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Punjab & Haryana High Court

K. Kannan, J.

LIC v. Permanent Lok Adalat, Hisar

CWP 21023/ 2018

08.01.2015

Insurance Act, Section 64 VB - States, that no risk could be assumed unless premium is received in advance - While no policy of insurance could be concluded without payment of premium, a converse does not necessarily operate - Receipt of premium cannot be taken as concluding the contract - In this case, what has happened is that the premium has been collected but there was no act signifying consent to any proposal – Insurance company not liable - No proposal had been forthcoming and the amount had been only credited in the Suspense Account and since the policy of insurance had not been under-written, there was no liability for the Insurance Company. *LIC of India v. Raja Vasireddy AIR 1984 SC 1014, relied.*

Facts: Agent of the LIC receiving a cheque from the deceased for on 02.11.2006 and the amount was encashed and credited in the Suspense Account. The person who had issued a cheque had however died on 05.11.2006 as a result of gunshot injury.

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K. Kannan, J. - The petition is at the instance of the Life Insurance Company of India (hereinafter referred to as 'LIC') denying the liability to pay the amount which was claimed by the legal heir of the deceased as an amount assured to be paid in the event of death of the claimant's husband. It was a case of an agent of the LIC receiving a cheque from the deceased for an amount of Rs. 11,628/- on 02.11.2006 and the amount having been encashed and credited in the Suspense Account. The person who had issued a cheque had however died on 05.11.2006 as a result of gunshot injury. Two years later on 12.07.2008, a notice had been issued by the wife contending that premium for the life insurance had been paid by her husband and encashed but neither the acceptance of the proposal nor the policy had been issued. The requirement under the notice was for release of the policy and the amount due under the policy.

2. The Insurance Company denied the liability on the ground that no proposal had been forthcoming and the amount had been only credited in the Suspense Account and since the policy of insurance had not been under-written, there was no liability for the Insurance Company.

3. The Permanent Lok Adalat before which the case was instituted reasoned that the cheque which had been received by the LIC had also been encashed and the Insurance Company could not have encashed the cheque unless there had been a valid proposal. The conduct of the Insurance Company presumed a contract of insurance by implication and since the death has ensued subsequent to the encashment of the premium paid, the liability was surely attracted and hence the LIC was liable to make the payment.

4. Before this Court, LIC makes reliance on the judgment of the Hon'ble Supreme Court in LIC of India v. Raja Vasireddy AIR 1984 SC 1014 that considered the very same issue of whether a binding contract could be taken as arising by mere receipt and retention of the premium. The facts in that case were, the proposal for the insurance had been made on 27.12.1960 and the two cheques for Rs. 300/- and Rs. 220/- had been issued in favour of the LIC as premia. Cheque for an amount of Rs. 300/- was encashed on 29.12.1960 and the cheque for an amount of Rs. 220/- was also encashed on 11.01.1961 after having been dishonoured three times. It was, therefore, a case that proposal had been issued, there had been a medical examination of the proposer and the payment of the premia through cheques which were encased by 11.01.1961 The proposer died on 12.01.1961 The Hon'ble Supreme Court held that the liability would arise

only if the policy had been underwritten and the expression "underwrite" signified to accept liability under. So long an acceptance had not been communicated, mere receipt and retention of premium could not result in a concluded contract. The significance of acceptance was alone taken to conclude a contract to fasten liability. This judgment had also been subsequently cited and relied on in a later judgment of the Hon'ble Supreme Court in LIC of India v. Rakhna Devi in CWP No. 808 of 2007 decided on 03.02.2011 That was a case where a proposal had been sent on 31.01.1998 and the proposer died on 01.03.1998 The acceptance of the proposal was made by LIC subsequently on 02.03.1998 and an acceptance after the event of death, the Hon'ble Supreme Court again held would not avail to the assured to claim the amount in the policy, by relying on the judgment of the Hon'ble Supreme Court referred to above in LIC v. Raja Vasireddy case (supra). The proposition that would emerge would be that acceptance of a proposal must be made before the event of death took place and that acceptance must be signified in writing.

In this case, the counsel appearing on behalf of the respondent would support the decision of the Permanent Lok Adalat by invoking what is normally understood in the context of a contract being taken as concluded by implication and the counsel would refer him to Bhagwati Prasad Pawan Kumar v. Union of India 2006 (3) CCC 682 (SC) that dealt with the ambit of Section 8 of the Contract Act. Hon'ble Supreme Court held an acceptance could be by conduct and conduct amounts to acceptance if it was clear that he did the act with the intention of accepting the offer. The counsel would have to Court believe that the premium could not be paid without any proposal accompanying the same and if it was encased it must mean that the proposal had been accepted. The proposition advanced by the counsel runs directly counter to the decisions of the Hon'ble Supreme Court referred to above. In LIC v. Raja Vasireddy case (supra), it was actually a situation where a proposal had been made, amount had been collected but acceptance was made subsequent to death. This was held to be insufficient. The counsel would also refer me to the provisions in Section 64 VB of the insurance Act that states, that no risk could be assumed unless premium is received in advance. I must observe that while no policy of insurance could be concluded without payment of premium, a converse does not necessarily operate. In other words, the receipt of premium cannot be taken as concluding the contract. In this case, what has happened is that the premium has been collected but there was no act signifying consent to any proposal. Now there is nothing brought on record to show that there was any document to be taken as a proposal. It is doubtful that the proposal had actually been taken. The counsel for the respondent refers me also to the judgment of the Hon'ble Supreme Court in Oriental Insurance Company Limited v. Dharam Chand in CWP No. 3996 of 2011. It was a case under Motor Vehicles Act, where a premium had been paid, cover note was issued, accident taken place after the issuance of cover note. The Court held that insurance must be deemed to have commenced from the time when the premium amount was received. There is nothing in this judgment that can support the respondent. The cover note is a provisional acceptance of the policy. Issue here is whether any acceptance for the offer of the contract to the insured had been done. There was none. The award of the Permanent Lok Adalat is erroneous and against the law and it is set aside.

The situation may seem poignant that a person who had paid the premium and which was encashed left nothing for the legal heirs to claim when the contingency in normal life insurance policy had arisen. The law is loaded against the claimant and particularly in the manner in which the LIC policy was interpreted by the Hon'ble Supreme Court where it found no use for the application of implied acceptance as possible. I cannot under the circumstances affirm the decision of the Permanent Lok Adalat. I direct the LIC to repay the amount of Rs. 11,628/- which they have received, with the interest of 12% per annum from the date the amount was received till the date of payment. The amount shall be paid

within four weeks from the date of the receipt of the copy of the order.

Writ petition is disposed of with the above observations.

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