

IN THE HIGH COURT OF ANDHRA PRADESH

W.P. No.19310 of 2021**Between:**

Mallela Manimala, W/o Mallela Brahmaiah,
Aged 55 Years, R/o 1-95,
Thotavari Palem Village,
Chirala Mandal, Prakasam District.

.... Petitioner

AND

Mallela Lakshmi Padmavathi,
W/o Late Ramesh Babu,
Age 30 years and three others

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **15.03.2023****SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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.... Respondents

! Counsel for Petitioner

: Sri Venkateswarlu Kolla

^ Counsel for Respondents

: Sri P. Sai Surya Teja for respondents 1 to 3
and Sri P. Sasidhar Reddy for 4th respondent

< Gist:

> Head Note:

? Cases referred:

1. 2021 SCC Online Del 2492 = AIR 2021 Del 121
2. MANU/SC/0231/1983 = AIR 1984 SC 346

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**Writ Petition No.19310 of 2021****ORDER:**

The petitioner filed this writ petition with the following prayer:

“to issue Writ, order or direction more particularly in the nature of writ of mandamus declaring the action of 4th respondent in attempting to give total maturity amount in connection with policy Nos. (i) ICICI Pru iProtect Smart bearing policy No.94425175 with life insurance cover of Rs.1,00,00,000/- (Rupees one crore only) and (ii) ICICI Pru Savings Suraksha bearing policy No.94425126 with life insurance cover of Rs.1,60,000/- (Rupees one lakh and sixty thousand only) taken by son of petitioner Ramesh Babu to 1st respondent who was nominated by the policy holder as illegal, arbitrary and against the right of petitioner as Class I heir of her son who died due to COVID-19 and declare the petitioner as class I heir of her late son Ramesh Babu along with respondents 1 to 3 and consequently direct 4th respondent to pay 1/4th of matured amount of the afore said policies to the petitioner”

2. The facts of the case in narrow compass are that the petitioner's son Ramesh Babu, who was working as Software Engineer in U.S.A., came down to India in February 2021 to serve his father ailing from COVID-19 and as the ill-luck would have it, himself affected with COVID-19 and died on 04.06.2021 while undergoing treatment leaving behind the petitioner, who is his mother and respondents 1 to 3 who are his wife and two minor children as his class I heirs. During his life time, Ramesh Babu obtained two insurance policies with 4th respondent i.e., (i) ICICI Pru iProtect Smart bearing policy No.94425175 for Rs.1,00,00,000/- and (ii) ICICI Pru Savings Suraksha bearing policy No.94425126 for Rs.1,60,000/-. Thus, the total amount covered by the two policies is Rs.1,01,60,000/-. Ramesh Babu nominated the 1st respondent, who is his wife, as beneficial nominee in both the policies. Now, the bone of

contention between the petitioner and respondents 1 to 3 is with regard to the policy amount. As per pleadings, while the petitioner claims that she being the mother and one of the class I heirs of his deceased son entitled to 1/4th share in the policy amount, the 1st respondent in her counter opposed the same on the main ground that as per the amended Section 39 of the Insurance Act, 1938, she alone is entitled to the said amount as she was shown as beneficial nominee. Her other contentions are that in respect of another policy obtained by her husband, the petitioner has already received 1/4th amount and that after the death of her husband, her parents-in-law necked her and children out of the house and they have no source of livelihood and now taking shelter in the house of her parents. The 4th respondent in his counter while admitting the two policies would contend that the writ petition is not maintainable as the issue is a private affair and the 4th respondent is not a State within the meaning of Article 12 of the Constitution of India.

3. Heard arguments of learned counsel for petitioner Sri Kolla Venkateswarlu, and Sri P.Sai Surya Teja, counsel for respondents 1 to 3, and Sri P.Sasidhar Reddy, Standing Counsel for 4th respondent.

4. Learned counsel in their respective arguments repeated their pleadings. While it is the contention of the petitioner that since the petitioner is admittedly one of the class I legal heirs of the deceased Ramesh Babu being his mother, she is entitled to 1/4th share in the estate of her son and therefore, she deserves 1/4th

of the insurance amount also. Though the 1st respondent is shown as nominee of the deceased in the two insurance policies, under law she should be treated only as a trustee on behalf of all the legal heirs and as a trustee she shall collect the insurance amount and disburse among the heirs, but she cannot appropriate the entire insurance amount for herself or for herself and her children in exclusion of the petitioner. It is argued that the amended section 39 of the Insurance Act, 1938 will not override the right of succession of the class I heirs enshrined in the Hindu Succession Act, 1956. Per contra, the argument advanced on behalf of the respondents 1 to 3 is that the concept that a nominee is a mere collector and a trustee on behalf of all the legal heirs who are entitled to a share in the estate of the deceased has undergone a seachange with the amendment of Section 39 of the Insurance Act, 1938 by virtue of the insurance laws [Amendment Act 5/2015 (w.e.f. 26.12.2014)], inasmuch as, sub-section (7) of amended Section 39 facilitates a holder of an insurance policy to specify any one or more nominees among his parents or spouse or his children as beneficial nominee(s) to be entitled to the insurance amount in exclusion of others. Learned counsel emphasized that in the instant case, since the deceased has shown his wife i.e., the 1st respondent as beneficial nominee in the two insurance policies, she alone in exclusion of other heirs will be entitled to the insurance amount and therefore, the petitioner cannot lay any claim over the insurance amount and seek a direction to 4th respondent in that regard.

Regarding the effect of amended Section 39, learned counsel placed reliance on the decision in **Shweta Singh Huria v. Santosh Huria**¹.

5. While so, Sri P.Sasidhar Reddy, Standing Counsel for 4th respondent, though initially argued that the 4th respondent is only a private insurance company and it will not come within the purview of State under Article 12 of the Constitution of India and on that count, the writ petition is not maintainable as the dispute is purely among the private persons, however, requested the Court not to consider the said plea and give a finding on the said aspect as the point raised by him is pending adjudication in some other matters. His remaining argument is in the line of the respondents 1 to 3 submitting that in view of the amended Section 39, the 1st respondent being the beneficial nominee alone is entitled to the compensation. He would further submit that both the policies taken by the deceased are valid and the amount covered by those policies are lying with 4th respondent and it will follow the ultimate decision of this Court.

6. The point for consideration is whether there are merits in this writ petition to allow?

7. **Point:** Admittedly, the two policies bearing Nos.94425175 and 94425126 taken by the deceased are valid policies and the amounts covered by those policies are with the 4th respondent. It should be noted that this Court in its order dated 20.12.2021 observed that since the petitioner herein is claiming only

¹ 2021 SCC Online Del 2492 = AIR 2021 Del 121

1/4th of the insurance amount, pendency of the writ petition will not come in the way of the respondent–Insurance company from disbursing the balance of the amount in favour of the persons eligible to receive the same. While so, on 27.07.2022, this Court further observed as follows:

“The issue of maintainability of the writ petition has to be decided.

Pending the said issue, it is not in dispute that the respondents 1 to 3 would be entitled to 75% of the policy amounts. Hence, the earlier order dated 22.12.2021, directing the disbursal of the balance amount of 75% in favour of the respondents is affirmed with a direction to the 4th respondent, to release the said 75% of the policy amounts, payable on the demise of late Sri M.Ramesh Babu.”

8. Be that as it may, the crux of the case pivots on the interpretation of Section 39 of the Insurance Act, 1938:

Section 39 of the Insurance Act, 1938 stood prior to its amendment by virtue of Amendment Act 5/2015 is as follows:

“39. Nomination by policyholder - (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable

for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policyholder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees died before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this Section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied.

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946 in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.”

(a) The above section manifests that the policyholder can stipulate his nominee by incorporating in the text of the policy itself and the insurer registers the same in the records and upon the death of the policyholder, the sum assured

shall be paid to the registered nominee and such payment shall be held as a valid discharge so far as insurance company is concerned. The prime question was whether such a registered nominee is only a mere collector–nominee to receive the insurance amount as an agent of the deceased policyholder and disburse among the legal heirs of the deceased as the said amount after his death represents his estate or whether the nominee was a beneficial-nominee to receive the said amount for his own in exclusion of the heirs of the deceased. The Apex Court in **Sarabati Devi v. Usha Devi**² with reference to the then Section 39 of the Insurance Act, 1938 in vogue happened to resolve this issue. After making a survey of various judgments of different High Courts, the Apex Court made the following observations:

“5. xxxxxxxx But the summary of the relevant provisions of Section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime of the policy holder. If that is so, on the death of the policy holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in paragraph 16 of the decision of the Delhi High Court in Mrs. Uma Sehgal's case (supra). If Section 39 of the Act is contrasted with Section 38 of the Act which provides for transfer or assignment of the rights under a policy, the tenuous character of the right of a nominee would become more pronounced. It is difficult to hold that Section 39 of the Act was intended to act as a third mode of succession provided by the statute. xxxxxx”

“12. Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all

² MANU/SC/0231/1983 = AIR 1984 SC 346

along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Yet Parliament has not chosen to make any amendment to the Act. In such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. xxxx”

9. Thus, the Apex Court having regard to the then Section 39 in vogue held that a nominee under the said provision is only a mere collector-nominee but not a beneficial one. The said judgment was followed in many other subsequent judgments.

10. Be that as it may, Section 39 was amended by virtue of the Amendment Act 5/2015 w.e.f. 26.12.2014. The amended Section 39 is as follows:

39. Nomination by policyholder. —(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a Will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policyholder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the insurer.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

(8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.

(9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.

(10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.

(11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his

death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.

(12) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (3 of 1874), applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

11. A careful perusal of sub-section (7) of Section 39 would indicate that the words "beneficially entitled" are employed for the first time in sub-section (7) of the amended Section 39 which we do not find in the original Section 39. In my considered view, the legislative intendment is manifestly clear from the words "beneficially entitled" which means the nominee or nominees shall receive the insurance amount on the death of policyholder in his / their own interest in exclusion of other heirs. My view gets fortified from the interpretation given to the words "beneficially entitled" in the treatise "The Law Lexicon" by renowned author Sri *P.Ramanatha Ayyar* in his second edition (Reprint 2010). The words "beneficially entitled" are defined as follows:

"Beneficially entitled to possession" does not mean entitled and deriving a benefit from possession, but beneficially entitled in the sense of being entitled for one's own benefit, if there is any benefit to be derived from the estate, and not simply as trustee for others" (Per COTTON, L.J., *Re Jones*, 53 LJ Ch. 811)

(a) The above narration pellucidly tells that a person who is authorized to be beneficially entitled to an estate means he will be entitled for his own benefit. It otherwise stipulates that the said person excludes the others from the

enjoyment of such estate. When this meaning is imported to Section 39(7) of the amended Act, it gives an understanding that the registered nominee or nominees after the death of the policyholder shall receive the insurance amount for his / their beneficial enjoyment in exclusion of other heirs. This legal aspect is no more *res integra*.

12. In **Ramgopal v. General Public**, the High Court of Rajasthan in its order dated 05.04.2019 in S.B. Civil Miscellaneous Appeal No.27/2018 observed thus:

“As per the decisions of the Hon'ble Supreme Court relied upon by the learned counsel for the appellants, the nominee of insurance policy receives the insured amount and the legal representatives of the assured can claim their share as per Law of succession. However, in the year 2015, amendment has been made vide the Insurance Laws (Amendment) Act, 2015 and as per the same, the nominee alone gets the amount on account of death of the insured. No other person can raise claim with regard to the said amount.

Section 39(10) of the Act as added by Amendment Act, lays down that the provision of Sub-section (7) shall apply to all policies of life insurance maturing for payment after the commencement of the said Act.

In the present case, the policy matured on the death of the insured. The insured had died on 14.12.2013. In case, the insured had remained alive, the policy would have matured as per the terms of the policy. Thus, the policy matured on 14.12.2013 on account of death of the insured. Hence, in the present case, (6 of 6) [CMA-27/2018] Section 39(7) of the Act as added by 'Amendment Act' would not apply.”

Thus, the learned Judge having noted that by virtue of the amendment brought to Section 39 of the Insurance Act, a nominee alone would get the amount on account of the death of the insured, held that in view of Section 39(10) of the amended Act, the amendment would apply to all policies of life insurance

maturing for payment after commencement of the said Act. Applying the aforesaid law to the case on hand, learned Judge held that since the insured had died on 14.12.2013 and the policy matured on the said date, the amendment Act would not apply to CMA No.27/2018.

13. In **Shweta Singh Huria's** case (1 supra), the High Court of Delhi happened to consider the 190th report of Law Commission of India and consequent amendment brought to Section 39 of the Insurance Act, 1938. The High Court observed thus:

“**31.** As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between 'beneficiary nominee' and 'collector nominee' and Section 39 of the Insurance Act, 1938 was amended accordingly, adding sub-Section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of Section 39 was carefully and cautiously drafted and the words used by the legislature are 'beneficial interest'.

32. Perusal of the impugned order of the Trial Court shows that the Appellants had brought the 2015 Amendment to the notice of the Trial Court, including the judgment of the Rajasthan High Court in Ramgopal (supra). But the Trial Court has not even dealt with the legal issue raised before it and allowed the application under Order XII Rule 6 CPC, based on the unamended provisions of Section 39. It is a settled law that the rights of the parties to a lis have to be decided in accordance with the statutory provisions and law that prevails on the day the cause of action arises.

33. In the present case, Appellants had specifically flagged the issue of applicability of the amendment to Section 39 on the ground that Late Shri Vineet Huria died on 11.07.2018 and the policy had matured after the Amendment to Section 39, came into force. It was thus incumbent upon the Trial Court to have considered and examined the issue, once the same was raised and highlighted by the Appellants and taken a decision accordingly, with respect to the benefits accruing under the insurance policies, in question.”

14. While so, a learned Judge of this Court happened to consider the effect of amended Section 39 in **Karanam Sirisha v Insurance Regulatory Development Authority**³. Learned Judge observed thus:

“16. Under the amended sub-section 7, a beneficial interest is created in favour of the nominee, when such a nominee is one of the members of the family of the holder of the life insurance policy, enumerated in sub-section 7 (hereinafter referred to as the enumerated nominee). The enumerated nominee is not just an agent or trustee of the legal heirs of the policy holder. The enumerated nominee is conferred with an independent beneficial right over the money received by the enumerated nominee. Where an enumerated nominee dies, after the death of the holder of the policy and before receiving the sum assured, sub-section 8 mandates that the legal heirs of the enumerated nominee are entitled to receive the sum assured and not the legal heirs of the policy holder. Such a change, in the line of succession, is because the sum assured is to be received by the enumerated nominee, absolutely, in his own right and consequently the legal heirs of the enumerated nominee would be entitled to the sum assured. Both these sub-sections, read together, have created a right in favour of the enumerated nominee, to receive the sum assured in his/her own right and not as the agent of the legal heirs of the assured/policy holder.

17. Viewed from any perspective, the provisions of Section 39 of the Insurance Act, now provide a right to the nominee enumerated in sub-sections 7 and 8 to receive the sum assured in his/her own right and not as an agent of the legal heirs of the policy holder. This view is also strengthened by the judgement of the Hon'ble High Court of Delhi in *Shweta Singh Huria and Others vs. Santosh Huria and Another.*”

15. Thus, the above jurisprudence tells that the consistent view of the High Courts is that after amendment of Section 39, a beneficial nominee takes the insurance amount after the demise of the holder of the policy for his beneficial enjoyment in exclusion of other legal heirs. To this extent change is brought in the law.

³ MANU/AP/2270/2022

16. The above being the law, the facts of the case are that admittedly Ramesh Babu, the son of petitioner, who obtained the insurance policies, died on 04.06.2021, as is evident from the copy of Death Certificate issued by the Greater Hyderabad Municipal Corporation, filed along with material papers in the writ petition, and as such the two insurance policies shall be deemed to have matured on the date of his death. Admittedly, he died after the amendment to Section 39 of Insurance Act, 1938 came into force. In that view, the law prevailing on the date of maturity of insurance policies would be applicable to this case, meaning thereby, the 1st respondent, the wife of the deceased, who is shown as nominee in the two policies, shall be beneficially entitled to receive the policy amounts in exclusion of the other heirs. Ergo, this writ petition is not maintainable.

17. Accordingly, this Writ Petition is dismissed. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

15.03.2023
MVA

U.DURGA PRASAD RAO, J