**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 18.04.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.30651 of 2023 AND**
**W.M.P.(MD)Nos.26361 & 26362 of 2023**

R.Subashini ... Petitioner

Vs.

1. The Chairman,
   HDFC Life Insurance Company Ltd.,
   12th Floor, Lodha Excelus,
   Apollo Mills Compound, NM Joshi Road,
   Mahalaxmi, Mumbai – 400 011,
   State of Maharastra.

2. The Branch Manager,
   HDFC Life Insurance Company Ltd.,
   45, Sanmugaraja Road,
   Karaikudi, Sivagangai District.

3. The Chairman,
   Bajaj Finserv Finance Ltd.,
   4th Floor, 208/1-B, Behind Weikfied IT Park,
   Viman Nagar, Pune – 411 014,
   State of Maharastra.

4. The Manager,
   Bajaj Finance Ltd.,
   Unit Nos. 804, 805 and 806,
   Delta Wing, 8th Floor, Raheja Towers,
   No.177, Anna Salai,
   Chennai – 600 002.

5. The Branch Manager,
   Bajaj Finance Ltd.,
   Karaikudi, Sivagangai District.

6. Dr.C.Stalin Raja,
Assistant Surgeon,
Government District Head Quarters Hospital,
Karaikudi, Sivagangai District. ... Respondents

**Prayer:** Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the first respondent HDFC Life Insurance Company Ltd., dated 31.03.2023, quash the same and further direct respondents 1 to 5 to disburse the insurance coverage amount bearing policy No.PP000208 and UIN:101N096V03 to the petitioner.

(Prayer is amended vide order dated 18.04.2024 in W.M.P.(MD)No.8309 of 2024)

For Petitioner : Mr.S.Xavier Rajini

For R-3 to R-5 : Mr.I.Suthakaran

For R-1, R-2&R-6 : No appearance.

* * *

**O R D E R**

Heard the learned counsel appearing for the writ petitioner and the learned counsel appearing for respondents 3 to 5.

2. The petitioner's husband had availed loan from the third respondent herein after mortgaging the petition mentioned property. The loan was also duly insured with HDFC Life Insurance Company Ltd.. The loan was sanctioned on 31.07.2021. The insurance policy was taken contemporaneously and the policy was valid from 31.07.2021 up to 30.07.2024. The petitioner's husband passed away on 14.01.2023 due to cardiac arrest. The petitioner informed the insurance company to honour the insurance claim so that the loan liability would be automatically liquidated. The insurance company informed the petitioner vide communication dated 31.03.2023 that since there was suppression of preexisting disease, claim cannot be honoured. Challenging the same, this writ petition came to be filed.

3. The petitioner had arrayed HDFC Life Insurance Co. Ltd., as respondents 1 and 2. Address of the headquarters was shown as the address for the first respondent, while the address of the branch office was shown as the address for the second respondent. Notices were sent through Court as well as privately. Notices were served on the insurer. Though the names of respondents 1 and 2 are printed in the cause list, they have not chosen to enter appearance.

4. The creditor, namely, Bajaj Finserv Finance Ltd., is before this Court. I requested the learned counsel for the creditor to inform the insurer about the listing of this case. Best efforts were taken by the fifth respondent to intimate HDFC Life Insurance Company Ltd. But still there is no response.

5. The insurance claim has been rejected only for the reason that the petitioner's husband was suffering from a preexisting disease, namely, hypertension. In this regard, the sixth respondent has given a medical certificate. A copy of the same has been enclosed at page Nos.31 to 33 of the typed set of papers. The petitioner in the affidavit filed in support of this writ petition has taken a specific stand that since the sixth respondent is a panel doctor for the insurance company, he had given a false certificate. Paragraph Nos.10 and 11 of the affidavit filed in support of the writ petition read as follows:-

> “10. I state that having known the certificate issued by the sixth respondent doctor, I enquired with him regarding the certificate issued by him dated 14.01.2023, and he replied that due to inadvertently he indicated as 5 years, and again he issued another certificate dated . 04.2023 indicating that my husband took treatment six

months back for Hyper tension, and my husband was on regular treatment for the past six months.

11. It is respectfully submitted that the 6th respondent doctor is discharging his duties without professional ethics and on collusion with the first respondent insurance company. It is pertinent to state that my husband has not taken any treatment with him for a single day either before his private clinic or before the Government Hospital. On the other hand, I have taken treatment before him in his private clinic for lungs infection."

Ground H reads as follows:-

"The first respondent ought not to have relied upon the certificate issued by is own doctor indicating contradictory statement, and the petitioner's husband has not taken any treatment before him for a single day."

6. The petitioner has rightly arrayed the said doctor as the sixth respondent. Notice issued to the sixth respondent has been duly served and his name has also been printed in the cause list. He has also not chosen to enter appearance. In these circumstances, this Court has to

necessarily proceed on the premise that the averments made by the petitioner are uncontroverted.

7. I initially entertained a doubt about the maintainability of the writ petition. A learned Judge of this Court in the decision reported in ***AIR 2019 MAD 220 (Jasmine Ebenezer Arthur Vs. HDFC ERGO General Insurance Company Limited and Ors.)*** held that a writ petition challenging the repudiation policy and claim by a private insurance company(HDFC ERGO General Insurance Company Limited) was maintainable. It was held therein as follows:-

> " 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.

...

12. It is argued by the respondents 1 and 2 that it is not performing any statutory function or obligations. According to the first respondent, the dispute has to be effectively decided only based on evidence and merely because Insurance Regulatory and Development Authority of India (in short, "IRDAI") is arrayed as the third respondent, Article 226 of the Constitution cannot be made applicable. The question whether writ petition was maintainable depends on the fact that the facts had an analogy with public law issues. ...

13. Even though law seems to be clear in constituting a balance between the insuring party and insured, in reality, there is no equality between the two as insurer is the richest corporation and the individual is an ordinary individual. In fact, in many cases, the individual

has no legal knowledge about the ambiguous language used in the company's policy with an intention to waive them from the liability to pay the injured on happening of an agreed event. Many a times the companies willfully neglect reimbursing the insured, who instead of getting their amount from the company have to pay the Courts for getting their rights enforced. ...

14. In India, there should be more transparency and accuracy of the facts before the contract comes into force. This reduces chances of confusion later, when the claim is made under the insurance policy. The malpractice and arbitrary use of power by the insurance companies must be restrained by incorporating provisions to reduce the chances of ambiguity at a later date. Or else, the insurer would continue to take advantage of the insured by falsely repudiating the claims made by the insured. "

The learned counsel draws my attention to the order dated ***27.11.2023*** made in ***W.P.(MD)No.2164 of 2021(R.Vasanth Kumari (Died) V. The Branch Manager, Canara Bank).***

8. I am satisfied that the aforesaid decisions clearly indicate

that the High Court would be justified in exercising its jurisdiction under Article 226 of the Constitution of India even in cases of insurance claims.

9. I carefully went through the letter of repudiation as well as the certificate issued by the sixth respondent. In fact, the letter of repudiation rests entirely on the stand of the sixth respondent. The sixth respondent had not enclosed any contemporaneous material to show that he had given treatment for hypertension to the petitioner's husband. The certificate issued by the sixth respondent is subsequent in point of time. If the certificates of the sixth respondent had been issued before the issuance of insurance policy, then the repudiation would have been in order. Likewise the insurer has not come before this Court to show that the petitioner's husband had suffered from the preexisting disease before the issuance of policy. Since the insurance company has not chosen to come before this Court to controvert the petitioner's allegations, I am constrained to intervene in favour of the petitioner. The impugned rejection made by the HDFC Life Insurance Company Ltd., is set aside.

10. Relief has to be granted to the petitioner on the following grounds:-

a) The insurer has not established before this Court that the deceased was actually suffering from a preexisting disease as certified by the sixth respondent.

b) There is nothing on record to show that the preexisting disease cited by the insurer was the cause of the policy holder's death. The burden to establish this fact is only on the insurance company. HDFC Life Insurance Company Ltd., cannot wash away their hands. They have not discharged this burden.

In this view of the matter, the letter of repudiation is set aside. The respondents 1 and 2 are directed to pay the insurance amount to the fifth respondent. This shall be done immediately and without any delay. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**18.04.2024**

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

**G.R.SWAMINATHAN,J.**

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