

---

**(1983) 12 OHC CK 0006**  
**In the Orissa High Court**  
**Case No : First Appeal No. 176 of 1972**

Santi Devi

APPELLANT

Vs

Life Insurance Corporation of India

RESPONDENT

---

**Date of Decision :** 23-12-1983

**Acts Referred:**

**Citation :** (1986) 59 CompCas 774 : (1984) 1 OLR 399

**Hon'ble Judges :** R.C. Patnaik, J;B.K. Behera, J

**Bench :** Division Bench

**Advocate :** Bijayananda Mohanty and G.V. Mohanty, for the Appellant; S.C. Ghosh, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

R.C. Patnaik, J.—This appeal arises from a dismissal of an action started on a motion by the widow on the death of her husband for recovery of a sum under a contract of life insurance.

2. Rama Abatar Agarwala, the deceased husband of the appellant, submitted a proposal for life insurance through the local agent of the Life Insurance Corporation of India, Rourkela. Along with the proposal were submitted the report of the doctor and the report of the agent. Rama Abatar also deposited Rs. 225.45. A receipt was granted therefore by the branch office and the branch manager, it is alleged, intimated that the proposal would be accepted and policy issued within a short while. On December 1/2, 1967, the Corporation asked Rama Abatar to submit a further medical report from another authorised doctor of the Corporation. Examination was done on December 14, 1967, and the report was submitted to the defendant-respondent on December 19, 1967. The plaintiff-appellant has averred that, while accepting the second report, the local branch manager and the assistant branch manager at Rourkela assured that a policy would be issued after receipt of the medical report by the divisional office at Cuttack. They also intimated that all the necessary formalities had been complied with and a decision to accept the proposal had already been taken. The

plaintiff has further averred that on December 22, 1967, Rama Abatar learnt from the branch office at Rourkela that the amount paid by him towards premium and the proposal had been accepted. On December 24, 1967, around 9 p.m. Rama Abatar met with his death in an accident. His widow, the appellant, intimated the Corporation about the fact of death of Rama Abatar and on February 21, 1968, the Corporation wanted certain information which were furnished on March 6, 1968. By their letter dated May 2 and 7, 1968, the Corporation despatched certain forms to her with directions for compliance. The appellant acted accordingly. Some time later the Corporation refuted the claim on the ground that no concluded contract had come into existence between the Corporation and the deceased.

3. The Corporation admitted receipt of the amount and the proposal. They also admitted to have received the medical reports. It was, however, contended by them that the local branch manager or other officers had no authority to accept a proposal which could only be accepted by the divisional manager. The amount was received as a deposit pending consideration of the proposal and the assertion that the branch manager and the assistant branch manager at Rourkela had intimated the deceased that the proposal had been accepted was untrue as the proposal had not, in fact, been accepted. The deposit could be accepted as a premium on acceptance of the proposal. As the proposal had not been accepted, there was no enforceable contract. As the appellant, while intimating the death of her husband, had asked for the forms, the same had been supplied to her; but that could not amount to a concluded contract in law.

4. On the pleadings, the trial judge framed three issues, the important of them being :

" Whether there has been acceptance of the proposal of the insurance in question and the contract has been completed."

5. On a consideration of the evidence, he held that the proposal had not been accepted and there was no concluded contract by the time of death of Rama Abatar. The suit was accordingly dismissed.

6. In appeal, Mr. Bijayananda Mohanty, the learned counsel for the appellant, has vehemently contended that the facts and circumstances irresistibly led to the conclusion that there was a concluded contract. Acceptance of the proposal could be inferred from the circumstances and the conduct of the parties. He especially relied on exhibit 17, a letter from the divisional manager to Sri G.N. Agarwala, the brother of Rama Abatar. It has been contended that failure of the Corporation to state in the said letter that the proposal had not been accepted went to indicate that there had been a concluded contract and the plea raised by the Corporation later on that there was no concluded contract was an after-thought. He has also submitted that the evidence of the witnesses examined for the plaintiff-appellant went to establish that the proposal had been accepted. He has urged that the Corporation having withheld the carbon copy of the proposal

review slip where acceptance of the proposal had been noted, adverse inference should have been drawn.

7. Mr. S.C. Ghosh for the Corporation in reply has submitted that the plaintiff had called for the proposal review slip. The same was produced in court but for reasons best known to her, the review slip was not tendered in evidence. The original review slip would have indicated that there was no such endorsement thereon that the proposal had been accepted. The document was not tendered in evidence, though called for by the plaintiff, as that would have negated the plaintiff's case of acceptance of proposal. The proposal review slip was prepared in duplicate and not in triplicate as has been contended by the plaintiff. The copy was retained in the branch office but somehow the same was missing. However, the original was produced in court. So, no adverse inference was available to be drawn. The Corporation, while producing the original, furnished explanation for non-production of the copy.

8. A contract of insurance in the widest sense of the term may be defined as a contract whereby one person, called the "insurer", undertakes, in return for the agreed consideration, called the " premium ", to pay to another person, called the " assured ", a sum of money, or its equivalent, on the happening of a specified event -- (See E.R. Hardy Ivamy's General Principles of Insurance Law). But a contract of insurance is a contract uberrima fides, i.e., utmost good faith, is required on both sides. There has to be offer and acceptance, i.e., definite promise by one and acceptance by the other. Acceptance may be formal by way of issue of policy, acceptance of the premium or may be implied from the conduct of the insurer.

9. Mr. Mohanty has contended that by acceptance of the amount, acceptance of the proposal could be inferred." He has further urged that the local officials of the Corporation had intimated the deceased that his proposal had been accepted by the divisional manager and he would be receiving the policy shortly. The fact that the proposal was accepted was corroborated by the letter (exhibit 17) issued by the divisional manager wherein there was not a whisper that the proposal had not been accepted. If the stand subsequently taken by the Corporation that there was no concluded contract were true, the same should have been categorically asserted in exhibit 17.

10. The amount tendered by the deceased was accepted as a deposit but not as a premium. Certain formalities were to be gone into and requirements satisfied before the proposal was accepted. The fact that the payment was made while submitting the proposal would indicate that the payment was not by way of premium because the proposal was yet to be accepted. We, therefore, negative the contention of the counsel for the appellant that the amount was accepted by the Corporation as premium.

11. P.W.-I is the brother of the deceased and was an agent of the Corporation at the relevant time. He has stated that the divisional office, after receiving the

proposal, asked the deceased to furnish a second medical report which was submitted on December 19, 1967. This belied the plaintiff's assertion that the first premium had been accepted on November 20, 1967. Exhibit 18 shows that the amount was accepted as a deposit. It clearly informed the deceased that if the payment was accepted, official receipt would be issued in due course and the amount which had been kept in deposit involved no risk to the Corporation. Exhibit 18, therefore, does not support the plaintiff's case.

12. P.W.-2 was the development officer of the Corporation in 1967. He has deposed that on December 21, 1967, the branch manager told him that he had received a message over telephone that the proposal of the deceased had been accepted. The evidence regarding acceptance of the proposal is hearsay evidence. Mr. S.B. Patnaik, the then branch manager, has not been examined as a witness. P.W.-2 has admitted in cross-examination that the Corporation had not issued the first premium receipt and the amount had been received as advance towards the proposal. It has been brought out in cross-examination that his employment as development officer has been terminated by the Corporation.

13. The Corporation examined one Section Samal, who was the assistant branch manager (admn.) at the relevant time and was acquainted with the case though he was not dealing with the proposal. He has categorically asserted that the proposal had not been accepted and Rama Abatar died while the proposal was being processed in the divisional office. He has categorically asserted that the proposal review slip was prepared in duplicate and not in triplicate and the carbon copy was missing. The record relating to the proposal indicated that the proposal had not been accepted.

14. Though exhibit 17 dated February 21, 1968, did not indicate that the proposal had not been accepted, there was nothing in it from which it could be inferred that the proposal was accepted. Exhibit 15 is very important. It is dated May 2 and 7, 1968. While despatching the forms to the plaintiff, it stated :

" While asking you to submit the claim forms we would like to make it clear that there was no concluded contract on the date of proposer's death and, therefore, the Corporation is under no legal liability to make any payment and that, however, without prejudice to the aforesaid legal position the claim forms are being issued....."

15. It would be evident from exhibit 15 that the Corporation had been denying the existence of a contract even while despatching the claim forms to the plaintiff. There is no other evidence relating to the conduct of the insurer which would establish a contract of insurance. Mr. Mohanty relied on Hindusthan Co-operative Insurance Society Ltd. Vs. Shyam Sunder and Others, . In that case, the proposal, the medical report and the friends' report were submitted to the insurer and a cheque for Rs. 295-10-0 was also handed over, being the sum payable for the half-yearly premium. The insurer encashed the cheque and appropriated the amount. Having regard to the circumstances and the conduct of

the insurer, it was held that there was a completed contract. It was held that there was no evidence that the amount was paid into any suspense account, rather it was taken into the company's own account. Moreover, the cheque was not paid while submitting the proposal but after the second examination. In the circumstances, a concluded contract was inferred.

16. In the present case, the amount was tendered along with the proposal and the letter, exhibit 18, clearly warned the deceased that the amount had been received as a deposit and if the payment was accepted, official receipt would issue and the deposit involved no risk to the Corporation. The exceptions in the letter clearly establish that the amount was not received as a premium. The Calcutta decision is, therefore, distinguishable. In our opinion, the learned Subordinate Judge has rightly held that there was no concluded contract at the time of death of Rama Abatar. We, therefore, affirm the decree and dismiss the appeal. We make no order as to costs of this court.

B.K.Behera, J.

17. I agree.

18. In order that there may be a binding contract, there must be an absolute and unconditional acceptance of the terms of a proposal. Until such acceptance, the stage of negotiation does not pass and no legal obligation is imposed. It is the acceptance of an offer and intimation of that acceptance which result in a contract. What facts would constitute an acceptance on the part of the insurers would depend on the circumstances of the particular case. For the reasons aforesaid, we are at one with the trial court that there was no concluded contract and, therefore, the suit had rightly been dismissed.