(2001) 03 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation APPELLANT

Vs

MULEMA SINGH RESPONDENT

Date of Decision : 19-03-2001

Acts Referred:

Citation : 2001 3 CPJ 555

Hon'ble Judges : S.K.Dubey , Neelima Dubey , B.L.Khare J.

Final Decision : Ordered accordingly

Judgement

1. THE two appeals arise out of order dated 10.12.1998 passed in Case No. 19/92 by the District Consumer Disputes Redressal Forum, Sarguja Ambikapur (for short the ''District Forum''), whereby the Life Insurance Corporation of India (for short the ''LIC'') and employer South Eastern Coal Fields Limited (for short the ''SECL'') have been ordered to pay the assured sum of Rs. 1,00,000/- with interest thereon at the rate of 6% p.a. from the date of complaint i.e. 28.1.1992 and Rs. 500/- as costs of the proceedings within a period of 45 days failing which the amount of Rs. 1,00,000/- to carry interest at the rate of 12% p.a.

2. ADMITTEDLY, life assured Anjani Kumar Singh, a store clerk was insured under by Salary Savings Scheme Policy No. S-3809827 Endowment Assurance with profits (with Accident Benefit) for a sum of Rs. 1,00,000/- under the table and term 14-25 of which monthly premium of Rs. 344.60 paise. After payment of two instalments of the premium by the life assured, the third and onwards monthly instalments of the premium were to be remitted by SECL after deducting the amount from the salary of the employee/the life assured. However, the third premium which was to be deducted and collected for its remittance was not remitted to the LIC by SECL on the ground that the life assured was on sick leave, the salary which he earned in that month was of only Rs. 117.94 paise. SECL did not intimate this fact to the life assured as a consequence, of this policy lapsed for non-payment of premium. Life assured died on 29.6.1989. The nominee/widow of the deceased made the claim which was not paid as the policy lapsed. The complaint filed was resisted. The District Forum after appreciation of

evidence held that the LIC as well as SECL were deficient in service. Mr. Deepesh Joshi, learned Counsel for the appellant submitted that the life assured gave an undertaking to the employer on 25.5.1989 that the deceased as employee would be responsible for consequences on account of non-payment of premium on his policy. Therefore, LIC cannot be held deficient in service for non-payment of the premium particularly when the earned salary was not sufficient for deduction and payment of the premium.

Mr. S.B. Dubey, learned Counsel for the SECL submitted that SECL was not charging any consideration who was acting only as a collecting agent. The amount was not deducted as the deceased did not earn sufficient salary, hence SECL cannot be held responsible.

3. THE contention of LIC is based on undertaking given by the life assured to SECL relevant of which we extract : "Dear Sir .... I agree that your liability will be confirmed to making arrangement for deduction of premium from my salary wherever this can be made and remitting the amount to the Corporation in time. I shall be entirely responsible for any consequences on account of non-payment of premium on my policy for reasons beyond your control such as in the event of my proceeding on leave without pay, or my drawing advance salary without deduction of premium, or my cancelling this authorisation for deduction of premium on my leaving your employment in any such case, or in case of withdrawal of the Salary Saving Scheme with you by the Life Insurance Corporation of India for any reason whatsoever, it will be my responsibility to make arrangements for remittance of the premium directly to the Corporation at the increased rate specified in the policy to prevent my policy from going into a lapsed condition. Yours faithfully Sd/-"

The Supreme Court in case of Delhi Electric Supply Undertaking v. Basanti Devi & Anr., III (1999) CPJ 15 (SC)=AIR 2000 SC 43, has considered the effect of Salary Savings Scheme endorsement and the effect of non-payment of premium by the employer in paras 5 and 6 which we quote : "5. We have also been shown a Circular titled ''Salary Savings Scheme Endorsement'', which is as under : ''This policy having been issued under the Corporation''s Salary Savings Scheme, it is hereby declared that the instalment premium shall be payable at the rate shown in the schedule of the policy so long only as the life assured continues to be an employee of his present employer, whose name is stated in proposal and premiums are collected by the said employer out of the salary of the employee and remitted to the Corporation without any charge. In the event of the life assured leaving the employment of the said employer or the premium ceasing to be so called and/or remitted to the Corporation, the life assured must intimate the fact to the Corporation and in the event of the Salary Savings Scheme being withdrawn from the said employer, the Corporation shall intimate the fact to the life assured and all premiums falling due on and after the date of his leaving employment of the said employer, or cessation of collection of the premiums and remittance thereof in the manner aforesaid, or withdrawal of the Salary Savings

Scheme as the case may be, shall stand increased by the imposition of the additional charges for the monthly payment that has been waived under the Salary Savings Scheme at 5% of the premium exclusive of any premium charged for Double Accident Benefits or extended Permanent Disability Benefits and any other extra premiums charged. During the period in which premium is remitted to the Corporation through the employer, the instalment premium will be deemed to fall due on the 20th day of each month instead of the due date within mentioned.

'' 6. The endorsement shows that the premium deducted by DESU from the salaries of the employees and remitted to LIC is without charge. When the employee leaves the employment of the said employer or his premium is ceased to be collected and/or remitted to the LIC this fact is to be intimated by the employee to the LIC. When the Scheme (Salary Savings Scheme) is withdrawn it is the LIC which intimates that fact to the employee whose life has been insured. Then premium is payable with an extra charge. This endorsement is in conflict with the terms of the Scheme as spelled out in the Brochure. Considering the conditions as to how premium is to be deducted from the salaries of the employees and remitted to the LIC by the DESU by one cheque for all the employees with the reconciliation statement it is not possible for any employee to know if the amount of the premium deducted from his salary has been remitted or not. An employee is not being given any separate premium notice nor is he given any receipt for the premium received. If a condition is now placed on the employee that it is he who is to intimate the LIC if there is no remittance of the premium deducted by DESU it will be too onerous a condition to be of any validity. Considering the Scheme such a condition cannot be imposed on an employee. It is impracticable. A purposive interpretation has to be given to the endorsement and it has to be held that since payment of premium after deducting from the salary of the employees is between DESU and LIC. It will not be for the employee to intimate the LIC about non-remittance of the premium."

4. IN the case in hand, even if the salary earned was not sufficient because of the amount of premium monthly was not remitted to LIC, it was the duty of the SECL to intimate the life assured the reason for non-remittance of the premium and to pay the same directly to LIC failing which the policy will lapse, which was not intimated by SECL, as a result of which for non-payment of the premium the policy lapsed. IN the circumstances, in our opinion, SECL has failed in discharge of its duty. LIC cannot take advantage of the undertaking which contains a too onerous condition, which cannot be imposed on an employee as it is impracticable to employee to know whether premium has been deducted or not. It was for the SECL to remit the premium to the LIC which was neither remitted to the LIC nor the life assured was intimated for making the payment of the premium. IN the circumstances SECL who was acting as an agent of the LIC failed to perform his part or duty in the matter of deduction or collection of premiums. Therefore, the District Forum in our opinion was right in holding that because of inaction of SECL, amounting to deficiency in service policy lapsed. In

view of the above, the appeal filed by the LIC is devoid of merit and has to be dismissed. However, in the light of the decision of the Supreme Court in Basanti Devi''s case the SECL cannot be held liable to pay jointly or severally the amount of Rs. 1,00,000/- under the policy accept for inaction. SECL shall bear the costs of the proceedings throughout which we fix at Rs. 2,000/-. Accordingly, LIC is ordered to pay Rs. 1,00,000/- with interest thereon at the rate of 6% p.a. from 28.1.1992 within a period of two months from the receipt of certified copy of this order failing which the interest shall be payable at the rate of 9% p.a. SECL shall pay an amount of Rs. 2,000/- as costs of the proceedings throughout within a period of two months from the receipt of certified copy of this order failing which the interest shall be payable on the said amount at the rate of 12% p.a. from the date of this order. In the result Appeal No. 1058/98 fails and is dismissed while Appeal No. 1118/98 shall stand allowed in the manner indicated here-inabove. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Ordered accordingly.