(2017) 02 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Case No : 560 of 2012

SBI LIFE INSURANCE CO. LTD. — APPELLANT

Vs

D. SRINIVAS & 2 ORS. — RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:
Consumer Protection Act, 1986, section 2 (r), Section 20 (1) (iii) - Composition of the National Commission
<a href=1891>Insurance Regulatory and Development Authority Act, 1999</a

Citation : 2017 1 CPR 395

Hon'ble Judges : K.S. Chaudhari, Prem Narain

Advocate : Rakesh Malhotra, Deepa Chacko, Anu Gupta, A.V. Rangam, Buddy Ranganandhan

Judgement

1. The order dated 16.07.2012 passed in CC No.63 of 2011 by A.P. State Consumer Disputes Redressal Commission, (in short ''the State Commission'') has been challenged by way of this First Appeal No.560 of 2012 before this Commission by SBI Life Insurance Company Limited the appellant.

2. In short the case of the complainant/respondent No.1 is that respondent No.1 D.Srinivas along with his wife Smt. D.Suguna and son Mr. D. Venu Gopal, obtained a housing loan of Rs.30,80,000 from the respondent Nos.2& 3 vide loan A/c No.62071944332 in the month of September, 2008 for construction of House on Plot No.8 & 11, admeasuring 448.85 sq. mtr., situated at Pragathi Nagar, Ramanthapur, Hyderabad. On 29.09.2008 a sum of Rs.78,150/- was debited from their loan A/c towards SBI Life Insurance Cover under Group Insurance Scheme for Home Loan Borrowers, through Master Policy Holder, i.e., the State Bank of Hyderabad, covering the life of Respondent No.1''s son Mr. D.Venu Gopal, who was one of the Joint loanees. The proposal form dated 29.9.2008 was accompanied by the good health declaration by the insured. Respondent No.1''s son, Mr. D. VenuGopal expired on 17.12.2009 at Hyderabad, due to a massive heart attack, consequently the said life insurance obtained in his name, came

into force, obligating the appellant to pay the outstanding amounts in their loan A/c. The respondent No.1 approached the appellant and respondent Nos.2 & 3 informing them about the demise of his son and requesting them to settle the insurance claim and to discharge the outstanding loan amount in their housing loan A/c. The Consumer Complaint Case No.63 of 2011was filed on 18.07.2011 before the State Commission.

3. The opposite party/appellant contested the complaint on the ground that the proposal for the policy was never accepted by the appellant as the insured did not present himself for medical examination inspite of repeated requests made by the appellant.It was further asserted that the amount of premium was refunded vide cheque No.120772 dated 10.12.2008 to the State Bank of Hyderabad amounting to Rs.78,150/-. Thus, the opposite parties pleaded no deficiency in service and no liability in connection with the payment in respect of the insured.

4. State Commission vide its order dated 16.07.2012 allowed the complaint as under:- "In the result the complaint is allowed in part directing OP3 insurance company to pay the entire amount due under home loan account and discharge the debt and on such discharge, opposite parties 1 & 2 are directed to issue ''No Due Certificate'' to the complainant. In view of latches on the part of OP3 insurance company, we direct it to pay Rs.25,000/- towards compensation for mental agony and Rs.10,000/- towards costs. Time for compliance four weeks."

5. Aggrieved with the order dated 16.07.2012 of the State Commission, the present appeal has been filed by the appellant/opposite party No.3.

6. Heard the learned counsel for the parties and perused the records.

7. Learned counsel for the appellant stated that the policy was a Group Insurance Policy for Housing Loanees and for a loan more than Rs.7.5 lakh, the policy requires additional medical examination of the insured apart from his signing the declaration of good health. The insured did not present himself for medical examination inspite of repeated requests sent by the agency appointed by the appellant for ensuring medical examination. The ''Health India''appointed for this purpose sent a letter dated 18.11.2008 stating that proposed Member/ Sri D. Venu Gopal missed more than three appointments for conducting his medical examination. Learned counsel stated that the proposal of the purposed Member was pending for medical examination and as the same was not being completed by the proposer,the premium was refunded during the life time of the deceased by way of cheque No.120772 dated 10.12.2008, which was sent to the bank vide letter dated 16.12.2008 and thus the proposal was never concluded. As the contract of insurance was never concluded, no liability can be fastened to the appellant for any kind of deficiency in service and for making any kind of payment relating to insurance. Learned counselalso stated that on the information of the bank that the cheque No.120772 dated 10.12.2008 refunding the premium amount was not traceable in the bank,another cheque No.480557

dated 23.2.2011 for the same amount of Rs.78,150/- was issued to the bank, which was duly deposited by the bank in the account of the complainant.

8. Learned counsel for the appellant further argued that the insured had nominated his wife Smt. DeekondaShakaja as nominee and therefore, the respondent No.1/complainant has no claim over the insurance claim amount. Thus, the complaint filed by the complainant is not maintainable and the State Commission has erroneously entertained the complaint. It was also argued that the State Commission has erroneously found the deficiency in service on part of the appellant for not concluding and issuing the policy to the proposer which was not prayed for by the complaint, as the complaint was filed for the payment of the policy amount to liquidate the loan amount. As per the policy terms,when no policy has been issued, how can any question of liquidating the loan outstanding on the date of death of the proposer arise?.

9. The learned counsel for the respondent No.1/ complainant stated that as claimed by the appellant, the insured was then alive but no copy of the letter allegedly sent by the appellant to the Bank refunding the premium amount with the cheque dated 10.12.2008 or any kind of intimation for medical examination was ever received by the deceased or the complainant. In fact, the Bank has denied receiving any letter dated 16.12.2008 and this itself speaks volumes of untrustworthy statements of the appellant who has fabricated these false letters after knowing the death of the insured.Learned counsel also argued that none of the intimation letters allegedly sent either by the appellant or their agent were ever received by the insured and therefore, the insured never knew that he was required to attend to any medical examination. A good health declaration was already signed by the insured and therefore, it is not clear why further medical examination was required. If the medical examination of loanees of more than Rs.7.5 lakhs loan was mandatory, this should have been done before the premium was deducted from the account and if this was discretionary, then it is not clear what prompted the appellant to go for the medical examination of the insured as no further information or document that was received by the appellant has been placed on record. To cover up the lapse, the appellantlater sent a cheque No.480557 dated 23.2.2011 to the bank, which has been deposited in the account of the respondent No.1.

10. Learned counsel for the respondent further claimed that Sub-Clause 6 of Clause 4 of Insurance Regulatory and Development Authority (Protection of Policyholders'' Interests) Regulations, 2002, mandates all Insurance Companies that proposals shall be processed by the insurer with speed and efficiency and all decisions thereof shall be communicated by it in writing within a reasonable period not exceeding 15 days from receipt of proposal by the insurer. However, in the present case, the proposal was not processed for more than two years. Learned counsel also referred to the case of SBI Life Insurance Company Ltd. Vs. Asha LataParida&Anr., III (2010) CPJ 228 (NC), wherein the following has beenheld:- "Consumer Protection Act, 1986 - Sections 2(1)(g), 2(1)(r), 21(b) -

Insurance Regulatory and Development Authority (Protection of Policy Holder''s Interests) Regulations, 2002 - Regulation 4(6) - Insurance - Repudiation of claim - Ground, policy at proposal stage due to medical requirements - Deficiency in service and unfair trade practice alleged - Forum directed OP 1-Insurer to remit entire loan, minus amount remitted to OP 2-Bank and directed OP 2 to pay compensation - Appeal partly allowed - Ordering OP 1 to pay compensation and exonerating OP 2 from paying compensation - Hence Revision - Defence taken by OP 1 that deceased not turned up for medical examination inspite of sufficient information not supported by documentary evidence - Regulation 4(6) provide proposal be processed within reasonable period not exceeding 15 days - OP 1 cannot take advantage of inaction in keeping proposal pending to deteriment of complainant - Insurance cover effective from date premium sent to OP 1 - Repudiation of claim was bad in law - Liability of OP 1 be determined vis-a-vis Regulation 4(6) and scheme and operational procedure -Guilty of gross deficiency in service - State Commission rightly exonerated OP 2-Bank - Order of Forum qua OP 1 restored - OP 1 directed to pay cost."

11. It was argued that facts and issues involved in the present case are similar to the case of SBI Life Insurance Company Ltd. Vs. Asha LataParida & Anr. (supra). In respect of the nomination of the wife of the deceased in the proposal form, the learned counsel argued that proposed policy was under Group Insurance Scheme for the Housing loanees of the bank and policy stipulates the payment of due amount of the loan on the date of death of the insured. In the proposal form, the insured had clearly agreed as follows:- "I agree that all benefits due under the Scheme in the event of my death would be payable to the Bank for applying towards liquidation of the outstanding loan amount under the Housing loan or any other loan provided by the Bank. In the event of any surplus remaining with the Bank after liquidating the outstanding loans, I nominate Smt. DeekondaShakaja, who is related to me as wife as the Nominee to receive such surplus amount. "

12. Learned counsel argued that it is clear from the above statement that insurance amount would go to the bank for liquidating the loan amount andif there is some surplus that may go to nominee. The State Commission has only ordered the payment to the tune of due unpaid loan amount on the date of death of the insured only.

13. Learned counsel appearing on behalf of respondent Nos.2 and 3 stated that the main dispute was between the appellant and the respondent No.1 and they have not challenged the order dated 16.07.2012 of the State Commission.

14. We have considered the arguments advanced by the parties and have carefully perused the documents. There is no dispute that the proposal form was submitted on 29.09.2008 under the Group Insurance Scheme of the appellant for housing loanees. From the Scheme it is also clear that even in the case of joint housing loan, the full loan amount will be insured even if the policy is issued in the name of only one loanee. In this case, the insured wasMr. D. Venugopal, who

was the son of the respondent No.1, whereas the loan is a joint loan in the name of respondent No.1, his son the insured, and wife of respondent No.1. The insured had signed the declaration, which reads as follows:- Good Health Declaration:

I declare that I am in sound health, do not have any physical defect/deformity, perform my routine activities independently and, that I have never suffered or have been suffering, or have been hospitalized for any critical illness @ or a condition requiring medical treatment for a critical illness as on date. "

15. In cases of loan amount exceeding Rs.7.5 lacs, the provision reads as follows:- As I am willing to join for life insurance cover from SBI Life Insurance Co. Ltd. subject to my under-going the medical examination and satisfying the health underwriting criteria of the Company, I authorise the Bank to debit my account for the standard gross premium plus any additional premium that may be required by SBI Life based on medical underwriting. I also note that in the event of SBI Life Insurance Co. Ltd. not being in a position to accept my life insurance for any reason whatsoever, the initial premium amount remitted by the Bank would be refunded and credited back to my account."

16. From the above undertaking, it appears that proposer was willing to join the life insurance cover from the appellant subject to his undergoing the medical examination and then, for this willingness he authorised the bank to debit his account for the payment of premium. This clearly implies that medical examination was to take place prior to the premium being debited from the bank account of the proposer. As this was a specific undertaking for the cases where the loan amount was in excess of Rs.7.5 lacs, the medical examination seems compulsory in such cases. If the medical examination is compulsory, then this should have been organised as part of formality to be completed while filing the proposal form itself and definitely before the premium amount was accepted by the appellant. Counterview cannot be claimed on this issue on the ground that in the same undertaking the proposer is authorizing the appellant to refund the premium amount in case appellant was not in a position to accept the proposal of life insurance for the proposer. This is so because this undertaking specifies non acceptance of the proposal for any reason whatsoever. Medical examination has become a point of controversy unnecessarily. We find merit in the argument of learned counsel for the respondent that if medical was compulsory for such cases, it should have been done along with filing of the proposal form and before the payment of premium and if it was discretionary, there should have been some reason for the appellant to have the medical examination of the proposer in this case. Appellant has not claimed that any specific information in respect of the health of the proposer was received by them after filing of the proposal form and, therefore, it was decided by them to go for the medical examination. No documents are filed in the present case showing that the proposer was suffering from any disease or illness and this came to the notice of the appellant after filing of the proposal form. Moreover the second part of this undertaking clearly

implies that if the proposal was not accepted for any reason whatsoever, the premium amount would be refunded and credited to the account of the proposer. In this case, the concerned account has been credited with the premium amount only after 23.02.2011 which is the cheque date. From this, it would be deemed to imply that the appellant had not rejected the proposal before 23.2.2011. The State Commission has observed that neither the bank nor the Insurance Company had ever informed the proposer or the complainant about non-issuance of policy for want of medical examination of the proposer. The complainant or the insured, though, would have tried to find out about the policy, but perhaps, they did not do so because an undertaking was already given by the insured that if the appellant was not in a position to accept the life insurance for insured, the premium would be refunded and would be credited to his account. As no amount was credited to the bank account of insured or the complainant, there was no occasion for them to believe that the proposal may not have been accepted.

17. Sub-Clause 6 of Clause 4 of Insurance Regulatory and Development Authority (Protection of Policyholders'' Interests) Regulations, 2002 clearly provides for taking decision on the proposal of Insurance within a period of 15 days from the date of filing of the proposal form. This circular was binding on all the Insurance Companies except for marine insurance. In the present case, the proposal has been rejected after the death of the ensured, when the cheque No.480557dated 23.2.2011 was actually sent to the bank for crediting to the account of the complainant i.e. after a long period of about 3 years when the rules of the regulator require it to be disposed of within 15 days only. Thus, there is a clear violation of the relevant regulations of the Regulator IRDA.

18. From the above examination, it is amply clear that the story of refunding the premium amount in the year 2008 itself on account of non-appearance of the proposer for medical examination is not proved. From the record, rather, it seems as an afterthought on the part of the appellant after the death of the insured. The premium was actually refunded by way of cheque No.480557 dated 23.02.2011and meaning thereby the proposal was pending with the Insurance Company for about three years as against the directions of the regulator to decide within 15 days.

19. From the above examination, it is also clear that the medical examination should have been done prior to accepting the premium amount as is evident from the undertaking given by the proposer. This also gels with the need to decide the proposal within 15 days. From these considerations, we do not find any merit in the argument of the appellant that the appellant is not liable because the contract of Insurance, was not concluded. In this regard, based on our examination, we tend to agree with the following observations of the State Commission:- "17. Obviously to cover up their latches in not considering the proposal, the insurance company came up with the above evidence which the bank itself did not admit when the insurance company under Ex.B6 informed the bank that the premium was not accepted and the amount was refunded by

cheque. The very bank repudiated it. The insurance company, despite the fact that a complaint has been filed did not substantiate the fact of non-acceptance of premium was informed to the bank, and the said bank had received back the premium set by it. Equally the proposal that said to have been repudiated on the ground that the proposer did not attend to the medical requirements. All this has been created evident from non-reply or reference to any of the notices given by the complainant, acknowledged by the bank. It is unfortunate that the nationalised bank and the insurance company are acting against the interests of proposer and to cover up their latches they are going to an extent of creating documents. The extraordinary delay and not acting on the proposal from 30.11.2008 till 25.2.2011 shows that the delay was abnormal, unconscionable and does not sustain. Where there is negligence writ large on the fact, necessarily, we have to hold that OP3 insurance company is guilty of deficiency in service. We can go to an extent stating that it is indulging in unfair trade practise. Only after coming to know that the insured is no more, they started repudiating. Equally they started creating documents and contending that since there was no policy, it was not liable to pay any amount. This case does not pertain to the claim basing on a policy. It is based on the deficiency in service in not issuing policy. Due to this act they were forced to discharge loan, which otherwise OP3 had to discharge. Therefore, we hold that OP3 insurance company was undoubtedly guilty of abnormal delay amounting to deficiency in service, though we cannot hold so in regard to OPs 1 &2."

20. Thus, the deficiency on the part of the appellant is proved and the State Commission has decided the compensation for this deficiency relying on the judgment of State of Gujarat Vs. Shantilal Mangaldas reported in AIR 1969 SC 634. In the case of SBI Life Insurance Company Ltd. Vs. Asha LataParida & Anr. (supra), this Commission has also allowed the payment of full loan amount by confirming the order of the District Forum.

21. Based on the above discussion, we find no error in the order dated 16.07.2012 of the State Commission, which is based on correct appreciation of facts, evidence and law. Accordingly, we find no force in the First Appeal No.560 of 2012 and the same is dismissed with no order as to costs. However, the liability of the appellant would be limited to unpaid loan amount on the date of death of insured i.e. 17.12.2009, subject to the limit of the policy amount, which is Rs.30,00,000/- only. 12.08.2016

PER JUSTICE K.S. CHAUDHARI

1. This appeal has been filed by the appellant against the order dated 16.7.2012 passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad (in short "the State Commission) in Complaint No. 63 of 2011 ? D. Srinivas Vs. The Asst. G.M, State Bank of Hyderabad & Ors. by which, complaint was allowed.

2. Brief facts of the case are that Complainant/Respondent along with his wife and son late D. Venugopal obtained housing loan for Rs.30 lakhs from OP No. 1 &

2/Respondent No. 2 & 3 State Bank of Hyderabad in the month of September, 2008 for construction of a house. The bank had deducted Rs. 78,150/- from their loan account on 29.9.2008 for insurance coverage with OP No. 3/Appellant. OP-3/ Appellant SBI Life Insurance covering the life of late D. Venugopal who was one of the joint loanees. Thus D. Venugopal was insured for the entire loan amount of Rs. 30 lakhs or outstanding dues in case of eventuality. While so, his son Venugopal died on 17.12.2009 due to cardiac arrest. When the complainant claimed the amount covered under the policy and to discharge the outstanding housing loan amount by submitting death certificate etc., they did not settle. Contrarily Ops 1 & 2 pressurizing to clear the outstanding loan, despite the fact that the entire loan amount should be discharged in terms of insurance policy on the death of his son. They also sent a letter dt. 18.1.2011 informing that Op3 had called for medical examination for coverage of life insurance of the deceased, and therefore the policy could not be completed pending medical examination, and that the proposal was returned, and that the amount was returned by way of cheque. It is clear that they had conspired together to deprive the insurance coverage. His son was never called for medical examination. They never received any cheque. On that he got issued legal notice to settle the claim for which they gave reply with false averments. Alleging deficiency on the part of OPs, complainant filed complaint before State Commission.

3. OP No. 1 & 2 resisted complaint and denied each and every averment made in the complaint however, admitted that the complainant, his wife and his son availed housing loan of Rs. 30 lakhs. As an agent of Op3, they have informed about the insurance coverage under housing loan. They agreed to take insurance policy in the name of D. Venugopal. They had collected Rs. 78,150/- towards premium from their loan account and paid it to Op3 along with application for issuance of policy. As an agent of Op3 it had attended the work as required. Later they learnt that Op3 had advised D. Venugopal to appear for medical examination. He failed to appear, and the policy could not be completed. They were not aware of the developments and ultimate refusal of the policy. On receipt of death intimation they have forwarded the same to Op3 which in turn informed that they could not provide insurance coverage as the medical examination was pending, and further they had refunded the premium amount. When they did not receive the cheque they wrote back to Op3 about it and then Op3 had sent duplicate cheque dt. 23.2.2011. This fact was intimated to the complainant. Since there was no coverage of insurance, the question of deficiency in service will not arise and prayed for dismissal of complaint.

4. OP No. 3 resisted complaint, denied averments of complaint and submitted that deceased nominated his wife Smt. D. Shailaja as nominee and complaint is bad for non-joinder of parties. It was further submitted that mere deposit of amount towards premium along with proposal does not automatically result into policy. It all depends on sum assured, age, specific reports etc. Till such time the deposit amount remain as it is, and cannot be deemed as acceptance of risk under the proposal. Since the proposal was pending for medical requirements,

and the same was not complied with by the proposer, the proposal deposit was refunded during the life time of the deceased by way of cheque dt. 10.12.2008. The proposal was never concluded. On receipt of letter dt. 3.1.2011 from the bank a fresh cheque was issued. Since there was no concluded contract during the life time of the proposer there was no obligation on it for payment of amount. The members who satisfy the eligible criteria will only be eligible for group insurance scheme. The proposer never complied with formalities, and therefore no policy was issued. Therefore, he would not fall within the definition of consumer. A contract of insurance comes into force only on issuance of policy. Denying any deficiency on their part, prayed for dismissal of complaint. Learned State Commission after hearing parties, allowed complaint and directed OP No. 3 to pay entire amount due under home loan and was further directed to pay Rs. 25,000/- towards compensation for mental agony and Rs.10,000/- towards cost. OP No. 1 & 2 were directed to issue no dues certificate to the complainant against which, appellant filed appeal before this Commission.

5. Heard learned Counsel for the parties finally at admission stage and perused record.

6. Learned Counsel for the appellant submitted that inspite of the fact that there was no concluded contract between complainant and OP No. 3 for issuance of policy, learned State Commission committed error in allowing complaint; hence, appeal be allowed and impugned order be set aside. On the other hand, learned Counsel for the Respondent No. 1 submitted that order passed by learned State Commission is in accordance with law on account of deficiency on the part of appellant; hence, appeal be dismissed. Learned Counsel for the Respondent No. 2 & 3 supported appellant.

7. It is admitted case of the parties that complainant along with wife and son D. Venugopal obtained housing loan of Rs. 30 lakhs from OP No 1 & 2 in September, 2008 and D. Venugopal submitted proposal form to OP No. 3 for issuance of policy covering housing loan. It is also not disputed that OP No. 1&2 collected Rs. 78,150/- towards premium from loan account of complainant and remitted this amount to OP No. 3 which was received by OP No. 3 on 13.10.2008. It is also not disputed that D. Venugopal one of the loanee died on 7.12.2009.

8. The core question to be decided in this appeal is whether OP No. 3 is bound to discharge loan amount on the ground of receipt of premium for issuing policy, though, proposal was neither accepted, nor policy was issued.

9. It is not disputed that D. Venugopal submitted form duly signed on 29.9.2008 titled SBI Life - Home Loan Insurance for Borrowers of State Bank Group" to OP No. 2. This form contains clause Where the loan Amount Exceeds R. 7.5 Lacs .

As I am willing to join for life insurance cover from SBI Life Insurance Co. Ltd. subject to my under-going the medical examination and satisfying the health underwriting criteria of the Company, I authorise the Bank to debit my account for the standard gross premium plus any additional premium that may be

required by SBI Life based on medical underwriting.

I also note that in the event of SBI Life Insurance Co. ltd. not being in a position to accept my life insurance for any reason whatsoever, the initial premium amount remitted by the Bank would be refunded and credited back to my account . Good Health Declaration :

I declare that I am in sound health, do not have any physical defect/deformity, perform my routine activities independently and, that I have never suffered or have been suffering, or have been hospitalized for any critical illness @ or a condition requiring medical treatment for a critical illness, as on date.

@ Critical illness is defined as follows:

The life to be insured should not

1. have suffered or be suffering from cancer

2. be taking treatment for heart disease

3. have undergone / or have been advised medically to undergo chest and / or heart surgery within the following six months.

4. have irreversible kidney and / or irreversible liver failure

5. have suffered or be suffering from paralysis

6. have undergone or been advised to undergo a major organ transplantation such as heart, lung, liver or kidney

7. have suffered or be suffering from AIDS or venereal diseases.

I hereby declare that the above statements are true and complete in every respect and that I have not withheld or omitted to give any information that may influence my admission into the Group Insurance Scheme or SBI Life Insurance Co. Ltd. I hereby agree that this declaration shall from the basis of my admission into the Group Insurance Scheme and if any untrue averment be contained therein, I my heirs, executors, administrators and assignees shall not be entitled to receive any benefits under the Group Insurance Scheme.

I hereby agree to your conveying the above particulars regarding my admission into the Group Insurance Scheme to SBI Life. I also permit SBI Life to approach me directly for any clarification and / or other purposes. I hereby agree and understand that no insurance cover will commence until the risk is accepted and requisite premium has been remitted to SBI Life .

Perusal of aforesaid form reveals that this insurance cover was to be issued subject to undertaking medical examination by the deceased D. Venugopal. It further reveals that if OP is not in a position to accept his life insurance for any reason premium amount remitted by bank was to be refunded. It further reveals that deceased agreed and understood that no insurance cover will commence

until the risk is accepted. Perusal of record reveals that by letter dated 17.10.2008, OP asked deceased for medical examination and further apprised him to contact M/s. Help India. It was further mentioned in the letter that medical test must be attended within 15 days from the date of letter failing which, proposal will not be processed. Letter dated 8.11.2008 issued by Health India and addressed to SBI Life Insurance reveals that client missed more than 3 opportunities and at present client is not contactable; so, they requested for cancellation of case. It further reveals that by letter dated 12.12.2008, SBI Life Ins. refunded amount of Rs. 78,150/- vide cheque no. 120722 dated 10.12.2008 to State Bank of Hyderabad. Learned State Commission without any cogent reason observed as under:

15. "We are constrained to state that Ex. B4 which was not referred to in Ex. A9 & A10 must have been fabricated for the purpose of this case.

17. It is unfortunate that the nationalised bank and the insurance company are acting against the interests of proposer and to cover up their latches they are going to an extent of creating documents.

10. Learned State Commission should have called record from SBI Life Insurance to ascertain whether Cheque No.120772 dated 10.12.2008 was sent by it to the State Bank of Hyderabad before aforesaid observations. State Bank of Hyderabad by letter dated 3.1.2011 intimated to SBI Insurance Company Ltd. that cheque has not been received and requested to issue duplicate cheque and in pursuance to that letter, SBI Life Ins. By letter dated 24.2.2011issued another cheque worth Rs.78,150/-.

11. It is admitted position that no insurance policy was issued by the appellant in favour of deceased. In the absence of insurance policy, no concluded contract comes into force between the deceased and appellant.

12. Hon''ble Apex Court in (1984) 2 SCC 719 - Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba & Ors. observed that mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. In the case in hand neither medical examination required by OP was got done by the deceased, nor any acceptance of proposal was communicated, nor any policy document was prepared and issued. In the light of aforesaid discussion, in the absence of any concluded contract between the parties, no claim was payable and OP has not committed any deficiency in repudiating claim and refunding premium amount. Learned State Commission committed error in allowing complaint and appeal is to be allowed.

13. This Commission in F.A. No.881 of 2013 ? Ajay Singh Bhambri Vs. Axis Bank Ltd. & Anr. observed as under: "The factual matrix of the case makes it very clear that although the proposal form was submitted and the premium was also paid to the Insurance Co., the policy in question had not been issued, when the death of the wife of the complainant took place. We have, therefore, no reasons

to differ with the findings of the State Commission that no concluded contract had come into existence between the parties. The State Commission, in their well-reasoned order have relied upon the order of the Hon''ble Supreme Court in Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba & Ors., 1984 (2) SCC 719, saying that merely filling any proposal for insurance and depositing first premium with the Life Insurance Corporation, do not create a binding contract between the parties. The State Commission has also placed reliance on the order passed by this Commission in ELSA Tony Phillip Vs. LIC of India & Ors., I (2009) CPJ 18 (NC), in which similar view has been taken. From the above discussion, it is very clear that the State Commission have rightly concluded that there was no liability on the O.P. Insurance Company to pay the loan amount in question, to the O.P. No. 1 Bank on behalf of the complainants. The order passed by the State Commission, therefore, does not suffer from any illegality, irregularity or jurisdictional error and the same is upheld. The appeal is, therefore, ordered to be dismissed. There shall be no order as to costs."

14. This Commission in II (1993) CPJ 146 (NC) also observed as under: The Hon''ble Supreme Court in its decision reported as ''Life Insurance Corporation of India V. Raja Vasi Reddy Komalavalli Kamba & Ors ? (1984) 3 SCR 350 have laid down while deciding the question as to when an Insurance Policy becomes effective that ? "?A mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy documents is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties after which the law raises a presumption of acceptance." In fact this case is also covered by our order passed in F.A. No. 343 of 1992 titled Consumer Education and Research Society & Anr. V. LIC of India decided on 15 th March, 1993 ? I (1993) CPJ 128 (NC) wherein we have held, after consideration of various decides cases, that where a proposer dies before the acceptance of the proposal, there is no concluded contract of insurance".

15. In the light of aforesaid discussion, it becomes clear that in the absence of any concluded contract between the parties, OP No. 3 was not bound to discharge loan merely on the ground of receipt of premium for issuing policy.

16. Learned Counsel for the respondent has placed reliance on judgment of this Commission in III (2010) CPJ 228 (NC) ? SBI Life Insurance Co. Ltd. Vs. Asha Lata Parida & Anr. in which insurance company was held liable even without concluded interest on the ground that Insurance Company kept proposal pending without taking decision regarding acceptance or otherwise which was in violation of regulations framed by IRDA.

17. Merely on the basis of delay in considering proposal by appellant for want of medical check-up of deceased, liability cannot be fastened on appellant for payment of housing loan in the absence of concluded contract between the parties.

18. I differ from the view taken by this Commission in Asha Lata case (supra) in

the light of aforesaid judgements of this Commission and judgment of Hon''ble Apex Court in Raja Vasi Reddy Komalavalli Kamba & Ors. (supra) and of the view that in the absence of concluded contact, learned State Commission committed error in allowing complaint and directing appellant to pay entire amount under loan account and appeal is to be allowed.

19. Consequently, appeal filed by the appellant is allowed and impugned order dated 16.7.2012 passed by learned State Commission in Complaint No. 63 of 2011 ? D. Srinivas Vs. The Asst. G.M, State Bank of Hyderabad & Ors. is set aside and complaint stands dismissed with no order as to costs. 22.11.2016

PER JUSTICE AJIT BHARIHOKE, PRESIDING MEMBER

1. The above noted appeal came up before the Bench comprising of Hon''ble Mr. Justice K S Chaudhari and Hon''ble Mr. Prem Narain. Hon''ble Members after hearing the arguments came to the different conclusions. Therefore, in terms of Section 20 (1) (iii) of the Consumer Protection Act, 1986 (in short, the Act) matter has been referred to the third Member opinion on following point of differences: Whether complainants are entitled to compensation from insurance Company even without concluded contract between the deceased and the Insurance Company? (Justice K S Chaudhari) Member 1. If medical examination is mandatory, then whether it should not be conducted before the payment of premium and whether asking the proposer to undergo medical examination after receipt of premium would not amount to unfair trade practice.

2. under the agreement that if the proposal is not accepted, premium paid shall be deposited back to the bank account of the proposer, whether non deposit of premium in the proposer''s bank account for about two and a half years would not amount to deeming the proposal as having been accepted by the Insurance Company, so far as the proposer is concerned?

3. Whether the guidelines issued by IRDA that decision should be taken by the insurance company on the proposal of insurance within a period of 15 days from its receipt, is not binding on the insurance company and if this provision is violated the, whether it would amount to deficiency on the part of insurance company.

4. Whether complainant would be entitled to compensation if guidelines of IRDA are violated and policy is not actually issued to the proposer till proposer''s death, though the proposer died after about one year and three months after submitting the proposal form"

2. The facts giving rise to the subject appeal are not disputed. Late Sh. D Venugopal s/o respondent complainant no.1 had taken loan of Rs.30 lakhs from State Bank of Hyderabad. He purchased a life insurance policy, which covered the entire loan of Rs.30 lakhs in the event of his death or outstanding dues in case of eventuality. D.Venugopal died on 17.12.2009 due to cardiac arrest. When the complainant submitted insurance claim under the policy seeking discharge of

outstanding housing loan taken by his son, the appellant insurance company repudiated the claim on the ground that insurance contract did not come into force because the proposal form could not be processed as a result of failure of the deceased to submit himself for mandatory medical examination.

3. The State Commission on consideration of the pleadings and evidence allowed the complaint, Being aggrieved of the order of the State Commission, Andhra Pradesh, the appellant approached the National Commission in appeal. The matter was heard by the above noted Coordinate Bench but the Members of the Bench did not come to an unanimous opinion and wrote separate judgments. As there was difference of opinion, the Members incorporated their point of difference, which has been referred for third Member opinion.

4. I have heard learned Shri Rakesh Malhotra, Advocate for the petitioner insurance company and Ms. Deepa Chacko, Advocate for respondent no.1 and Mr.Buddy Ranganandhan, Advocate for respondent no.2 & 3. .

5. Shri Prem Narain, Member has formulated the following question on which he has differed with the Presiding Member Justice K S Chaudhari. "1. If medical examination is mandatory, then whether it should not be conducted before the payment of premium and whether asking the proposer to undergo medical examination after receipt of premium would not amount to unfair trade practice.

2. under the agreement that if the proposal is not accepted, premium paid shall be deposited back to the bank account of the proposer, whether non deposit of premium in the proposer''s bank account for about two and a half years would not amount to deeming the proposal as having been accepted by the Insurance Company, so far as the proposer is concerne?

3. Whether the guidelines issued by IRDA that decision should be taken by the insurance company on the proposal of insurance within a period of 15 days from its receipt, is not binding on the insurance company and if this provision is violated the, whether it would amount to deficiency on the part of insurance company.

4. Whether complainant would be entitled to compensation if guidelines of IRDA are violated and policy is not actually issued to the proposer till proposer''s death, though the proposer died after about one year and three months after submitting the proposal form?"

6. Hon''ble Justice K S Chaudhari has formulated the point of difference as under: "Whether complainants are entitled to compensation from insurance Company even without concluded contract between the deceased and the Insurance Company?" In order to arrive at a correct decision, it is necessary to answer the questions raised by Hon''ble Member Shri Prem Narain.

Issue No.1

7. The question which needs determination is whether in the event of mandatory

condition of medical examination, acceptance of premium before the medical examination would amount to unfair trade practice?

8. My answer to the above question is in the negative for the reasons enumerated as under: The term Unfair Trade Practice is defined under section 2 (r) of the Act as under:

"unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;-

(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii)makes to the public a representation in a form that purports to be-

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause

(1), a statement that is-

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

1. expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

2. contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation .- For the purpose of clause (2), "bargaining price" means-

3. a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

4. a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits-

5. the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

6. the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme.

Explanation. - For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time, published, prominently in the same newspapers in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

9. On bare reading of the above, it is clear that Unfair Trade Practice is a trade practice which is done for the purpose of promoting sale, use or supply of any goods or for provision of any service by means of unfair method or deceptive practice. I fail to appreciate how acceptance of premium before the mandatory medical examination would be held in promoting the sale / business of the insurance company. Therefore, in absence of the aforesaid basic ingredient of unfair trade practice, it cannot be said that acceptance of premium before the mandatory medical examination amounts to unfair trade practice. Issue no.2

10. Second issue raised by Shri Prem Narain is also answered in the negative in view of the judgment of the Hon''ble Supreme Court in the matter of Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba & Others AIR 1984 SC 1014, wherein Hon''ble Supreme Court while dealing with the question has observed as under: 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 raises a presumption of acceptance.

See in this connection the statement of law in Corpus Juris Secundum, Vol. XLV 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 offer or, 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 company''s executive officers." 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 360the 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.

Issue No. 3 & 4.

11. The question is whether the failure of insurance company to process the insurance proposal submitted by deceased within 15 days in violation of clause 4 (6) of Insurance Regulatory and Development Authority (in short, IRDA) notification dated 26.04.2002 would amount to deficiency in service and whether the complainant would be entitled to compensation on account of the violation?

12. No doubt, by the above noted clause 4 (6) of IRDA guidelines issued vide notification dated 26.04.2002, the insurer is required to process the proposal form with speed and efficiency and take the decision within a reasonable period

not exceeding 15 days from the receipt of proposal by the insurer but the question is whether this regulation / direction is mandatory and binding on the insurer. In this regard, Section 26 & 27 of IRDA Act, 1999 assumes importance. Said sections are reproduced as under: "26. Power to make regulations

(1) The Authority may, in consultation with the Insurance Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section

(1) of section 10;

(b) the transactions of business at its meetings under sub-section (4) of section 10;

(c) the terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;

(d) the powers and functions which may be delegated to Committees of the members under sub-section (2) of section 23; and

(e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

27. Rules and regulations to be laid before Parliament Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation."

13. On reading of the above, it is obvious that Section 26 confers powers on IRDA to make regulations consistent with the Act. However, Section 27 provides that rules and regulations framed by IRDA shall be laid as soon as possible before each House of Parliament while it is in session.

14. In the instant case, learned counsel for the complainant has failed to show that regulations issued vide notification dated 26.04.2002 were placed before the Parliament and have been approved by both the Houses. 14 years have gone by,

therefore, notification in my view has elapsed for want of confirmation by the Parliament. Therefore, non compliance of 15 days period for processing of proposal by the insurance company will not come in the way of insurance company to repudiate the insurance claim.

15. In the light of the above noted observations, I agree with the view taken by Hon''ble Mr. Justice K S Chaudhari. Reference is answered accordingly.

16. Matter be placed before the concerned Bench for appropriate orders. In F.A. No. 560 of 2012 ? SBI Life Ins. Co. Ltd. Vs. D. Srinivas & Ors. arguments were heard on 6.5.2016 by the Bench comprising of Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member and Hon''ble Mr. Prem Narain, Member. Judgment was dictated by Hon''ble Mr. Prem Narain, Member and sent for approval of Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member. Hon''ble Mr. Justice K.S. Chaudhari, Presiding Member dictated dissenting judgment. As Members of the Bench differed in their opinion, the matter was placed before Hon''ble President, NCDRC. Hon''ble President referred the matter to Hon''ble Mr. Justice Ajit Bharihoke, Member. Hon''ble Mr. Justice Ajit Bharihoke, Member agreed with the view taken by Hon''ble Mr. Justice K.S. Chaudhari.

In the light of majority judgement, appeal filed by the appellant is allowed and impugned order dated 16.7.2012 passed by learned State Commission in Complaint No. 63 of 2011 ? D. Srinivas Vs. The Asst. G.M, State Bank of Hyderabad & Ors. is set aside and complaint stands dismissed with no order as to costs.

