(1997) 08 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 411 of 1990

Pushpa Devi Thakur APPELLANT

Vs

L.I.C. of India and Another RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:
Contract Act, 1872 — Section 4

Citation : (1998) ACJ 1017

Hon'ble Judges : M. Srinivasan, C.J;A.L. Vaidya, J

Bench : Division Bench

Advocate : Praneet Gupta, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—Though it is an unfortunate case that the insured died within two days after taking the policy of the insurance, the law is clear on the subject. The petitioner''s husband gave the premium for insurance policy and proposal was sent on 21.7.1988. He died on 23.7.1988. The proposal reached the respondent Corporation only on 25.7.1988, by which time the proposer was dead. The petitioner claimed that the contract has come into existence when the insurance Corporation sent the first premium receipt dated 13.8.1988. It is stated in the said receipt that the acceptance of the payment places the Corporation at risk with effect from the date of acceptance-cum-first premium receipt.

2. But even on the date on which the receipt was prepared, that is, 13.8.1988, the proposer was already dead. Hence, the contract could not have come into existence at all. Section 4 of the Indian Contract Act provides that the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer. In this case, the proposer was dead when the acceptance was said to have been made by the insurance Corporation.

3. The matter has been considered by the Supreme Court in Life Insurance

Corporation of India v. Raja Vasireddy Komalavalli Kamba 1984 ACJ 345 The Court has held that 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. In this case, the final acceptance is that of the insurer and even before that acceptance was made, the party who proposed died and, therefore, the contract could not have come into existence in the eye of law. A similar proposition has been held by the Supreme Court in Life Insurance Corporation of India v. Kiran Sinha 1985 ACJ 657

4. Consequently, the prayer of the petitioner in this writ petition cannot be granted. The writ petition is dismissed. No costs.

