IN THE HIGH COURT OF ANDHRA PRADESH

***

W.P.No.26730 of 2021

BETWEEN:

Karanam Sirisha W/o. Late Karanam Raghu
(under protection of her father Gattim manikyala Rao)
R/o. Dr. No.1-11-14/1, K.N. Road,
Opp. Bus Complex, Tadepalligudem,
West Godavari District.

... Petitioner

AND

$ 1. Insurance Regulatory Development Authority, 3rd Floor, Parisrama Bhavan, Basheer Bagh, Hyderabad – 500004, Telangana.

2. The Life Insurance Corporation of India, Jeevan Bima Marg, Nariman Point, Mumbai, Maharashtra 400021.

3. LIC of India, Chirala Branch, Chirala, Prakasam District.

4. LIC of India, Tadepalligudem Branch, Tadepalligudem, W.G. District.

5. HDFC Life Insurance Company Limited, 11th Floor, Lodha Rxelus, Apollo Mills Compound, N.M. Joshi Road, Mahalakshmi, Mumbai 400011, Maharashtra.

6. Max Life Insurance Axix Bank Limited, Door No.37-1-406/10, Trunk Road, Opp: LIC of India, Bhagya Nagar, Ongole, Prakasam District.

7. Karanam Raghava Rao, S/o. Subbarao, Dr.No.35-065-432, Rahul Residency, ZPE colony, Lawyer Pet, Gandhinagar, Ongole, Prakasam District.

8. Smt. Karanam Venkata Chalamma, W/o. Raghavarao, Dr.No.35-065-432, Rahul Residency, ZPE colony, Lawyer Pet, Gandhinagar, Ongole, Prakasam District.

... RESPONDENTS

Date of Judgment pronounced on : 22.11.2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No

3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

+ W.P.No.26730 of 2021

% Dated:22.11.2022

BETWEEN:

Karanam Sirisha W/o. Late Karanam Raghu
(under protection of her father Gattim manikyala Rao)
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... RESPONDENTS

! Counsel for Petitioner : Sri B. Soma Sekhar

^Counsel for Respondent No.1 : Sri M.V. Suresh

^Counsel for Respondent Nos. 2 to 4 : Sri Valiveti Sreedhar

^Counsel for Respondent No.5 : Sri T.P. Ravishankar

^Counsel for Respondent No.6 : Sri D. Ravi Kiran

<GIST:

>HEAD NOTE:

? Cases referred:

1. AIR 1984 SC 346
2. AIR 2021 DEL 121

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.26730 of 2021

ORDER:

The husband of the petitioner, before and after marriage, had taken six life insurance policies from respondents 1, 5 and 6. The details of these policies are as follows:

1. Respondent No.3, vide Policy No. 845828411 on 28.12.2014 for a sum of Rs.15,00,000/-.
2. Respondent No.4, vide Policy No.633991139 on 28.08.2019, for a sum of Rs.1,50,00,000/-.
3. Respondent No.5, vide Policy No.20980126 on 03.01.2019 for a sum of Rs.10,00,00,000/-.
4. Respondent No.5, vide Police No.18273437 dated 27.02.2016 for a sum of Rs9,64,970/-.
5. Respondent No.5, vide Policy No.18991940 dated 06.02.2017 for a sum of Rs.7,71,010/-.
6. Respondent No.6, vide Policy No.266676659, on 03.12.2014 for a sum of Rs.10,99,996/-.

2. The 7th respondent, who is the father of the deceased husband of the petitioner, was registered as nominee in respect of the life insurance policies shown in Sl.Nos.1, 2, 4 & 6. The 8th respondent, who is the mother of the deceased husband of the petitioner, was nominated in the other policies. The husband of the petitioner was murdered on 18.08.2021 in Vijayawada and investigation in the said murder is being carried out in Crime No.555 of 2021.

3. The petitioner has approached this Court with the complaint that respondents 7 and 8 are seeking to take away the sum assured being paid out by the insurance companies, without giving her share of the said compensation. The petitioner contends that she is entitled to a share of the sum assured, under the said life insurance policies, as she is a Class-I heir of her late husband along with respondents 7 and 8 and would be entitled for her share in the sum assured being paid out by the insurance companies. She also contends that her husband had executed a Will bequeathing the sum assured in these policies to her and she is the sole person who is entitled to the entire sum assured.

4. The petitioner contends that respondents 7 and 8 have already withdrawn the sum assured under the policies mentioned at Sl.Nos.3 and 4, depriving her from the benefits accrued to her as a Class-I legal heir under the Hindu Succession Act. The petitioner now seeks a direction to the respondents 1, 5 and 6 to pay out, her share, of the sum assured to her.

5. The petitioner contends that Section 39 of the Insurance Act, 1938, which provides for a nominee to receive the sum assured, has been interpreted by various High Courts and the Hon'ble Supreme Court to mean that the nominee is only an agent who shall receive the sum assured on behalf of the legal heirs of the deceased person and as such respondents 7 and 8 are required to deliver her share after receiving the sum from the insurance companies and that, in the alternative, the

insurance companies should pay out her share of the sum assured directly to her.

6. Respondents 7 and 8 have filed a counter affidavit contending that by virtue of the Amendment Act, 2015, the law on the subject has changed and respondents 7 and 8 are entitled to the entire sum assured on account of being nominated to receive the said amounts by their son.

7. During the pendency of the writ petition, I.A.No.2 of 2022 has been filed by the bank of Baroda contending that the late husband of the petitioner is due a sum of approximately Rs.20 crores as on 21.12.2021 and that the sum assured that will be paid out by the respondent-insurance companies should be attached and paid to the Bank.

8. Similarly, I.A. No.1 of 2022 has been filed by a private individual claiming that the deceased husband of the petitioner owes an amount of Rs.5,86,00,000/- along with interest at the rate of 25% per annum and a suit for recovery has also been filed in O.S.No.48 of 2022 on the file of the X Additional Chief Judge, City Civil Court, Hyderabad. The case of the implead petitioner is also that the said amount has to be attached and paid out to the implead petitioner.

9. Both these implead petitions have been dismissed by way of a separate order today.

10. Section 39 of the Insurance Act, 1938, prior to its amendment, in 2015 reads 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.

11. This provision stipulates that, in the event of the death of the policy holder of the life insurance policy, the sum assured shall be paid out to the person registered as the nominee and such payment shall be valid discharge for the insurance company. The question, as to whether the nominee receives the said amounts on his own account or as an agent for all the legal heirs, had come up for consideration before various high Courts. All the High Courts, barring the Hon'ble High Court of Allahabad and the Hon'ble High Court of Delhi, had held that the nominee, under Section 39 of the Act, is nothing more than an agent to receive the money due in a life insurance policy and that on the death of the assured/holder of the policy, the said amounts form part of the estate of the deceased, subject to the Law of Succession applicable to him. However, the Hon'ble

High Court of Allahabad took a contrary view. The Hon'ble High Court of Delhi had also held in the same manner.

12. One of the said judgments of the Hon'ble High Court of Allahabad came up, by way of an appeal, before the Hon'ble Supreme Court in the case of **Smt. Sarbati Devi and Anr. Vs. Smt. Usha Devi**[1]. The Hon'ble Supreme Court, after reviewing the aforesaid judgments, had taken the view that a nominee is only an agent who would receive the money on behalf of the legal heirs of the policy holder and the said amount can be claimed, by the heirs of the assured, in accordance with the Law of Succession governing them. The ratio in the aforesaid judgment is contained in the following paragraphs:

> **5.** We shall now proceed to analyse the provisions of Section 39 of the Act. The said section provides that a 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. If the nominee is a minor, the policy-holder may appoint any person to receive the money in the event of his death during the minority of the nominee. That means that if the policy-holder is alive when the policy matures for payment he alone will receive payment of the money due under the policy and not the nominee. Any such nomination may at any time before the policy matures for payment be cancelled or changed, but before such cancellation

[1] AIR 1984 SC 346

or change is notified to the insurer if he makes the payment bona fide to the nominee already registered with him, the insurer gets a valid discharge. Such power of cancellation of or effecting a change in the nomination implies that the nominee has no right to the amount during the lifetime of the assured. If the policy is transferred or assigned under Section 38 of the Act, the nomination automatically lapses. If the nominee or where there are nominees more than one all the nominees die before the policy matures for payment the money due under the policy is payable to the heirs or legal representatives or the holder of a succession certificate. It is not necessary to refer to sub-section (7) of Section 39 of the Act here. 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 para 16 of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . 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. The provision in sub-section

(6) of Section 39 which says that the amount shall be payable to the nominee or nominees does not mean that the amount shall belong to the nominee or nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession and that the rigour of the rules governing the testamentary succession is not relaxed even where wills are registered.

8. We have carefully gone through the judgment of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] . In this case the High Court of Delhi clearly came to the conclusion that the nominee had no right in the lifetime of the assured to the amount payable under the policy and that his rights would spring up only on the death of the assured. The Delhi High Court having reached that conclusion did not proceed to examine the possibility of an existence of a conflict between the law of succession and the right of the nominee under Section 39 of the Act arising on the death of the assured and in that event which would prevail. We are of the view that the language of Section 39 of the Act is not capable of altering the course of succession under law. The second error committed by the Delhi High Court in this case is the reliance placed by it on the effect of the amendment of Section 60(1)(*kb*) of the Code of Civil Procedure, 1908 providing that all moneys payable under a policy of insurance on the life of the judgment debtor shall be exempt from attachment by his creditors. The High Court equated a nominee to the heirs and legatees of the assured and proceeded to hold that the nominee succeeded to the estate with all 'plus and minus points'. We find it difficult to treat a nominee

as being equivalent to an heir or legatee having regard to the clear provisions of Section 39 of the Act. The exemption of the moneys payable under a life insurance policy under the amended Section 60 of the Code of Civil Procedure instead of 'devaluing' the earlier decisions which upheld the right of a creditor of the estate of the assured to attach the amount payable under the life insurance policy recognises such a right in such creditor which he could have exercised but for the amendment. It is because it was attached the Code of Civil Procedure exempted it from attachment in furtherance of the policy of Parliament in making the amendment. The Delhi High Court has committed another error in appreciating the two decisions of the Madras High Court in *Karuppa Gounder* v. *Palaniamma* [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] and in *B.M. Mundkur* v. *Life Insurance Corporation of India* [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . The relevant part of the decision of the Delhi High Court in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] reads thus: (AIR p. 40, paras 10, 11)

"10. In *Karuppa Gounder* v. *Palaniamma* [AIR 1963 Mad 245 at para 13 : (1963) 1 MLJ 86 : ILR (1963) Mad 434] , *K* had nominated his wife in the insurance policy. *K* died. It was held that in virtue of the nomination, the mother of *K* was not entitled to any portion of the insurance amount.

11. I am in respectful agreement with these views, because they accord with the law and reason. They are supported by Section 44(2) of the Act. It provides that the commission payable to an insurance agent shall after his death, continue to be payable to his heirs, but if the agent had nominated any person the commission shall be paid to the person so

nominated. It cannot be contended that the nominee under Section 44 will receive the money not as owner but as an agent on behalf of someone else, vide *B.M. Mundkur* v. *Life Insurance Corporation* [AIR 1977 Mad 72 : 47 Com Cas 19 : (1977) 1 MLJ 59 : ILR (1975) 3 Mad 336] . Thus, the nominee excludes the legal heirs."

13. The Hon'ble Supreme Court, in the above judgement, had also observed as follows:

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 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. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the judgments of the Delhi High Court in *Fauza Singh case* [AIR 1978 Del 276] and in *Uma Sehgal case* [AIR 1982 Del 36 : ILR (1981) 2 Del 315] do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does

> not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

14. No Amendment of this provision was carried out for some time. The issue was examined by the Law commission of India, in its 190th report, in the following manner, (the extract of the report of the Law commission is taken from the judgement of the Hon'ble High Court of Delhi, in **Shweta Singh Huria and Others vs. Santosh Huria and Another**[2].)

> **The Law Commission's views:—**
>
> 7.1.12. There appears to be a consensus of sorts on the need for drawing a clear distinction between a beneficial nominee and a collector nominee. It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee. Although it is true that this is the law in USA, Canada and South Africa, the social realities of our country where the death of a sole breadwinner of the family immediately throws the remaining family into hardship cannot be lost sight of. To deny, in such instance, the right

[2] AIR 2021 DEL 121

of the legal representatives to the policy amount on the basis that the nominee is a different person seems harsh. On the other hand, what appears reasonable is to give an option to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee. Public interest and the peculiar social realities in India cannot permit the adoption of the procedures followed in Canada, USA or South Africa. The Commission is not agreeable to the suggestion that a provision similar to s.45 ZA as in the Banking Regulation Act, 1949 should be adopted.

7.1.13. The suggestion that a proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed, has also been welcomed by the responses, and is hereby recommended.

Final recommendations of the Law Commission in regard to Section 39:—

7.1.14. After considering all the responses and reexamining the entire issue, the final recommendations of the Law Commission regard to s.39 may be summarised as under:

(a) A clear distinction be made in the provision itself between a beneficial nominee and a collector nominee.
(b) It is not possible to agree to the suggestion made by some of the insurers that in all cases the payment to the nominee would tantamount to a full discharge of the insurer's liability under the policy and that unless the contrary is expressed, the nominee would be the beneficial nominee.

(c) An option be given to the policyholder to clearly express whether the nominee will collect the money on behalf of the legal representatives (in other words such nominee will be the collector nominee) or whether the nominee will be the absolute owner of the monies in which case such nominee will be the beneficial nominee.

(d) A proviso be added to make the nomination effectual for the nominee to receive the policy money in case the policyholder dies after the maturity of the policy but before it can be encashed.

Suggested Amendment of Section 39:—

"7.1.15 To give effect to the above recommendations, the Law Commission is of the view that s.39 be recast as follows:

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(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 subsection (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.

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(10) The provisions of sub-sections (7), (8) and (9) shall apply to all policies of life insurance maturing for payment after the commencement of this Act.

(11) Every policyholder shall have an option to indicate in clear terms whether the person or persons being nominated by the policyholder is/are a beneficiary nominee(s) or a collector nominee(s).

Provided where the policyholder fails to indicate whether the person being nominated is a beneficiary nominee or a collector nominee it will be deemed that the person nominated is a beneficiary nominee.

Explanation : For the purposes of this sub-section the expression 'beneficiary nominee' means a nominee who is entitled to receive the entire proceeds payable under a policy of insurance subject to other provisions of this Act and the expression 'collector nominee' means a nominee other than a beneficiary nominee."

15. Thereafter, Parliament had amended Section 39 of the Insurance Act, 1938 by an Amendment Act in 2015, as recommended by the Law commission. However, the distinction between a 'beneficiary nominee' and 'collector nominee' was not included in the amendment. The relevant change in the provision of law is contained in the amended sub-sections (7) and (8) of Section 39, which read as follows:

"(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."

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**.

18. There is another factor which requires to be taken into account. Sub section 2 of Section 39 of the Act, sets out the manner in which a nomination is to be made and the liability of the insurer in relation to payment of the sum assured to the nominee, in the following terms:

> (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.

19. Sub Section 2 provides that a nomination has to be incorporated into the text of the policy itself and registered in the records of the insurer. The policy holder can change the nominee by way of an endorsement or a Will. However, an Insurer will not be liable for any bona fide payment made by the insurer to the earlier nominee if the change is not informed to the Insurer. This would mean that a change in the nominee can be made, by way of a Will, outside the text of the policy also. But, the same would not affect the liability of the Insurer who, has not been informed of the change carried out by the Will, and under a bona fide belief, pays out to the earlier nominee. The operative words here are "payment made bona fide". Payment made by an Insurer, after being informed of a change made through a Will, cannot be a bona fide payment which is protected under Section 39 of the Act. In such circumstances, the Insurer would have to either act in terms of the Will or await the result of any litigation, in the event of the Will being challenged by any of the legal heirs of the policy holder.

20. In the present case, a Will is being propounded by the Petitioner and given the disputes between the parties here, the said Will would have to be proved in an appropriate proceeding. Consequently, the Insurers would have to await the orders of the competent court, in relation to the said Will, before paying out any part of the sum assured to

either party. It is stated that some of the policies have already been paid out to the 7th and 8th respondents. In such an event, the Insurers would have to await the result of the proceedings relating to the Will, for those policies which have not been paid out and it would be open to the Petitioner to avail of her remedies against the 7th and 8th respondent in relation to the policies which have already been paid out.

21. Since, the said litigation may take time, it would be appropriate to direct respondents 1, 5 and 6 to place all the sums assured, which have not been disbursed till now, in a fixed deposit with any public sector scheduled bank and pay out the sum assured with the accrued interest to the person who succeeds in the litigation relating to the said Will. Needless to say, the respondents 1, 5 and 6 can always pay out the sum assured with interest accrued on the fixed deposits to the petitioner and respondents 7 and 8, if they arrive at a compromise and approach the Insurers together.

There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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R. RAGHUNANDAN RAO, J.

22nd November, 2022.
Js.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.26730 of 2021

22nd November, 2022

Js.