(1993) 01 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

UMA DEVI APPELLANT

Vs

LIFE INSURANCE CORPORATION RESPONDENT

Date of Decision : 25-01-1993

Acts Referred:

Citation : 1993 1 CPJ 551 : 1993 1 CPR 447

Hon'ble Judges : D.R.Vithal Rao , K.R.Ramaswamy Iyengar , Susheela Cheluvaraju J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is by the wife and children of late Mahadev Topannavar, claiming a sum of Rs. 2,00,000/- (with double accident benefit), the amount mentioned in the policy proposal form as payable in the event of death, from the L.I.C. of India, the opposite party.

2. COMPLAINANT No. 1, is the wife and complainants No. 2 to 7 are the children of late Mahadev Topannavar, Mahadev Topannavar met with an accident on 3.6.1990 and expired. The late Mahadev Topannavar, had made proposal for insurance, as per Ex. R-l, with the opposite party at Belgaum on 30th April, 1990 and also made payment of a sum of Rs. 1,520/- to the opposite party as per Ex. R-2. The opposite party on scrutiny of the said proposal had sought, as per Ex. C-l, on 11.6.1990 from deceased Mahadev Topannavar to produce E.C.G. report. The late Mahadev Topannavar got the E.C.G. report from the concerned Doctor and sent the same to the opposite party on 24.6.1990. The complainants averred that thereafter the deceased Mahadev did not receive any further communication from the opposite party. The deceased Mahadev met with an accidental death on 3.8.1990.

The complainants after the death of deceased Mahadev, made demands with the opposite party for payment of the sum assured with all the benefits thereon but the opposite party wrongfully repudiated the claim in their communication as per Ex. C- 2 on. 14.9.1990.

3. THE complainants further averred that the deceased had done all that was necessary to be done by him and so the contract of insurance came into existence during the life of the deceased Mahadev and so the Insurance Company was liable for the payment of the amount mentioned in the policy proposal form as payable in the event of death. The complainants further averred that due to the negligence on the part of the Insurance Company they had been put to great loss and injury.

4. THE complainants claimed the amount mentioned in the policy proposal form with all the benefits thereon. The opposite party, the Insurance Company filed statement of objections and disputed the allegations made in the complaint. The opposite party admitted the fact that the deceased Mahadev Topannavar had made the proposal for insurance as per Ex. R-l, on 30.4.1990. It also admitted that he had also deposited a sum of Rs. 1,520/- for which a deposit memorandum, as per Ex. R-2, was issued. The opposite party further averred that on scrutiny of the proposal, the report of E.C.G. was called for from the deceased Mahadev, as per Ex. C-1 and on receipt of the said report of E.C.G. the same was referred to the Zonal Under-writing Section at Hyderabad on 3.7.1990 for its scrutiny. The Zonal Underwriting Section at Hyderabad on the scrutiny of the said report called for reports of Blood-sugar tolerant test, Cholesterol etc. The Branch Office of the opposite party at Dharwad on receipt of the papers from Hyderabad requiring further reports, instead of sending the papers to Belgaum Branch for compliance, by mistake sent the said papers to the Hyderabad Zonal Office and in the meanwhile, unfortunately the deceased Mahadev expired and so there was no concluded contract of Insurance between the deceased Mahadev and the opposite party.

5. THE opposite party on the basis of these facts averred that there was no liability on the Insurance Company for payment of the amount mentioned in the policy proposal form as there was no contract of insurance which had come into existence.

6. DURING enquiry, complainant No. 1, examined herself as C.W-1 and got Exs. C-l to C-5, marked in evidence. The opposite party-Insurance Company, examined the Assistant Divisional Manager, as R.W-1, and the Divisional Officer, as R.W- 2, and got Exs. R-l to R-8 marked in evidence. We have heard the learned Counsel for the parties.

Having regard to the pleadings of the parties and the submissions made by them, the only point that arises for our consideration is, whether there was a concluded valid insurance contract between the deceased Mahadev Topannavar and the L.I.C. of India and whether any liability could be fixed on the Insurance Company for the payment of the amount mentioned in the policy proposal form as payable in the event of death.

7. IT is not disputed that the deceased Mahadev Topannavar, with a desire to take the policy, made proposal for insurance on 30.4.1990, as per Ex. R- 1. IT is

also not disputed that the deceased Mahadev made payment of a sum of Rs. 1,520/- towards the premium payable to the opposite party. The opposite party issued receipt as per Ex. R-2 for the receipt of the said sum. The recitals in the said receipt reads as under: "Deposit Memorandum: Payment as shown alongside has been received and held in deposit. If the payment is found in order the amount will be adjusted and Corporation official receipt issued." R.W-1, has in this regard, stated thus: "Ex. R-2 is the deposit receipt issued by the Branch while registering the proposal. If the proposal had been accepted, the deposit would have been adjusted towards the first premium and then the first premium receipt, that is, stamped receipt would have been issued."

8. R.W-1, has in the re-examination, stated thus: "The money paid as per Ex. R-2 by the proposed along with proposal form, Ex. R-l, is still in deposit as evidenced by the deposit schedule, as per Ex. R-8 at Ex. R- 8(a). The relevant entry is at Ex. R-8(b)."

This material shows that the money that was received by the opposite party from the deceased Mahadev was taken as only a deposit towards the premium payable incase the proposal had been accepted by the L.I.C. prior to the date of death of the proposer. It is also not disputed that the opposite party issued communication to the deceased Mahadev, as per Ex. C-l on 11.6.''1990, requiring the production of E.C.G. report, the material part of it reads thus: "We thank you for the above proposal for insurance. We request you to comply with the requirements under item 11 set out below for further consideration of the proposal. Item-11: E.C.G. with report from Dr. Bhate or Dr. Joglekar of Belgaum."

The deceased Mahadev produced E.C.G. report as per Ex. R-4 and R-5 on 24.6.1990.

9. R.W-1 has in this regard stated thus: "Since, Ex. R-5, the E.C.G. report was not normal, so I referred the proposal to the Zonal Office at Hyderabad, next higher office for their decision. It was not expected to take the decision at my level as the E.C.G. report was not normal, Ex. R- 6 is the proposal review slip. It gives all the details pertaining to the proposal and the decision taken thereon. The Hyderabad Zonal Office on considering the proposal and the accompanying documents called for further medical special report as per Ex. R-6(a). On receipt of this decision from the Zonal Office, I forwarded the papers to the Branch Office for compliance. The requirements could not be complied with as in the meanwhile the party, proposer expired. As the requirements could not be complied with and the proposal remained incomplete, so the contract was not concluded, so I decided to refund the deposit to the nominee as per rules."

10. SO it is clear from this material that the proposal for insurance made by the deceased Mahadev Topannavar, was under consideration of the Insurance Company. The said proposal had not received the acceptance of the Insurance Company. The learned Counsel for the complainants submitted that the proposer, the deceased Mahadev had done all the acts that were required to be done by a

proposer and there was no further action to be done by the deceased. The Insurance Company after the receipt of the report of E.C.G. from the deceased on 24.6.1990 did not issue any communication to him, therefore, it should be deemed that the proposal was accepted by the Insurance Company and then there was a concluded valid insurance contract between the deceased and the Insurance Company. The learned Counsel relied upon a decision in L.I.C. of India Trivandum v. L. Kamalamma, reported in A.I.R. 1986 Kerala page 215 and submitted that the facts and the circumstances in the present case did conclusively establish the existence of a contract during the life of the deceased, Mahadev.

In our opinion, the said decision in Kamalamma ''s case has no application to the facts of this case. In the said case, their Lordships held that the evidence placed on record in the said case conclusively established the existence of a contract during the life of the deceased.

11. IN the present case, it is not disputed that the proposal, as a matter of fact, was not accepted. On the other hand it is submitted that it should be deemed to have been accepted because the re was no communication from the INsurance Company after submitting E.C.G. report on 24.6.1990. The Supreme Court in L.I.C. of India v. Raja Vasa Reddy and Others, reported in (1984) 2 Supreme Court Cases page 719, held at paras 14 and 15 thus: "14. When an insurance policy becomes effective is well-settled by the authorities but before we note the said authority, 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 L.I.C. 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. XLIV. p-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 a communicated to the offeror, 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.

15. Though in certain human relationships silence to a proposal might convey

acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie, acceptance must be communicated to the offeror. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed. See in this connection statement of law in MacGillivray and Parkington on Insurance Law, seventh edition, page 94, paragraph 215.''

12. IT is clear from the decision of their Lordships in the Supreme Court referred to above, that mere delay in giving a n answer cannot be construed as an acceptance. Their Lordships have further held that in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. In the present case, there is absolutely no material placed on record to show that the proposal was accepted by the Insurance Company. It is evident from the material on record that the proposal made by the deceased Mahadev was under consideration and scrutiny of the Insurance Company. It had not received the acceptance of the L.I.C. prior to the date of death of the deceased Mahadev. Having regard to these facts and in the circumstances of the case, we are constrained to hold that there was no valid contract of insurance which had come into operation and no liability could be fixed on the Insurance Company for the payment of the amount mentioned in the policy proposal form as payable in the event of death. So the complaint is liable to be dismissed.

13. HOWEVER, the opposite party has admitted that the amount of Rs. l ,520/- given by the deceased Mahadev alongwith the proposal form was still in deposit with L.I.C. The opposite party has also fairly admitted these facts and agreed to refund the same to the complainants. In view of this fact, we deem it proper to direct the opposite party to refund the said amount of Rs. 1,520/- with interest at 18% p.a. from 30.4.1990 till its payment to the complainants. ORDER In the Result, therefore, this complaint fails and it is dismissed. HOWEVER, we direct the opposite party, that is, L.I.C. of India to refund the deposit amount of Rs. 1,520/- (Rupees one thousand five hundred and twenty only) with interest at 18% p.a. from 30.4.1990 till its payment to the complainants. The opposite party shall make the payment of the said sum to the complainants within a period of 4 weeks from this day. The parties are directed to bear and pay their own costs. Complaint dismissed.