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**(1997) 02 NCDRC CK 0041**

**In the National Consumer Disputes Redressal Commission**

DHARAMVIR ANAND

APPELLANT

Vs

L.I.C. of India

RESPONDENT

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**Date of Decision :** 17-02-1997

**Acts Referred:**

**Citation :** 1997 1 CPJ 427

**Hon'ble Judges :** A.P.Chowdhri , Desh Bandhu J.

**Final Decision :** Appeal allowed with costs

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**Judgement**

1. BRIEF facts giving rise to this appeal are that Mr. Dharamvir Anand obtained an insurance policy for his daughter Km. Ranjan Anand on 10.5.89 for a sum of Rs. 2.00 lacs. The complainant was nominee under the policy. The assured Ranjan Anand died on 15.11.92. The Life Insurance Corporation of India was informed on 16.2.93. The complainant submitted the claim in the prescribed forms A to E alongwith the last premium receipts. On 25.6.93, LIC asked the complainant to submit discharge receipt. It was done. On 3.8.93, however, the complainant received a letter from LIC to the effect that the complainant was entitled only to receive the amount of the premium actually paid without any interest as the policy holder had committed suicide within three years of the commencement of the risk vide Clause 4B of the Policy. The complainant filed a complaint before the District Forum. The case was contested. On a consideration of the matter, the District Forum held that there was no deficiency in service and accordingly dismissed the complaint. Aggrieved against the order, the complainant has preferred this appeal. Reply has been filed by the respondent. It has been submitted that the proposal for obtaining the insurance policy was submitted on 25.3.90 and the same was accepted by LIC on 31.3.90. It was, however, admitted that the policy has been given effect from a back date namely 10.5.89 at the request of the proposer for purposes of planning his tax liability. It was further stated that the complainant's case had been processed with reasonable despatch and the amount of premium paid by the complainant was offered according to the terms of the policy. This was not acceptable to the complainant and the case was referred to the Central Office for examination by

Claims Review Committee comprising one retired Hon"ble Judge of the High Court and three Senior Officers of the respondent Corporation. The said Committee conveyed their decision to pay Rs. 2.00 lacs on ex-gratia basis to the complainant vide their letter dated 2.2.95. The complainant, however, declined to accept the said amount.

2. WE have heard Mr. Amit S. Chaddha, Advocate for the appellant and Mr. A.K. Kaushal, Advocate for the respondent and have carefully gone through the records. It is not disputed that the policy was given effect from a back date namely, 10.5.89. It is also not disputed that this is permissible by law. The contention of Mr. Chaddha, learned Counsel for the appellant is that the legal fiction has to be given full effect and that being so, the policy must be deemed to have come into force with effect from 10.5.89 and the period of three years referred to in Clause 4B had expired at the time of death on 15.11.92. Mr. Chaddha highlighted the fact that four annual premiums had been paid before the death of the assured. On behalf of the respondent it was contended that the contract came into being only when the acceptance was communicated to the proposer. In the facts of the present case, Mr. Kaushal pointed that acceptance was conveyed only on 31.3.90. The period of three years according to Mr. Kaushal was, therefore, to be reckoned from the commencement of the risk i.e. 31.3.90. The death having occurred in November, 1992 was within three years and the LIC was only liable to pay the actual premium received without any interest. He placed reliance on LIC v. Raja Vasi Reddy Komala Valli Kamba and Others, AIR 1984 SC 1014, We have given our careful consideration to the respective submissions. We find no merit in the contention of Mr. Kaushal for the simple reason that the contract of insurance undoubtedly came into being only when the proposal was accepted on 31.3.90 but one of the terms of the contract was that the same shall be given effect from a back date namely 10.5.89. On the completion of the contract, therefore, all terms of the contract including the term for giving backdated effect came into force and the contract must be deemed to have come into being with effect from 10.5.89. Our above conclusion finds support from a decision of the Supreme Court in M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, (1984)2 SCC 323. With regard to the effect of deeming clause, their Lordships laid down as under: "The effect of a deeming clause is well- known. Legislature can introduce a statutory fiction and Courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case East End Dwellings Co. Ltd. v. Finsbury Borough Council that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it - one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs".

We further find that the ground on which the claim has been repudiated does not bear scrutiny and the repudiation cannot be considered to be based on valid

reasons. It cannot, therefore, be urged that there is no deficiency in service.

3. THE appeal is accordingly allowed; order of the District Forum is set aside. THE respondent is directed to pay the amount due under the policy together with the interest @18% per annum w.e.f. 3.8.93 till date of payment alongwith costs quantified to be Rs. 3,000/-. A copy of the order be communicated to both the parties as well as District Forum-II. Appeal allowed with costs.