
(1958) 09 AP CK 0008
In the Andhra Pradesh High Court
Case No : Appeal No. 545 of 1954

Hindusthan Ideal Insurance Co. Ltd.

APPELLANT

Vs

B. Jayalakshamma

RESPONDENT

Date of Decision : 24-09-1958

Acts Referred:

Contract Act, 1872 — Section 182, 188

Citation : AIR 1959 AP 562

Hon'ble Judges : Munikanniah, J; Bhimasankaram, J

Bench : Division Bench

Advocate : B. Manavala Choudar and P. Lingayya Choudary, for the Appellant; E. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

Munikanniah, J.—In this appeal by the insurer, the following facts need be mentioned.

2. The respondent's husband B. Venkatarama Naidu of Chelepalli had insured his life with the appellant-company who issued policy No, 10765 on 4-2-1949 marked as Exhibit A-1 under which the risk was to take effect from 20-12-1948. The premium was payable in half-yearly instalments of Rs. 302-8-0 and the second instalment was due to be paid on 20-6-1949.

The assured did not pay this instalment within the period of grace which expired on 20-7-1949. On 30-7-1949 he paid Rs. 302-8-0 in the District Co-operative Central Bank Ltd., Chittoor, who were the bankers of the insurer. The appellant passed a receipt therefore on 1-8-1949, but as this instalment of the premium was paid out of time, the insurance company wrote Exhibit A-4 to the assured that the amount was credited to the "anamath" account and reiterated the request to send interest and the form of health certificate in order to enable them to take necessary action in respect of the lapsed policy. Exhibit B-6 is yet another letter sent by the insurer. In this the insurance company wrote:

"Immediately after seeing this letter, if you send a sum of Rs. 3/- towards interest along with the health certificate sent herewith duly filled in signed and also attested by witnesses, we can take proper action.

3. The assured in compliance therewith filled in Exhibit B-4, the declaration of good health and handed it over to P. W. 2 on 13-11-1949 along with a sum of Rs. 5/- towards interest. P. W. 2 paid this sum into the Chittoor District Co-operative Central Bank Ltd., on 15-11-1919 and forwarded the Challan therefore and Exhibit B-4 to the insurance Company on the same date.

It is not denied by the appellant that on 19-11-1949 the company condoned the delay and admitted the assured as a policy-holder by adjusting the amounts from the suspense account to the policy account and thus revived the policy, and also sent an intimation of this fact to the assured. On the same day. Exhibit A-14 the premium notice was also sent to the address of the assured stating that the next premium was due in December, 1949. The company has also mentioned in Exhibit A-12, which is a list of premiums due for the month of December, 1949, the name of Venkatarama Naidu as one of the policy-holders from whom the premium was due and the attention of P. W. 2 was invited for immediate compliance.

Meanwhile the respondent's husband was stabbed at 8.00 a. m., at Chelepalli on 15-11-1949 & died in the Government Head-quarters Hospital at Chittoor the same day at 11.00 p. m., having been brought there for treatment. Later on when the notice Exhibit A-6 was issued on behalf of the plaintiff who was the nominee of her husband u/s 39 of the Insurance Act, the insurer sent the reply Exhibit A-7 which is extracted hereunder;

"We acknowledge receipt of your registered letter of the 17th instant and regret to note that the above gentleman was murdered. The policy has been under lapse with effect from 20-6-1949 and it was not revived till the day of his death. As the policy had thus been under lapse on the date of the party's death, we regret to say that no claim, can be sustained on the policy."

Thereupon the respondent filed the suit and against the decree in that suit, the insurer has come on appeal.

4. Before we deal with the contentions raised on behalf of the appellant, we may point out that Sri Manavala Choudary, the learned Counsel for the appellant, has not seriously questioned before us the finding that the assured did fill in the form of health declaration on 13-11-1949 and Hand over this declaration and a sum of Rs. 5/- to P.W. 2 at Chelepalli on that day.

Even if this fact is in serious dispute, we still consider that having regard to the evidence of P. W. 3, the karnam of that village who attested Exhibit B-4, and the testimony of P. W. 2 who had collected the first premium and paid it to the company and also received Exhibit A-9 dated 22-6-1949 from the Organiser of the insurer company to collect this particular premium amount and cause it to be

paid into the Central Bank, we cannot but completely agree with the finding of the lower Court in this regard.

5. What is now urged by the learned counsel for the appellant is that P.W. 2 was only a canvassing agent who was expressly forbidden from receiving payments by way of premia or otherwise and not authorise to receive any papers from a policy holder. In regard to the first part of this contention reliance is sought to be placed on Clause (3) in Exhibit B-10 which is the printed document containing the terms of agency. It reads:

"(3) An agent is not entitled to collect any premium of moneys due to the company, nor can he incur liabilities or debts so as to be bidding upon the company in any manner.""

There is also a similar clause in Exhibit B-8 which is an order of appointment issued to P.W. 2 although it is couched in a slightly different language. Clause 3 is as follows : --

"The agent shall not collect either the premiums or the debts payable to the company. He shall not borrow loans on behalf of the company."

These clauses in the contracts between the insurer and their agents of course govern the relations inter se. But we are not concerned with them, but with the position of third parties. So far as third parties are concerned unless they are fixed with the knowledge of these terms they are entitled to proceed on the footing that the agent has the authority to do what in actual practice the insurer allows him to do. If he allows his agent to collect monies and issue to the payer due receipts for the amounts so collected he must be deemed to have held out his agent as a person authorised to collect. It is needless to point out that these clauses do not hinder the company from authorising their agents to collect; they only prevent the agents from claiming or exercising the right to collect. Our attention has also been drawn to Clause 3 in policy No. 10765, which is marked as Exhibit A-1, wherein it is stated that all premiums are payable in full on the due date at the head office of the company or to its brandies or at its authorised bankers. As regards the clause in the policy Ex. A-1, it does not prohibit any other mode of payment. A mode recognised in practice by the insurer as permissible and adopted by the insurer is surely good against the former. This view is fortified by the following excerpt from. Ex. B-9 which is a copy of the printed prospectus of the appellant company for the year 1948.

"Receipt of payments. The company does not hold itself responsible for the payments made to any of its agents, unless such agents are authorised to make collections and give temporary receipts on the printed forms prescribed for this purpose by the company. The receipts issued by the agents are only temporary and the formal receipts are issued by the company signed by the General Manager. If any policy holder making payment to an agent does not receive official receipt from the Head Office within 10 to 15 days, he should immediately draw the attention of the Head Office to this fact for taking necessary action."

Therefore, there is no denying the fact that though the agent is not entitled as of right to collect any premium or moneys, the agent is not prevented when authorised from acting in this respect for the insurer so as to bind the principal. It is also not without force to observe that the absence of receipts on the printed forms would not make the authorisation ineffective, if actually the agent had been acting under authority but had refrained from or did not pass any receipt.

6. In order to find out whether the act of the particular agent binds the company or not, it is necessary to gather from the evidence firstly whether the particular person acting for the insurer is an agent and secondly, could he be said to be authorised to collect the money for the insurance company.

7. Before answering these two questions we may refer to that argument of the learned counsel for the appellant that all premiums are payable in full on or before the due date at the Head Office of the company or to its Branches or at its authorised Bankers contained in the clauses in the policy issued to the assured and to none else. The short answer to this is that the remittances of collection made by the organiser or P.W. 2 have time and again been accepted by the insurer and treated as payments by the assured. Therefore other modes of payment are not unknown in the conduct of business by this Insurance Company.

8. To take up the question whether P.W. 2 is an agent, if it is remembered that the first premium on this policy was collected by P.W. 2 and that the insurance company itself had addressed P.W. 2 as their agent as is evident in Exhibit A-12, it is futile for the appellant to contend that P.W. 2 is not an agent of the insurer. The further contention that though the organiser Sri V.V. Rama Rao at Masulipatam is an agent, any delegation by him to P.W. 2 is invalid, has no substance. It is not uncommon that insurance companies employ different classes of agents, but nevertheless each one of them can act for the company without "having to derive authority by delegation. If any doubts are suggested in regard to the appointment of P.W. 2 as an agent, they are cleared on a reference to Exhibit B-8 which is the order wherein the "agency terms" are mentioned. It is useful in this connection to notice that in the letter written by Sri V. V. Rao, Organiser, to P.W. 2, the latter is referred to as Agent. Hindustan Ideal Insurance Co. Ltd.. (vide exhibits A-9 and A-13). P.W. 2 has also styled himself as the agent in Exhibit B-5 while forwarding the challan for payment of interest of Rs. 5/- and Exhibit B-4. Exhibit A-12 which is the list of premiums due for December, 1949 communicated to P.W. 2 makes due recognition of the agency of P.W. 2 as it is also mentioned there and it is an instance of direct correspondence by the insurance company, with P.W. 2 as its agent. There is, therefore, little doubt that P.W. 2 was as much an agent of the appellant as Sri V. V. Rama Rao was.

9. Then as regards the authorisation of P.W. 2 to collect the interest due from the plaintiffs husband, we may set out the evidence. As early as 12-11-1948 Sri V.V. Rama Rao, Organiser, wrote to P.W. 2 asking him to meet Venkatarama Naidu and collect the premium immediately and remit it into the Bank. This relates to , the first premium. Then again on 22-6-1949, he wrote Exhibit A-9 which is with

regard to the premium now in question. The organiser directed P.W. 2 to collect the premium amount from the assured and cause it to be paid into the Co-operative Bank.

Though it may not be necessary to attach much importance to Exhibit A-10, as in our opinion this letter whose upper portion has been torn cannot be said to have been properly proved, yet another letter written by the company on 13-10-1949 (Exhibit B-1) to the Organiser is in respect of the collection of interest from this assured. A copy of this letter was sent to P. W. 2 and this is in these terms : --

"No. 16581 dated 13-10-1949. Premium. Sri V. V. Ramarao Garu, Organiser, H.I.I. Co., Ltd., Ramaraopeta, Kakinada, East Godavari District.

Sir,

In respect of Policy No. 10765.

We intimated them to send health certificate and interest crediting into "anamath" account of their policy the sum of Rs. 302-8-0 sent through the Chittoor District Co-operative Central Bank as the policy had been lapsed since the second half yearly instalment of the premium payable by 20-6-1949 in respect of the aforesaid policy was not received by us within the days of grace. But as the health certificate was. not received by us, we have issued reminder also subsequently. Till now the health certificate had not been received.

Therefore, I request you to take proper care after this letter and make arrangements to send sum of Rs. 4-8-0 towards the remaining interest sending the health certificate. The policy shall continue to lapse until satisfactory health certificate and interest reach us arid until a pakka receipt is issued as if the premium has been credited in company books.

Please consider.

Secretary.

Copy to Sri V. Krishnaiah Naidu."

10. Therefore, whatever might be the injunctions against collecting of moneys by the agents of the insurance company, in practice it is evident that the agents were authorised to collect premiums and moneys and remit them; and as has already been pointed out, such a collection made by P.W 2 for this policy towards this instalment had also been accepted remains undenied.

11. Among the functions enumerated in the Insurance Act with reference to an insurance agent, Section 2(10) specifies "soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance." At page 237, Halsbury's Laws of England, third edition. Volume 22, we find "he following: -

"Payment of premium: -- The premium may be paid by the assured to the insurers or to an insurance agent acting on behalf of the insurers. If the agent

has authority to receive it, the payment binds the insurers. The authority need not be an express authority; it may be implied from the circumstances."

A passage in Section 786, of Mac Gillivray on Insurance Law is instructive ; --

"Conditions restricting authority of agent : In order to protect the company from liability arising out of the unauthorised acts of its agents a condition is frequently inserted in the policy to the effect that agents are "not authorised to make, alter," or discharge contracts or waive forfeitures," or that "nothing less than a distinct agreement indorsed on the policy shall be construed as a waived. Such conditions are valuable in that they give notice to the assured of a definite restriction, on the agent's authority, and may prevent the company being bound by acts which would otherwise be within the agents apparent authority, but, like all other conditions in the policy, they may be waived by the subsequent conduct of the company or of the company's agent recognised and permitted by the company."

In *Insurance Co. v. Norton*, (1878) 96 US 234 at p. 240, Bradley J. of the Supreme Court of the United States, said ;

"The policy contained an express declaration that the agents of the company were not authorised to make, alter, or abrogate contracts or waive forfeitures. And these terms, had the company so chosen, it could have insisted on. But a party always has the option to waive a condition or stipulation made in his own favour. The company was not hound to insist upon a forfeiture though incurred, but might waive it. It was not bound to act upon the declaration that its agents had no power to make arrangements or waive forfeitures; but might at any time at its option give them such power. The declaration was only tantamount to notice to the assured which the Company could waive and disregard at pleasure."

Thus while the Insurance Act brings within the ambit of the authority of the insurance agents the business of working for renewal or revival of the policy, the agent's authority to receive payments from the proponent or the policy holder could not only be traced to the contract subsisting between the agent and the principal but may also be implied from the circumstances of a case. The salutary principle that a party always has the option to waive a condition or stipulation made in his own favour cannot be ignored.

Applying these principles to the facts of the present case, we are firmly of the view that P.W. 2 has acted on the authority of the company as an agent to collect the amount and receive the health certificate on behalf of the appellant.

12. Further even if as contended for on behalf of the appellant it is only Sri V. V. Rama Kao as organiser is the agent of the insurance company and letters written by him to P.W. 2 could not be taken strictly as an authority to P.W. 2, the payment to P.W. 2 by the assured, in the circumstances of this case, is still a payment to the Organiser. It is not always that persons authorised to receive payments do take the amounts directly by themselves; but payments are made

at their office or to persons who are sent for collection.

In such cases though the hand that received the payment is that of the person deputed, it becomes a case of that other extending the collector's hand instead of his own for the physical act of receiving the payment. This aspect needs no further elaboration as it is a familiar thing in daily occurrence. Any such payment made to the agent through the collector would also be accounted as such from the time the collection was made is up-held by the decision in *Hairoon Bibi Vs. The United India Life Insurance Co. Ltd.*,

13. With regard to the contention that the handing over of the health declaration to P.W. 3 is not binding on the company, there is nothing in the general terms of agency as illustrated by Exhibit B-10 or in the special terms of the appointment of P.W. 2, to suggest that the agent is debarred from accepting any communications addressed to the company. An agent is a person duly authorised to act on behalf of another and in all matters represents his principal except in so far as his authority is expressly limited and the limitation is known to the person who deals with the agent.

No disability imposed on the agent as regards receipt of papers on behalf of the company has been brought to our notice. He serves little useful purpose if he cannot do even such a mere mechanical act as that. It seems to us that the authority of the agent to receive the health declaration to question on behalf of his company admits of no doubt.

14. It is next urged by Mr. Choudary that the terms for revival of lapsed policies contained in Clause 7 of Exhibit A-1 lay down that even if payment of arrears of premium with interest thereon is made and the declaration of good health is sent the revival is dependent upon the satisfaction of the Directors as to the continued good health and eligibility of the life for assurance. A decision of the Directors as regards the satisfactory nature or otherwise of the proof of continued good health of the life of the assured is insisted on as the sine qua non. It is also submitted by him that Exhibit B-4 the printed form used for declaration of good health contained the following in column 5 : --

"Until I receive a receipt from the company that the company has revived my policy, I hereby agree to treat that my life policy has not been revived and that if the statements and requests made herein are incomplete and false the revived policy shall stand cancelled by itself."

The learned counsel therefore insisted that the payment of interest and the handing over of the declaration of good health to P.W. 2 did not operate to revive the policy, but only the receipt of the order issued by the company stating the company had revived the policy after arriving at a decision thereon had that effect; that secondly, there can be satisfaction in regard to the eligibility of the life for assurance in the case the life of the assured was in existence till the time a decision is taken by the Directors and the receipt is issued but that the fact that the assured was in the present case alive at the time, paid the premium or

the interest and gave the declaration to P.W. 2 would not matter; and thirdly, that the insurer has a right to cancel the order of revival when it is passed under the mistaken belief that the assured was alive.

15. The first of these questions raises the important point whether the acceptance by the insurer of the application for revival is necessary or there is automatic revival of a lapsed policy on the fulfilment of the conditions specified. Clause 7 of the insurance policy which is relevant may be extracted: --

"Revival of lapsed policies : -- When a premium is not paid within the days of grace the policy lapses as from the due date of the unpaid premium subject to company's non-forfeiture. Regulations for automatic paid-up Assurance and the scheme for Automatic Extension, when and so far as applicable. A policy that has lapsed may be revived within two years from the date of lapse if the Directors are satisfied as to the continued good health and eligibility of the life for assurance and on payment of arrears of premium with interest thereon at 6 per cent per annum compound subject to a minimum interest of Annas Eight. A satisfactory declaration of good health on the company's printed form may be accepted as an evidence of good health of the life assured if revival is applied for within six months from the date of lapse and a full medical report completed by an approved doctor of the company at the assured's own expense will be required if revival is applied for after one year from the date of lapse. The decision of the Directors as regards the satisfactory nature or otherwise of the proof of continued good health of the life assured submitted for consideration of revival is final."

A careful reading of this clause reveals that the right to revive a policy is to be exercised by the assured on payment of arrears of premium with interest thereon etc., and upon the production of satisfactory declaration of good health, if revival is applied for within six months from the date of lapse. The decision of the Directors referred to in that clause could be only in regard to the nature of proof that would be acceptable to the company, as the case happens to be one of revival within six months or thereafter,

If therefore the company has decided to issue the printed form of declaration of good health treating the particular case as a matter where that declaration by the assured is enough to satisfy the Directors, no question of a further acceptance of the declaration of good health as being satisfactory would arise, though always an incomplete and false declaration will fail to create any rights in the assured.

The language of this clause does not give room to suppose that the insurer has reserved the right to further accept or reject a declaration of good health made in the company's printed form when the company is satisfied that that is the course to be adopted and not a full medical report by an approved doctor of the company as contemplated in another contingency. While so, the superimposition, and even the alleged acceptance of another condition, in making the declaration

contained in Exhibit B-4 is neither legal nor permissible.

The original contract namely, Exhibit A-1 laid down the basis on which, in the event of revival being desired, the insurer would grant it. It is not thereafter possible for the insurers to add further terms and conditions if and when the revival is desired so as to affect the terms of the original agreement. We have, therefore, little doubt that there is no force in the contention of the learned counsel for the appellant that until the acceptance of the renewal application and the issue of memorandum stating that the policy has been revived, the policy remains lapsed; on the other hand, the payment of the premium and interest and the handing over of the declaration of good health to the insurance company or to the person authorised by the company in this behalf revives the lapsed policy *co instanti*.

The utter absence of any evidence showing that the directors render decisions on applications for renewal is significant. It is not asserted that any such decision preceded the renewal purporting to have been effected in regard to this very policy; a fact which further strengthens our conclusion that the renewal of lapsed policies follows as a matter of course on the fulfilment of the conditions mentioned in Clause 7.

16. We have next to consider what is meant by the term "if the directors are satisfied as to the continued good health and eligibility of the life for assurance" in Clause 7 of the insurance policy. This clause does not require that the assured should continue to be alive at the time when the company takes up the application for renewal for consideration assuming, of course, that it is a matter for its consideration.

The principle enunciated in *T.G. Rajan Vs. The Asiatic Government Security Life Assurance Co., Ltd.*, to the effect that the death of the assured subsequent to the payment of the policy amount within the grace period does not disqualify the claim in regard to that life, amply supports our view in this matter. In *Pritchard v. Merchant's and Tradesman's Mutual Life Assurance Society*, (1858) 140 ER 885, upon which reliance is placed for the appellant, a beneficiary of the policy paid the premium after the policyholder was dead, and the facts- therein are dissimilar to the present case.

We cannot therefore accept the contention of the learned counsel for the appellant that the death of the assured in this case on the 15th of November, 1949 so operates as to render the revival ineffective. A similar argument had been pressed with reference to continued good health in Clause 7 of the insurance policy. Mr. Choudary urges that good health upto the point of the consideration by the Directors of the application or declaration of health is what is meant.

But this contention, needless to point out, is untenable, as the point of time upto which the continuance of good health is required could in no case be beyond the date of declaration of good health. Therefore we consider that the expression

"continued good health" could only refer to good health from that date from which the risk under the original policy started to the date of the declaration.

17. The last point as put for the appellant is this: The policy had lapsed on 20-6-1949. It was so also on the date of the party's death. The premium was adjusted in the books of the insurance company only after the party died. This adjustment had been made without the knowledge of the death of the party, and the order of revival, if any, should be taken as void as it was passed under the mistaken belief that the assured was alive. In those circumstances, according to the terms of Exhibit B-4 the revived policy stood cancelled.

But we have held as pointed out above that the second premium had been paid by the plaintiff's husband long before his death and the amount of interest and the declaration of good health had been handed over to P.W. 2 on 13-11-1949 when the assured was alive so as to bind the insurance company. The fact that by the time of the death of the assured, the challan and Exhibit B-4 sent by P.W. 2 did not reach the insurance company but was received on 17th of November, 1949, or the circumstance that it was later on the amount kept in the "anamath" account was adjusted towards the revived policy, would not alter the situation or affect the accruing of the liability for the insurer company.

The clause as to cancellation is one contained in Exhibit B-4 only, which, we have already pointed out, cannot add to or alter the terms contained in the insurance policy. It follows that the stand taken by the insurance company that the policy stood lapsed is untenable.

18. In the result the appeal fails and is dismissed with costs.