
(2013) 08 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

AVTAR SINGH

APPELLANT

Vs

Sbi Life Insurance Co. Ltd

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : 2013 0 NCDRC 575 : 2013 3 CPJ 608

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : SHAKTI K.PATTANAIK , RAKESH MALHOTRA

Judgement

1. THIS revision petition has been filed by the Petitioners/Complainants against the impugned order dated 1.05.2012 passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh (in short, "the State Commission ") in Appeal No. 357 of 2011 - The SBI Life Ins. Co. Ltd. Vs Sh. Avtar Singh and Ors. by which, while allowing appeal, order of District Forum allowing complaint was set aside.

2. BRIEF facts of the case are that deceased Dharam Singh, father of complainants/petitioners purchased insurance policy from OP/respondents and paid first premium of Rs.15,000/- on 9.9.2008. Deceased filled proposal form while subscribing for aforesaid insurance policy. Dharam Singh died on 9.10.2008. When complainants came to know about the policy, they approached OP for payment of amount, but as claim was repudiated, complainants filed complaint alleging deficiency on the part of OPs. OP-1 contested complaint and submitted that, as there was no concluded contract between Dharam Singh and OP, merely by deposit of premium amount along with proposal form, did not automatically result into the issuance of an insurance policy. It was further alleged that on 15.9.2008, Dharam Singh was asked to comply with some requirements, but he failed to comply with the requirements. Denying deficiency on the part of OPs, prayed for dismissal of complaint. OP 2 submitted that complaint may be dismissed for misjoinder of parties, as OP 2 was only operating SB Salary Account of Dharam Singh. District Forum after hearing both the parties, allowed complaint and directed OP to pay Rs.2,02,500/-. Appeal filed by

the OP was allowed by learned State Commission vide impugned order against which, this revision petition has been filed. Heard learned Counsel for the parties at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that as soon as premium was encashed by OP, insurance policy came into force and OP 1 committed deficiency in repudiating claim and learned State Commission committed error in allowing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law, which does not call for any interference; hence, revision petition be dismissed.

4. PERUSAL of record clearly reveals that Dharam Singh submitted proposal form for obtaining life insurance policy on 9.9.2008 along with premium of Rs.15,000/-. On 15.9.2008, OP asked petitioner to comply with certain requirements, which were not complied with and on 9.10.2008 Dharam Singh died. Thus, it becomes clear that contract of insurance was not concluded between Dharam Singh and OP. Merely by encashing cheque of premium, insurance contract does not come into force, as held by this Commission in [I (2011) CPJ 60 (NC)] - LIC of India Vs. Bhoomikaben M. Modi and Ors., [2009 STPL (CL) 479 (NC)] - Elsa Tony Phillip Vs. Manager, LIC of India and Ors. and [I (2010 CPJ 137 (NC)] - Kolla Vijaya Laxmi Vs. Life Insurance Corporation of India and Anr. This Commission in Elsa Tony Phillip case (Supra) in para 3 and 4 observed as under: "3. Thrust of argument advanced by Shri T. Harish Kumar for the appellant is that along with the proposal first premium was paid by Tony Phillip by issuing a cheque of Rs.1,662 which was got encashed by the Insurance Co. and, thus a concluded contract came into existence between the parties and the order under appeal was thus, legally erroneous. As may be seen from the order under challenge, the State Commission in reaching the conclusion that concluded contract had come into existence, has heavily relied the decision in Life Insurance Corporation of India V. Raja Vasireddy Komalavalli Kamba and Ors. ((1984) 2 SCC 719.) Omitting immaterial portion, para Nos. 14 and 15 of this decision at pages 726 and 727 of the report read thus: "14 ...The mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy documents is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance. See in this connection the statement of law in Corpus Juris Secundum, Vol. XLIV, wherein it has been stated as: The mere receipt and retention of premiums until after the death of applicant does not give rise to a contract, although the circumstances may be such that approval could be inferred from retention of the premium. The mere execution of the policy is not an acceptance; an acceptance, to be complete, must be communicated to the offer or, either directly, or by some definite act, such as placing the contract in the mail. The test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the company "s executive officers. 15. Though in certain human relationships silence to a

proposal might convey acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie, acceptance must be communicated to the offeror. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed. See in this connection statement of law in MacGillivray and Parkington on Insurance Law, Seventh Edition, page 94, paragraph 215 ".

4. Admittedly, neither acceptance of the proposal was communicated nor policy was issued to Tony Phillip by the respondent-Insurance Co. Considering the ratio of the said decision of Supreme Court, mere encashment of cheque, given towards first premium, is not enough to conclude that a contract had come into existence between the parties. Decision in LIC and Ors. v. Smt. Raksha Devi (R.P. No. 702 of 2003, decided on 20.10.2005) is of no help to the appellant. Impugned order, thus, does not suffer from any legal infirmity and the appeal deserves to be dismissed being without merit ". In the light of aforesaid discussion, we do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

5. CONSEQUENTLY , revision petition filed by the petitioner is dismissed at admission stage with no order as to costs.