

(2005) 10 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

LIFE INSURANCE CORPORATION OF INDIA

APPELLANT

Vs

RAKSHNA DEVI

RESPONDENT

Date of Decision : 20-10-2005

Acts Referred:

Citation : 2005 0 NCDRC 49 : 2005 4 CPJ 214 : 2006 2 UC 733

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Advocate : S.P.MITTAL , M.N.KRISHNA MANI , S.PANI

Judgement

1. ON the ground that the assured has expired before the date of acceptance of the policy, the claim of the wife of the assured was rejected by the LIC. Hence, the Complainant approached the District Consumer Disputes Redressal Commission, Moga, by filing Complaint No.528 of 2000. That complaint was allowed and the Insurance Company was directed to pay the benefits due to her under the LIC Policy which came to Rs.2,06,700/- along with interest at the rate of 10% p.a. from the date of the death of the assured, Ishwar Chand, i.e. 1.3.1998, till its payment to the Complainant. The LIC was also directed to pay Rs.10,000/- as compensation for harassment and Rs.2,000/- as costs.

2. AGAINST that judgment and order, the LIC preferred Appeal No. 1097 of 2001 before the State Consumer Disputes Redressal Commission, Punjab. In appeal it was contended by the LIC that (i) as the proposal submitted by the deceased was not concluded till 1st March, 1998, i.e. on the date of the death of the assured, it cannot be held that the contract between the parties was concluded; and (ii) the deceased had not disclosed that he was a patient of diabetes and that he died due to ailment and not by accident. Both these contentions were rejected by the State Commission. The State Commission observed that the proposal was accepted and the insurance policy was issued, therefore, the contract was concluded; and that it was for the Insurance Company to complete the formalities within a reasonable time. With regard to the second contention, it was observed that there was no evidence on record to the effect that the deceased had died not due to accident, but due to natural death because of

diabetes. Submissions: Learned Counsel for the LIC submitted that the deceased, Ishwar Chand, who was having a subsisting insurance policy, approached the Branch Office of the LIC at Moga on 30.1.1998 for having policy for insurance coverage of his life for a sum of Rs.1 lakh. On 27.3.1998 the deceased met with an accident and was admitted in the hospital on the very same date. He died on 1st March, 1998. Unaware of the death of the assured, the proposal was accepted and the insurance policy covering the life risk for a sum of Rs.1 lakh was issued on 9th March, 1998. It is also not disputed that the Complainant has filled in proposal form on 28th January, 1998 and had given the cheque for the premium on the said date. The receipt of premium is dated 30.1.1998. It is also not disputed that the proposal was accepted on 2nd March, 1998 by the competent officer of the LIC and the policy was given retrospective effect from 28.10.1997 as requested by the insured.

On the basis of the said admitted facts, it is contended by the learned Counsel Mr. Mittal that it cannot be held that the contract between the parties was concluded as the proposal submitted by the Complainant was accepted only on 2nd March, 1998 i.e. one day after his death. He referred to Sections 2(b) and 36 of the Contract Act, 1872. As against this, learned Counsel appearing on behalf of the Complainant submitted that from the policy issued by the LIC it is clear that the contract stands concluded with retrospective date from 28.10.1997. He further submitted that the delay in issuance of the policy is on the part of the LIC and the LIC cannot take undue advantage of its own wrong. Even after acceptance of the proposal form the office of the LIC issued policy only on 9.3.1998. The assured cannot be a sufferer for this lethargy on the part of the officers of the LIC, which is constituted under the LIC Act, 1956, and nationalised with a view to provide services which were not available in Private Sector in India. It is a social welfare institution. He has also contended that in any case the proposal was accepted by the LIC. Therefore, contract stood concluded in favour of the proposer with retrospective effect from 28.10.1997. He has also relied upon the decision of the Kerala High Court in Life Insurance Corporation of India Vs. L. Kamalamma, AIR 1986 Kerala 215. Findings:

3. BEFORE appreciating the contentions we would refer to the decision of the Apex Court in the case of Life Insurance Corporation of India Vs. Anuradha, (2004) 10 SCC 131, wherein the Court 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, should think of devising a policy available in insurgency-afflicted regions which would take care of the assured and his family members in such areas. The Court hinted that the insurance policies with terms and conditions suited to the requirements of people inhabiting insurgency - or militancy-affected areas need to be devised and propagated. Similarly, in the case of Life Insurance Corporation of India & Ors. Vs. Smt. Asha Goel & Anr., AIR 2001 SC 549 = (2001) 2 SCC 160, the Court has observed that : "16. In course of time the Corporation has grown in size and at present it is one of the largest public sector financial undertakings. The public in

general and crores of policy-holders in particular, look forward to prompt and efficient service from the Corporation. Therefore, the authorities in charge of management of the affairs of the Corporation should bear in mind that its credibility and reputation depend on its prompt and efficient service. Therefore, the approach of the Corporation in the matter of repudiation of a policy admittedly issued by it, should be one of extreme care and caution. It should not be dealt with in a mechanical and routine manner."

4. FROM the aforesaid enunciation of law it is apparent that LIC is not a Private Company, but a Corporation established as a social welfare institution and the said service is not available in the private sector. Apart from the terms and conditions suited to the requirement of the people, the management of the affairs of the Corporation should be prompt and efficient. Before repudiating the claim, the management should bear in mind that it is easy to find out technical objections in any contract. However, endeavour of such social welfare institution should be to find out ways and means to do justice to the insured or his heirs on the ground that it is a social welfare institution. Further, it is to be stated that in exercise of the powers conferred by Clause (zc) of sub-section (2) of Section 114A of the Insurance Act, 1938 read with Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999, the Authority has framed Insurance Regulatory and Development Authority (Protection of Policy-Holders' Interest) Regulations, 2002. The said Regulations, inter alia, provide that the proposal shall be processed by the insurer with speed and efficiency and all decisions shall be communicated by it in writing within a reasonable period not exceeding 15 days from the receipt of the proposal by the insurer. Relevant Regulation No.4 is as under: "Regn. 4. Proposal for insurance. - (1) Except in case of a marine insurance cover, where current market practices do not insist on a written proposal from, in all cases, a proposal for grant of a cover, either for life business or for general business, must be evidenced by a written document. It is the duty of an insurer to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form. (2) Forms and documents used in the grant of cover may, depending upon the circumstances of each case, be made available in languages recognised under the Commission of India. (3) In filling the form of proposal, the prospect is to be guided by the provisions of Section 45 of the Act. Any proposal form seeking information for grant of life cover may prominently state therein the requirements, of Section 45 of the Act. (4) Where a proposal form is not used, the insurer shall record the information obtained orally or in writing, and confirm it within a period of 15 days thereof with proposal and incorporate the information in its cover note or policy. The onus of proof shall rest with the insurer in respect of any information not so recorded, where the insurer claims that the proposer suppressed any material information or provided misleading or false information on any matter material to the grant of a cover. (5) Wherever the benefit of nomination is available to the proposer, in terms of the Act or the conditions of policy, the insurer shall draw the attention of the proposer to it and encourage the prospect to avail the

facility. (6) Proposals shall be processed by the insurer with speed and efficiency and all decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposals by the insurer."

Regulation 6 provides for matters to be stated in life insurance policy. It, inter alia, provides that life insurance policy shall clearly state the name of the plan governing the policy, its terms and conditions. Other requirements are also provided therein. Regulation 8 provides for "Claims procedure in respect of life insurance policy. No doubt, it can be contended that these regulations would have no retrospective effect and therefore, would not have any application to the present case. But, at the same time, it should be borne in mind that these are general principles which are applicable for the business of insurance. Applying the aforesaid principles, it is apparent that there was unjustifiable delay in accepting the proposal dated 28.10.1997 only on 2.3.1998. There is no justifiable reason for such delay, that too, in a case where the assured was having a previous subsisting policy. Apart from the delay, the question which is sought to be raised by the learned Counsel for the LIC is whether there was a concluded contract or not. Learned Counsel for the LIC contended that taking into consideration the provisions of Section 2(b) of the Contract Act, it is clear that a proposal when accepted becomes promise, i.e. an agreement; i.e. to say, it becomes a contract.

For appreciating the aforesaid contention, we would refer to the provisions of Section 2(b) and Section 36 of the Contract Act, which are as under: "Section 2: Interpretation-clause." In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:- (a)... (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise."

5. THE aforesaid clause (b) is to be read in context of the facts of each case. It is specifically provided at the outset of the Section that the meaning given therein is to be accepted "unless a contrary intention appears from the context". If it is read in that way, in the present case, it would mean that proposal was accepted with retrospective date, i.e. from 28.10.1997, that means, the contract is finalised from the said date; and, this interpretation would be in consonance with the purpose for which the Life Insurance Corporation was established. If the Officers of the LIC take months together to finalise the proposal without any justifiable reason, then it cannot be contended that even though the contract is accepted with retrospective effect, the contract would come into existence only on 2nd March, 1998. Assured has paid the consideration (premium) in advance. He was not required to do anything after acceptance of the contract. Acceptance of the agreement was unconditional and was in favour of deceased. Hence, after acceptance of the proposal the contract would relate back to the date from which the insurance coverage was granted. The Apex Court in *New India Assurance Co.*

Ltd. Vs. Ram Dayal & Ors., (1990) 2 SCC 680, observed (no doubt, the insurance was for a motor vehicle) that when a policy is taken on a particular date, its effectiveness is from the commencement of that date. Further it was sought to be contended that LIC accepted the proposal under the mistake as it was not knowing the fact that the assured had expired on 1st March, 1998. In our view, for making a contract void on the ground of mistake of fact, Section 20 of the Contract Act makes the position clear. It provides that where both the parties to an agreement are under mistake as to matter of fact essential to agreement, the agreement is void. In the present case, it cannot be said that both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement, hence, it cannot be said that agreement or issuance of the insurance policy was void.

This is also made clear in Section 22 of the Contract Act, which provides that : "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

6. THE Apex Court in Tarsem Singh vs. Sukhminder Singh - AIR 1998 SC 1400, after quoting the relevant Sections of the Contract Act, held that Section 20 provides that an agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this Section. Admittedly, in the present case, so called mistake is unilateral and hence, the contract is not voidable at the instance of the Insurance Company which committed so called mistake. The next question is applicability of Section 36 upon which reliance is placed by the learned counsel for the petitioner. It deals with agreements contingent on impossible events. It provides that, "Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made". There is no question of impossible event happening in the present case. For human being death may be natural or accidental and it may happen at any point of time. Therefore, it is not a case of agreement contingent on impossible event and Section 36 would have no bearing to the present case, because, this was not a case of agreement contingent on impossible event. In view of the aforesaid discussion there is no substance in this revision petition and is dismissed. The Petitioner shall pay Rs.10,000/- as costs to the Complainant.