

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 26.03.2009

+ W.P.(C) 1787/2007

SUBIYA DEVI

..... Petitioner

Through : Ms. Anu Mehta, Advocate.

versus

L.I.C. & ORS.

..... Respondents

Through : Mr. Ankur Goel, Advocate, for Resp. No.1.

Mr. Asutosh Lohia, Advocate, for NDMC.

CORAM:**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

S.RAVINDRA BHAT, J. (OPEN COURT)

1. Issue Rule. Mr. Ankur Goel and Mr. Asutosh Lohia, learned counsels for Respondent No. 1 and 2 respectively, waive notice of *rule*. With consent of counsels for parties, the matter was heard finally for disposal.

2. The petitioner seeks a direction to the Respondent No.1 (hereafter called "LIC") to disburse the amounts due under its policies issued by it in favour of late Mr. Sagmuni. The undisputed fact is that the petitioner is nominee of the said Mr. Sagmuni.

3. The brief facts necessary for deciding the case are that Mr. Sagmuni was an employee of

the New Delhi Municipal Council (NDMC). The NDMC had obtained a policy from the LIC; it was known as the 'Salary Saving Scheme'. It assured that in the event of untimely death of the employee covered by the policy and upon fulfillment of other stipulated conditions, an assured amount was payable to the deceased's nominee; in case of the employee's survival throughout the term of the policy, the sum assured was payable to the employee. The relevant terms of the policy are as follows:

"This policy having been issued under the Corporation's Salary Saving Scheme, It is hereby declared that the instalment premium shall be payable of the rate shown in the schedule of the policy so long only as the life Assured continues to be an employee of his present Employer, whose names is stated in proposal and premiums collected by the said Employer out of the salary of the employee and remitted to the Corporation without any charge. In the event of the Life Assured leaving the employment of the said Employer or the premium ceasing to be so collected and/or remitted to the Corporation the Life Assured must intimate the fact to the Corporation and in the event of the Salary Saving Scheme being withdrawn from the said employer, the Corporation shall intimate the fact to the Life Assured and all premiums falling due on and after the date of his leaving Employment of the said Employer, or cessation of collection of the premiums and remittance there of in the manner aforesaid or withdrawal of the Salary Saving Scheme as the case may be, shall stand increased by the imposition of the additional charges for the monthly payment that has waived under the Salary Savings Scheme at 5% of the premium exclusive of any premium charged for Double Accident Benefits or extended permanent Disability Benefits and any other extra premium charged."

4. Mr. Sagmuni apparently was suffering from tuberculosis. He stopped attending work from 01.08.2002; apparently he was hospitalized. He passed away on 10.09.2002. It is an undisputed position that the hospitalization expenses were borne by NDMC in terms of its policies. The petitioner apparently approached the LIC for payment under the Salary Saving Scheme policy entered into by her late husband. The LIC, in November 2002 took the position that since contribution from NDMC had stopped with effect from July 2002, the policy had lapsed. This is evident from the following letter:

"Smt. Subiya Devi,

*E-10, Harkesh Nagar,
Okhla Tank,
New Delhi-110020*

*SUBJECT: REGARDING POLICY NO. 121413640 UNDER LIFE
INSURANCE SWAJEEVAN OF SH. SAGMUNI (DECEASED).*

Sir,

With regard to the above named deceased Late Mr. Sagmuni, we were intimated by you on 13.11.2002. In this regard we wish to inform you that the above stated policy, the premium has been paid upto the period of June, 2002. Under this policy, the premium has not been paid since July, 2002 due to which the abovementioned policy has lapsed w.e.f. July, 2002.

That the death of policy holder Sh. Sagmuni took place on 10.09.2002. Therefore, due to the lapse of the policy there is no claim arising out of this policy."

5. The petitioner contends that the NDMC deposited the balance premium thereafter with the LIC despite which, the latter refused to honor its policy. The petitioner refers to letter dated 24.03.2004 written by the LIC where its position was that since payment of premium had not been paid since July 2002 upto the death of the policy holder, the terms of the policy were not breached, and it was not obliged to make payments.

7. The petitioner contends that the NDMC deposited the premium on 22.01.2004; a copy of the receipt issued by the LIC in this regard has been produced along with the writ petition. It is, therefore, contended that having accepted the premium, though belatedly, the LIC cannot now escape its liability. The petitioner also contends that the NDMC stood in the position of an agent of LIC and as an employer, if there was a lapse or negligence on its part, she as a nominee and beneficiary of the policy could not have been deprived of her legitimate rights, which were part and parcel of the terms and conditions of service of her late husband.

7. LIC's position in its return is that the petitioner has approached this Court highly belatedly. It is submitted that the cause of action to approach the Court, if at all since the

disputes are primarily adjudicable by Civil Courts – arose upon its refusal in 2002. Yet, the petitioner has approached the Court five years later, the claim is not only hit by laches but is also beyond the period of limitation prescribed. The LIC contends that even otherwise, the NDMC deposited the amount only in 2004 and, therefore, it cannot be saddled with liability to pay the assured amount in respect of a lapsed policy.

8. The NDMC's position is that the employee had stopped attending to its duties since 01.08.2002 and that there was no leave balance to his credit which could have induced it to debit any amount and pay the LIC. It is submitted that the policy, therefore, lapsed. NDMC contends, however, that upon coming to know that late Mr. Sagmani was suffering at the relevant time and, therefore, could not attend his duties, which ultimately led to his death, it regularized his absence and deposited the premium in January 2004. It was submitted, therefore, that the NDMC cannot be held liable by any stretch of the imagination.

9. During the course of the proceedings, reliance was placed upon the decisions of the Supreme Court in *Chairman, Life Insurance Corporation and Ors. v. Rajiv Kumar Bhasker* AIR 2005 SC 3087 and *Delhi Electric Supply Undertaking v. Basanti Devi and Anr.* AIR 2000 SC 43. Learned counsel for the petitioner also relied on decision reported as *LIC vs. Consumer Education Research Centre* AIR 1995 SC 1811 to submit that in such cases, the Court has jurisdiction to intervene under Article 226.

10. The preceding discussion would show that the main ground for rejection of the petitioner's claim by LIC was that the premium were not paid by NDMC. *Basanti Devi (supra)* is an authority for the proposition that where such policies are obtained by an employer, it acts as an agent of the Insurer (in this case LIC). The law in *Basanti Devi (supra)* was affirmed and applied in *Rajiv Kumar Bhasker (supra)* case. Perhaps conscious of that, learned counsel for the

LIC stated during the course of the hearing today that the petitioner has been issued cheque for Rs.65,979/-, which includes the sum assured and the bonus accrued upto date; the same was tendered to the petitioner in the Court. He further claims that this is purely on the basis of application of *Basanti Devi's (supra)* ratio and the LIC should not be burdened with any further amount since the petitioner approached the Court belatedly.

11. The petitioner, on the other hand, contended through her counsel that the inaction by the LIC and NDMC has ultimately resulted in denial in what was legitimately due to her, in 2002. It is also submitted that if the NDMC had paid the amount as an agent of the LIC at the appropriate time, the present state of affairs would not have arisen. As far as LIC is concerned, it cannot escape the liability by merely tendering the amount since it concededly accepted the premium in January 2004.

12. The Court has carefully considered the submissions of parties. The primary grievance, if one may say so, of the petitioner for payment of the sum assured under the policy, stands satisfied today by the LIC tendering the sum of Rs.65,979/-. However, the petitioner, perhaps argues justifiably - that she was unnecessarily driven to this litigation. After all, the law declared in *Basanti Devi (supra)* has been in existence for more than nine years. That was in the context of a litigation to which the LIC itself was a party. It was again affirmed in 2005 in *Bhasker's* case (*supra*). It is not as if the LIC is oblivious to its being bound by the law declared under Article 141 of the Constitution; it is also doubly aware being party to both the judgments. Such being the position, the LIC, bearing a near monopolistic state agency, could not have adopted a completely indifferent attitude as it has displayed in the present case. It was aware that any lapse on the part of the NDMC, entitled the employee, or his heirs or the benefits under the policy. The objective of the Scheme was to precisely cater to an unfortunate and unforeseen tragedy, as

has visited the present petitioner. The fact that she was tossed back and forth by the NDMC and LIC, reflects poorly on both the institutions. As far as the NDMC is concerned, the Court is of the opinion that it cannot distance itself from the liability as it is seeking to; concededly, the petitioner's late husband was its employee and was on its rolls. He stopped attending work (their euphemism for illness). The NDMC was conscious that it was not due to his fault. It "regularized" his absence, and even proceeded to deposit the premium with LIC about 13 months after his death. However, by that time the damage had been done; the LIC was by then, determined not to pay any amount to the petitioner. This attitude of brazen indifference to the plight of an innocent and unlettered nominee of a policy holder who lost his life, and was denied her just dues for all these years, has to be condemned in the strongest terms. One can only recollect, with anguish what was stated by the Supreme Court in *Lucknow Development Authority Vs. M.K. Gupta*, AIR 1994 SC 787 in the following terms:

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a Statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bonafide loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was malafide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of

injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same? It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant are over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the Court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.

13. In the light of the above discussion, the Court is of the opinion that to mould the relief suitably, in view of the above circumstances, it would be necessary to saddle both LIC and NDMC with interest liability. Since the amount was deposited with LIC with effect from 22.01.2004, it would be appropriate that the LIC pays interest at 15% per annum on the basic sum assured, i.e. Rs.60,000/- for the period from 01.02.2004 till date. As far as NDMC is concerned, the Court is of the opinion that had it taken remedial action within time, instead of “regularizing” the absence and depositing the amount almost 13 months later, this lamentable situation would have been avoided. In the circumstances, the NDMC should bear the interest for the period 01.09.2002 to 21.01.2004 at the same rate, i.e. 15% per annum.

14. The Court is further of the view – as noted previously in this judgment that this entire litigation was wholly unnecessary. Had the LIC or even the NDMC cared to arrive at some settlement, at least after the present writ petition was filed, this judgment would have been avoided. The records show that at least 12 hearings have taken place after the first date of hearing; 07.03.2007, when notice was issued to the respondents.

15. In the circumstances, this is also an appropriate case for award of costs. The petitioner is

directed to be paid Rs.40,000/- as costs to be shared equally by the respondents, LIC and NDMC. The costs and interest amounts directed by the Court shall be duly calculated and paid to the petitioner within six weeks from today.

The writ petition is allowed in the above terms.

**S. RAVINDRA BHAT
JUDGE**

**MARCH 26, 2009
'ajk'**