BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.397 of 2022
and
W.M.P.(MD)No.313 of 2022

S.Saraswathi ... Petitioner

Vs.

The Branch Manager,
Life Insurance Corporation of India,
Branch Office,
Periyakulam Post,
Theni. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned notice dated 02.11.2020 issued by the respondent herein and to set aside the same as illegal and to direct the respondent to continue to pay a sum of Rs.60,000/- in petitioner's account as per the policy condition till the date of maturity i.e. 02.02.2031.

For Petitioner : Mr.C.Sundaravadivel

For Respondent : Mr.S.Anwar Sameen

ORDER

The question that calls for consideration is whether the insurer having mistakenly paid certain amounts to the beneficiary under an insurance policy is entitled to demand repayment.

2. Section 72 of the Indian Contract Act, 1872 mandates that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. A learned Judge of this Court in the decision reported in ***(2000) 1 CTC 88 (Indian Bank Vs. M.S.Habibullah)*** observed that the law with regard to recovery of money made by mistake is not well settled in India and that the aforesaid statutory provision does not indicate the application of the rule of estoppel in such cases. This observation may not be correct. As early as in the year 1949, it was held by the Privy Council in the decision reported in ***AIR 1949 PC 297 (Shiba Prasad Singh Vs. Maharaja Srish Chandra Nandi)*** that it should not be taken that every sum paid under mistake is recoverable no matter what the circumstances may be and that there may in a particular case be circumstances which disentitle a plaintiff by estoppel or otherwise. In ***Mafatlal Industries Ltd. Vs. Union of India (1997) 5 SCC 536***, the Hon'ble Supreme Court held that Section 72 of the Contract Act is based upon and incorporates a rule of equity. In such a situation, equitable considerations cannot be ruled out while applying the said provision.

3. Let me come to the facts of the case. The petitioner's husband Thiru.Vijayakumar availed an insurance policy on 02.02.2012 under the plan “Jeevan Ankur” floated by LIC. The annual premium payable was Rs.25,195/-. The sum assured was Rs.6,00,000/-. The date of maturity was mentioned as 02.02.2031. Vijayakumar passed away on 30.03.2014. He failed to pay the third year premium which was due on 02.02.2014. It was not paid even before the expiry of the grace period of 30 days. Clause II of the policy reads that if the premium is not paid before the expiry of the days of grace, the policy lapses. Yet by applying “Claim Concession and Chairman Relaxation Rules, 1987”, the sum assured (Rs.6,00,000/-) was disbursed to the petitioner after deducting the unpaid premium due.

4. The policy availed by the petitioner's husband also provided for payment of an income benefit equal to 10% of the sum assured under the basic plan on each policy anniversary till the end of the policy term. The respondent was paying a sum of Rs.60,000/- every year on the policy anniversary for six years. In the year 2020, the audit department informed the branch office that the additional income benefit was not payable. Thereupon, the impugned communication dated 02.11.2020 was issued calling upon the petitioner to

repay the sum of Rs.3,60,000/- that was credited to the petitioner's account by mistake.

5. The stand of the respondent is challenged in this writ petition on the grounds set out in the affidavit filed in support of this writ petition. The petitioner seeks two fold reliefs. She wants me to quash the demand for repayment. She wants me to direct the Corporation to continue to pay the income benefit till the end of the policy term.

6. I have to necessarily hold that on account of the petitioner's husband's failure to pay the third premium, the policy lapsed. If the policy holder had died before the expiry of the grace period, the policy would not have lapsed. Vijayakumar died after the expiry of the grace period of 30 days. It is only on account of the application of the relaxation rules, even the sum assured came to be paid. The entitlement of the petitioner to receive the sum assured (Rs.6,00,000/-) is beyond dispute. LIC had issued the circular bearing Reference No.CO/CRM/899/23, dated 23.04.2013. The relevant extracts are as follows:-

"A) As per clarification received from Actuarial Dept, the Chairman's relaxation rules, as applicable under Endowment Plan-14, will also be applicable under Plan No-807-LIC's Jeevan Ankur and Plan No.-812-LIC's New Jeevan Nidhi.

The rules for considering the death claim will be as follows:-

After at least two full years premiums have been paid but not 3 full years premiums have been received under a policy and:-

"1. If the death of the life assured were to occur after expiry of days to grace but within 3 months of the due date of first unpaid premium, claim will be considered for full sum assured sub to recovery of the unpaid premiums up to next policy anniversary following the date of death.

....

5. The relaxation as mentioned above is applicable for basic sum assured only and not for any other benefit such as accident benefit, income benefit, additional sum assured on maturity after the death of policy holder or for any optional rider sum assured under plan 807-Jeevan Ankur. After settlement of claim amount as above, contract will come to end and no further benefits are payable under the policy. "

The petitioner has not challenged the aforesaid circular. I therefore hold that stoppage of income benefit is in order. The petitioner cannot insist that the respondent should continue to pay a sum of Rs.60,000/- being 10% of the sum assured every year till the date of maturity.

7. The core issue is whether the petitioner is liable to make refund of Rs.3,60,000/- paid by the respondent mistakenly. Section 72 does not contain an absolute rule and does not demand that every payment made by a party while labouring under a mistake is to be mechanically directed to be recovered *(Pollock & Mulla on the Indian Contract Act, 1872 16th edition at Page No. 847)*. In ***Kelly Vs. Solari (1841) 9 M & W 54, Parke B*** held that where money is paid to another under the influence of a mistake, that is upon the supposition that a specific fact is true which would entitle the other to the money, but which fact is untrue, and the money would not have been paid if it had been known to the payer that the fact was untrue, an action will lie to recover it back. The learned Judge remarked that it would be against one's conscience to retain a sum mistakenly paid by the other. Law has evolved since such an inflexible proposition was laid down. The Privy Council in ***A-G of Trinidad and Tobago Vs. Trinsalvage Enterprises Ltd (PC) (2023) 1 WLR 4045*** held that a restitutionary claim in the law of unjust enrichment has three central elements which the claimant must prove. These elements are that the defendant has been enriched, that the enrichment was at the claimant's expense, and that the enrichment at the claimant's expense was unjust (ie. that there was an “unjust factor”). If those three elements are established by the claimant, the claim

succeeds unless the defendant can establish a defence, such as change of position.

8. When the State as employer passed order for recovery of monetary benefits wrongly extended to the employees, the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (2015) 4 SCC 334*** held as follows:-

> "12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
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> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
>
> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
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> (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
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> (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

9. In ***Metro Exporters (P) Ltd, Vs. SBI (2014) 11 SCC 161***, the Hon'ble Supreme Court held that the customer should not suffer for the mistake committed by the bank. The facts of the case have been captured in the following paragraphs.

> "31. We are of the view, even if the amount was credited by the Bank to the appellants' account by a mistake, the question is whether, in the facts and 20 of 23 circumstances of this case, the Bank is justified in marking a lien on the appellants' EEFC account, thereby realizing the amount paid. Bank, as already stated, had credited the amount in the appellants' EEEC account on 2.11.2006 and, so far as the appellants are concerned, their claim as against the importer stood satisfied, since the same forms part of a series of transactions. The question is whether the Bank can, after a lapse of more than two years, that is on 6.3.2009, could mark a lien on the appellants' EEFC account and later receive amount by making a debit entry on 29.10.2009 for an aggregate amount of Euro 1,36,027.
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> 32. Facts, in this case, clearly indicate, so far as importer is concerned, he had already paid the amount and the SBI, Foreign Department, Kolkata had received the amount in the Nostro account of Bank of America with remittance advice to Bank of India, instead of SBI, Overseas Branch, Mumbai. Appellant was also informed on 2.12.2006 of the export collection advice by the SBI for US$ 199,959.74 and the appellant received the amount. Bank might have committed a mistake, but now it would be impossible for the appellant to recover the amount from the importer since, so far as the importer is concerned, it had paid the amount. If the SBI, Overseas Branch had not given credit of the amount, then, appellant could have proceeded against the importer at the earliest opportunity, but now the question is whether the appellant should suffer for the mistake committed by the Bank, to which our answer is in the negative."

10. ***Indian Bank Vs. M.S.Habibullah (2000) 1 CTC 88*** involved a case of erroneous payment of interest to the customer. The bank sought to recover the same after a lapse of a long period. This Court held that the bank was not entitled to recovery.

11. Applying the aforesaid principles, the question to be posed is whether LIC is justified in demanding refund of the amount erroneously paid. As already noted, this Court will have to bear the equitable principles in mind. The question of hardship which figured prominently in *White Washer*'s case has to be taken into account. The petitioner is a widow. She lost her husband in her middle-age. The children were then aged 10 and 9. In her representation, she had stated that she looked forward to receiving the income benefit to meet her children's educational expenses. The amounts were paid over a period of 6 years during 2015-2020. We are now in 2024. The third year premium had been deducted while paying the sum assured. This of-course was as per the relaxation rules in force. If the policy holder had paid the third year premium, the corporation would have been liable to pay the additional income benefit till 2031. It is not as if the petitioner made any erroneous representation. The corporation on its own had made the payments. The petitioner had spent the sums received by her towards the education of her children. The principles

laid down in White Washer's case can very well be extended to a case of this nature. Recovery can be effected only by filing a suit. The limitation period has also expired. The burden of establishing the three elements mentioned in ***A-G of Trinidad and Tobago Vs. Trinsalvage Enterprises Ltd (PC) (2023) 1 WLR 4045*** is on the insurer. This burden had not been discharged in this case. Merely saying that there was a mistaken payment is not sufficient to invoke Section 72 of the Contract Act. Even if the insurer discharges the initial burden, the payee can call in aid equitable defences such as change of position, lapse of time, estoppel, exceptional hardship etc. In this case, the petitioner can definitely plead lapse of time and exceptional hardship in response to the respondent's demand.

12. The question formulated at the outset can be answered only in the light of the factual matrix obtaining in the particular case. As far as the case on hand is concerned, it is answered in favour of the beneficiary and against the insurer. The impugned communication is set aside. The Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2024

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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