(1995) 08 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

L.I.C.OF INDIA APPELLANT

Vs

K.ARUNA KUMARI RESPONDENT

Date of Decision : 14-08-1995

Acts Referred:

Citation : 1995 0 NCDRC 69 : 1995 2 CPC 516 : 1995 3 CPJ 80 : 1995 3 CPR 62

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , S.P.BAGLA J.

Advocate : M.L.Visweswaraiah , Bhaskar George

Judgement

1. THIS Revision Petition has arisen out of the order dated 9.3.94 of the Andhra Pradesh State Commission at Hyderabad dismissing the appeal of the Life Insurance Corporation of India-Petitioner herein (for short called L.I.C.) and upholding the order dated 4.3.92 of the District Forum, Cuddapah which had directed the L.I.C. to pay a sum of Rs. 99,500/- either towards the amount covered by the insurance policy proposed by her husband or by way of compensation for deficiency in service of the Opposite Party or their subordinates.

2. THE facts in brief are these. Shri K. Ramakrishna Reddy, husband of the Complainant had submitted to the Rajampet branch of Cuddapah Division of Life Insurance Corporation of India a proposal for insurance on own life proposing the sum of Rs. 1,00,000/- being Proposal No. 39365 D. A sum of Rs. 2,510/- was paid as initial amount towards proposal under Receipt No. 291488 dated 3.9.91. Unfortunately, the Complainant''s husband died in an accident on 23.9.91. The Complainant claimed the amount due under the policy of insurance in pursuance of the proposal and the premium accepted by L.I.C. L.I.C.''s stand is that since the proposer did not submit the certificate of age, it wrote a letter dated 6.9.91 to the proposecihat for consideration of the proposal he is required to submit age proof viz. school certificate/service register etc. and as the proof of age was not submitted there was no acceptance of proposal and hence L.I.C. is not liable to pay any amount. The District Forum before whom the complaint was filed came to the conclusion that in the absence of any acknowledgement or other record produced by the Opposite Party to prove thaf such a letter (of 6.9.91) was

posted, they - were not inclined to place any reliance on the version of the Opposite Party that such a letter was posted on 6.9.91. The District Forum observed that the claim of the Complainant was summarily rejected on sole ground that L.I.C. had not accepted the proposal because it wrote letter dated 6.9.91 which in its opinion was fabricated. The District Forum held that the Complainant''s husband had submitted a valid proposal with his age as 31 years supported by school certificate, paid the premium of first instalment and even if there was no formal acceptance and issuance of the policy to the deceased, it was only on account of deficiency of service of L.I.C. and therefore, they cannot take advantage of their own fault. The District Forum granted the relief as noticed above and its order was upheld by State Commission for the same reasons.

3. WE have heard the learned Counsel for the parties and have gone through the records. In our view there was no concluded contract of insurance subsisting between the deceased and L.I.C. and in its absence no compensation could have been granted by the District Forum or affirmed by the State Commission. The Complainant has not established on record that the proof of age was submitted by the deceased alongwith the proposal. It is common knowledge that proof of age is an essential requirement that has to be furnished by a proposer alongwith the proposal so as to enable the Life Insurance Corporation of India to underwrite the risk and fix the amount of premium thereon. The quantum of premium is dependent upon and varies with the age of the proposer. In this case the Plan and Term is 14-20 with the accident benefit for the proposed sum of Rs. 1.00 lakh and therefore the proof of the age is an essential precondition for acceptance of the proposal. The Receipt No. 2914Â§8 dated 3.9.91 is only a deposit memorandum. It specifically records "payment as shown along side has been received and held in deposit. If the payment is found in order the amount will be adjusted and Corporation''s Official Receipt issued". The reasons for keeping the amount in deposit are specifically stated as "initial amount towards proposal". The proposal and the deposit memorandum could not be construed as a receipt showing the acceptance of the insurance premium in favour of the deceased-husband of the Complainant. As it is not established on the record that the age proof was submitted alongwith the proposal and the stand of the L.I.C. is that none was submitted, it is reasonable to expect that L.I.C. would ask for the age proof viz. school certificate/service register for consideration of the proposal. There was no basis for the District Forum as well as for the State Commission to make an observation that the letter dated 6.9.91 was fabricated merely because there is no acknowledgement of the said letter from the deceased or other record either to prove that it was posted and that it was received by the deceased. There is no suggestion by the Complainant that any of the officials of the L.I.C. were inimical to her or her deceased husband or there was any animosity on the part of the officials of the L.I.C. It is highly improbable that the officers of the L.I.C. would forge an office copy of the letter dated 6.9.91 to defeat the claim of the Complainant.

4. WHETHER letter dated 6.9.91 was sent or not or it was received by the deceased is wholly irrelevant on the facts and circumstances of the case. By merely submitting the proposal and payment of an amount which was kept in deposit without appropriation towards the premium it cannot be construed as a concluded contract of insurance. There has to be an offer of the L.I.C. of accepting the proposal, issuing the premium receipt and subsequently issuing a policy of insurance. The mere receipt of the initial amount towards proposal and retention of it until after death of the deceased is not acceptance of the contract of insurance. The acceptance must be signified by some act or acts agreed to by the parties after which the law raises a presumption of acceptance. The Supreme Court in L.I.C/s case reported in AIR 1984 SC page 1014 held : "The contract of Insurance will be concluded only when the party to whom the offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. 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 s signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as prima facie, acceptance must be communicated to the offerer. Similarly, the mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance."

This Commission in "LJ.C. of India v. Mrs. Bitnala Routray" reported in I (1991) C.P.J, page 420 in its order held that where a proposer dies before the acceptance of the proposal by L.I.C, there is no concluded contract of insurance and thus the non-payment of the amount does not amount to deficiency in service.

5. THE impugned orders of the District Forum as well as of the State Commission suffer from serious illegalities in the exercise of jurisdiction as the view expressed by them is against the settled law by the Supreme Court. In the result, the Revision Petition is allowed &ad the impugned orders of the District Forum dated 4.3.92 and of the State Commission dated 9.3.94 are hereby set aside and the complaint is dismissed, leaving the parties to bear their, own costs.