

(1998) 02 PAT CK 0064
In the Patna High Court
Case No : Civil Revision No. 2288 of 1994

Life Insurance Corporation of India

APPELLANT

Vs

Krishna Singh

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Insurance Act, 1938 — Section 38

Citation : AIR 1999 Patna 106

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : B.K. Shukla and Anil Jha, for the Appellant; Ashok Kumar Sinha and Arvind Kumar Verma, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—The question for consideration in this civil revision preferred by the defendant-Life Insurance Corporation of India is whether the suit filed by the respondent in the Court of Sub-Judge, Jehanabad, for recovery of Rs. 19,87,702/- on the basis of several insurance policies effected at Tamlak Midnapur in the State of West Bengal is maintainable. The objection of the petitioner was that no cause of action had arisen within the jurisdiction of Jehanabad Civil Court and as such Jehanabad had no territorial jurisdiction to entertain the suit.

2. The trial Court has negated the objection. Hence this civil revision application. This preliminary question was considered by a Division Bench of the Calcutta High Court in Peoples Insurance Co., Ltd. Vs. Benoy Bhusan Bhowmik and Others, , in which B.K. Mukherjea, J. held that in the case of a life insurance policy the claimant must prove the death of the assured [before he can enforce his claim against an insurance company. The death of the assured is thus a material part of the cause of action, the plaintiff is bound to prove the fact if traversed, and if not proved the defendant will have an immediate right to

judgment. Hence the Court at the place where the assured died has jurisdiction to try a suit for the recovery of the insurance money.

3. It was further held that once it is established that a Corporation has got a branch office at any place it shall be deemed in the eye of law to carry on its business at that place irrespective of the nature of the work that is actually carried on there. The decision was in the tight of Section 20 C.P.C.

4. A contrary view has been taken by the Rangoon High Court in *Jupiter General Insurance Co. Ltd. v. Abdul Aziz* AIR 1924 Rang 2, wherein it was held that in a suit for recovery of money due under a fire insurance policy the cause of action does not include the loss or damage of the property insured, and consequently the place where the loss occurred could not determine the forum of such suit. The learned Judges in course of their judgment observed that the expression "cause of action" as used in Section 20, Clause (c), Civil P.C., should not be taken to have the same meaning as it was given to it in (1989) 22 QBD 128 and the several other cases both English and Indian which followed it. In an earlier decision of the Calcutta High Court reported in *The Bengal Provident and Insurance Company Ltd. Vs. Kamini Kumar Choudhury*, , the learned Judges opined that the death of the assured did constitute a part of the cause of action and consequently the plaintiff was competent to institute the suit in the Court where the death of assured had taken place. This view supported by the decision of English Court in (1797) 101 ER 933 (*Cailland v. Champion*).

5. The facts of the present case is identical with the facts of Calcutta case. The trial Court has rightly rejected the preliminary objection raised by the petitioner that Jehanabad had no jurisdiction to entertain the suit. The trial Court shall - dispose of the matter before hearing of the suit. This will not preclude the petitioner from raising the question of jurisdiction on other grounds.

This application is dismissed. No. costs.