(2003) 09 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

M.KANAGAVALLI APPELLANT

Vs

DIV.MANAGER, LIC OF INDIA RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Citation : 2003 4 CPJ 143 : 2004 1 CLT 224 : 2004 1 CPC 409 : 2004 1 CPR 1

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THIS First Appeal arises out of the order dated 1st June, 1994 of the State Commission, Tamil Nadu in Original Petition No. 537/1992. Brief facts of the case are :

2. THE appellants M. Kanagavalli & Ors. are legal heirs of one Murugesan who died on 28.4.1991. THE said Murugesan had taken a Life Insurance Policy from the respondent Life Insurance Corporation of India for Rs. 1,00,000/-. THE premium was required to be paid quarterly. Two quarterly payments of the premium were made on time. THE third premium was due on 23.2.1991 and it was not paid within the prescribed time. It was not even paid during the grace period of one month. On 27.4.1991 i.e. one day before his death the deceased Murugesan took a Pay Order for the policy note of Rs. 1,247.50 and interest of Rs. 12.50 totalling Rs. 1,260/- from the UCO Bank and sent to the 2nd respondent, the Branch Manager, LIC, by post. As mentioned, on the next day he unfortunately expired. THE Pay Order was received by the opposite party on 30.4.1991 and was encashed on 3.5.1991. THE claim made by the nominee, the 1st appellant was rejected by the LIC on the grounds that policy had lapsed for non-payment of the premium on the expiry of the grace period. When the matter was taken up before the State Commission, the State Commission held the facts that policy has lapsed for non-payment of the premium on the expiry of the grace period, revival of policy is not automatic, revival takes place only on acceptance by the insurer of all arrears of premium with interest as stipulated in the rules and that the revival could only be during the life-time of the insured

and not after his death. Since the amount was encashed only on 3.5.1991 i.e. about a week after the death of the insured, there can be no question of revival of the policy. On these grounds the State Commission dismissed the complaint.

We have gone through the case papers carefully. On behalf of the appellant our attention was drawn to the Explanation to Section 54-VB of the Insurance Act, 1938 which provide that "Where the premium is tendered postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be". This is of no explanation of the case before us. The explanation refers to a case where the policy is proposed to be accepted by the Insurance Company and refers to the date of application in such cases. Similarly, the Supreme Court decision in Shashi Gupta v. LIC of India, reported at II (1995) CPJ 15 (SC)=AIR 1995 SC 1367, where the Supreme Court while interpreting a Circular of the LIC held that where two interpretations of a Circular are possible, interpretation beneficial to the policy holder should be adopted. In that case policy was obtained on 1.4.1999 and two yearly premiums have been paid by 1.4.1991. As a third annual premium could not be paid within the grace period of one month, the policy lapsed on 1.5.1991. It however so happened that the policy holder was assassinated at Chandigarh on 30.5.1991. Under normal circumstances, the policy lapses unless three instalments are paid. However, the Supreme Court was interpreting a Circular dated 16.10.1987 of the Corporation which relaxed the condition and according to which if the death of the insured were to occur after two premiums have been paid within three months of the due date of the next unpaid premium, the full sum assured together with declared bonus should be paid. The policy in question was a double accident benefit policy. The Supreme Court was interpreting the meaning of the words "full sum assured". We are afraid that this decision is of no relevance to the case before us, for a simple reason that in the case before the Supreme Court is regarding the concession provided by the Circular, for payment of as an ex-gratia basis, not-withstanding the fact that the policy lapsed.

3. IN the case before us, the policy lapsed on 23.4.1991. The respondent gave no indication to the insured that they are ready and willing to revive the policy. It is irrelevant whether the pay order was sent by the insured by himself or by someone else. After receiving the payment on 3.5.1991, there is no decision by the respondent to revive the policy. Issue of a notice by the respondent advising to make the payment for the quarter due on 23.6.1991, especially when the respondent did not know whether the death of insured, does not amount to revival of the policy. IN the light of the above discussion, we see no reason to interfere with the order of the State Commission. The appeal is dismissed and the State Commission''s order is confirmed. Appeal dismissed.