(2008) 03 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

GITA DEVI AGGARWALA APPELLANT

Vs

CHAIRMAN LIC RESPONDENT

Date of Decision : 04-03-2008

Acts Referred:

Citation : 2008 2 CPJ 375

Hon'ble Judges : R.C.Jain , P.D.Shenoy J.

Final Decision : Revision Petition disposed of

Judgement

1. -MR. Kishori Lal Aggarwala, husband of the deceased submitted a proposal to insure his life for a sum of Rs. 1,00,000 with double accidental benefits on 28. 7. 1997 with half-yearly premium of Rs. 4,772 with risk w. e. f. 28. 6. 1997. Unfortunately, in a devastating fire Mr. Kishore Lal Aggarwala became a victim and in his attempt to save himself from the clutches of the fire he jumped from the first floor along with his family members and thereby sustained severe injuries to which he succumbed.

2. BEFORE the death of the insured all important formalities were completed by the LIC. The LIC Eastern Zone on 25. 6. 1997 had collected premium of Rs. 4,772 and given a slip indicating premium calculations in detail initialled by the Development Officer. The deposit memo, of the Eastern Zone of the LIC for Rs. 4,772 is dated 25. 6. 1997. The declaration of the proposal is dated 28. 7. 1997. As proposer was 60 years of age he was examined by the LIC''s doctor Dr. P. K. Dass and he had signed the proposal forum. As LIC wanted ECG to be done due to the age factor, it was performed on 30. 9. 1997 and it was found to be within normal limits by Dr. Arun Kumar Aggarwal. The Development Officer conducted an independent inquiry and submitted a report on 29. 10. 1997 as follows: "mr. Kishori Lal Aggarwal maintains high standard of living. His physical condition is good. He is well-known in his area. His monthly income is good. As no agent approached him for proposing for a life insurance policy on his own life he did not purchase so long. Now he is proposing for this insurance of his own life. As I find no moral hazard in him, I do recommend for acceptance of this proposal. "

LIC accepted the proposal on 13. 11. 1997 vide their letter dated 15. 11. 1997 which was received by Branch Office on 20. 11. 1997. In the meanwhile the insured died in a fire accident on 12. 11. 1997. The District Forum after hearing the parties passed the following order: "the complainant is entitled to have Rs. 2,00,000 (Two lakh) insured value minus Rs. 4,772 which has been paid and compensation of Rs. 10,000 from the O. Ps. The O. Ps. directed to pay the same by one month from this date failing which the complainant is entitled to have the same by way of execution after expiry of period mentioned above with an interest of 8% p. a. from this date till the date of realization. "

The State Commission after going through the records of the case and hearing the learned Counsel for the parties allowed the appeal of the Life Insurance Company. Dissatisfied by the orders of the State Commission, the complainant has filed this revision petition.

On 13. 11. 1997 Manager (NB and Actt.) has observed as follows: "accepted at or + AB upto Age 70 years + reasons to be given by the LA for late insurance + consent. "

On 5. 1. 1998 Assistant Administrative Officer (Claims) LIC Divisional Office, Jalpaiguri in his notes and order-sheet has submitted a note for the decision of Divisional Manager. The extract of the note reads as follows: "strictly speaking there was no concluded contract because acceptance letter was not issued during deceased''s lifetime and the claimant may be informed accordingly stating at the same time that the Corporation is not liable for any payment except refund of the amount deposited towards the first premium. "

Of course, there is a provision that since however there was delay on the part of the office in issuing the acceptance letter, claim form may be issued without prejudice and the claimant may be written to as per form No. 5171 after proper investigation, etc. if it is found satisfactory, the Corporation may only consider ex gratia claim. " "la died in a fire incident (as reported by the claimant) before the acceptance of proposal dated 28. 7. 1997. Proposal was accepted at age 60 on 13. 11. 1997, LA died on 12. 11. 1997. Decision of acceptance of proposal was communicated to the BO vide our letter dated 15. 11. 1997 and it was received by BO on 20. 11. 1997. Proposal was accepted with requirements. Papers do not reveal any submission of requirements. Death intimation received by BO on 15. 12. 1997. Ex gratia claim may be considered and we may issue required claim forms. Put up to the Division Manager. "

3. SO in this case now it is necessary for us to decide whether the contract was concluded or not. In this connection it is advisable for us to go through the decisions of the Hon''ble Supreme Court. In Life Insurance Corporation of India v. Raja Vasireddy, AIR 1984 SC 1014 (1018), the Hon''ble Supreme Court has held that: "though in certain human relationship 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. Merely delay in giving an answer cannot be construed as an acceptance, as, prima facie acceptance must be communicated to the offerer. 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. "

The facts of the present case are distinguishable from the above citations. The details are enumerated below: "one late Raja Basireddy Chandra Dhara Prasad (hereinafter referred to as ''deceased'') died intestate on 12th January, 1961. He had filed a proposal for insurance for Rs. 50,000 on 27th December, 1960. There was medical examination by the doctor of the life of the deceased on 27th December, 1960. The deceased had issued two cheques for Rs. 300 and Rs. 220 respectively in favour of the appellant as first premium. Cheque for Rs. 300 was encashed by the appellant on 29th December, 1960. Cheque for Rs. 220 was dishonoured three times and finally encashed on 11th January, 1961. As mentioned hereinbefore, the deceased died on the day following i. e. on 12th January, 1961. "

4. IN the above cited case one of the cheques for Rs. 220 given by the insured was dishonoured thrice and finally was encashed on 11. 1. 1961 and the insured died on the following day wherein in this case the first half-yearly premium was paid on 28. 7. 1997 and the insured died on 12. 11. 1997. During the interregnum the ECG of the insured was done which was found to be within normal limits, the Development Officer gave a report after independent inquiry on 29. 10. 1997 which was favourable to the insured and the office had written elaborate notes recommending issue of the policy and in principle decision was taken to issue the policy and further the office record reveals the inordinate delay by the office in issuing the acceptance letter. In this case the acceptance was communicated by a letter dated 13. 11. 1997 which is a day after the death that means the approval must have been accorded on one or two days prior to the communication. Further the Corporation took almost four months to communicate its acceptance and the delay has been admitted by the Corporation in one of its own notes quoted supra. In this connection it is worthwhile to look into some of the subsequent judgments given by Hon''ble Apex Court. In Life Insurance Corporation of India v. Anuradha, II (2004) SLT 1065=ii (2004) ACC 44 (SC)=ii (2004) CLT 5 (SC)= (2004) 10 SCC 13, wherein the Court has observed that the Life Insurance Corporation is social welfare institution, more so when life insurance has been nationalized and the service is not available in the private sector, should think of devising a policy available in insurgency-afflicted regions which would take care of the assured and his family members in such areas. The Court hinted that the insurance policies with terms and conditions suited to the requirements of people inhabiting insurgency or militancy-affected areas need to be devised and propagated.

5. FURTHER, in the case of Life Insurance Corporation of India and Ors. v. Asha

Goel and Anr. , I (2001) SLT 89=air 2001 SC 549, the Court has observed that: "in course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in general and crores of policy-holders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner. "

6. FURTHER, it is to be stated that in exercise of the powers conferred by Clause (zc) of Sub-Section (2) of Section 114a of the Insuance Act, 1938 read with Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999, the Authority has framed Insurance Regulatory and Development Authority (Protection of Policy Holders'' Interest) Regulations, 2002. The said Regulations, inter alia, provide that the proposal shall be processed by the insurer with speed and efficiency and all decisions shall be communicated by it in writing within a reasonable period not exceeding 15 days from the receipt of the proposal by the insurer. Relevant Regulation No. 4 is as under: "regn. 4. Proposal for insurance- (1) Expect in case of a marine insurance cover, where current market practices do not insist on a written proposal from, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidences by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form.

(2) Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognized under the Commission of India.

(3) In filing the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements of Section 45 of the Act.

(4) Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with proposal and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover.

(5) Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer shall draw the attention of the proposer to it and encourage the prospect to avail the facility.

(6) Proposals shall be processed by the insurer with speed and efficiency and all

decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the insurer. "

Though the above regulations have come into effect in 2002 after the issue of the policy and the death of the insured, the sum and substance of these regulations (supra) were already incorporated in the guidelines issued by the LIC. It is well-known fact that how decisions are taken in a huge public sector undertaking. Two different parts of files are maintained. One part is called noting file, another part is called correspondence file. Orders of the competent authorities are taken on the noting file and subsequently these are converted into letters which are later on typed and sent by an officer who is generally lower in rank than the authority who has taken decision. If the letter was sent on 13. 11. 1997, it is very clear that noting, drafting and orders of the competent authority were obtained much prior to that and as the death has taken place a day earlier, the decision must have been taken on the noting part of the file much earlier than the date of death.

In this case it is clear that Insurance Company has taken a long time to process this insurance proposal as is evident from the fact that date of proposal was 28. 7. 1997 whereas under writing was done on 13. 11. 1997. A combined reading of the above judgments of the Hon''ble Supreme Court along with Regulation 4 of the Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulations, 2002 leads us to the irresistible conclusion that the Insurance Company was not justified in repudiating the claim as the abnormal delay was caused by the officers and staff of the Insurance Company in communicating the acceptance of the policy.

7. AS essential facts of he case i. e. , the payment of premium, filling up of the policy form, issue of receipt, age of the proposer and death of the insured in a fire accident are not in dispute we hereby direct the LIC to pay Rs. 2,00,000 (Rupees two lakh only) with interest @ 9% from three months from the date of the claim till the date of payment. LIC shall also pay Rs. 10,000 as costs to the complainant. R. P. disposed of.

