BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.07.2024

DELIVERED ON : 12.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.12121 of 2021
and
WMP.(MD)No.14152 of 2024

Syed Ali Fathima ... Petitioner

Vs.

1. The State of Tamilnadu,
represented by its Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2.The District Collector,
Pudukkottai District,
Pudukkottai.

3.PNB Housing Finance Ltd.,
9th Floor, Anthriksh Bhavan,
22, Kasturi Ba Gandhi Mark,
New Delhi – 110 001.

4.TATA AIG General Insurance Company Ltd.,
represented by its Manager,
No.4031, 2nd Floor,
Samsung Tower,
Pantheon Road,
Egmore,
Chennai-600 008. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceeding of the fourth respondent in relation to GCSP0235987720-001523, dated 11.02.2021 and quash the same as illegal and consequently direct the respondents to release the insured sum of Rs.26,87,912/- and pay the same to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondents : Mr.V.OM Prakash
Government Advocate
for R.1 and R.2
: Mr.B.Rajesh Saravanan
for R.3
: Mr.V.Sakthivel
for R.4

ORDER

The Writ Petition is directed against the order dated 11.02.2021 passed by the fourth respondent repudiating the insurance claim and for direction to the fourth respondent to honour the claim of Rs.26,87,912/- made by the writ petitioner in respect of the policy bearing No. 0235987720 001524.

2. It is not in dispute that the petitioner's husband Dr.A.Jaheer Hussain had built a house by obtaining financial assistance of Rs.52,50,000/- from the third respondent and in order to secure the risk of inability to discharge the loan due to unforeseen circumstances such as death, the petitioner's husband had taken a home loan insurance with the fourth respondnet under Master Policy No.0235987720 for a secured sum of Rs.26,87,912/-. It is also not in dispute that the petitioner's husband got infected with Corona Virus on 03.07.2020 and was admitted in Jawarharlal Institute of Post Graduate Medical Education and Research Hospital, Pondicherry and despite treatment, unfortunately he succumbed to the illness on 26.07.2020.

3. The writ petitioner has made a claim application with the fourth respondent, but the fourth respondent had sent the impugned communication by e-mail on 11.02.2021 rejecting the petitioner's claim on two grounds, that Covid-19 is not a critical illness covered by the policy and that the petitioner's husband had suppressed the material facts with malafide intention. Challenging the rejection of the claim, the present writ petition came to be filed.

4. The learned Counsel for the petitioner would contend that the petitioner's husband died due to Covid-19 and it is a fatal discease which is universally accepted as a critical illness, that the writ petitioner's husband has not suppressed any facts at the time of taking the insurance policy and that the fourth respondent without considering the same, has passed the impugned order rejecting the petitioner's claim.

5. The fourth respondent has filed a counter affidavit taking a stand that as per the certificate issued by the JIPMER Hospital on 09.10.2020 that the insured did not suffer from any of the named critical illness as defined and covered under policy, that the insured has given

false and misleading information at the time of taking policy, that the concealment of material facts in the medical history and health condition of the insured in the proposal form is serious misrepresentation and hence, the policy came to be cancelled ab-initio in line with the provision of the clause under the policy and that therefore, the fourth respondent has rightly repudiated the claim.

6. The third respondent which has advanced a loan to the petitioner's husband has also filed a counter affidavit mainly raising the objection about the maintainability of the writ petition. Admittedly, no relief is claimed against the third respondent. But according to the petitioner, since the third respondent has been insisting to repay the loan due to them and threatened to take coercive action under SARFAESI Act, the third respondent was also impleaded.

7. It is admitted by both the petitioner as well as the fourth respondent that in the proposal form, there were some questions for which, the insured has given his answers which are now under challenge.

8. The learned Counsel for the respondents 3 and 4 have raised a technical objection with regard to the maintainability of the writ petition and since the fourth respondent is the private insurer, they will not come within the definition of the State and that therefore, the very writ petition cannot legally be maintained.

9. The learned Counsel for the writ petitioner would rely on the decision of this Court in the case of ***Jasmine Ebenezer Arthur Vs. HDFC ERGO General Insurance Company Limited and others*** in ***W.P.No.22234 of 2016 dated 06.06.2019***, reported in ***AIR 2019 MAD. 220*** wherein, a learned Judge of this Court, after referring to various decisions, has come to a decision that the writ petition is maintainable even against private insurance company and the relevant passages are extracted hereunder:-

> *"8. The basic object of the Insurance Act was to ensure the vast power concentrated in the hands of insurance companies was not abused and the policyholders' money was safely invested. However, in spite of regulations by the law, there is much abuse of the Trust by the private insurers, which lead to nationalization of insurance sector. Thereafter, the*

insurance business was conducted through the Corporations of the Central Government under Life Insurance Corporation of India and General Insurance Corporation, etc.,.

9. Today, in the modern world, there are numerous socioeconomic activities to be performed by the State. This resulted in sharing some of the obligations to the other bodies, while retaining certain level of control over them. This gave an impetus to the public and private bodies to acquire major concerns and started exercising monopoly power over its activities, which are close to State functions. By allowing these governmental functions to the private bodies, the fundamental rights of the citizens are being strained. Therefore, to protect the rights from the clutches of the Legislature, Executive, public and private agencies, the Courts have to extend their power under Article 226 of the Constitution of India, which is usefully extracted hereunder :

......

10. A reading of Article 226 makes it clear that it can be invoked not only for infringement of fundamental rights, but also for any other purpose. Therefore, as stated above, the question that requires determination is whether the private bodies performing public duties can be brought within the purview of judicial review. If a private body is

brought within the purview of Article 12, then it will be subject to constitutional limitations. As happened in this case, lack of effective control has made the private bodies acquire more power similar to public authorities. The public monopoly power is replaced by private monopoly power. Hence, it becomes necessary that the private bodies should be made accountable to judiciary within the judicial review. If any private body has a public duty imposed on it, the Court has jurisdiction to entertain the writ petition."

10. The learned Counsel for the petitioner as well as the learned Counsel for the fourth respondent would rely on the judgment of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India and others Vs. Asha Goel (Smt.) and another*** reported in ***(2001)2 SCC 160*** and the relevant paragraphs are extracted hereunder:

"Article 226 of the Constitution confers extra-ordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any fetter on exercise of the extra-ordinary jurisdiction. It is left to the discretion of the High Court. Therefore it cannot be laid down as a general proposition of law that in no

case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors, like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues; the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case.

The Courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts.

The pros and cons of the matter in the context of the fact situation of the case should be carefully weighed and appropriate decision should be taken. In a case where claim by an insured or a nominee is repudiated raising a serious dispute and the Court finds the dispute to be a s bona fide one which requires oral and documentary evidence for its *determination then the appropriate remedy is a civil suit and not a writ petition under Article 226 of the Constitution. Similarly, where a plea of fraud is pleaded by the insurer and on examination is found prima facie to have merit and oral and documentary evidence may become necessary for determination of the issue raised then a writ petition is not an appropriate remedy."*

The Hon'ble Supreme Court has specifically held that a general proposition of law cannot be laid that a claim under an Insurance Policy can never be enforced under Article 226 of the Constitution of India. Considering the above, the contention of the respondents 3 and 4 that the Writ Petition is not maintainable cannot be sustained.

11. Now turning to the merits of the case, before entering into further discussion, it is necessary to refer the decisions relied on by both the parties. The learned Counsel for the petitioner would rely on the following decisions:

(i) ***2021(13) SCC 561 (Sulbha Prakash Motegaonkar and Others Vs. Life Insurance Corporation of India)*** wherein the insurer by refering to the concealment of the fact that the insured has suppressed the fact that he was suffering from lumbar spondilitis with PID with sciatica, has rejected the claim and when the same was confirmed by the National Consumer Disputes Redressal Commission, the same was challenged before the Hon'ble Supreme Court and the relevant passages are extracted hereunder:

> *"5. It is not the case of the Insurance Company that the ailment that the deceased was suffering from was a life threatening disease which could or did cause the death of the insured. In fact, the clear case is that the deceased died due to ischaemic heart disease and also because of myocardial infarction. The concealment of lumbar spondilitis with PID with sciatica persuaded the respondent not to grant the insurance claim.*
>
> *6. We are of the opinion that the National Commission was in error in denying to the appellants the insurance claim and accepting the repudiation of the claim by the respondent. The death of the insured due to ischaemic heart disease and myocardial infarction had nothing to do with his lumbar spondilitis with PID with sciatica. In our considered opinion, since the alleged concealment was not of such a nature as would disentitle the deceased from getting his life insured, the repudiation of the claim was incorrect and not justified."*

(ii) In ***N.Lakshmi Vs. the Insurance Regulatory and Development Authority of India, Hyderabad and others*** made in W.P.No.26233 of 2022, it has been held as follows:

"8. On perusal of the records revealed that the petitioner's husband's life insured with the second respondent to the tune of Rs.71,00,000/- which was the loan amount availed by him from the fourth respondent. While being so, he died on 10.05.2021. Admittedly, during May month of 2021 peak of Covid-19 second wave. Though the petitioner's husband was not tested Covid-19, during Covid-19 pandemic, he suffered with cardiac arrest and died. In the medical certificate of cause of death issued by the Thiruvekadu Municipality, it is certified that the deceased died due to cardiac arrest. Further he died at the age of 40 years. The claim made by the petitioner was rejected only on the ground that the cause of death did not cover under the policy.

9. On perusal of the policy, the occurrence for the first time of heart attack of specified severity is covered under the policy. The petitioner's husband died due to cardiac arrest during the Covid-19. Only because of Covid-19, he suffered with cardiac arrest and it is noting but heart *attack and the demise of the petitioner's husband is very much covered under the policy. ......)*

The above decisions cannot be made applicable to the facts of the case on hand.

12. Now let us consider the decisions relied on by the learned Counsel for the fourth respondent:

i) (2001) 2 SCC 160 (Life Insurance Corpn. of India and others Vs. Asha Goel and another)

"12. ... The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called in question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person."

(ii) (2019) 6 SCC 175

(Reliance Life Insurance Company Limited and another Vs. Rekhaben Nareshbhai Rathod)

"26. .... It is standard practice for the insurer to set out in the application a series of specific questions regarding the applicant's health history and other matters relevant to insurability. The object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form the applicant declares that she/he warrants truth. The contractual duty so imposed is such that any suppression, untruth or inaccuracy in the statement in the proposal form will be considered as a breach of the duty of good faith and will render the policy voidable by the insurer. The system of adequate disclosure helps buyers and sellers of insurance policies to meet at a common point and narrow down the gap of information asymmetries. This allows the parties to serve their interests better and understand the true extent of the contractual agreement.

The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact. As this Court held in Satwant Kaur (supra) 19 (1766) 3 Burr 1905 21 "there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance". ...

27. In the present case, the insurer had sought information with respect to previous insurance policies obtained by the assured. The duty of full disclosure required that no information of substance or of interest to the insurer be omitted or concealed. Whether or not the insurer would have issued a life insurance cover despite the earlier cover of insurance is a decision which was required to be taken by the insurer after duly considering all relevant facts and circumstances. The disclosure of the earlier cover was material to an assessment of the risk which was being undertaken by the insurer. Prior to undertaking the risk, this information could potentially allow the insurer to question as to why the insured had in such a short span of time obtained two different life insurance policies. Such a fact is sufficient to put the insurer to enquiry.

.....

31. Finally, the argument of the respondent that the signatures of the assured on the form were taken without explaining the details cannot be accepted. A similar argument was correctly rejected in a decision of a Division Bench of the Mysore High Court in ***VK Srinivasa Setty v Messers Premier Life and General Insurance Co Ltd21*** *where it was held:*

> *"Now it is clear that a person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequence arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it. That is because, in filling up the proposal form, the agent normally, ceases to act as agent of the insurer but becomes the agent of the insured and no agent can be assumed to have authority from the insurer to write the answers in the proposal form.*
>
> *If an agent nevertheless does that, he becomes merely the amanuensis of the insured, and his knowledge of the untruth or*

inaccuracy of any statement contained in the form of proposal does not become the knowledge of the insurer. Further, apart from any question of imputed knowledge, the insured by signing that proposal adopts those answers and makes them his own and that would clearly be so, whether the insured signed the proposal without reading or understanding it, it being irrelevant to consider how the inaccuracy arose if he has contracted, as the plaintiff has done in this case that his written answers shall be accurate."

(iii) ***T.Nagammal Vs. The Insurance Ombudsman, Chennai and others*** in W.P.No.10852 of 2014, dated 01.02.2024;

"5. In the present case, the husband of the petitioner underwent a bypass surgery on 26.09.1999. The said fact was not indicated in the declaration form. Clause 11 of the declaration form says "Personal History". ....

6. In all the above columns, the husband of the petitioner has stated "No". The usual state of health of the husband of the petitioner was stated as " Good". Therefore, the medical history of the husband of the petitioner was suppressed.

Subsequently, the insurance company came to know that the deceased underwent a bypass surgery in the year 1999 itself and was under medication. "

13. The above decisions are squarely applicable to the present case. As already pointed out, it is the specific stand of the fourth respondent that the Writ Petitioner's husband has suppressed the material facts about his health condition. In the impugned order as well as in the counter affidavit, the fourth respondent has produced three questions and the answers found in the proposal form and the same are extracted hereunder:

"i) Have you are any of the persons proposed for insurance suffered from or taken treatment or hospitalized for or have been recommended to take medication or surgery for any of the critical medical conditions? A critical medical condition would mean cancer, end stage renal failure, multiple sclerosis, major organ transplant heart valve replacement. Coronary arthery bypass graft, stroke, paralysis, first heart attack of specific severity, total blindness, creutzfeldt-jakop

discease, primary idiopathic pulmonary hypertension, motor neuron disease, progressive scleroderma.

Ans: No

ii) Are you or any of the person proposed for insurance in good health?

Ans: Yes

iii) Are you or any of the person proposed for insurance is in good health and not undergoing/awaiting any treatment for any illness?

Ans: No"

14. No doubt, as rightly contended by the learned Counsel for the fourth respondent, Covid or Corona Virus was not shown as critical illness in the policy. But admittedly, the policy was taken in the year 2018. Till 2020 nobody is aware of the Corona virus. Moreover, as rightly contended by the learned Counsel for the petitioner, in the treatment certificate issued by the Jawaharlal Institute of Postgraduate Medical Education and Research, where the insured was taking treatment, has given the cause of death as "Septic shock with multi organ

dysfunction syndrome with severe acute respiratory distress syndrome due to sars / Covid 2 pneumonia”

15. Considering the consequent effect of the infection of Covid-19 virus and multi organ dysfunction syndrome occurred, the same can very well be covered under critical illness. But it is further evident from the treatment certificate that the insured was shown to have hypertension and diabetes mellitus and he was also described as obese. According to the fourth respondnet, the insured did not declare his medical condition of having diabetes mellitus since 20 years and hypertension since 10 years at the time of proposing for insurance and the same would amount to misrepresentation and material suppression.

16. The learned Counsel for the petitioner would contend that Corona is nothing to do with the diabetes mellitus and hypertension and hence, even assuming that the insured has suppressed the above, that would not be considered as material suppression and misrepresentation.

17. As per the article issued by the Harvard Health publication (Harvard Medical School), it has been stated that the high Blood Pressure or diabetes prior to getting Covid-19 sharply increases the risk of Covid complications and the hypertension and diabetes are considered as comorbidities.

18. As rightly pointed out by the learned Counsel for the fourth respondent, a specific question has been raised in the proposal form that whether the person proposed for insurance is in good health, the insurer has given a positive answer as “yes” and he has not mentioned about his having hypertension and diabetes mellitus for a long period and for another question, whether the person proposed for insurance is in good health and not undergoing / waiting for any treatment for any illness, he has given negative answer. But, admittedly, he was suffering from hypertension and diabetes for a long period.

19. Considering the above, this Court has no hesitation to hold that the writ petitioner's husband has suppressed the fact that he is having hypertension for ten years and is having diabetes mellitus for twenty

years and the writ petitioner has not offered any reason or explanation for not disclosing the illness in the proposal form by her husband. Since the insurer has suppressed the material facts about his health condition, taking note of the legal position above referred, the decision of the fourth respondent in repudiating the claim for the reason that the insurer has given false and misleading information to the insured, cannot be found fualt with. Hence, this Court concludes that the Writ Petition is devoid of merits and the sam is liable to be dismissed.

20. In the result, the Writ Petition is dismissed. There shall be no order as to costs.

12.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The Secretary,
   Health and Family Welfare Department,
   Fort St. George,
   Chennai.

2. The District Collector,
   Pudukkottai District,
   Pudukkottai.

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY ORDER MADE IN

W.P.(MD)No.12121 of 2021

12.08.2024