

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26233 of 2022
and W.M.P.No.10847 of 2024

N.Lakshmi

...Petitioner

-Vs -

1. The Insurance Regulatory and
Development Authority of India,
Sy No.115/1, Financial District,
Nankramguda, Gachibowli,
Hyderabad – 600 032.

2. The Authorized Officer,
The ICICI lambard General
Insurance Companu Ltd.,
ICICI Lambar House,
414, P.Balu Marg,
Off Veer Sawarkar Marg,
Near Siddhivinayak Temple,
Prabhadevi, Mumbai – 400 025.

3. The General Manager,
Reserve Bank of India,
Kamarajar Salai,
Chennai – 600 001.

4. The Authorized Officer,
DCB Bank Ltd.,
6, Rajaji Road,
Nungambakkam,
Chennai – 600 034

... Respondents



W.P.No.26233 of 2022

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in claim reference No.SCM044231808 dated 20.12.2021 and quash the same and consequently direct the respondents 1 & 2 to release the insured amount in policy number 4080/DCB/156681458/00/00 in loan No.DRBLCHE00465053 of Rs.40,00,000/- and policy number 4080/DCB/205087286/00/00 loan No.DRSBCHE005075333 of an amount of Rs.31,00,000/-. (*Prayer amended as per order dated 26.04.2024 in W.M.PNo.13171 of 2024 in W.P.No.26233 of 2022*)

For Petitioner : Mr.K.Suresh Babu
For Mr.N.Vijayaraj
For Respondents
For R1 : Mr.M.B.Raghavan
M/s.M.B.Gopalan Associates
For R2 : Mr.B.Sivakallapan

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 20.12.2021, thereby repudiated the claim made by the petitioner.

2. The petitioner's husband obtained loan from the fourth respondent under loan No.DRBLCHE00465053 to the tune of Rs.40,00,000/- and another loan No.DRSBCHE005075333 for an



amount of Rs.31,00,000/-. Both the loans mandate the loan borrower life to be insured. Therefore, the petitioner's husband insured his life to the tune of Rs.71,00,000/- for the loan amount with the second respondent.

3. While being so, the petitioner's husband died on 10.05.2021 due to sudden cardiac arrest during the second wave of Covid -19 pandemic, as such no postmortem was conducted on the body of the deceased petitioner's husband. In fact, it was duly recorded as “cause of death is cardiac arrest” by the Tiruverkadu Municipality assessed by the doctors. Immediately the petitioner, being the wife of the deceased, made claim before the second respondent.

4. The second respondent repudiated the claim made by the petitioner on the ground that no investigations were done and no postmortem was done and therefore, the cause of death was not known. Further on verification there was no major medical illness and procedures as defined and covered under the policy. Hence the claim falls outside the purview of the major medical illness and procedure defined and covered under the policy. Further if any grievance, the petitioner can seek remedy of Grievance Redressal procedure before the Insurance Ombudsman.

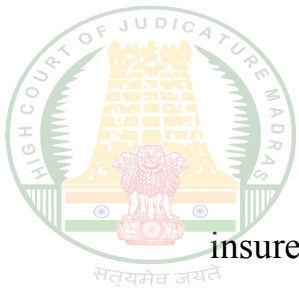


Aggrieved by the same, the present Writ Petition.

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5. The learned counsel appearing for the petitioner submitted that though there is remedy before the Ombudsman, the repudiation of claim made by the petitioner is arbitrary and against the law. Therefore, the writ petition is very much maintainable before this Court under Article 226 of the Constitution of India. Insofar as the claim is concerned, admittedly the petitioner's husband died due to cardiac arrest and it is nothing but heart attack. Due to Covid-19, there was no postmortem and due to sudden demise the deceased was not tested. Further he died during Covid-19 pandemic situations and he was suffered with severe cardiac arrest. It comes under the category of major medical illness. All of us sudden he died and he was 40 years old at the time of his demise.

5.1. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Gurmel Singh Vs. Branch Manager, National Insurance Co. Ltd.***, reported in ***2022 SCC OnLine SC 666***, which held that the documents which were asked by the



insurer were beyond the control of the claimant to procure and furnish.

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Once there was a valid insurance on payment of huge sum by way of premium, the insurance company ought not to have become too technical and ought not to have refused to settle the claim on non-submission of documents. Further held that while settling the claims, the insurance company should not be too technical and asked for the documents.

5.2. He also relied upon the judgment of this Court reported in **2019 SCC OnLine Mad 2246** in the case of **Jasmine Ebenezer Arthur Vs. HDFC ERGO General Insurance Company Ltd., & ors.**, in which this Court held that the writ petition is very much maintainable not only for infringement of fundamental rights but also for any other purposes. 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 of the Constitution of India, then it will be subject to constitutional limitations. Therefore, it become necessary that the private bodies should be made accountable to judiciary within the judicial review.

6. Per contra, the learned counsel appearing for the second



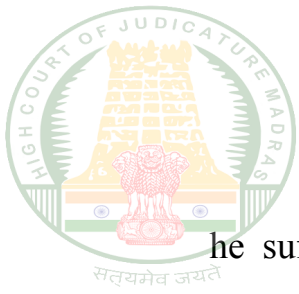
respondent submitted that as against the repudiation of the claim made by the petitioner there is a remedy before the Insurance Ombudsman.

Without approaching the Insurance Ombudsman, the petitioner filed this writ petition and therefore, the present writ petition is not maintainable.

Further as per the policy condition, the cardiac arrest would not come under the coverage of the policy. Admittedly, the petitioner's husband died due to cardiac arrest and therefore the insurance policy taken by the petitioner's husband has not been covered and as such, the second respondent rightly repudiated the claim made by the petitioner.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

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. As held by the Hon'ble Supreme Court of India, the insurance company should not be too technical and acted arbitrarily. There is no doubt over the insurance policy, which was taken by the petitioner's husband. After issuance of insurance policy, they have received premium amount and therefore, the claim cannot be rejected on technical ground.

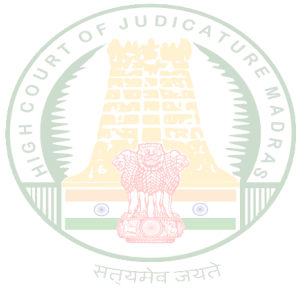
10. As held by this Court in *Jasmine Ebenezer* case, as stated supra, even though law seems to be clear constituting a balance between



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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. The case on hand is the classic example of the same. The petitioner's husband suffering with sudden cardiac arrest and it falls under the one of the disease covered under the policy. Further the policy conditions cover the disease and no one can be stated as it is not major medical illness.

11. In view of the above discussions, the order impugned in this writ petition cannot be sustained and liable to be quashed. Accordingly, order passed by the second respondent in claim reference No.SCM044231808 dated 20.12.2021, is hereby quashed. The second respondent is directed to allow the claim of the petitioner and disburse the insured amount within a period of four weeks from the date of receipt of a copy of this Order.



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12. With the above directions, the Writ Petition stands allowed.

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Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

29.04.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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W.P.No.26233 of 2022

G.K.ILANTHIRAIYAN. J.

rts

To

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Development Authority of India,
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