
(2011) 05 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India

APPELLANT

Vs

JAMUNA

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : 2011 3 CPJ 474

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition allowed.

Judgement

1. LATE Shri G. Munivenkataramana Naidu sent proposal No. 671 for taking a life insurance under "Janarakshak Policy" for a sum of Rs. 5,00,000 with accidental benefits to L.I.C. the Petitioner herein through its agent A. Ramachandra Chetty. Under the policy in the event of death prior to maturity twice the assured amount was to be paid to the assignee or nominee or the legal representatives. Deceased paid Rs. 3,250 through cheque with the proposal form on 22nd May, 2002 and another sum of Rs. 11,470 on 31st May, 2002 on completion of medical check up. Thus a total amount of Rs. 14,720 was paid by him towards premium. Unfortunately, G. Munivenkataramana Naidu died in a road accident on 12th June, 2002 i.e. within 12 days of filing the proposal. Petitioners had not issued policy till the date of death of proposer. Complainants - Respondents who are legal heirs of the deceased filed their claim which was not settled on the ground that the proposal was not complete for want of certain requirements. That as no policy was issued there was no concluded contract between the parties and hence, the Petitioners were not liable to pay the amount to the Respondents. Aggrieved by this, Respondents filed complaint before the District Forum. Petitioners on being served, entered appearance and filed written statement. It was admitted that deceased had submitted proposal No. 671 on 31st May, 2002 by paying an amount of Rs. 3,250 on 22.5.2002 and Rs. 11,470 on 31.5.2002 towards deposit under plan and term 91-22 for a sum of Rs. 5,00,000. The proposal was not completed for want of certain requirements viz. (i) re-check of measurements, (ii) fresh agent's reports, details of income source, and (iii) details of previous policy, etc. The proposer was duly called upon to furnish the

details and acceptance of policy. Since, the details were not furnished, proposal for life insurance was not accepted. No policy was issued. There was no concluded contract between the parties and, therefore, Petitioners were not liable to pay any amount to the Respondents. It was prayed that complaint be dismissed as there was no deficiency in service on the part of the Petitioners.

2. DISTRICT Forum after taking into consideration the pleadings as well as evidence led by the parties allowed the complaint and directed the Petitioners to pay Rs. 10,00,000 (double the insured amount) together with interest @ 9% from 18.12.2002 till the date of realization and Rs. 1,000 towards litigation expenses to the Complainants.

3. PETITIONERS being aggrieved filed appeal before the State Commission which has been dismissed by the impugned Order.

4. COUNSEL for the parties have been heard at length.

5. COUNSEL appearing for the Petitioners contends that the Fora below have erred in directing the Petitioners to pay insured amount as there was no concluded contract between the parties. That as per the judgment of the Supreme Court of India in Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and Ors., 1984 (2) SCC 719, contract of insurance is complete only on the acceptance of the proposal. That till the acceptance of proposal and issuance of the policy and communication of the acceptance of the proposal binding contract does not come into existence. That the communication is complete only when communicated to the person proposing to take the policy. Mere acceptance and retention of the premium was not acceptance of proposal. As against this, Counsel for the Respondents has supported the judgments of the Fora below for the reasons given therein.

6. IT is not disputed before us that G. Munivenkataramana Naidu had sent a life insurance proposal for Rs. 5,00,000. He died within 12 days from the date of making the proposal before the offer could be accepted. The proposal was not accepted for want of certain requirements i.e. (i) re-check of measurements, (ii) fresh agent's reports, details of income source, and (iii) details of previous policy, etc. Petitioners had served a notice upon G. Munivenkataramana Naidu calling upon him to furnish the details so that life insurance proposal could be accepted. As no details were furnished, proposal was not accepted and policy was not issued. Supreme Court in Raja Vasireddy Komalavalli Kamba (supra), has held that mere receipt and retention of premium is not acceptance of the policy. The contract of insurance can be termed as concluded only when party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Relevant observations made in paras 14 and 15 of the judgment read as under: "14. 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 Edn., 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, p. 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." 15. 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 some thing 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 offerer. 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 and Parkington on Insurance Law, Seventh Edn., p. 94, para 215."

7. IN the present case, Petitioners had taken certain objections to the proposal. A communication was sent to the intending insured requiring him to complete certain requirements. Before complying with the requirements, the intending insured died. No policy had been issued. Till the issuance of the policy, no binding contract had come into force between the parties. Merely because the Petitioners retained the sum of Rs. 3,250 sent along with the proposal form and the amount of Rs. 11,470 sent subsequently, does not signify acceptance of the policy. Petitioners had not accepted the offer made by the intending insured. Till the acceptance of the offer, no binding contract had come into existence. In a recent judgment in LIC and Ors. v. Rakshna Devi, Civil Appeal No. 808 of 2007, the Supreme Court reiterating the law laid down in Raja Vasireddy Komalavalli Kamba (supra), has observed as under: "A contract under the Contract Act implies offer, acceptance and consideration. Without acceptance there is no

concluded contract. If before the acceptance the offerer dies, the offer immediately lapses and hence there cannot be any acceptance after his death".

8. THE view taken by the Fora below runs counter to the law laid down by the Supreme Court of India. Orders passed by the Fora below are set aside. Revision Petition is allowed and the complaint is ordered to be dismissed with no order as to costs. Revision Petition allowed.