**(2013) 11 NCDRC CK 0036**

**In the National Consumer Disputes Redressal Commission**

RAJ BALA APPELLANT

Vs

LIC OF INDIA RESPONDENT

**Date of Decision :** 19-11-2013

**Acts Referred:**

**Citation :** 2013 0 NCDRC 781 : 2013 4 CPJ 556

**Hon'ble Judges :** K.S.CHAUDHARI , B.C.Gupta J.

**Advocate :** R.S.MALIK , ARUNAV PATNAIK , Mahima Sinha

## Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 29.11.2012 passed by Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, ''the State Commission'') in Appeal No. 1380 of 2012-Smt. Raj Bala Vs. LIC of India by which, while dismissing appeal, order of District Forum directing to pay paid up value was upheld.

2. BRIEF facts of the case are that complainant/petitioner ''s husband had purchased two insurance policies from OP/respondent on 20.1.1999 for a sum of Rs.50,000/- and Rs.2,00,000/-, respectively. On 10.10.2001, complainant ''s husband did not return back to home from his office so; FIR was lodged on 3.11.2001 under Section 365 IPC. Complainant also informed OP about kidnapping of her husband, but OP did not inform the complainant regarding steps to be taken. Complainant paid last premium of Rs.3248/ - on 13.1.2007 and Rs. 3,211/ - on 26.1.2008. It was further alleged that complainant filed Civil Suit No. 755/2009 in the Court of Civil Judge (JD), Sonepat for declaration that her husband Jeet Singh is dead and decree to that declaration was passed on 21.5.2010. Complainant also obtained death certificate on 2.8.2010 from concerned Registrar. It was further submitted that cheque of Rs.10,000/ - issued by OP was returned by complainant. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that complainant was asked to keep the policy in force by making payment of due premium vide Regd. letter dated 16.5.2002. It was further submitted that date of death of Jeet Singh will be treated as 21.5.2010 and not

10.10.2001. As both the policies had already lapsed, complainant was entitled to receive paid up value of the policy and prayed for dismissal of complaint. Learned District Forum after hearing both the parties directed OP to pay paid up value of the policies to the complainant. Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed. Heard learned Counsel for the parties finally at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that as petitioner ''s husband was missing from 10.10.2001 and declaration regarding death had already been obtained from the Civil Court vide decree dated 21.05.2010, Jeet Singh ''s death should be treated from 10.10.2001 and complainant was entitled to receive full payment of policies, but learned District Forum has committed error in allowing only paid up value and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law as policy had already elapsed before death of Jeet Singh; hence, revision petition be dismissed.

4. IT is admitted fact that petitioner ''s husband obtained two insurance policies on 20.1.1999 and as per petitioner ''s allegation, her husband was missing from 10.10.2001 and petitioner paid last premium on 13.1.2007 for the first policy and on 26.1.2008 for the second policy. It is also not disputed that petitioner filed Civil Suit on 9.5.2009 for declaration of death of her husband which was decided on 21.5.2010. Learned Counsel for the petitioner submitted that death should be presumed from 10.10.2001, whereas learned Counsel for the respondent submitted that death to be presumed from 21.5.2010 or at the earliest from 9.5.2009 when Civil Suit for declaration was filed. Learned Counsel for the respondent has placed reliance on (2004) 10 SCC 131 - LIC of India Vs. Anuradha in which such type of controversy has been dealt at length in paragraphs 14 to 16, which runs as under: 14. On the basis of the above said authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act 1872. In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question, arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back

 

on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person who''s life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise. 15. If an issue may arise as to the date or time of death the same shall have to be determined on evidence - - direct or circumstantial and not by assumption or presumption. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to proceed on premise that the death had occurred on any given date before which the period of seven years'' absence was shown to have elapsed. 16. We cannot, therefore, countenance the view taken by the High Court in either of the two appeals that on the expiry of seven years by the time the issue came to be raised in Consumer Forum or Civil Court and evidence was adduced that the person was not heard of for a period of seven years by the wife and/or family members of the person then not only the death could be presumed but it could also be assumed that the presumed death had synchronized with the date when he was reported to be missing or that the date and time of death could be correlated to the point of time coinciding with the commencement of calculation of seven years backwards from the date of initiation of legal proceedings. In order to successfully maintain the claim for benefit under the insurance policies it is necessary for the policy to have been kept alive by punctual payment of premiums until the claim was made. The appellant -LIC was justified in turning down the claims by pleading that the policies had lapsed and all that could be paid to the claimants was the paid -up value of the policies

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5. PERUSAL of aforesaid judgement clearly reveals that death of petitioner ''s husband is to be presumed at the earliest from 9.5.2009 and certainly not from the date of missing i.e. 10.10.2001. Admittedly, premium of first policy was not paid after 13.1.2007 and premium of second policy was not paid after 26.1.2008 and both the polices lapsed before filing Civil Suit on 9.5.2009 meaning thereby both policies lapsed during life time of the deceased. In these circumstances, in the light of aforesaid judgement, petitioner was entitled to receive only paid up value of the polices and not the maturity amount and learned District Forum has not committed any error in allowing complaint only to that extent and learned State Commission has not committed any error in dismissing appeal and revision

 

petition is liable to be dismissed.

6. CONSEQUENTLY , revision petition filed by the petitioner is dismissed at admission stage with no order as to costs.

 