(1998) 12 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

USHA — APPELLANT

Vs

L.I.C. — RESPONDENT

Date of Decision : 28-12-1998

Acts Referred:

Citation : 1999 1 CPJ 535

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Appeal dismissed

Judgement

1. BRIEF facts of the case are that one Rajinder, deceased, who was employed as a loader in Indian Airlines, became a member of a Group Life Insurance Scheme and obtained 20 years money-back policy with profits (with accident benefit) dated 13.8.1980 from Life Insurance Corporation, hereinafter referred to as opposite party 1. The said insured remained absent from duty from November, 1991 to August, 1992. It appears that his salary was not drawn during the period of his absence. He, however, reported on duty in September, 1992 and in the salary-slip for September prepared in October, 1992, inter alia 2,400.20 were deducted from the arrears bill due on account of monthly LIC premium. On 25.10.1992 the said insured was murdered. A claim under the policy was made by his widow Smt. Usha, who was nominee of the insured under the policy. The claim was repudiated by LIC letter dated 27.3.1993 on the ground that the policy had lapsed on account of non-receipt of premium for the period November, 1991 to October, 1992. The amount worked out under the lapse policy had, however, been paid. The complainant approached District Forum impleading both LIC as opposite party 1 and Indian Airlines Corporation as opposite party 2. Her case was that employer had, admittedly, deducted the premium one month before the death of the insured. Her case was that under a tripatite arrangement the monthly insurance premium was required to be deducted from the salary of the insured by the employer and the same was required to be forwarded to LIC and, in fact, for the period upto October, 1992. The said premium had been deducted from the salary of the deceased and in these circumstances she could not be deprived of the benefits of the policy. She, however, claimed payment of amount

due under the policy along with interest @ 24% p.a. from the date of the insured''s death till date of payment. The relief was expressly claimed only against LIC.

2. THE stand of LIC before the District Forum was the policy issued in favour of the insured was an individual insurance policy under the Salary Saving Scheme. Admittedly, LIC failed to receive the premium w.e.f. 4.11.1991 till date of death of the deceased or within the grace period of 15 days allowed from the date of death and, accordingly, the policy stood lapsed. It was further stated by LIC that in the month of October, 1992 the said employer deducted 12 months'' premium due in November, 1991 to October, 1992 @ Rs. 218.20 from the Salary bill pertaining to the month of November, 1992 in lumpsum. THE said amount was, however, remitted to the LIC by the said employer only on January, 1993 i.e. after three months of the death of the deceased policy holder. It was further pointed out that the salary bill itself was prepared on 30.10.1992 i.e. 5 days after death of the deceased on 25.10.1992. As the policy stood lapsed the Insurance Company was not liable to pay the amount under the policy. The plea of the employer, opposite party 2 was that the insured was absent for 11 months from November, 1991 to September, 1992 and his salary was charged in the month of October, 1992 when a sum of Rs. 2,400.20 being arrears for 11 months was deducted and sent to LIC. It was further stated that there was a practice of LIC accepting what is described is "gap premium" for a period upto 12 months. In support of such a practice reliance was placed on Minutes of the Meeting dated 18.11.1993 between the representatives of IAC and LIC, vide copy Annexure R-2 filed with the written version dated 22.12.1993. As the arrears did not exceed the said period of 12 months, LIC was bound to accept the same and that being so the policy had not lapsed and the LIC was bound to pay the money in accordance with the terms of the policy.

On a consideration of the matter and relying on the decision of the National Commission in Divisional Manager, LIC v. Hari Bandhu Setha, Etc., II (1995) CPJ 239 (NC), it was held by the District Forum that the employer was responsible for the policy to lapse. In the present case, however, the employer could not be directed to pay the amount as no relief had been claimed by the complainant against the employer, opposite party 2. The only relief sought was against LIC. In this view of the matter, the complaint was dismissed. Aggrieved by the order, the complainant has preferred this appeal.

3. WE have heard learned Counsel for the parties and have carefully gone through the record. WE have carefully gone through the terms and conditions of the insurance policy, copy whereof has been filed as Annexure A with the appeal. The premium was payable on monthly basis and it was provided under Condition No. 2 relating to payment of premium as under : "A grace period of one month but not less than 30 days will be allowed for payment of yearly, half yearly or quarterly premiums and 15 days for monthly premium. If death occurs within this period and before the payment of premium then due, the policy will still be

valid and the sum assured paid after deduction of the said premium as also the unpaid premium/s falling due before the next anniversary of the policy if premium is not paid before the expiry of the days of grace, the policy lapses."

Another noteworthy feature in the instant case is that nowhere the employer either undertook to ensure timely payment of the premium or to render the service of deducting the premium and forwarding the same to LIC in time from month to month. It is, therefore, of no consequence from the point of view of LIC that the premium of 11 months from November, 1991 to October, 1992 had been deducted from the salary due for the month of September, 1992 paid in October, 1992. In fact, the salary bill itself was prepared on 30.10.1992 when, admittedly, Rajinder had died on 25.10.1992. There is also no dispute that the premium had not been sent by the employer to LIC within 15 days of the death of the insured but only on 19.1.1993 long after the policy had lapsed. It would be convenient to refer to the case law cited before us at this stage. In MCD/DESU v. Basanti Devi, II (1995) CPJ 50 (NC) the insured was an employee of DESU. He had taken an insurance policy under the Salary Deduction Scheme. The policy issued to him was in force w.e.f. 28.1.1992. Only two monthly premium had been paid. The insured died on 17.8.1992. The admitted case was that no premiums had been paid after 28.3.1992. By majority the National Commission took the view that duty was cast on the employer to deduct/remit overdue premium and the employer was, therefore, held liable to indemnify the nominee of the insured. Mr. Y. Krishnan, as he then was, however, recorded a dissenting note in which he came to the conclusion that the employer could not be fastened with liability as services of making deduction and remitting the premium were without any consideration. In a latter decision in Divisional Manager, LIC v. Hari Bandhu Setha & Ors. (supra) the insured was a Junior Engineer in Public Health Department of the Bihar Government. There was non deduction from his salary on account of LIC premium from 1st January, 1990 to July, 1990. The insured died on 17.7.1990. Deduction for the aforesaid period was, however, made in October, 1993 and remitted to LIC. The National Commission held that the State Government was deficient in failing to deduct/remit the amount and, accordingly, held it liable to indemnify the heirs of the deceased. The said decision in Hari Bandhu Setha was set aside by the Supreme Court in case reported as Divisional Manager, LIC v. Hari Bandhu Setha & Ors., JT (1996) 4 SC 288 mainly on the ground that the State was rendering service without any charge. It was, therefore, held that no claim could be made in the Forum created under the Consumer Protection Act for the alleged deficiency on the part of the Government, being without consideration.

4. ANOTHER decision to which attention has been invited is G.M., Hotel Kanishka v. Saroj Atal & Anr., III (1997) CPJ 72 (NC). The view taken therein was that LIC failed to send a statement regarding non-receipt of monthly premium. This case is not applicable to the facts of the case in hand for the simple reason that it has not been shown to us that the LIC undertook to send a notice regarding over due payment of premium. We are, therefore, constrained to hold that the employer

could not be held liable as the service of deduction from the salary and forwarding the premium to LIC had not been undertaken by the employer on payment of any charges and the reasoning which commended itself to the Apex Court clearly applies. We are further of the view that the LIC is not liable as admittedly, the premium was not paid within time or within 15 days grace period of the death of the deceased and the policy lapsed. Whatever remedy the complainant might have before the Civil Court vis-a-vis the respondents, we do not think that there is any deficiency in service on the part of the respondents for the reasons already discussed. Before parting with this order, we would like to say a word on two other issues which have been raised. One is regarding a practice of accepting gap premium not exceeding 12 months. Para 4 of the letter dated 22.12.1993 (at page 44 of the record) lays down as under : "Acceptance of Gap Premiums : We mentioned that some cases have come to our notice where IAC has remitted to us Gap Premiums under individual policies. We informed them that they can remmit to us Gap Premiums upto 12 months for policies which have run for more than 3 years. In other cases, the P.H. may be advised to contact out office as in such cases further evidence of health will be required before acceptance of overdue premium. The IAC agreed to do so in future."

(emphasis supplied) The requirement of future evidence of health is crucial and decision to accept gap premium not exceeding 12 months has to be read subject to this all-important condition. In the present case, this condition could not be satisfied as, admittedly, the insured had died on 25.10.1992. This is with regard to acceptance of Gap Premium. It has been vehemently contended that the contents of the complaint filed under the Consumer Protection Act are not required to be construed with the rigorous rules applicable to pleadings in the Civil Court and the Forum should have allowed the complaint against the employer for having failed to deduct the premium and forward the same to LIC in time. In this behalf our attention was also invited to the concluding part of the relief claimed by the complainant namely "pass such other orders as are thought fit in the facts and circumstances of the case." We have two difficulties in accepting this contention. These are : (a) the employer cannot be made liable as the service rendered by it was without any consideration and; (b) the fact that salary was not drawn for 11 months in this particular case was on account of the absence of the deceased for a period of 11 months preceding his murder.

5. WITH regard to plea of limitation the appellant had made an application for condonation of delay and has placed on record copies of medical record to explain the delay. In the facts and circumstances of the case, we think it is a fit case to condone the delay. We order accordingly. Condonation of delay, however, does not affect the ultimate result and for the reasons already given the appeal fails and the same is dismissed. It will, however, be open to the complainant to have her remedy, if any, according to law before the Civil Court. We make no order as to costs. Copy of the order be furnished to the parties as well as District Forum-II. Appeal dismissed.