BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.07.2025

PRONOUNCED ON: 13.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.24532 of 2022
and
W.M.P.(MD)No. 18596 of 2022

Rani ... Petitioner

Vs.

1. The Insurance Ombudsman,
Fathima Akthar Court, 4th Floor,
453, Anna Salai, Teynampet,
Chennai - 18.

2. HDFC Life Insurance Co Ltd.
Rep by its Authorized Officer
13th Floor, Lodha Excelus, Apollo Mills Compound
N.M.Joshi Road, Mahalakshmi ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Order passed by the 2nd respondent in Policy No. PP000239 dated 28.03.2021 and consequent order passed by the 1st respondent in Ref.No.CHN-L-019-2223-0137 dated 03.10.2022 and quash the same and directing the 2nd respondent to disburse the insured amount with interest fixed by this Hon'ble Court in Policy No. PP000239.

For Petitioner : Mr.R.M.Arun Swaminathan

For Respondent : Mr.C.Muthu Saravanan

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ORDER

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the 2nd respondent in Policy No. PP000239 dated 28.03.2021 and consequent order passed by the 1st respondent in Ref.No.CHN-L-019-2223-0137 dated 03.10.2022 and to direct the 2nd respondent to disburse the insured amount with interest fixed by this Court in Policy No. PP000239.

2.1. The brief facts as stated in the affidavit are that the petitioner's husband namely Xavier Selvin has insured with 2nd respondent company in Policy No. PP000239 for Rs.10,47,087/- lakhs on 08.02.2019 and subsequently died on 04.03.2020. The petitioner submitted the claim with the Insurer Office at Madurai on 23.03.2020 and the same was examined by the concerned officer, who raised several questions and the petitioner being wife of deceased aware of the facts, had answered the questions accordingly. The petitioner subsequently came to understand that the Branch Manager of HDFC Life Insurance have asked some queries to one Doctor S.Sivakumar. But the petitioner's husband was never treated or consulted with the said Dr.S.Sivakumar. Without knowing the history of the patient, the Doctor cannot give such a statement, which is against his professional Ethics and also against the Natural Justice. Based on his statement dated 16.03.2020, the authorized authority has rejected the claim. Even the impugned order was not served to the petitioner. But after repeated request of petitioner's brother, the photo copy of the impugned order was given on 26.04.2021.

2.2. The impugned order states that the petitioner had suppressed the material facts and intentionally mislead the company in order to get claim. But the petitioner opposed strongly and condemned the words and also replied the true facts. Further the petitioner was never having any intention to mislead the HDFC Life Insurance Company. Hence the petitioner filed appeal before the Review Committee of the respondent company, but no progress in the appeal. Hence the petitioner submitted an application to the 1st respondent Ombudsmen. The 1st respondent has conducted VC Meeting and passed the subsequent impugned order in Ref.No.CHN-L-019-2223-0137 dated 03.10.2022. Aggrieved over the same the present writ petition is filed.

3.1. The 2nd respondent has filed counter affidavit, wherein the respondent denied the allegations and submitted no averments of the petitioner are admitted by the 2nd respondent. Further stated that the deceased had insured under Policy No. PP00239 for Rs.10,47,087/-, after the death of the insurer on 04.03.2020, the petitioner had submitted a claim to the 2nd respondent on 23.03.2020 along with the necessary insurance documents, medical certificate of the deceased and the death certificate. After thorough perusal of the application and documents it revealed that there are grounds for concern, specifically the doctor's certificate dated 16.03.2020 contained crucial information that the deceased suffered from DM/IHO/Rheumatoid Arthritis for past 5 years. This information clearly indicates that the deceased had been afflicted with Diabetes Mellitus, Ischemic Heart Disease and Rheumatoid Arthritis for five years prior to insurance, which information is pre-existing medical conditions was concealed when acquiring the insurance policy. Hence, the 2nd respondent has rejected the application with a remark that the petitioner shall prefer appeal within 30 days of the order.

3.2. Further stated that if the insurer disclosed his true health condition at the time of taking the policy, the respondent would not have approved the policy without medical examination. Further stated that the petitioner had averred in her affidavit that she had filed revision against the order, but the petitioner has not whispered any details with regard the revision. The petitioner had filed a complaint before 1st respondent in Ref. No CHN-L-019-2223-0137 letter dated 28.03.2021 against their repudiation. The 1st respondent had conducted enquiry and after hearing both sides 1st respondent passed order dated 03.10.2022 by upholding the stand of the 2nd respondent.

3.5 Furthermore stated that the clarification letter given by the Doctor to the Joint Director also confirms that the deceased was suffering from Diabetes Mellitus, Ischemic Heart Disease and Rheumatoid Arthritis for past five years. Thus, the suppression of medical condition of deceased has been proved without any doubt. And the petitioner has not approached this Court with clean hands. The order dated 28.03.2021 was passed only after verifying the documents produced by the petitioner. It is pertinent to note that 1st respondent conducted detailed enquiry and passed the subsequent order in Ref.No.CHN-L-019-2223-0137 on 03.10.2022 by upholding their findings. Hence the respondents prayed to dismiss the writ petition.

4. Heard Mr.R.M.Arun Swaminathan, the Learned Counsel appearing for the petitioner and Mr.C.Muthu Saravanan, the Learned Counsel appearing for the 2nd respondent and perused the records.

5. The ground on which the petitioner's policy claim was rejected is that

the petitioner's husband had no disclosed the aliment he suffered. The respondent had relied on the question and the answer submitted by the deceased, which is extracted hereunder:

> *"1. Have you ever suffered or are currently suffering from (a) Chest pain or heart attack or any other heart disease, (b) Cancer, tumour growth or cyst of any kind, (c) Stroke, paralysis Epilepsy any psychiatric/mental disorder, disorder of brain/nervous system or any kind of physical disabilities, (d) Asthma, tuberculosis or lung disorder (e) Disease or disorder of muscles, bones or joint, arthritis or blood disorder (anaemia) or any endocrine disorder, (f) Disease of the kidney, digestive system (stomach, pancreas, gall bladder, intestine -*
>
> *Yes No (No has been ticked)*
>
> *2. Are you taking any medication or has a doctor ever attended to you for any conditions, diseases or impairment not mentioned above (except for cough or cold)?*
>
> *Yes No (No has been ticked)"*

6. Further the 2nd respondent had relied on the certificate issued by a doctor namely Dr. Sivakumar, wherein the certificate states that the deceased was suffering from DM/IHO/Rheumatoid Arthritis for the past five years and died due to sudden

cardiac arrest and the relevant portion extracted hereunder:

> *"Mr. Xavier Selwin S/o Ebenezer 55/M resides at No.4/420, Aravindh Nagar 3rd Street, Thanakkankulam, Thirunagar, Madurai was suffering from DM/IHO/Rheumatoid Arthritis for past 5 years."*

Based on the above two reasons the 2nd respondent had denied the insurance claim.

7. It is seen that the 2nd respondent had relied on the question and the answer submitted by the deceased person and had denied the claim. But while accepting the insurance contract the respondent failed to seek any medical report. At least the respondent ought to have sought for blood test which would have indicated the diabetes and rheumatoid arthritis. The same issue was already dealt by another Learned Single Judge in W.P.No.2249 of 2009 vide order dated 24.08.2018 in the case of S.Tenzingh Vs. the Insurance Omdudsman and others wherein it is held as under:

> *"10. In the fact, the Honourable Supreme Court in the case of United India Insurance Company Vs MKJ Corporation 1996 (6) SCC 428 has observed that, it is a fundamental principle of insurance law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) would he privately knows to draw the other into a*

bargain, from his manners ignorance of that facts and his believing the contrary. Just as the insured has a duty to disclose, similarly, it is the duty of the insurers and their agents to disclose all material facts within their knowledge, since, obligation of good faith applies to them equally with the assured. The duty of good faith is of a continuing nature. After completion of the contract no material alteration can be made in its terms except by the mutual consent.

11. Material on record disclosure reveals that the petitioner had taken 9 policies. The insurance company has not stated as to whether it was specifically put to the petitioner that whether he was a diabetic or was suffering from hypertension or not. In any event the insurance company should have insisted on a blood test before granting the insurance cover. ***Without conducting a preliminary blood test which would have establish the petitioner is a diabetic****. The insurance company cannot rely upon on the statements given by the relatives of the petitioner at the time of admission for concluding that the petitioner had suppressed the fact that he has a diabetic at the time of taking the insurance policy. It is well known that a diabetic person does even come to know as whether he has diabetic till he is actually diagnosed. The insurance company after 9 policies which has been taken by the petitioner without even insisting it on a blood test report cannot turn back from its liability.*

12. A perusal of the counter would show that the insurance company is contending, had they came to know that the petitioner is a diabetic or he had *undergone a surgery would not have given the insurance cover. They also point states the petitioner had a habit of consuming alcohol for the past 25 years. The issue is to whether all these are material facts or not and is the insurance company justified in taking this issue. As stated earlier, the insurance company did not even insist on a simple blood test report before granting the insurance cover to the petitioner. It was equally incumbent on the insurance company to insist on a blood test.*

13. As stated by the Honourable Supreme Court in the case of United India Insurance Company Vs MKJ Corporation 1996 (6) SCC 428, good faith applies to both insurer and insured. The facts here shows that the insurance company is not acting in good faith. ***It does not lie in the mouth of the insurance company to deny the insurance claim on the ground that the petitioner had not disclosed that he was a diabetic at the time when the policy was taken. The defense to deny the claim on the ground of ailment which alleged by the petitioner was suffering is a complete after thought. The defense has been taken only after seeing discharge summary****.*

14. The writ petition is allowed. The insurance company is directed to pay the petitioner amount under the insurance policy within 4 months with interest at the rate of 6% per annum from the date of the claim till the date of end. There shall be no order as to costs."

8. Aggrieved over the aforesaid judgment, the insurance company preferred appeal in W.A.No.661 of 2019 and the order passed by the Learned Single Judge was confirmed vide order dated 27.02.2019.

9. In the present case, the facts are similar. In the above case it is discharge summary, but in the present case it is the certificate issued by a doctor immediately after the death of the insurer. The 2nd respondent without conducting a preliminary blood test which would have establish the petitioner is a diabetic or rheumatoid arthritis, cannot now deny the claim of the petitioner. Further relying on the death certificate is only after thought. Therefore, following the above orders, this Court is of the considered opinion that the 2nd respondent has no ground to deny the claim. Consequently, the respondent is directed to pay the same with 6% interest from the date of claim petition, (*)within a period of four weeks from today, i.e., on 19.08.2025

10. With the above observations and direction, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

13/08/2025

(*)Added as per order of this Court dated 19/08/2025 made in WP(MD)No. 24532 of 2022

Sd/-

Assistant Registrar (CS II)

// True Copy //

/02/2025

Sub Assistant Registrar(CS)

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W.P(MD)No.24532 of 2022

DATED : 13.08.2025

MGJ (19.08.2025) 11P/ 1C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023