IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-06-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 2416 of 2024
and WMP No. 2619 of 2024

Mrs.M.Geetha

Petitioner(s)

Vs

1. The Chairman Cum Managing Director
United India Insurance Company Ltd.,
Registered And Head Office,
No. 24 Whites Road,
Chennai 600 014

2.The Manager
United India Insurance Company Ltd.,
Branch Office - 010909 , Plot No. 112,
2nd Floor, Thiruvalluvar Salai,
Thiruvanmiyur
Chennai 600 041

3.Administrative Officer
Office Of Insurance Ombudsman,
Fathima Akhtar Court,
4th Floor, 453 (old No. 31),
Anna Salai, Teynampet, Chennai 18

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent in vide Reference No. IO/ CHN/A/ HI/ 0045/ 2020-2021 dated 31.08.2020 based on the rejection order of the 1st respondent rejecting the petitioner claim which was covered under valid insurance policy No. 0109094218P117064832 valid from 27.03.2019 to 26.03.2020 to quash the same and consequently direct the 1st respondent to pay compensation with interest within a time frame as fixed by this court.

For Petitioner(s): Mr.M.R. Thangavel

For Respondent(s): Mr.Caldwell Justine

ORDER

This writ petition has been filed assailing the Award passed by the 1st respondent dated 31.08.2020, rejecting the claim made by the petitioner seeking for settlement of policy amount by the 2nd respondent Insurance Company.

2.The case of the petitioner is that she was married to one Mohanavasan and out of the wedlock there were two girl children who were aged about 17 years and 12 years respectively. The petitioner's husband during his lifetime had taken an Individual Personal Accidental Policy with the United India Insurance Company Limited and the policy was subsisting for the period from 27.03.2019 to 26.03.2020.

3.On the fateful day on 22.04.2019, the petitioner's husband had gone to the house of one of his friend to attend a function. At about 3.30 p.m., the petitioner was informed that her husband drowned in a nearby lake when he went for bathing. Unfortunately, he was brought dead to the Government Hospital, Tambaram.

4.The post-mortem was conducted the next day and a final opinion was given stating that the death was caused due to asphyxia by drowning.

5.The petitioner submitted a claim before the Insurance Company and the same was rejected by the Insurance Company on the ground that the petitioner's husband drowned due to intoxication and consumption of alcohol and hence, the same fell within the exception 5(b) of the Policy which excludes payment of compensation in respect of death of the insured whilst under the influence of intoxicating liquor.

6.The petitioner aggrieved by the repudiation of the claim submitted a complaint before the 1st respondent. The 1st respondent through proceedings dated 31.08.2020 passed an Award rejecting the claim and confirming the stand taken by the Insurance Company. Aggrieved by the same, the present writ petition has been filed before this Court.

7.The Insurance Company has filed a counter and they have taken a stand that the petitioner while giving complaint before the Peerkankaranai Police Station had specifically mentioned in the complaint that her husband had gone to his friend's house and had consumed alcohol and thereafter, when he went to the lake for bathing, he drowned due to influence of alcohol. Hence, the 1st respondent has taken a stand that the petitioner after having admitted to this fact, cannot insist for the payment of the claim amount since it is a breach of the terms of contract. Accordingly, the Insurance Company has sought for the dismissal of this writ petition.

8.Heard Mr.M.R.Thangavel, learned counsel appearing on behalf of the petitioner and Mr.Caldwell Justine, learned counsel appearing on behalf of the respondents.

9.While dealing with the decision taken by the Ombudsman, this Court must keep in mind that the said authority is not a replacement for a Civil Court and the authority was brought in as a mechanism to ensure that claims made before the Insurance Company are not rejected in an arbitrary fashion and the parties are not driven to Court where genuine claims are made under a policy. Keeping this in mind, this Court will test the proceedings of the 1st respondent, dated 31.08.2020.

10.There is no dispute with regard to the fact that the petitioner's husband had an Individual Personal Accident Policy Cover issued by the 2nd respondent Insurance Company. This was for the period from 27.03.2019 to 26.03.2020. The petitioner's husband Mohanavasan died on 22.04.2019 and hence, his demise had occurred during the subsistence of the policy.

11.The Insurance Company is repudiating the claim mainly on the ground that the petitioner's husband was under the influence of alcohol at the time of drowning and therefore, the claim is excluded under Clause 5(b) of the Policy.

12.The basis on which such a stand has been taken by the Insurance Company is the FIR that was registered in Crime No.292 of 2019 by the Peerkankaranai Police Station, St. Thomas Mount. On carefully reading the FIR, it is seen that the petitioner was informed by one of the friends of her husband that her husband attended the function and at about 3.30 p.m., he went along with his friends and consumed alcohol and he was bathing in a lake and he drowned. What is evident from this complaint is that the petitioner was not personally aware as to whether her husband was under the influence of alcohol. She had stated so in the complaint based on what was informed to her by one of the friend of the deceased.

13.It is relevant to take note of the Post-mortem Certificate that was issued by the Medical Officer of Government Hospital, Tambaram after conducting the post-mortem on 23.04.2019 at about 12 noon. On internal examination, the following findings were noted:

> *Internal Examination: Head - skull intact, membrane intact, Brain congested, based of skull intact, Ribs intact, heart - enlarged, 100 ml of clotted blood, lungs - congested, squeeze test positive, hybrid intact, stomach - 10 ml of partially digested food particles, liver, spleen, kidney, intestine - congested, Bladder empty.*

14.The viscera was sent for a chemical examination and the chemical analyst has given a report as follows:

No poison detected to viscera (Tox.H.No.1189/2019)

No diatom detected (T.No.3558/2019 BIOL 257/2019)

15.Ultimately, the opinion of the post-mortem Doctor regarding the cause of death is that the deceased had died of asphyxia caused by drowning.

16.The Post-mortem Report did not give any indication of traces of alcohol found in the internal organs. In view of the same, an expert opinion was sought for from a Doctor. The Doctor on going through the entire report came to a conclusion that there is no scientific evidence to prove that the deceased consumed alcohol. He further stated that if there were traces of alcohol, the post-mortem Doctor would have mentioned about the same in the report. Even in the Viscera Report, nowhere it was mentioned that alcohol was detected in the sample received. The Doctor has further confirmed that alcohol determination can be made for 36 hours after death. The post-mortem had happened within 24 hours and the viscera report was also received within 24 hours and the presence of alcohol does not find a mention in those reports.

17.A very detailed report has been given by the Doctor and it is quite evident that there was no scientific evidence to prove that the petitioner's husband consumed alcohol.

18.The 1st respondent while passing the order has strongly relied upon the FIR that was registered after the complaint was given by the petitioner. The statement of the petitioner to the effect that she was informed by the friend of the deceased that he consumed alcohol, was put against the petitioner. Accordingly, the claim was rejected.

19.If there are disputed questions of fact which requires recording of evidence and appreciation of evidence, certainly this Court will not exercise its jurisdiction under Article 226 of the Constitution of India. However, when the facts are straight forward and it does not require taking evidence, this Court can always exercise its jurisdiction under Article 226 of the Constitution of India and the law on this issue is now too well settled.

20.Keeping the above in mind, what is available before this Court are the statement made by the petitioner in the complaint given to the police based on what was informed to her by a friend of the deceased and on the other hand, the scientific evidence in terms of Post-mortem Certificate, Viscera Report and the opinion of the Doctor are available.

21.What was stated by the petitioner in the complaint is purely hearsay. The petitioner did not have any personal knowledge and she had merely stated what she heard from one of the friend to the effect that her husband consumed alcohol. If ultimately, some traces of alcohol were detected during post-mortem or at the time of analysing the viscera, the complaint given by the petitioner can be said to be supported/substantiated by such scientific evidence. However, the scientific evidence that is available does not support the statement made by the petitioner in the complaint which is more in the nature of hearsay.

22.The Post-mortem Report and the Viscera Report were made available within 24 hours from the time of death of the petitioner's husband. There is not even an indication that there were traces of alcohol. A scientific evidence will not lie and it is the safest evidence that can be acted upon by a Court. Hence, scientific evidence pitted against the hearsay statement given by the petitioner in the complaint, necessarily the scientific evidence has to be acted upon.

23.In the light of the above discussion, this Court holds that the Insurance Company as well as the 1st respondent had given needless importance to the statement of the petitioner in the complaint which has been held by this Court to be a hearsay and they have not taken into consideration the overwhelming scientific evidence that was available. Hence, the rejection of the claim made by the 2nd respondent Insurance Company is unsustainable and the order passed by the 1st respondent has to be necessarily interfered by this Court.

24.In the light of the above discussion, the impugned proceedings of the 1st respondent dated 31.08.2020, is hereby quashed and there shall be a direction to the 2nd respondent to pay the compensation amount to which the petitioner is entitled under the Policy, within a period of four weeks from the date of receipt of copy of this order.

25.In the result, this writ petition stand allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

27-06-2025

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

To

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No. 24 Whites Road, Chennai 600 014

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N.ANAND VENKATESH J.

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