondents 1 to 3 to deposit all the death benefits of the petitioner's deceased daughter Nirmala in the name of her minor son by name Nirmal.



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2.The petitioner is the mother of the deceased Government Servant

Nirmala, who had worked as a staff nurse in the 3rd respondent's hospital.

The deceased Nirmala had married the 4th respondent. She had one son by name "Nirmal". Subsequent to the death of Nirmala, 4th respondent is said to have entered into a second marriage. The allegation of the petitioner is that the 4th respondent is not taking care of his minor son Nirmal properly and his academic performance would reflect the same. Since the 4th respondent is not taking care of his minor son properly, the petitioner has filed this Writ Petition seeking to deposit the terminal benefits of her deceased daughter Nirmala in minor's account of Nirmal itself until he becomes major.

3. Heard, Mr.S.Kolandasamy, learned Counsel for the petitioner and Mr.K.Prabakar, learned Standing Counsel for the respondents 1&2 and Mr.T.Chezhiyan, learned Additional Government Pleader for the 3rd respondent and Mr.N.Umapathi, learned counsel for the 4th respondent and perused the materials available on records.



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4. Mr.S.Kolandasamy, learned counsel for the petitioner submitted that the 4th respondent has lavishly spent the petitioner's deceased daughter's salary by holding control over her ATM card. The 4th respondent does not have any job. On 13.07.2011, 44 ½ sovereigns of gold and Rs.1,60,000/- cash were stolen from the house of the petitioner. At that time, the petitioner's daughter, Nirmala and the 4th respondent were at the petitioner's house. The petitioner had given a complaint before Kovai Kuniyamuthur Police Station on 13.07.2011 and a First Information Report in Cr.No.551 of 2011 was registered and it is pending for investigation. The 4th respondent threatened that he would consume poison if the enquiry is conducted by taking his finger prints etc., The petitioner's daughter Nirmala requested the petitioner not to proceed with the above theft case, as it would affect her life. Though the petitioner knew that it was the 4th respondent who stole the properties and the petitioner did not seriously pursue the case.

4.1. When Nirmala was pregnant and was going for regular check up at P.S.G. Hospital Coimbatore, the Doctors advised her to take



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treatment at N.M. Hospital, Ramanathapuram, Coimabtoe.

Subsequently, on 12.04.2019 a wordy quarrel arose between Nirmala and the 4th respondent with regard to her admission at N.M. Hospital for delivery. In a fist of anger, 4th respondent kicked on Nirmala's stomach, Nirmala called the petitioner immediately over phone by crying. Immediately petitioner rushed to her house. Mean while the 4th respondent called Dr.Thilagavathy and he took Nirmala to N.M. Hospital. In the scan report, it was found that the fetus in the womb lost life and Nirmala also died subsequently. The 4th respondent has taken the LIC policy amount which was in Nirmala's son's name and he also plans to marry his girl friend after getting Nirmala's provident fund and other monetary benefits. The 4th respondent is not a person of good character and would not show any interest in the minor and he cannot provide him good education. The petitioner has given a complaint on 11.05.2019 against the 4th respondent and the enquiry is pending. The petitioner has also filed a guardian petition and the same is also pending. Hence the petitioner has filed this petition for Writ of Mandamus to direct the Respondents 1 to 3 to deposit the petitioner's daughter Nirmala's all



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monetary benefits to her minor son namely Nirmal.

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5. Mr.N.Umapathi, learned counsel for the 4th respondent submitted that he is the lawful guardian of his son and he is entitled to get the terminal benefits of his deceased wife and he would take care of his son.

6. From the Newspaper report produced by the petitioner, it is seen that her daughter who was a staff Nurse at Government Hospital, Coimabtoe, was admitted in a private hospital for delivery. The Newspaper report produced by the petitioner states that the friends and relatives of Nirmala protested before the hospital by stating that the negligence of the doctors is the reason for the death of Nirmalar.

7. Even though the father is the natural guardian for his minor son, in certain special circumstances and also in the context of the concerns now expressed by the petitioner, the respondents 1 to 3 can deposit the entire terminal benefits of the deceased Nirmala in the name of her only



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minor son, Nirmal, until he attains majority.

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8. The learned counsel for the petitioner submitted that no orders can be passed by this Court which would disallow a share for the 4th respondent in his wife's death cum retirement emoluments. The petitioner has produced the provident fund in the name of the petitioner's grandson to show that the son was not treated well by the 4th respondent and his academic performance was very poor. The guardian court's role in determining the guardian for the minor is crucial, as it has to consider all relevant factors and evidence presented by both parties.

9. Without any doubt the husband is one of the legal representatives of his deceased wife and he is entitled to get a share in her death cum terminal benefits. But, it is not wrong to postpone his enjoyment over the said share until his son becomes a major. Had Nirmala was alive, she would not have relished the intention of the 4th respondent to utilise every fortune of the family without reserving it for the future of the son.



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10. The learned counsel for the 4th respondent submitted that he is in need of half of the terminal benefits of the deceased Nirmala, as he have to meet out the educational expenses of the minor son.

11. It is hard to imagine that the fourth respondent would wait for the death of his wife Nirmala in order to utilize her terminal benefits for educating the son. As a father of the minor child the 4th respondent got the responsibility to earn money and spend it for raising his son. Hence, the reason stated by the 4th respondent that his share in the terminal benefits of Nirmala is needed for meeting out any expenses in connection with his minor son can not be countenanced.

12. Under such circumstances, I feel it is appropriate to direct the respondents 1 to 3 to deposit the whole of the all service and terminal benefits if any payable to the deceased Nirmala, in a fixed deposit in the name of her minor son till he attains the age of majority.



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13. In the result, this Writ Petition is **disposed of**. No costs. The

Respondents 1 to 3 are directed to invest the service and terminal benefits of deceased Nirmala in the name of her minor son (Nirmal) in any of the Nationalized Banks in a fixed deposit until he becomes major.

No costs. Consequently connected miscellaneous petition is closed.

11 .01.2024

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking

Neutral Citation : Yes/No

jrs



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R.N.MANJULA, J.

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