(1997) 02 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

G.PADMAVATHI AMMA APPELLANT

Vs

DIVISIONAL MANAGER, LIC OF INDIA RESPONDENT

Date of Decision : 11-02-1997

Acts Referred:

Citation : 1997 3 CPJ 512 : 1997 3 CPR 412

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order passed by the District Forum, Kollam, in O.P. No. 564/ 94. The complainants are the appellants.

2. WE heard the Counsel for the appellant and also the respondent. Shortly stated the allegations in the complaint are as follows: The First complainant''s husband took a policy on 24.8.1992 and paid a premium of Rs. 922/- to the agent. According to that proposal the termination period was 15 years. Later the insured reduced the period from 15 years to 10 years. An additional sum of Rs. 454/- was paid to the agent on 1.9.1992. A receipt dated 4.9.1992 was issued. Before the policy was issued, Muraleedharan Pillai, the husband of the complainant and the father of complainants 2 and 3 died on 3.9.1992. A claim was made but the opposite party rejected the claim on the ground that there was no concluded contract. The complainant alleged that there is deficiency on the part of the opposite party in repudiating the claim and claimed insurance amount.

The opposite party filed a version stating that the complainants are not consumers since Muraleedharan Pillai had no policy. On 31.8.1992 2 proposals dated 29.8.1992 on the life of Muraleedharan Pillai were received. on 24.8.1992 Rs. 922/- was remitted. On 4.9.1992 Rs. 454/- was remitted. The amount remitted was insufficient and proof of age was not submitted. All the requirements were not complied with. Proposals were not concluded. In the meanwhile Muraleedharan Pillai died on 3.9.1992. It is in those circumstances the claim was repudiated. The opposite party expressed willingness to refund the amount paid towards premium.

3. THE District Forum held that there was no concluded contract and therefore it may not be said that there is deficiency in service and in that view the complaint was dismissed. Aggrieved by the said order this appeal has been preferred by the complainants.

4. LEARNED Counsel contended that the proposals were submitted and also the premium was paid and the fact that insurance policy was not issued is not a ground to repudiate the claim. We are unable to accept this contention raised by the learned Counsel. The Supreme Court had occasion to consider similar question in Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and Others, AIR 1984 SC 1014. The Supreme Court quoted with approval the statement of law in Corpus Juris Secundam Volume XLIV Page 686 which reads as follows: "The mere receipt and retention of premium 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 along. When the application so requires, the acceptance must be evidenced by the signature of one of the company''s executive officers".

After quoting the above passage Supreme Court went on to say- "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 considered 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 Kerala High Court had also occasion to consider a similar question in Life Insurance Corporation of India v. Mrs. Prasanna Devaraj, 1994 (2) KLJ 570. The Division Bench also followed the above decision of Supreme Court and held in similar circumstances that there was no acceptance of proposal creating a concluded contract.

5. THE National Commission also had an occasion to consider a similar case in Life Insurance Corporation of India and Another v. Smt. K. Aruna Kumari, III (1995) CPJ 80 (NC)=1995 (3) C.P.R. 62. A sum of Rs. 2,510/- was paid as initial amount towards the proposal on 3.9.1991. But the insured died in an accident on 23.9.1991 before the acceptance of the proposal was communicated to the insured. THE National Commission held that mere receipt of initial amount towards proposal and retention of it until after death does not amount to acceptance of contract of insurance.

6. THE foregoing discussion would show that there is no merit in the appeal. It is

accordingly dismissed. Appeal dismissed.

