

(2006) 02 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India

APPELLANT

Vs

JAYAMLIKA

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Citation : 2006 2 CLT 397 : 2006 2 CPJ 280

Hon'ble Judges : M.B.Shah , S.N.Kapoor J.

Final Decision : Revision Petition dismissed

Judgement

1. COMPLAINANT's son, Nagarajappa, was working as an Assistant in the office of the Assistant Commissioner of Commercial Tax, Challateu. He had taken five insurance policies from the Life Insurance Corporation of India (hereinafter referred to as the LIC) under the Salary Savings Scheme. In a road accident he expired in April, 2001. On his death, the complainants demanded the sum assured as per the policy. The same was refused on the ground that the premium was not regularly remitted by the Department in which the deceased was working. Hence, the mother of the deceased (respondent No. 1-complainant) and his daughter-in-law (wife of the deceased) approached the District Forum, Chitradurga. The District Forum by common judgment and order dated 5th August, 2003 dismissed the complaints by holding that the deceased was negligent in not getting the premium deducted from his salary for some time and, hence, the policy lapsed due to non-payment of premium for which the assured was solely liable.

2. AGAINST the order of the District Forum respondent No. 1 preferred Appeal No. 998 of 2003 before the State Commission. The appeal was allowed by the State Commission by its judgment and order dated 3.11.2004 wherein the State Commission directed the LIC to pay the amount due under the policies with all the benefits with interest at the rate of 9% p.a from the date of the complaint till the date of realisation. Against that order this Revision Petition is filed by the LIC.

Mr. S.M. Gagendran, learned Counsel for the petitioner submitted that the impugned order passed by the State Commission cannot be justified, as there

was lapse on the part of the deceased in paying the premium. Except paying the premium for a few months, the deceased had not bothered to pay the premium.

3. AS against this, Mr. Madhukar Nudig, learned Counsel for the complainant submitted that it was the duty of the department to deduct the premium from the salary and for non-payment of the premium the complainants should not suffer. If the employer commits default in payment of the premium, the insurer cannot be blamed in view of the salary saving policy. In our view, the point involved is settled by the Apex Court in *DESU v. Basanti Devi*, IV (1999) SLT 351=III (1999) CLT 1 (SC)=(1999) 8 SCC 229. That judgment was again reaffirmed by the Apex Court in *Chairman, Life Insurance Corporation v. Rajiv Kumar Bhaskar*, V (2005) SLT 567=III (2005) CLT 144 (SC)=(2005) 6 SCC 188.

4. BEFORE referring to the judgments of the Supreme Court, we would reproduce the "Salary Savings Scheme Endorsement" (endorsement on the policy) which is part of the policy No. 623981644, which reads thus: "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 as only the life assured continues to be an employee of his present employer whose name is stated in the proposal, and the premiums are collected by the said employer out of the salary of the employee and remitted to the Corporation without any charges. In the event of the life assured leaving the employment of the said employer or the premium ceasing to be so collected and/or remitted to the Corporation, the life assured must intimate the fact to the Corporation and in the event of 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 the 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 charge for monthly payment that has been waived under the Salary Savings Scheme at five per cent of the premium exclusive of any premium charged for accident benefit and other extra premium charged".

From the aforesaid endorsement it is clear that the Department in which the deceased was serving was required to pay the premium so long as the life assured continued to be an employee of his present employer whose name was stated in the proposal form and the premiums were to be collected by the said employer out of the salary of the employee and remit to the LIC without any charges. In the event of Salary Savings Scheme being withdrawn due to non-collection of the premium, the L.I.C. is required to intimate the assured. This is admittedly not done in the present case. In *DESU v. Basanti Devi* (supra) the Court while dealing with the Salary Saving Scheme observed that, 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 employee is between DESU and LIC, it will not be for the employee to intimate LIC about non-remittance of the premium.

5. THEREAFTER, considering the various other aspects the Apex Court in *Life Insurance Corporation & Others v. Rajiv Kumar Bhaskar* (supra), held as under: "In terms of the Scheme, significantly the employee for all transactions was required to contact his employer only. In view of our findings aforementioned, the Corporation, thus, cannot be permitted to take a different stand so as to make the employee suffer the consequences emanating from the default on the part of the employer. If for some reasons, the employer is unable to pay the salary to the employee, as for example, its financial constraints, the employee may be held to have a legitimate expectation to the effect that his employer would at least comply with its solemn obligations. Such obligations having been undertaken to be performed by the employer at the behest of the Corporation as its agent having the implied authority therefor, the Corporation cannot be permitted to take advantage of its own wrong as also the wrong of its agent. In any event, the employer was obligated to inform the employee that for some reason, he is not in a position to perform his obligation whereupon the latter could have paid the premium directly to the appellant herein".

6. IN view of the aforesaid settled law, there is no substance in this Revision Petition. However, the learned Counsel appearing for the Insurance Company submitted that in the present case there were two nominees-one was the mother of the deceased and the other was the wife of the deceased. The complaints were filed by the mother and the wife of the deceased before the District Forum. Those complaints were dismissed by the District Forum by a common order. Against that order the mother of the deceased has alone filed appeal before the State Commission and the wife of the deceased has not preferred any appeal. Despite this, the State Commission directed the LIC to pay the assured sum for all the five policies.

In our view, in all the five policies the repudiation of the claim was on the same ground that the assured had not paid the premium regularly. Once that contention is negated, the nominees of the assured were required to be paid the sum assured by the LIC. As such, the LIC is established as the welfare measure. The Apex Court in the case of *Life Insurance Corporation of India v. Anuradha*, II (2004) SLT 1065=III (2004) CLT 5 (SC)=(2004) 10 SCC 131, has observed that the Life Insurance Corporation is a social welfare institution, more so when life insurance has been nationalised and the service is not available in the private sector.

7. FURTHER, it is to be stated that it is necessary for the officers of the LIC to change their negative approach in dealing with such claim and the insurance coverage should not be nullified by backward looking interpretation of the Act.

The terms and conditions of the policy should not be read with a non-benevolent eye which would result in frustrating the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved by the LIC Act. Further, learned Counsel for the complainant has pointed out that because of paucity of funds no separate appeal was filed before the State Commission. But, for getting relief, prayer was made. Further, before this Commission also written submissions to that effect along with the cross revision application is filed. He submitted that to do equitable justice power similar to Order 41 Rule 33 of CPC is required to be exercised in such cases. He submitted that in any case the Consumer Fora is required to do justice in an equitable manner without being bound by technicalities developed under Civil Procedure Code as the C.P.C. is not applicable to the Consumer Forum.

8. IN our view, the submission is justified. For rendering justice to the consumers equity is the basis. Apart from the fact that LIC is established as a welfare measure, the is also a benevolent welfare statute for the protection of consumers. IN the present case, it is a fact that repudiation of the claim made by the complainants is totally unjustified in view of the law settled by the Apex Court. Hence, the order passed by the State Commission is just, proper and equitable. IN our view, in such cases, the LIC ought not to have raised such contention. Further, in the case of DESU v. Basanti Devi (supra), while dealing with such a contention, the Court relied upon the decision of Mahant Dhangir v. Madan Mohan, (1987) Suppl. SCC 528 and held that the sweep of power under Order 41 Rule 33 of Cr. P.C. is wide enough to determine any question not only between the appellant and the respondent but also between the respondent and co-respondents, and the appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. And, thereafter, held that when the circumstances exist which necessitate the exercise of discretion conferred by Rule 33, the Court cannot be found waiting when it comes to exercise of its powers. The Court held that such power could be exercised by the Consumer Fora. The said decision was referred to and relied upon in the Chairman, LIC v. Rajiv Kumar Bhasker (supra). In this view of the matter, the Revision Petition is dismissed. The Insurance Company is directed to pay the sum assured under the five policies to the nominees as held by the State Commission, within a period of eight weeks from today. There shall be no order as to costs. Revision Petition dismissed.