(2016) 10 PAT CK 0025

In the Patna High Court

Case No : First Appeal No. 50 of 1990 (Against the judgment and decree dated 23.09.1989, decree sealed and signed on 16.11.1989, passed in Title Suit no. 164 of 1987 by Shri Sita Ram Pandey, Ist Subordinate Judge, Gaya)

The Life Insurance Co. — APPELLANT

Vs

Krishna Devi — RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Contract Act, 1872 — Section 39, Section 64VB, Section 7, Section 8 Insurance Act, 1938

Citation : (2017) AIR(Patna) 75

Hon'ble Judges : Jitendra Mohan Sharma, J.

Bench : Single Bench

Advocate : Mr. Umesh Pd. Singh, Sr. Advocate, Mr. R.R. Prasad, Mr. Rajendra Kumar and Ms. Surabhi, Advocate, for the Defendants/Appellants; Mrs. Veena Rani Prasad and Mr. Vishal Saurabh, Advocates, for the Plaintiff/Respondent

Final Decision : Dismissed

Judgement

Jitendra Mohan Sharma, J.—The instant first appeal has been preferred against the judgment and decree dated 23.09.1989, decree sealed and signed on 16.11.1989, passed in Title Suit no. 164 of 1987 by Shri Sita Ram Pandey, the then Ist Subordinate Judge, Gaya whereby and where under the suit filed by the plaintiff/respondent was decreed against the defendants/appellants.

2. The plaintiff/respondent has filed the suit for declaration that the proposal along with first premium submitted by late Prakash Ram for issuance of his life insurance policy having a sum of Rs. 1,00,000/- became the contract and the defendants being the Insurance Company is liable to indemnify or compensate the plaintiff for the sum insured along with interest and also for a decree of Rs. 1,34,300/- against the defendants filed by the plaintiff Krishna Devi the wife of late Prakash Ram.

3. Briefly stated, the case of the plaintiff is that the husband of the plaintiff was a successful business man. At the instance of the agent of the defendants and its officials he became ready to enter into a contract for insurance with the defendants. The husband of the plaintiff on the representation made by the recognised agent of the defendants including the officers of the local Branch Gaya entered into a contract for insurance with the Life Insurance Corporation of India (hereinafter referred to as the Corporation) whereby the Corporation agreed to cover the risk of the life of the husband of the plaintiff and the amount for contract was entered to the tune of Rs. 1,00,000/-. Before entering into the contract of insurance, the agent of the Corporation and the official, specially defendant no. 3, got performed all the pre-requisites paraphernalia i.e. medical examination, ECG from the recognised and legally appointed doctor of the Corporation. The agents and the officers of the Corporation after being fully satisfied about the physical fitness of the plaintiff''s husband, became ready to enter into the contract of insurance with the husband of the plaintiff. Proposal form was filled-up on 15.09.1984 which was dully signed by the husband of the plaintiff. The contract was to be completed on payment of the first premium and on 18.12.1984 the local officer of the Corporation of Gaya Branch duly accepted the proposal form and on calculating of first premium to be paid, advised the husband of the plaintiff that a sum of Rs. 10360/- is payable towards first premium and accordingly, the husband of the plaintiff paid the said premium amount by an account payee cheque in favour of Life Corporation of India. The local officer of the Corporation issued a receipt dated 18.12.1984 showing the payment of first premium. The plaintiff was a nominee for which the proposal form submitted by her husband and, as such, she is entitled to claim the insured amount. The Corporation encashed the cheque and deposited the amount in its account and, as such, the proposal submitted by the plaintiff''s husband along with first premium paid, became contract. Unfortunately, the husband of the plaintiff all of a sudden died on 11.01.1985 and on account of sudden death, the plaintiff was very much up-set and shocked and hence, she lost her mental balance, resulting, she could not inform to the defendants regarding death of her husband immediately after death. The plaintiff became mentally and physically settled and informed the defendant no. 3 about the death of her husband by letter dated 04.09.1985 and on 05.04.1986 she lodged the claim before defendant no. 3. Again on 29th July, 1986 the plaintiff sent a letter to the Branch Manager, Gaya of the Corporation claiming the insured amount but in reply the defendant no. 3 wrote a letter dated 16th August, 1986 denying the claim of the plaintiff on the ground that there was no concluded contract, thereafter, the plaintiff sent registered legal notice to the defendants but in spite of that the defendant did not pay the amount, resulting, the necessity of filing of the present suit. The plaintiff has also claimed interest at the rate of Rs. 18 % per annum from 12.01.1985 on the insured amount of Rs. 1,00,000/-.

4. A joint written statement has been filed on behalf of defendants denying the claims of the plaintiff and they contested the suit. It is alleged by the defendants

that the suit of the plaintiff is not maintainable as there was no concluded contact between the parties and the proposal along with premium submitted by the plaintiff was under scrutiny stage and in the meantime the husband of the plaintiff died and, hence, the contract remained unconcluded. The proposal for policy was under the scrutiny stage and the same has to be performed and accepted by the competent authority and while the proposal for the policy was under scrutiny stage, Prakash Ram died and, hence, the said proposal remained unconcluded proposal and as such, the contract was not concluded. The premium along with proposal submitted by late Prakash Ram was kept in suspense account and since it was under scrutiny, no pakka receipt was issued to late Prakash Ram and, as such, the same remained proposal and it never became concluded contract. The plaintiff or the legal heirs of late Prakash Ram may withdraw the alleged premium deposited in the suspense account. It is claimed by the defendant that since the proposal of the husband of the plaintiff was not accepted, the plaintiff is not entitled to the amount for which the plaintiff''s husband made the proposal for insurance policy.

5. The learned Sub-Judge framed the following issues after re-cast on the basis of pleadings of the parties:-

(i) Whether the suit is maintainable as framed ?

(ii) Whether the plaintiff got any cause of action for filing the suit ?

(iii) Whether the claim of the plaintiff is barred by limitation ?

(iv) Whether there was any contract between the parties for insurance of the life of late Prakash Ram to the tune of Rs. 1,00,000/- and whether the plaintiff is entitled for a decree as claimed ?

(v) To what relief, if any, is the plaintiff entitled to ?

6. Learned Sub-Judge took up the issue no.(iii) and (iv) at first and decided in favour of the plaintiff and against the defendants. Issues no. (i) (ii) and (v) were taken together and they were also decided in favour of the plaintiff and against the defendants and accordingly, the suit was decreed on contest in part with cost.

7. The claim of the plaintiff regarding interest over the insured amount since 12.01.1985 was not allowed and she was found entitled for interest from the date of filing of the suit at the rate of Rs. 9 % per annum and further the plaintiff was found entitled for pendentilite and future interest at the rate of Rs. 9 % per annum over the decreetal amount from the date of filing of the suit till its realization.

8. The defendants being aggrieved and dissatisfied with the judgment and decree, preferred this appeal challenging the legality, correctness and propriety of the same on the ground that issues no. (ii) and (iv) have been wrongly decided after misconstruing and misreading the evidence of DW 2 Jagdish Prasad Sinha, an employee of the Corporation, observing that DW 2 has admitted that

there is no defect in proposal of late Prakash Ram and the Corporation has no right to reject the proposal. Since the decision to accept or repudiate the proposal is an act after application of mind by the top official concerned after carefully going through the scrutiny of the papers submitted in due course of law and procedure vide L.I.C. standing Order, 1960, stipulating that competent authority to accept proposal up to Rs. 50,000/- is by the Assistant Divisional Manager and for above it is the General Manager. The evidence of DW 4 has not been correctly extracted by the court below because DW 4 was never competent to give an opinion which has been extracted from him. The judgment and decree has been passed erroneously and illegally. The findings of the court below is quite illegal and contrary to the settled law. Evidence of PWs relied upon by the court below seems to be wide of the mark and irrelevant. The observation of the court below that it becomes admitted fact that there was no defect in the proposal is an erroneous observation. The court below has failed to appreciate that payment kept in suspense account and no pakka receipt issued, non-issuance of insurance policy, therefore, on account of non-acceptance of the proposal by the proper authorities vide L. I. C. standing order 1960 delegating such powers in due course of procedure does not warrant a conclusion that the contract is complete and acceptance can be presumed in law and the same will be regarded as acceptance to fasten liability of the L.I.C. The decision cited and relied upon by the learned court below is not correct law in view of a direct Supreme Court decision on Contract Act, 1872 Sections 7 and 8 to the effect that in insurance proposal acceptance is complete only when it is communicated to the proposer. Silence or receipt and retention of premium cannot be construed as acceptance. As per the settled law of Supreme Court, it can be said that the proposal was in the state of suspended animation, there was not even order of acceptance at any point of time even after the death and as such there was no legal contract fit to be acted upon by the Corporation. Acceptance must be absolute as per Section 7 of the Contract Act, 1872, in order to convert a proposal into a promise, the acceptance must: (1) be absolute and unqualified; (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within in a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise, but, if he fails to do so, he accepts the acceptance.

9. Learned counsel for the appellant has placed reliance upon a judgment reported in AIR 1984 Supreme court Page 1014 in the case of Life Insurance Corporation of India, Appellant v. Raja Vasireddy Komalavalli Kamba and others? Respondents and on that basis it has been submitted that the judgment and decree passed by the learned court below is fit to be set aside. Further reliance has been placed upon a judgment reported in AIR 1966 Supreme Court 1644 (paragraph 19 and 20) in the case of General Assurance Society Ltd., Appellants v. Chandmull Jain and another? Respondents and it has been argued that the

Insurance Company is entitled to get the policy cancelled. It has also been argued that a party cannot claim anything more than what is covered by the terms of contract, for the reason that the contract is a transaction between two parties and has been entered into with open eyes and understanding the nature of contract. Here, in this case, neither the insurance policy was issued nor pakka receipt was granted and the amount of the husband of the plaintiff was kept in suspense account waiting decision of the higher officials regarding acceptance or refusal of the contract. The learned counsel has further placed reliance upon a judgment reported in (2013) 5 Supreme Court Cases 470 (paragraph 23) in the case of Rajasthan State Industrial Development and Investment Corporation and another? Appellants v. Diamond @ Gem Development Corporation Limited and another.. Respondents.

10. On the other hand, learned counsel for the respondents, arguing in this appeal, has submitted that the facts of the case of Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and others (Supra) is on quite different footing. There, by way of first premium, two cheques were issued, one cheque was encashed and another cheuqe was not encashed and then, again another cheque was issued which was ultimately encashed but just one day after, the insured died. Here, when Corporation accepted the payment of first premium by cheque and kept the amount in its account by encashing the cheque, the same will be recorded as acceptance of the proposal by the Corporation. Here, premium of Rs. 10360/- was paid by Prakash Ram through a cheque No. 946267 dated 15.12.1984 and the same was encashed by the Corporation and the amount was kept in the account of the Corporation and receipt, marked as Ext. 4, was issued on 18.12.1984. The amount of first premium was realized by the Corporation and the same was deposited in its account and thereafter, Prakash Ram died on 11.01.1985. During such period no communication was made to Prakash Ram whether his proposal was accepted or rejected. The plaintiff had informed regarding the death of her husband through an application dated 04.09.1985 (Ext. D) and she claimed the insured amount. Prior to writing of letter by the plaintiff, no communication was made by the defendant whether the proposal of Prakash Ram was accepted or rejected. The defendant have only taken plea that since Prakash Ram died, his proposal cannot be accepted. From the record it appears that no defects were found in the proposal of deceased Prakash Ram, his proposal was also not rejected by the Corporation. The witnesses of the defendants have also admitted that there was no defect in the proposal of Prakash Ram and the same was not rejected by the Corporation. Further the witnesses of the defendants also admitted that when no defect is found in any proposal for insurance, the Corporation has got no right to reject the proposal. In the present case, admittedly, there was no defects in the proposal submitted by deceased Prakash Ram. Further the first premium has been paid by Prakash Ram and the same was encahsed by the Corporation and the amount was kept in the account of Corporation since the cheque drawn in favour of the Corporation by deceased Prakash Ram towards the payment of first

premium for insurance of his life to the tune of Rs. 1,00,000/- which was encahsed by the Corporation and the same was kept in its account and hence, the same will be deemed to be as acceptance of the proposal in view of the decision of Kerala High Court in the case of Life Insurance Corporation of India, Trevandrum,.. Appellant v. L. Kamalamma, Respondent reported in AIR 1986 Kerala 215. In the aforesaid judgment, the Division Bench has distinguished the ruling reported in AIR 1984 Supreme Court page 1014. Here, also the judgment reported in AIR 1984 Supreme Court page 1014 does not help the appellant for the facts of the case clearly indicated the total absence of a contract, whereas the facts of this case, however, speaks to the contrary. The learned trial judge has rightly relied upon the judgment rendered in the case of Life Insurance Corporation of India, Trevandrum (Supra) and has rightly passed the judgment and decree and there is no need of interference by this Court.

11. On the basis of rival contentions of the parties, the only point for consideration in this appeal is as to whether the judgment and decree passed by the learned trial judge is fit to be confirmed or is fit to be set aside.

12. It is admitted fact that late Prakash Ram was the successful businessman and had submitted a proposal duly filled up before the appellants for insurance of his life for sum of Rs. 1,00,000/-, thereafter, he was medically examined by the doctor, duly authorised and appointed by the appellants and ECG was also done. Medically he was found fit. Ext. G series are the medical examination report wherein he was found medically fit. Ext. F is the confidential report of the Branch Manager of Corporation wherein also no defect was pointed out by the Branch Manager in his confidential report regarding the proposal submitted by Prakash Ram. Ext. H is the agent''s confidential report wherein also no defect was found regarding the proposal of Prakash Ram. DW 2 Jagdish Prasad Sinha, the employee of appellants, has also admitted that no defect was seen or found in the proposal of late Prakash Ram. He also admitted that if there is no defect in the proposal form, the Corporation has got no right to reject the proposal submitted by the porposer. He has also stated that if the proposal is rejected, information is given to the proposer in this regard. He further admitted that proposal of late Prakash Ram for insurance of his life was not rejected by the Corporation. DW 4 Krishana Kumar Singh is the Administrative officer of Corporation. He has also similarly stated that there was no defect in the agent''s report nor there was any adverse report in the moral hazard form. DW 3 Arjun Bajpayee is also an employee of the appellants. He also submitted that if any defect is not found in the proposal for insurance of life, the Corporation has got no power to reject the proposal. Thus, it is admitted position between the parties that no defect was found in the proposal of late Prakash Ram for insurance of his life. Further it is admitted position between the parties that Prakash Ram had paid the first premium for the insurance by cheque and the same was encashed by the Corporation and the amount was kept in the account of Corporation but the case of the appellants is that the alleged deposit was kept in suspense account and no official receipt was issued to him accepting the proposal and as

such the proposal remained unconcluded. It is for consideration whether any contract had taken place between Prakash Ram and the Corporation.

13. From both sides oral evidences have also been adduced. On behalf of plaintiff altogether 7 witnesses have been examined. Out of those witnesses, PWs 2 and 3 are formal witnesses. PWs 4, 5 and 7 have stated that agents and the officials of the Corporation had assured to late Prakash Ram that if he deposited the first premium then, his life will be insured and the policy for insurance will be issued to him. PW 6 Rabindra Prasad is the LIC agent and he has supported that Prakash Ram had paid the first premium by cheque and the Corporation had accepted the cheque and encashed the cheque and deposited the first premium amount in its account. The Division bench of Kerala High Court in the matter of Life Insurance Corporation of India, Trevandrum (Supra) has considered the judgment in the case of Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and others (Supra) and has distinguished the same. The facts of the present case is on better footing, than the case of Life Insurance Corporation of India, Trevandrum (Supra). Facts of Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and others (Supra) does not help the appellants for the facts of that case clearly indicated totally absence of a contract and the facts of this case speak to the contrary. The contract of Prakash Ram came into existence during his life and during his life no intimation was given regarding his proposal. The contract was binding on the Corporation. The witnesses of the appellants have also stated during trial that up-till-now the proposal has not been rejected by the Corporation. In the present case, the proposal form was available on 08.12.1984 and towards first premium Prakash Ram paid Rs. 10360/- by cheque and the cheque was encashed by the Corporation and the amount was kept in its account. A receipt was issued on 18.12.1984 regarding the payment of the first premium by the officer of the Corporation and that receipt has been marked as Ext. 4. The amount deposited by late Prakash Ram towards the first premium was not found deficient by the Corporation, no defect was found in the proposal form of deceased Prakash Ram and that has been admitted by the witnesses of the appellants also, as such, there was no obligation left to be performed by the proposer Prakash Ram. It has been taken plea on behalf of the appellants that since the proposer died, his proposal cannot be accepted and, as such, the same became not a concluded contract. Admittedly, Prakash Ram the husband of the plaintiff died on 11.01.1985, the death certificate has been marked as Ext. 5, no communication was made to Prakash Ram whether his proposal was accepted or rejected. Ext. D is the application dated 04.09.1985 through which the plaintiff had informed regarding the death of her husband and the plaintiff respondent also claimed the insured amount. Ext. C is the endorsement made over the application of the plaintiff by the official of the Corporation. Prior to writing of letter by the plaintiff no communication had been made by the appellant/defendants whether the proposal of Prakash Ram was accepted or rejected. Ext. 6 series are the correspondence letters of the defendants through which the defendants denied to

make payment of the alleged insured amount. The defendants have only taken plea that since Prakash Ram died, his proposal cannot be accepted. From the record it appears that no defect was found in the proposal of deceased Prakash Ram, his proposal was also not rejected by the Corporation. The witnesses of the defendants have also admitted that there was no defect in the proposal of Prakash Ram and the same was not rejected by the Corporation. Further the witnesses of the appellants have also admitted that when no any defect in any proposal for insurance is found, the Insurance Corporation has got no right to reject the proposal. In the present case, admittedly, there was no defect in the proposal submitted by deceased Prakash Ram. Since the cheque drawn in favour of Corporation by the deceased Prakash Ram towards the payment of first premium for insurance of his life to the tune of Rs. 1,00,000/- was insured by the Corporation and the same was kept in its account and a receipt marked Ext. 4 was also issued by the office of the Corporation and hence, the same will be recorded as acceptance of the proposal and this view finds support from the decision of Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and others (Supra) as discussed above. The learned Sub-Judge has rightly held that the contract for insurance came into existence and the death of the proposal does not give unequivocal power to the defendants to reject the proposal for insurance. Further the deceased Prakash Ram died on 11.01.1985 while the payment of first premium was made on 18.12.1985. The plaintiff informed the defendant regarding death of Prakash Ram on 04.09.1985 prior to that no order regarding proposal of Prakash Ram was passed by the official of the Corporation and the plea has been taken that the proposal was kept under scrutiny stage. During such long period no action regarding the acceptance or rejection was taken by the officials of the Corporation regarding the proposal of Prakash Ram. The learned Sub-Judge has rightly held that it goes to show negligence and carelessness on the part of the employee of the Corporation. There is no evidence on record that prior to communication of death by the plaintiff, the defendants have knowledge about the death of Prakash Ram. The claim has been lodged by the plaintiff within three years of death of Prakash Ram. The plaintiff being nominee made in the proposal form is entitled to claim the insured amount, since the contract had come into existence after payment of first premium, the appellants/defendants are liable to pay the insured amount of Rs. 1,00,000/- to the plaintiff.

14. I am satisfied that the learned trial Judge who had the advantage of seeing the witnesses, watching the demeanor in stating the evidence came to the right conclusion. This point is accordingly, decided against the appellants and in favour of the respondents.

15. In the result, the appeal is accordingly, dismissed without costs.

