

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 28TH DAY OF SEPTEMBER 2012/6TH ASWINA 1934

WP(C).No. 2393 of 2005 (I)

PETITIONER :

SUKUMARI, W/O. LATE N.ARJUNAN,
KEEZHOOTTUTHOTTATHIL VEEDU, VAKKANAD P.O.
KUKZHUMATTIKKADU (VIA), KAREEPRA
KOTTARAKKARA TALUK, KOLLAM DISTRICT, PIN-691 509.

BY ADV. SRI.ANIL K. NARENDRA

RESPONDENT(S):

1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT
AGRICULTURE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, KAREEPRA, KOTTARAKKARA
KOLLAM DISTRICT.
3. THE NEW INDIA ASSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, FIRST FLOOR, K.A.V.S.BUILDING
M.G.ROAD, KOCHI-682 016,
REP. BY ITS DIVISIONAL MANAGER.

R1 & R2 BY GOVT. PLEADER SRI. EGY N. ELIAS
R3 BY ADV. SRI. P.J. JOSEPH PANIKKASSERY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-09-2012,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF G.O.(MS) NO. 144/99/AD DATED 2.6.99 ISSUED BY THE 1ST RESPONDENT.
- EXT.P2 : COPY OF G.O.(MS) NO. 50/2000/AGRI. DATED 17.2.2000 ISSUED BY THE 1ST RESPONDENT.
- EXT.P3 : COPY OF THE KARSHAKA RAKSHA INSURANCE CERTIFICATE ISSUED TO LATE N.ARJUNAN.
- EXT.P4 : COPY OF DETAILED REPRESENTATION DATED 7.5.2001 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT.P5 : COPY OF REPLY DATED 23.5.2001 SUBMITTED BY THE 2ND RESPONDENT TO THE GOVERNMENT.
- EXT.P6 : COPY OF COMMUNICATION DATED 19.5.2001 OF THE 1ST RESPONDENT ADDRESSED TO THE PETITIONER.
- EXT.P7 : COPY OF COMMUNICATION DATED 2.8.2003 OF THE 1ST RESPONDENT TO THE 3RD RESPONDENT.
- EXT.P8 : COPY OF COVERING LETTER DATED 2.8.2003 OF THE 1ST RESPONDENT ADDRESSED TO THE PETITIONER.
- EXT.P9 : COPY OF REPRESENTATION DATED 7.8.2003 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P10 : COPY OF COMMUNICATION DATED 9.2.2004 OF THE 3RD RESPONDENT ADDRESSED TO THE DIRECTOR OF AGRICULTURE.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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A.M.SHAFIQUE, J.

W.P.(C) No. 2393 of 2005 - I

Dated this the 28th day of September, 2012

J U D G M E N T

The petitioner challenges Ext.P10 order issued by the Insurance Company denying the benefit of Ext.P3 policy. The policy was issued in pursuance of Ext.P1, a scheme of the Government of Kerala wherein the Government decided to insure about the 10 lakh farmers by paying an amount of Rs.one crore as premium to the Insurance Company. By Ext.P2 certain modifications were made to the Scheme by which the farmers or agriculturists having more than 10 cents of land were also enrolled as beneficiaries of the Scheme. It is in that manner, Ext.P3 came to be issued. Though there is no date in the policy, it is an admitted fact that Ext.P3 was issued on 18.4.2000. The insurer died on 3.5.2000 in a road accident. When a claim was raised the Insurance Company by Ext.P10 rejected the claim on the basis that

as per the master policy issued by them there is a clause which says that the policy will commence on the date of receipt of the farmers list being furnished by the Department of Agriculture to the Insurance Company. According to them, the said list was received only on 1.8.2000 and therefore there is no obligation on the part of Insurance Company to pay the insured amount. Though it is stated that the Insurance Company had filed a counter affidavit, it is not seen on record and it seems that the petitioner had filed reply affidavit based on a copy served on the counsel for the petitioner.

2. The Government has filed a counter affidavit supporting the stand taken by the petitioner.

3. The main contention urged by the counsel for the petitioner is that though the master policy contains a clause which indicates that the policy shall commence on 2.10.1999 or the date on which the list of insured was forwarded by the Agricultural Officer to the Insurance

Company which ever is later, as far as the insured is concerned this Clause was not brought to their notice which amounts to non-disclosure of a material term in the contract and for that reason the Insurance Company cannot deny the benefits arising under the said policy.

4. It is a fact that this policy had been issued to cover agriculturists under a scheme framed by the Government in order to give certain benefits to the farmers who are not in a position to take independent Insurance Policy. It is also not in dispute that the policy had been issued on 18.4.2000. The premium had been paid as on 2.10.1999. That being the situation there is a valid policy in existence. Then the only question is whether the clauses in the master policy which restricts the period of coverage to a later date has any relevance at all. Going by the Scheme Exts.P1 and P2 Scheme and the purpose of the policy, the contract of insurance commences on 2.10.1999 and remains valid till 1.10.2000. Once the policy

is issued and the premium is paid in the normal circumstances there is a coverage of insurance. This is postponed to a future date i.e. the date when the Agricultural Officer makes available the list of insured to the office of the respondent. This procedure is normally against the usual principle of policy conditions. That being the situation it was all the more necessary that the insured ought to have been told about the conditions in the master policy even at the time when they were enrolled as beneficiaries under the policy and Ext.P3 policy was issued. Apparently Ext.P3 policy does not contain any such stipulation. Having not done so, it clearly amounts non-disclosure of the facts as laid down by the Supreme Court in **Modern Insulators Ltd. v. Oriental Insurance Co. Ltd.** [(2000) 2 SCC 734] in which paragraph 8 reads as under:

“It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids

either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since the obligation of good faith applies to both equally”.

5. That apart, this particular provision which insists on the Insurance Company to obtain a list from the Agricultural Officer in order to make an effective policy is unreasonable, arbitrary and against public policy, thereby becoming enforceable. Ext.P3 is issued by an authorised officer of the New India Insurance Company and it cannot be believed for a moment that an Insurance Company will issue a policy without knowing the credentials of the insured. Having done so, the postponement of the effective date of the policy is against the normal rule of a policy coming into effect. Having collected the entire premium in advance it is not open for the Insurance Company to rely on an unreasonable and

arbitrary Clause to deny the benefit of the policy. Ext.P10 is therefore liable to be set aside.

6. Under these circumstances, this writ petition is only to be allowed.

(i) Ext.P10 is set aside.

(ii) The 3rd respondent is directed to pay the amount due under Ext.P3 policy to the legal heirs of late Sri.Arjunan with interest @10% per annum from the date when the amount had become due till the date of payment.

A.M. SHAFFIQUE, JUDGE.

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