(1991) 01 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India — APPELLANT

Vs

Chandra — RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Citation : 1992 1 CPR 152 : 1993 1 CPJ 204

Hon'ble Judges : S.K.Mal Lodha , Saria Khan J.

Final Decision : Appeal allowed

Judgement

1. AGGRIEVED against the order dated 27.7.1990 passed by the District Forum, Jaipur in Complaint Case No. 827/89, the opposite parties have filed this appeal under Section 15 of the Consumer Protection Act, 1986 ("the Act" herein). Facts leading to this appeal lie in a very narrow compass. The complainant respondents husband proposed for his insurance for Rs. 10,000/- on 26.5.1989. The amount of the first premium amounting to Rs. 166/- was deposited on the same day i.e. 26.5.1989 vide receipt No. F/171392. The amounts collection has been mentioned as B.O.C. No. 392-194. In the receipt it is mentioned in front column of the "policy proposal No. new." The complainant''s husband died in truck matador accident at Ajmer on 8.7.1989. In connection with that a First Information Report No. 94/89 was lodged. A Panchnama was also prepared. It is said by the complainant that on 23.39.1989 she went to opposite party No. 1 regarding the death claim of her husband. She was told to come after three or four days. It is said that when she went there on 4.10.1989 opposite party No. 1 did not give any reply and told her to bring an application of after accident death claim. Nothing was done even after she had gone with the application form. It is said that opposite party No. 1 refused to give any amount on account of the accident death claim to the complainant. She, therefore, filed the complaint praying that the opposite parties may be directed to make the payment of the entire accident death claim and also to pay Rs. 20,000/- for harassment and mental agony. Costs of the complaint and interest were also claimed. The complainant submitted her affidavit dated 16.11.1989 in support of the complaint. The opposite parties filed version of the case resisting the complaint.

It was submitted that no policy covering the risk for Rs. 10,000/- was issued to the deceased (husband of the complainant) regarding which the sum of Rs. 166/- was deposited. It was, however, admitted that the sum of Rs. 166/- was received under B.O.C. No. 392-194. It was specifically pleaded that no proposal for insurance in pursuance of the B.O.C. was received from the proposer. According to the opposite parties neither any proposal was accepted nor policy was issued. As proposal was not accepted and the policy was not issued there was no question of commencement of the risk. The contents of the writing in B.O.C. as proposed in the version of the case are written as under: "Payment as shown along side has been received and held in suspense. If the payment is found in order the amount will be adjusted and Corporation''s Official receipt issued." Photostat copy of B.O.C. was submitted with the version of the case. An objection regarding the maintainability of the complaint was raised. It was submitted that the complainant is neither a "consumer" nor the death claim comes under the definition of the claim. Affidavit of Shri J.P. Bhutra dated 23.7.1989 was filed in support of the version of the case. It appears from the record that on 15.5.1990 an application was submitted on behalf of the opposite parties that the District Forum has no jurisdiction to hear the complaint in view of the decision rendered in Urmila Goyal and Others v. Sr. Divisional Manager, L.I.C. passed in Complaint Case No. 98/89 decided on 16.4.1990 by the State Commission. Besides submitting the documents and the affidavits referred to hereinabove, parties did not produce any evidence before the District Forum. The District Forum heard the arguments on 23.7.1990 and passed the impugned order directing the opposite parties to pay to the complainant Rs. 10,000/- and also interest @ 12% from the date of the order until payment. AGGRIEVED the opposite parties-appellants have filed this appeal.

2. BEFORE hearing arguments, it was put to Mr. Beharilal Agarwal, Advocate for the opposite parties-appellants and Mr. Satya Prakash Sharma, Advocate for the complainant-respondent whether the arguments in the appeal may be heard in the absence of one member as the Bench sitting today consists of the President and one member only. Both the learned Counsel appearing for the parties submitted that the arguments in the appeal may be heard and the appeal may be disposed of. After obtaining their consent and after considering Section 15 of the Act and Rule 8(9) of the Consumer Protection (Rajasthan) Rules, 1987, we heard Mr. Agarwal, Advocate for the appellants and Mr. Sharma, Advocate for the respondent and carefully examined the order under appeal in the light of the submissions made by the learned Counsel for the parties. The only point that arises for our consideration in this appeal is whether in the absence of acceptance of the proposal for insurance, a duly completed contract for the insurance had come into existence. There is no dispute that the deceased (husband of the complainant) proposed for the insurance on 26.5.1989 and deposited a sum of Rs. 166/- as the first premium for which the receipt was issued. Subsequent to that proposal form was neither filled nor accepted and as the proposal form was not accepted, a duly completed contract did not come into

existence covering the risk. Mr. Agarwal has relied on A.I.R. 1984 S.C. 1014 to show that no binding contract of insurance had come into existence between the opposite parties and the deceased Dilip Singh so no amount as death claim was payable to the complainant. The Supreme Court in paras 13 and 14 ruled as under:- 13. When an insurance policy becomes effective is well-settled by the authorities but before we note the said authorities, it may be stated that it is clear that the expression "underwrite" signifies ''accept liability under''. The dictionary meaning also indicates that (See in this connection The Concise Oxford Dictionary Sixth Edition p. 1267). It is true that normally the expression "underwrite" is used in Marine insurance but the expression used in Chapter III of the Financial powers of the Standing Order in this case specifically used the expression "underwriting and revivals" of policies in case of Life Insurance Corporation and stated that it was the Divisional Manager who was competent to underwrite policy for Rs. 50,000/- and above. 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. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance. See in this connection the statement of law in Corpus Juris Secundum, Vol. XLIV page 986 wherein it has been stated as:- "The mere receipt and retention of premiums 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 offeror, either directly, or by some definite act, such as placing the contract in the mail. The test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the company''s executive officers."

14. 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 construed as an acceptance, as, prima facie, acceptance must be communicated to the offeror. 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. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed. See in this connection Statement of Law in MacGillivray & Parkington on Insurance Law, Seventh Edition page 94, paragraph 215."

It is significant to note that in that case the deceased has already submitted the proposal form for insurance. There was medical examination by the Doctor of the deceased and the deceased had issued two cheques in lieu of first premium. The first cheque for Rs. 100/- was encashed. The second cheque was also encashed though after dishonour. A death claim was filed for the insured amount Rs.

50,000/-. It was denied by the Divisional Manager of the Insurance Company. One of the important and main issue canvassed in that case before the Sub-Judge was whether there was a concluded contract between the deceased and the LIC of India. The Supreme Court held that concluded contract of insurance has not come into existence. It also considered the fact of retention of the amount paid as first premium and ruled that the mere receipt and retention of premiums 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 District Forum after considering the definitions of the "complaint", "consumer", "consumer dispute" and "service" as given in Section 2(1)(c), (d), (e) and (o) of the Act came to the conclusion that the complaint of the complainant was maintainable as it involved a consumer dispute. It took note of A.I.R. 1934 Alld. 298 and on the basis of that decision held that as it was admitted by the opposite parties that the first premium was paid it should be inferred that the proposal was accepted and after that the premium was paid. The facts of A.I.R. 1934 Alld. 298 are altogether different and it has no bearing whatsoever to the case on hand. In that case the proposal form was signed and premium was paid. Insurance was for one year. The cover note was sent to the insured by which policy was to be issued within 30 days.

In view of the authoritative pronouncement of the Apex Court of the country referred to here in above the facts of which are more or less similar to the facts of the present case, in disagreement with the District Forum we hold that no concluded contract of insurance had come into existence by payment of Rs. 166/- on 26.5.1989. There is no material on record to hold as submitted by the learned Counsel for the complainant-respondent that the proposal was submitted and that it should be presumed that it was accepted. Appropriate action will be taken by the opposite parties- appellants for the return of Rs. 166/- paid by deceased Dilip Singh on 26.5.1989 to the complainant-respondent.

3. THE result is that this appeal succeeds. THE appeal is allowed and the order dated 27.7.1990 passed by the District Forum, Jaipur is set aside and the complaint is dismissed. THEre will be no order as to costs of this appeal. Appeal allowed. _____

