(1999) 04 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Registration APPELLANT

Vs

BHARAT ELECTRONICS LTD RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Citation : 2001 1 CPC 469 : 2001 1 CPJ 70

Hon'ble Judges : M.S.JANARTHANAM , BANUMATHI BASKARAN J.

Judgement

1. THIS original action is for the recovery of the policy amount on the ground of repudiation of the claim not being justifiable on the facts and in the circumstances of the case.

2. THE complainant is one Mrs. Chitra. The opposite parties are : (1) Life Insurance Corporation of India represented by its Regional Manager, Anna Salai, Madras; and (2) The Branch Manager, Life Insurance Corporation of India, Anna Nagar, Madras -40.

3. ONE R. Murugesan (since dead), is the husband of Mrs. Chitra, the complainant. He was desirous of insuring his life for Rs. 2,50,000/ -. He submitted the proposal form for insuring has life, to the 2nd opposite party. He appears to have issued a Cheque for Rs. 10,250/ - dated 31.5.1993 drawn on Nedungadi Bank, Paper Mills Road, Perambur, Madras, towards the first premium of the policy to be taken. It is claimed that the cheque was encashed and a receipt therefor had been issued. The said Murugesan, it is said, underwent all formalities including medical requirement as stipulated by the Life Insurance Corporation of India (for short, ''LIC'').

4. ON 26.4.1993, as quick of fate would have it the said Murugesan was stated to have been murdered. A letter dated 6.5.1993 emanating from the 2nd opposite party directing the said Murugesan to pay a sum of Rs. 5,748/ - by way of balance of premium was received on 12.5.1993. The said letter also disclosed that the period of policy was to be reduced from 15 years to 10 years.

5. DESPITE completion of all formalities, undue delay had been caused by the

opposite parties in discharging their duty, in the sense of communicating their decision on the proposal made by the complainants husband (since dead). This act of the opposite parties, it is claimed, would amount to deficiency in service on their part.

6. THE claim made by the complainant was repudiated by the opposite parties on 29.4.1995. Such repudiation is untenable in law. Alleging the factors as above, the complainant knocked at the doors of this Commission for the reliefs as below : (a) to pay the entire policy amount together with accident benefits which is twice the policy amount (sum assured) and all other attendant benefits together with interest at the rate of 18% per annum from 6.5.1993 till the date of realisation to the complainant under Policy Proposal No. 88662, with Anna Nagar Branch within a stipulated time by this Honourable Forum, in a sum of Rs. 5,00,000/ - (Rupees five lakhs only); (b) to pay a further sum of Rs. 1,00,000/ - to the complainants by way of compensation towards damages, loss, mental agony and hardships suffered by the complainant due to the negligent act of the opposite parties in their failure to pay the policy money in time and for committing negligence, failure to discharge their duties to the complainant as a consumer; (c) to grant such further or other reliefs as this Honourable Forum may deem fit and proper in the circumstances of the case and thus render justice.

7. THE opposite parties, in pith and substance, would contend that there was no deficiency in service on their part. No doubt true it is that the said Murugesan was desirous of insuring his life for a sum of Rs. 2,50,000/ -. It is also true that he issued a cheque for Rs. 10,250/ - as initial deposit on 31.3.1993 towards the premium and the cheque so deposited was encashed and kept in deposit.

8. THE deceased proponent, of course, had undergone all the medical tests subsequent to his proposal. He was aged at 53 at that time. He gave the proposal for Rs. 2,50,000/ - under Table and Term - 14 -15 - ''14'' indicating Endowment policy with profits and ''15'' indicating the duration of the policy. The premium is calculated on the basis of the plan proposed as well as the duration of the policy based on the age of the life assured at the time of the proposal. Consideration of the proposal for acceptance is made on the basis of a ''Review Slip''. The Review Slip was prepared in this case by the concerned Branch and the same was forwarded to the Divisional Office on 2.4.1993. Considering that the proponent had no earlier policies and his age being 53 years at the time of proposal, the sum proposed being Rs. 2,50,000/ -, it was decided to refer the case to Central Underwriting Section (CUS) located at Mumbai. A decision was taken on 21.4.1993 at Mumbai by the CUS to accept the proposal on modified terms, viz., (1) reduced period of cover from 15 to 10 years; (2) extra premium of Rs. 13.20 per Rs. 1,000/ - sum assured; (3) Subject to Moral Hazard Report of Assistant Branch Manager confirming the income of the proponent and also consent letter from the proposer for such modified terms. On the basis of the recommendations of Zonal Underwriting Section, a decision was taken by the Competent Authority to accept the proposal as recommended by the Head Office

if the proposer gives his consent for such modified terms.

9. THE decision of the Underwriter was communicated by the Controlling Divisional Office to the Branch on 5.5.1993 and on the basis of the decision of the Underwriter a letter was addressed in the normal course to the proponent on 6.5.1993 itself by the Branch Office. Unfortunately, before the proponent would accept the revised terms proposed by the opposite parties for reducing the period of insurance from 15 to 10 years payment of extra premium and payment of difference in the premium and before the receipt of the moral hazard report from the Assistant Branch Manager concerned, the proponent died. In effect, the proposal did not at all result in a concluded contract by signification of acceptance by the opposite parties before the proponent died. The repudiation of the claim of the complainant by the opposite parties is very well justified on the facts and in the circumstances of the case. The complaint is liable to be dismissed.

10. BOTH the parties did not adduce any oral evidence. By consent, Exhibits A -1 to A -7 on the side of the complainant and Exhibits B -1 to B -7 and B -9 to B -11 were marked on the side of the opposite parties. Exhibit B -8 on the side of the opposite parties had been marked subject to the production of the original. The opposite parties filed the original of Exhibit B -8 alongwith a memo in order to get over the objection so raised by the other side. Arguments of learned Counsel Mr. S. Ramalingam appearing for the complainant and learned Counsel Mr. V. Jambunathan, appearing for the opposite parties were heard.

11. FROM the pith and substance of the submissions of learned Counsel appearing on either side, the points as below arise for consideration : (1) Whether the proposal of the proponent, R. Murugesan - since dead - resulted in a concluded contract by the acceptance of such proposal by the opposite parties ? (2) Whether the repudiation of the claim as made by the complainant by the opposite parties, on the facts and in the circumstances of the case, would amount to deficiency in service ?

12. POINT No. 1 : There is no denial of the fact that the proponent R. Murugesan desired to take a life insurance policy for a cover of Rs. 2,50,000/ - and submitted that proposal under the original of Ex. B -1 dated 23.3.1993 through the agent of the opposite parties. It is also an undisputed fact that he made payment by way of a cheque for Rs. 10,250/ - towards the first premium of the policy to be issued to him. Admittedly, the cheque he issued had been encashed by the opposite parties and the same was kept in deposit for adjustment towards the first premium of the policy to be issued. Yet another fact about which there is no controversy at all is that the proponent R. Murugesan died on 26.4.1993 as a consequence of his having been done to death by certain rowdy elements. No doubt true it is, the proponent submitted himself to all the medical tests. What remained to be done on the date of death of the proponent which event happened on 26.4.1993 was, the acceptance of the proposal submitted by him and the issuance of the policy on such acceptance.

13. THE question so moot to arise for consideration at this juncture is whether it is legally permissible to infer, on the facts and in the circumstances of the case as referred to above, a concluded contract of insurance to mulct liability on the part of the opposite parties.

14. LEARNED Counsel appearing for the complainant would vehemently argue that the issuance of a receipt for Rs. 10,250/ - by the oposite parties towards the first premium paid itself would tantamount to acceptance of the proposal resulting in a concluded contract between the proponent and the opposite parties -LIC. The receipt had admittedly been issued before the death of the proponent. Learned Counsel Mr. V. Jambunathan representing the opposite parties, with equal vehemence, struck a discordant note to the argument so emanated from the other side. What he would submit is that the issuance of a receipt for the amount received towards the first premium and keeping it in deposit is itself not sufficient to come to the conclusion that the proposal had been accepted by the opposite parties. He would further say that some overt act must have to be done on the part of the opposite parties in signifying their acceptance of the proposal of the proponent for a concluded contract to result in. He would further say that prolonged silence or detention of the amount received towards the first premium for pretty long in deposit could not at all be construed as signification of acceptance of the opposite parties to the proposal emanating from the proponent. In a nutshell he would say that there was no concluded contract.

15. THE rival submissions of either of learned Counsel may fall for consideration in the arena of discussion in the light of the decision emerging from the Apex Court of this country in Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba & Ors., AIR 1984 SC 1014.

16. THE facts of the said case may be stated in rather a crisp fashion so as to understand in the best of fashion possible the dictum laid down therein. One late Raja Vasireddi Chandra Dhara Prasad died intestate on 12th January, 1961. He had filed a proposal for insurance for Rs. 50,000/ - on 27th December, 1960. There was medical examination by the doctor of the life of the deceased on 27th December, 1960. The deceased had issued two cheques for Rs. 300/ - and Rs. 220/ - respectively in favour of the appellant, as first premium. The cheque for Rs. 300/ - encashed by the appellant on 29th December, 1960. The cheque for Rs. 220/ - was dishonoured three times and finally encashed on 11th January, 1961.

17. THE deceased died on the following day i.e., 12th January, 1961. On 16th January, 1961, the widow of the deceased wrote to the appellant intimating the death of the deceased and demanded payment of Rs. 50,000/ -.

18. THE Divisional Manager, Masulipatam Branch, denied liability on 28th January, 1961. Thereafter there was correspondence between the parties between 1st February, 1961 to 23rd December, 1963 wherein the respondents/ plaintiffs had claimed the payment and the appellant had denied liability for the

same. The respondents instituted the suit in the Court of the Subordinate Judge, Masulipatnam for the recovery of the claim amount. After trial, the said Subordinate Judge held that there was no concluded contract. He said that as per the prospectus of the Life Insurance Corporation of India, the risk under the Corporation policy commenced on the date of receipt of the first premium in full or the date of acceptance whichever was later and the second instalment of the premium falls due on a date calculated from such date of commencement of risk. He was further of the opinion that the documents in that case coupled with evidence on behalf of the appellant -Corporation established that the proposal sent by the deceased for some reason or other was not accepted by the Divisional Office by the time the deceased had died. The Trial Court, therefore, held that there was no concluded valid insurance contract between the deceased and the Corporation.

19. THE matter was not allowed to stop there. The matter had been agitated further before the High Court. The High Court reversed the order of the trial Judge. Consequently the matter had been further agitated before the Apex Court. In such a context, what the Supreme Court said in paragraphs 13 and 14 of its order is relevant and the said paragraphs read as under : ''13. When an insurance policy becomes effective is well -settled by the Authorities, but before we note the said authorities it may be stated that it is clear that the expression underwrite signifies ''accept liability under. The dictionary meaning also indicates that. (See in this connection The Concise Oxford Dictionary, Sixth Edition p. 1267). It is true that normally the expression ''underwrite'' is used in Marine insurance but the expression used in Chapter III of the financial powers of the Standing Order in this case specifically used the expression ''underwriting and revivals'' of policies in case of Life Insurance Corporation and stated that it was the Divisional Manager who was competent to underwrite policy for Rs. 50,000/ - and above. The mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raised a presumption of acceptance. See in this connection the statement of law in Corpus Juris Secundum, Vol XLIV page 986 wherein it has been stated as : The mere receipt and retention of premiums until after the death of applicant does not give rise to a contract, although the circumstances may be such that approval could be inferred from retention of the premium. The mere execution of the policy is not an acceptance : an acceptance, to be complete, must be communicated to the offerer, either directly, or by some definite act, such as placing the contract in the mail. The test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the Companys executive officers. 14. Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be

construed as an acceptance, as, prima facie, acceptance must be communicated to the offeror. 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. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed. See in this connection statement of law in MacGillivray & Parkington on Insurance Law, Seventh Edition page 94 paragraph 215.''

20. THE facts of the case in Raja Vasireddy (supra), is applicable in all fours to the facts of the instant case. The fact that there was some sort of a delay on the part of the opposite parties in signifying the commencement of the proposal as submitted by the proponent R. Murugesan (since deceased), cannot at all be construed as an acceptance resulting in a concluded contract. As laid down by the Supreme Court, 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 the instant case, before ever the acceptance of the offer was communicated to the proponent resulting in a concluded contract, the proponent, as quirk of fate would have it, unfortunately died. It is to be taken note of here that the opposite parties took some time in communicating their acceptance. The reason appears to be this. The proponent deceased at the the time of taking the proposal was, admittedly, aged 53. That apart, the policy proposed to be taken was for a period of 15 years. The sum assured was a huge one quantified at Rs. 2,50,000/ -. The opposite parties, it appears, in such matters, wanted for a decision to be taken by the Central Underwriting Section. The case has been referred to them for consideration. After their consideration, the opposite parties wanted to make a counter proposal revising the original offer. The revised offer made by the opposite parties is traceable to Ex. B -8 ''Review Slip'' and it discloses the terms and conditions for the revision of the proposal. According to the said Review Slip, extra premium is required to be paid at Rs. 13.20 per Rs. 1,000/ - subject to Moral Hazard Risk Report by Assistant Branch Manager (Sales) confirming the income and consent letter from the proponent. It is based only on such Review Slip a further communication had been sent by the opposite parties to the proponent. As stated earlier, before the receipt of the said communication, the proponent unfortunately died. It is only on the signification of acceptance of the proponent of the counter offer made by the opposite parties, a concluded contract would result in. The proponent, by way of reiteration we may state, had unfortunately died before he would signify his assent to the revised proposal. Consequently, a concluded contract did not come into existence. We answer the point in the negative. Point No. 2 : In view of our finding at Point No. 1 that there was no concluded contract between the proponent and the opposite parties, it goes without saying that it cannot at all be said that there was any deficiency in service on the part of the opposite parties. We answer the point accordingly.

21. FOR the reasons as above, the complaint deserves to be dismissed.

22. IN fine, the complaint is dismissed. We however make no order as to costs on the facts and in the circumstances of the case. Complaint dismissed.