
(1946) 07 MAD CK 0015
In the Madras High Court

Hairoon Bibi

APPELLANT

Vs

The United India Life Insurance Co. Ltd.

RESPONDENT

Date of Decision : 15-07-1946

Acts Referred:

Contract Act, 1872 — Section 4

Citation : AIR 1947 Mad 122 : (1946) 59 LW 542 : (1946) 2 MLJ 253

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—The plaintiff sued for the recovery of a sum of Rs. 1033 due by the defendant company in respect of a life

insurance policy which stood in the name of her husband Abdul Karim Saheb. The insurance policy is dated 1st February, 1938. It provides that

the date of the commencement of the assurance was on the 8th January, 1938, and the quarterly premium payable was Rs. 12-9-0. The amount

was subsequently enhanced into Rs. 13-2-0. A quarterly premium was payable on the 8th October, 1939. It was not paid on the due date, and

under the terms of the policy, there was one month's period of grace from that date for payment. The amount was not paid even within this month

and Abdul Karim, the assured, wrote to the company, under Ex. D-6, on 19th November, 1939, asking for an extension of one more month of the

days of grace and stating that he would pay the premium with the penalty due by the 8th December, 1939. This letter elicited the reply, Ex. P-11,

from the company on 21st November, 1939, in which they asked him to send a sum of Rs. 13-10-0 for premium and interest so that they could

send him a receipt and they state:

Since the policy will continue to be under lapse till receipt of the premium amount, we would urge you to remit this amount as early as possible

even before 8th December, 1939, so that the insurance protection may continue to be bestowed on the policy.

2. Abdul Karim remitted the amount by money order from his village on 28th November, 1939, well within the 8th December, 1939, and the

amount reached the company's branch office on the 30th November, 1939. But Abdul Karim died suddenly on 29th November, 1939. When a

claim was made for payment of the insurance amount, the widow was met with the plea that as the assured was dead before the premium was

actually received by the company the policy which had lapsed was not in force and that nothing was therefore due and payable to her. It was in

these circumstances that she filed the suit. It was dismissed by the District Munsiff of Kallakurichi and the decree was confirmed by the

Subordinate Judge of Cuddalore. The second appeal has been preferred against these decisions.

3. Clause 3 in the policy of insurance provides for the revival of lapsed policies. On the fulfilment of certain prescribed conditions the lapsed policy

will revive. The revival is not dependent on the goodwill or grace of the company. Of course, the very idea underlying the revival of a lapsed policy

is that the assured should be alive on the date of the revival. If he was dead when the policy was in a state of lapse, there could be nothing like any

revival at all.

4. Therefore we have to find out whether in this case the policy had been revived on or before the 29th November, 1939, when Abdul Karim

died, and this brings us to a consideration of the question whether the remittance of the premium by post on the 28th November, 1939, can be said

to be binding against the company in the sense that a proposal made by them for payment in a particular manner was accepted by Abdul Karim so

that it became an effective payment against them from which they would not resile on the ground that the money was not actually received by their

branch till after the man died. Two points arise in this connection. One is whether the letter from the company asking Abdul Karim to remit the

amount connotes or involves a remittance by post. The other is that even if it does so, whether the fact that the sender could under the post office

rules call back the money order detracts in any way from the rule that acceptance in the manner indicated by the proposer or offer Or constitutes in law a good and valid acceptance.

5. I agree that the word "" remit"" does not necessarily mean sending the money by post. The idea of a direct payment in person or by messenger might also be involved; but in construing a commercial letter we have to pay regard to the practice or course of dealing between the parties and find out what could have been intended. Abdul Karim was in an out of the way village in the district and we have evidence of a number of occasions when premia were sent by postal money order. Therefore such a remittance is not only one of the modes that must have been in the contemplation of the parties, but one is led to think in the present case, having regard to what happened previously that it was probably the mode of payment that was intended.

6. That the remitter has got a right, qualified or absolute, to instruct the post office not to pay the money to the payee, which is said to be provided by Rule 275 and 276 of the rules framed under the Indian Post Office Act, has in my opinion nothing to do with the question whether when the person who is called upon to do a particular thing does it in the manner in which the proposer authorises him to do it, the proposer is not bound by what has been done. The law on the subject is very clear and is found laid down not only in Section 4 of the Indian Contract Act and in the illustrations thereto but also in Section 50 of the same Act, illustration (d). It is also found discussed at length in *Henthorn v. Fraser* (1892) 2 Ch.

27. There is nothing in the rules referred to above which compels us to modify the general proposition of law that if the promisee prescribes or sanctions any manner of performance, performance in that manner discharges the obligation of the promisor.

7. Mr. Rajagopala Aiyangar ingeniously argued that the proposal came from Abdul Karim asking for an extension of time for payment till a particular date and the acceptance was by the company of this proposal and he contended that it was not a case where there was a proposal by the company which was accepted in any particular manner by Abdul Karim. It is hardly necessary to meet this argument at any length because letters from one party to the other may contain proposals and counter proposals.

We have to look at the substance and find out on any particular occasion who was the offer or and what was the offer and whether it was accepted or not by the opposite party. When the company told Abdul Karim that he should remit the money well before the 8th December, 1939, so that the protection of the insurance policy might be available to him, they no doubt accepted to grant him the time he wanted but proposed also that he should send the money in a particular manner and this proposal by them was accepted in turn by Abdul Karim by the money being sent by post, as it used to be sent even previously.

8. The defence raised is highly technical and in my opinion should not be given effect to unless we are compelled to do so by law. I find we are not so compelled and that the remittance by post is binding against the company. As soon as the money was put into the post office, following the demand by the company, the lapsed policy revived.

9. The second appeal is allowed and the decrees of the lower Courts are set aside and the plaintiff will have a decree for the amount claimed in her plaint with interest at six per cent. per annum from the due date till date of realisation. The company will pay her costs right through. The respondent will pay the Court-fees due to the Government. No leave.