(1999) 03 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

ELSA TONY PHILIP — APPELLANT

Vs

MANAGER, (PS/CLAIMS), L.I.C. OF INDIA — RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Citation : 1999 2 CLT 508 : 1999 2 CPJ 280 : 1999 2 CPR 475

Hon'ble Judges : L.Manoharan , K.M.Latha J.

Final Decision : Complaint dismissed

Judgement

1. COMPLAINT for direction to the opposite parties to settle the insurance claim of the complainant and also for compensation. The allegations in brief are : The complainant is the widow of late Shri Tony Philip. Shri Tony Philip had taken two insurance policies one for Rs. 1,50,000/- and the other for Rs. 1,00,000/-. On 29.3.1995 the third opposite party who is an agent of the Life Insurance1 Corporation alongwith the Assistant Manager Mr. Mohan Roy came to canvass business and requested Sri Tony Philip to take life insurance policy for Rs. 3 lakhs so that he could become a Kodipathi. Mr. Tony Philip to oblige him took policy for Rs.3 1akhs; accordingly on the same day executed proposal for a double accident benefit policy and he paid Rs. 1662/-by a cheque drawn on Syndicate Bank, Kottayam. The same was accepted and Ext. A1 receipt was issued followed by Ext. A2 official receipt. The said Tony Philip met with a motor accident on 17.4.1995 and Crime No. 144/95 was registered by the Chingavanam Police Station, later the same was closed. The claims in respect of the aforesaid 3 policies taken by the aforesaid Tony Philip were submitted. The first opposite party though settled the claims and paid the amount as per the earlier two policies, the claim in respect of the third policy, neither was settled nor was paid inspite of repeated demands. Father of the deceased Tony Philip met the second opposite party on 23.7.1996 and submitted a letter enclosing the copy of the receipts and made request to settle the matter at the earliest; but that was not fruitful; instead they issued letter dated 1.3.1997 to furnish 15 specimen signatures of late Sri Tony Philip. Since the complainant was not in possession of the specimen signature of the deceased it could not be complied. Thereafter

nothing was heard. It is alleged, failure to settle the claim, under law, would constitute deficiency of service and negligence; therefore she is entitled to the aforesaid direction.

2. THE opposite parties filed their version in which they admitted to their having received the proposal dated 23.3.1995 at the office of the first opposite party on 30.3.1995 any they also admitted to their having received a cheque for Rs. 1,662/-. THEy contend-, the cheque was encashed and is kept in Suspense Account and they have issued Ext. A2 suspense memorandum also. THE decision to accept the proposal was taken on 18.4.1995, no policy was prepared nor has acceptance communicated or issued as in the meanwhile on 25.4.1995 the opposite parties 1 and 2 received an intimation to the effect that Mr. Tony Philip expired on 17.4.1995 in a road accident. THE said intimation was received before acceptance and the issue of the policy. In view of the fact that death occurred before acceptance and also that the acceptance was not communicated there is no concluded contract. THE signatures in the medical report accompanying the proposal dated 23.3.1995 varied with the signatures of the deceased in other documents. THEy maintained that there is no deficiency of service consequently they wanted dismissal of the complaint. On behalf of the complainant, the complainant gave evidence as PW 1 and on behalf of the opposite parties RW 1 was examined. On the side of the complainant Exts. A1 to A9 were produced and on the side of the opposite parties Exts. B1 to B3 were produced. .

The points that arise for consideration are : (i) Whether there is a concluded contract ? (ii) Whether there is any deficiency of service ? (iii) Reliefs and costs ?

3. IN the circumstance of the case it would be convenient to discuss these points together. It is submitted by the learned Counsel for the complainant that, the stand taken by the opposite parties that there is no concluded contract cannot be supported under law. The learned Counsel maintained, receipt of the proposal, receipt of the cheque for the amount of Rs. 1,662/- and encashment of the same having been admitted, the said aspects alongwith the conduct of the opposite parties would reveal, as a matter of fact, there was acceptance of the proposal before the death of Mr. Tony Philip on 17.4.1995. Hence, according to the learned Counsel the opposite parties cannot be heard to contend that there is no concluded contract. It is pointed out by the learned Counsel that, the third opposite party wanted to become a ''Kodipathi'' and the deceased Tony Philip was persuaded to take a double accident benefit policy for Rs. 3 lakhs and only on account of the same the policy came to be taken. On the other hand the learned Counsel for the opposite parties would maintain that, it is necessary in the case of insurance contract that the acceptance is communicated; and since in fact no such communication of acceptance was even issued itself would show that, there was no concluded contract. It is also urged by the learned Counsel that, though a decision for acceptance of the proposal was taken on 18.4.1995 the death of Mr. Tony Philip since was on 17.4.1995 the acceptance cannot take effect. IN either view, according to the learned Counsel, there could be no concluded contract and

therefore the complaint has to be dismissed. Before the institution of this complaint, the complainant had instituted Ext. A7 complaint before the District Forum, Kottayam. Ext. A8 is the copy of the version filed therein. By Ext. A9 order the District Forum dismissed the complaint reserving the right of the complainant to approach proper Forum having jurisdiction. This was on account of the fact that the claim exceeded the pecuniary jurisdiction of the District Forum. Now coming to the dispute in this case as is admitted a proposal dated 29.3.1995 was received by the opposite party alongwith a cheque for Rs. 1,662/- drawn on Syndicate Bank. Learned Counsel for the complainant made reliance on a decision reported in 1986 KLT 347, in support of his argument that the very encashment of the cheque sent by the deceased would amount to acceptance as the amount under cheque was treated as the first premium; and in this case though it is maintained that acceptance was only on 18.4.1995 as a matter of fact acceptance was there on 31.3.1995 as could be revealed from Ext. B3. The learned Counsel stressed that Ext. B3, the First Premium Commission Bill extract shows that, the first premium was adjusted on 31.3.1995 and 15% commission is also noted. Thus the fact that the first premium was adjusted from the amount paid by the deceased itself would demonstrate not only intention to accept the proposal on that date, the said conduct would reveal acceptance itself. But the learned Counsel for the opposite parties relied on the decision of the Division Bench of the Kerala High Court reported in 1994 (2) KLT 541, LIC of India v. Prasanna Devaraj, in support of their contention that the same would not constitute acceptance under law. What could be seen from Prasanna Devaraj''s case (supra) referred to early is that it was alleged the appellants had accepted the proposal, encashed the cheque and acknowledged the same and receipt dated 9.3.1982 was issued. But the person who submitted the proposal died on 19.3.1982. What was urged was that Ext. A1 therein would constitute unconditional acceptance and in support of the said case, reliance was sought to be made on the decision reported in 1986 KLT 347, LIC of India v. Kamalamma. The High Court relied on the decision of the Supreme Court reported in AIR 1984 Supreme Court 1014, LIC of India v. Raja Vasi Reddy Komala Valli Kamba & Ors., to hold that there could be no concluded contract. Apart from the same learned Counsel for the complainant referred to us a decision of the National Commission reported in 1993 (2) CPR 129, Consumer Education and Research Society & Anr. v. LIC of India. There the proposal of the assured reached the Branch only after the death of the assured. The amount paid on behalf of the assured was kept in suspense account and the premium was not calculated before death. In such circumstances the National Commission held that there was no concluded contract. Here, Ext. B3 shows that premium was adjusted. In the decision of the National Commission reported in II (1993) CPJ 146 (NC)=1993 (2) CPR 98, LIC of India v. Mrs. Bimla Routray, the National Commission considered the question of acceptance where the premium was paid and the proposal submitted on 14.3.1987, the next day the insured died in an accident. The proposal was accepted on 19.3.1987 and the policy was issued covering risk from 27.3.1987. There, the National Commission held on the basis of the decision of the Supreme

Court reported in 1984 (3) SCR 350, that the proposal can not be said to have been accepted as where a proposer dies before the acceptance of the proposal, there is no concluded contract .of insurance. The learned Counsel also relied on a decision of the National Commission reported in I (1993) CPJ 9 (NC), Baroda Municipal Corporation v. Akhil Bharathiya Grahak Panchayat Limited & Ors., wherein also the National Commission took the same view.

4. WITH due regard to the nature of the dispute involved in this case it is necessary to advert to a decision of the Supreme Court reported in 1984 Supreme Court 1014, referred to early. There among other things the Supreme Court held that, acceptance is complete only when it is communicated to the officer. In paragraph 13 of the said decision the Supreme Court refers with approval Corpus Juris Secundum, Vol. XLIV page 986, wherein it is stated : "The mere execution of the policy is not an acceptance; an acceptance, to be complete, must be communicated to the officer, either directly, or by some definite act, such a placing the contract in the mail. The test is not intention alone..."

Then in para 14, the Supreme Court Held : "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...." 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."

This decision of the Supreme Court makes the position clear that acceptance must be unconditional and the same has to be communicated so far as the contract of insurance is concerned. Mere delay in the acceptance cannot be construed as acceptance. The decision of the Kerala High Court reported in 1994 (2) KLT 541, referred to early relying on the aforesaid decision of the Supreme Court distinguishes the decision reported in 1986 KLT 347, referred to early and relied on by the learned Counsel for the complainant. It is observed, the view taken by the Court in interpreting Ext. A1 , which is also a suspense memorandum, was on the facts of that case. But the view expressed in 1994 (2) KLT 541, is, a suspense memorandum (similar to Ext. A2 herein) cannot constitute acceptance. Ext. A2 itself says that, the same is chalan-cum-suspense memorandum for proposal deposit. It is further stated that, it will not be valid unless it has been validated by ECR signed by the Cashier. The decision of the Kerala High Court reported in 1994 (2) KLT 541, referred to early does not treat such suspense memorandum as acceptance. The question now is whether Ext. B3 could amount to acceptance. If at all, Ext. B3 could have only one effect, that is, the first premium was adjusted from the amount paid by way of cheque. The Supreme Court in the LIC of India case (supra), referred to early referred to Corpus Juris Secundum, Volume XLIV with approval wherein it is stated that 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. Therefore merely because premium is adjusted that cannot by itself imply acceptance. Apart from the same, in the same decision the Supreme Court has observed, contract of insurance would be concluded only when the party to whom offer was made accepts the same unconditionally and communicates acceptance to the person who made the offer. Apart from the same Ext. B1 endorsement itself notes the date 18.4.1995, the same is relied on by the opposite parties as the date of acceptance. No other material is placed to show that, at any time before that date opposite parties accepted the proposal. If that is so, it can be seen that acceptance itself was after the death of Mr. Tony Philip who had sent the proposal. Then acceptance itself cannot be valid. It is more so, as the said acceptance was made before knowing, Mr. Tony Philip expired on 17.4.1995. When the matter is so understood it is clear that, there was no acceptance before the death of Mr. Tony Philip as the mere adjustment of the amount of the premium by itself would not amount to acceptance. Then as is already noted, mere intention to accept is not sufficient to constitute concluded contract as per the law laid down by the Supreme Court in the decision reported in AIR 1984 SC 1014, referred to early to the effect that in insurance contract acceptance has to be communicated. Ext. A2, as has already noted, though was issued the same neither can constitute acceptance nor communication of acceptance as the same calls itself as chalan-cum-suspense memorandum. Looking at the question in the context of the law laid down by the Supreme Court, it is not possible to agree with the learned Counsel for the complainant when he urged that, there is concluded contract. Then it is clear that the complaint is liable to be dismissed. Points found against the complainant. In the result the complaint is dismissed, but in the circumstances of the case there will be no order as to costs. Complaint dismissed.

