

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 01.03.2011*
Judgment Delivered on: 11.03.2011

+ **RSA No.164/2004 & CM No.8584/2004 (for stay)**

LIFE INSURANCE CORPORATION OF INDIA Appellant
Through: Mr. S.P. Mittal, Advocate

Versus

SMT. ANITA RANI & OTHERS Respondents
Through: Mr. Arun Sukhija, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1 The present appeal has impugned the judgment and decree dated 01.04.2004 which had endorsed the findings of the trial Judge dated 19.07.2003 whereby the suit filed by the plaintiffs seeking recovery of Rs.80,000/- from the defendant/ Life Insurance Corporation had been decreed in their favour.

2 The present suit had been filed by the two legal representatives of deceased Harsh Kumar. Harsh Kumar had submitted a proposal for insurance of his life in the sum of Rs.80,000/-. This proposal was dated 28.10.1983. A sum of Rs.2,128/- had been given as premium to the defendant corporation vide cheque dated 31.10.1983. The deposit memorandum issued by the defendant corporation evidencing this fact is dated 31.10.1983. Harsh Kumar died on 10.11.1983. The legal representatives of the deceased corresponded with the defendant corporation seeking a

claim on the insurance policy; inspite of repeated correspondences the said claim was finally negated; suit was accordingly filed.

3 The defence of the defendant was that the deceased had died on 10.11.1983; the proposal of the deceased had been accepted only on 11.11.1983 i.e. one day after the date of death of the deceased; in these circumstances, no valid/binding contract had come into existence prior to 11.11.1983. Other facts were undisputed.

4 On the pleadings of the parties, the following five issues were framed:-

- 1. Whether Life Insurance Policy issued by the defendant is effected w.e.f. 31.10.1983? If so, the effect? OPP.*
- 2. Whether the said Insurance Policy is effective w.e.f. 11.11.1983? If so, what effect? OPD.*
- 3. Whether the plaintiff is entitled to any interest? If so, at what rate and on what amount?*
- 4. Whether the plaintiff is entitled to the amount claimed in the suit?*
- 5. Relief.*

5 The plaintiff examined herself as PW-1. She had reiterated the averments made on oath. The proposal form bearing the signatures of Harsh Kumar had been proved as Ex. D/P-1. This form was admittedly submitted on 28.10.1983. The medical examination had been conducted by the doctor of the defendant corporation on 28.10.1983. The first premium paid on this policy in the sum of Rs.2,128/- was on 31.10.1983; receipt of the said amount had been proved as Ex. PW-1/1. The policy sent by the defendant corporation had been proved as Ex. PW-1/3. Along with the policy, Ex. PW-1/2 which is the acceptance letter-cum-first premium receipt had also been issued. This document had been scrutinized by the trial Judge. It had noted that the entire

document is type written but at certain points there was hand-writing in pen which made a reference to the date of 11.11.1983.

6 Perusal of this document shows that the name of the assured is Harsh Kumar; the sum assured was Rs.80,000/-; he was a male; mode of premium was yearly; number of agent was 1926122; nominee Smt. Anita was the wife; date of proposal was 28.10.1983; father's name was Sh. Wazir Chand; occupation of the assured was business; address and age was also typed written; the date of commencement of 31.10.1983 found mention in column marked Br./Dc. (The learned counsel for the appellant was not able to explain this abbreviation.) Thereafter in hand-writing on two places in this document, the date of 11.11.1983 was mentioned. After a scrutiny of the cross-examination of the witness of the plaintiff as also the witness of the defendant, the trial Judge had concluded that this appears to be an interpolation and date of 11.11.1983 appears to have been added later on. This finding was also endorsed by the first appellate court.

7 The proposal form is Ex. D-1. The details of the assured have been hand written; it is signed by assured. There is a declaration by the proposer on the last but one page of the said document. Emphasis has been laid on one part of this declaration where there is a mention that if after the date of submission of the proposal but before the issue of first premium receipt there is any change in the occupation/financial position/general health of the assured, the same shall be intimated to the corporation to reconsider the terms of acceptance of assurance; omission to do so which refer this assurance as invalid. It is submitted that this clause shows that the proposal was yet under consideration. This clause in Ex. D-1 in fact

supports the contention of the plaintiff; it states that only in anyone of the aforementioned three eventualities i.e. change in occupation/financial position/general health of the assured, the terms of acceptances of assurance would be liable to be reconsidered.

8 The facts of the present case are by and large admitted. The assured had submitted a proposal for his life insurance on 28.10.1983. Medical examination by a doctor appointed by defendant No. 1 had stood complete on this date. The first premium by way of cheque in the sum of Rs.2,128/- had also admittedly been paid by the assured on 31.10.1983. Ex. PW-1/2 is the acceptance letter-cum-first premium receipt dated 31.10.1983. Interpolations contained in the said document have been noted and which are also evident from the face reading of the document. The entire document is type written bearing date of 31.10.1983 except at two places where the date of 11.11.1983 has been mentioned in hand-writing. The assured had died on 10.11.1983. Contention of the corporation was that the policy had come into existence on 11.11.1983 which was evident from the date mentioned in the policy Ex. PW-1/3.

9 Both the fact finding courts below had delved into this argument and had arrived at a conclusion that a perusal of the documentary evidence which included the terms of the proposal form, receipt dated 31.10.1983 (Ex. PW-1/2) as also the policy (Ex.PW-1/3) to hold that the contract between the parties i.e between the insurer and assured had come into existence on 31.10.1983; proposal had been made on 28.10.1983 and acceptance had been completed on 31.10.1983. Formality of

sending the policy only remained; death of assured on 10.11.1983 i.e. one date prior to the date of the formal issuance of the policy on 11.11.1983 did not affect the liability of the insurance company.

10 This is a second appeal. It has been admitted on 10.04.2008. The following substantial question of law was formulated:-

“Whether a proposal for insurance given during the lifetime of the proposer ceases to be a proposal at the point of time of the death of the proposer which took place prior to the date of acceptance of the proposal?”

11 The vehement contention of learned counsel for the appellant is that the proposal of the deceased had been accepted by the defendant corporation only on 11.11.1983; prior thereto, there was no binding contract between the parties. Attention has been drawn to Section 4 of the Contract Act, 1872 (hereinafter referred to as the ‘said Act’). It is pointed out that a communication of the acceptance is complete only when it comes to the knowledge of the proposer. It is submitted that the contract up to 11.11.1983 was only a contingent contract; on death of the assured on 10.11.1983, since the subject matter of the contract i.e. the risk of life of the assured itself having become non-existent, the contract had become void. It is submitted that in terms of Section 36 of the said Act on an impossible event, such a contingent agreement becomes void. Emphasis has been laid on illustration (b) of the said Section. It is pointed out that the courts below have failed to appreciate the ratio decidendi of the judgment of the Apex Court reported in AIR 1984 SC 1014 LIC of India Vs. R. Vasireddy. It is submitted that in paras 13 & 14 of the said judgment, the Apex Court had clearly stated that in insurance contracts, silence by itself does not denote a consent and no binding contract arises until the person to whom

an offer is made says or does something to signify his acceptance; general rule being that a contract of insurance will be concluded only when the parties to whom the offer is made accepts it unconditionally and communicate its acceptance to the person making the offer.

12 Arguments have been countered. It is submitted that the courts below are the two fact finding courts, both the said courts had concurrently held that the contract had come into existence on 31.10.1983; plaintiff was entitled to his claim. Judgment relied upon by learned counsel for the appellant is clearly distinguishable.

13 Record has been perused. Dates as aforementioned are admitted. The proposal form is Ex. D-1. It is dated 28.10.1983; it is duly filled and signed by the assured i.e. Harsh Kumar. The document itself describes it as a proposal. It is admitted that on this date the defendant corporation had medically examined the assured; the medical examination had not revealed anything untoward; this is also not the case of the defendant corporation. The premium amount of Rs.2,128/- had been sent by cheque; the deposit memo dated 31.10.1983 has been proved as Ex.PW-1/2. The last line of the document mentions

"Receipt issued subject to realization of 'cheque'"

The Acceptance Letter-cum-First Premium Receipt has also been exhibited as Ex.PW-1/2. This is a typed document. The date mentioned in the document is 31.10.1983. Date at two places (as aforementioned) has been hand written i.e. of 11.11.1983. The last line of this document is relevant. It reads as under:-

"If you do not receive policy within 90 days, please write to us at the

above address”

This line indicates that insurance policy had to reach the assured within next three months failing which the assured should contact the defendant corporation. What necessarily can be inferred is that sending of the policy was but a mere formality.

On the right hand column of this Acceptance Letter-cum-First Premium Receipt (Ex.PW-1/2) is a printed format. It reads as:-

“We have also received the amount noted in the Schedule being the First Premium on the Police assurance for the Plan and amount indicated therein. The acceptance of this payment places the Corporation on risk with effect from the date of this Acceptance cum First Premium Receipt or if the proposal is under the Children Deferred Assurance plan from the deferred date on terms and conditions of the police of assurance which will be sent shortly.

The issue of this receipt is also subject to the realization of the amount in cash and the terms and conditions of acceptance printed overleaf.”

A reading of this part of the document again shows that after receipt of the first premium and subject to the realization of the cheque, the policy of the assured would be sent.

The ‘Conditions of Acceptance’ printed overleaf are also relevant. The relevant extract which (at the back page of Ex.PW-1/2) reads as under:-

“It is most important to note that if any change in your occupation or any adverse circumstance connected with your financial position or general health of yourself or that of your family, however unimportant you may consider the same, occurs between the date of proposal and the date of issue of this Receipt or if a proposal for assurance or an application for revival of a policy on your life made to any Office of the Corporation has since the date of this proposal been withdrawn or dropped, deferred or declined or accepted at an increased premium or subject to a lien or on terms otherwise than as proposed or if you have been selected for service in any of the Branches of Military, Naval or Air Force Services between the date of this proposal and the date of issue of this receipt the assurance will be invalid and all moneys which shall have been paid in respect thereof forfeited unless intimation of such event be made in writing to the Corporation and this acceptance of proposal be reapproved

by the Corporation.”

14 Perusal of these terms and conditions show that if there is any change in the occupation/financial position/general health of the assured which would be the intervening period between the date of the proposal and the issuance of this receipt, the assurance will become invalidated. These terms and conditions also throw a light on the intention of the insurance company which was that only on any one of the aforementioned contingencies which would be between the intervening period from the date of proposal to the date of issuance of the receipt, could the proposal be invalidated. Date of proposal is admittedly 28.10.1983. Date of this document is 31.10.1983. This document also thus substantiates the argument of learned counsel for the respondent/plaintiff that the acceptance of the proposal had stood complete on 31.10.1983; a valid and binding contract had come into existence on that date. The issuance and sending of the policy on 11.11.1983 was but only a formality.

15 The facts of R. Vasireddy (Supra) are clearly distinguishable. In that case, ‘V’ had filed a policy of insurance on 27.12.1960; two cheques had been issued in favour of the LIC as first premium; first cheque had been encashed on 29.12.1960 but the second cheque was dishonoured three times before it was finally encashed on 11.01.1960. The deceased had died on 12.01.1960. Specific defence of the defendant corporation in the written statement was that on the date of death of the deceased, the amount covering the two cheques was still lying deposited in the suspense account and had not been adjusted towards premium since the proposal had not been considered; the terms of acceptance had not been fixed and

the premium amount required for the proposal had also not been calculated; Chapter III of the Binding Orders of 1960 dealing with the financial powers had not been correctly construed. Further defence was that the proposal could be accepted by the Divisional Manager alone; Ex. B-14 which was the said proposal had an endorsement to the following effect 'may be accepted at OR'; letters written by the Assistant Manager evidenced that the papers should be forwarded to the Divisional Manager; since the Divisional Manager had not considered the papers, a valid binding contract had not come into existence; it was in these circumstances that the Apex Court had noted that silence by itself does not denote a consent; something must be said or done to signify acceptance. The relevant extract of the said judgment read as follows:-

"The general rule is that the contract of insurance made 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."

16 The defendant corporation had accepted the proposal/offer of the assured on 31.10.1983. Ex. PW-1/2 clearly recites that first premium has been received and subject to realization of the cheque, the policy would be sent shortly. The terms and conditions of acceptance on the back page of Ex. PW-1/2 also show that it was only in the eventuality of either one of the contingencies; i.e. being any change in occupation/financial position/health condition of the assured (which would be between the date of the proposal and the date of issuance of this receipt), the assurance would be invalidated and on no other count. None of these contingencies had admittedly taken place. On a specific query put to learned counsel

for the appellant as to what were the acts or further formalities done by the department after 31.10.1983, learned counsel for the appellant had no answer. It is clearly not the case of the appellant that after 31.10.1983 (which was the date of acceptance of the first premium on the assurance policy) that the defendant corporation had taken any step in furtherance of this agreement. It is clear that the contract had come into existence on 31.10.1983 itself.

17 Section 7 of the said Act is relevant. It reads as under:-

*"7. **Acceptance must be absolute.**- 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 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."

Section 8 of the said Act reads as under:-

*"8. **Acceptance by performing conditions, or receiving consideration:-** Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal."*

18 A co-joint reading of these statutory provisions shows that the acceptance must be absolute and unqualified; it may be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted. Performance of a condition of the proposal or the acceptance of any consideration also tantamounts to an acceptance.

19 In the present case the consideration i.e. the first premium of the policy had been accepted/acknowledged on 31.10.1983; it was a step towards the performance of the condition of the proposal

which performance amounted to an acceptance of the proposal.

20 In AIR 1986 Kerala 215 Life Insurance Corporation of India , Trivandrum Vs. L. Kamalamma, the judgment of the Apex Court reported as (supra) was considered by a Division Bench of the Kerala High Court. It was distinguished on facts. In this case, the policy had not been issued to the assured, the Court had gone a step further to hold that even in the absence of issuance of the policy, a contract had come into existence.

21 In the present case also, the testimony of three witnesses of the plaintiff as also the witnesses of the defendant had been scrutinized to arrive at this conclusion. DW-1 had admitted that the proposal of Harsh Kumar was received in their Branch and the first premium amount of Rs.2,128/- had been paid by him. In his cross-examination, he had admitted that the proposal can also be accepted on the date itself if there is a request by the party or sometime even retrospectively. It is also not the case of the defendant No. 1 and he has nowhere pleaded or deposed that between the intervening period of 31.10.1983 to 11.11.1983 any act express or implied had been done by him in furtherance of the agreement between the parties; after 31.10.1983 there was admittedly no act on the part of the department. The proposal of 28.10.1983 had been accepted by the corporation on 31.10.1983 when the first premium amount had been tendered; all requisite formalities including the medical examination of the assured had stood complete. PW-2 who was working as a Development Officer in the LIC deposed that he had handled this case; the premium on the proposal was paid on 31.10.1983; the proposal was complete in all respects; since the Senior Manager Mr. K.C. Mudgal was the

person authorized to accept the proposal and he being on leave between 07.01.1983 to 10.01.1983, the formality was finally completed only on 11.11.1983. Thus what was left to be done by the corporation was only sending the policy which was nothing more than a formality.

22 The Life Insurance Corporation Act, 1956 was a legislation engrafted in the statute having the object to provide for nationalization of life insurance business in India. In AIR 1934 All 298 Muhammad Sultan Vs. Clive Insurance Co., Ltd. & Anr, a Division Bench of Allahabad High Court had held that the non issuance of a formal policy would not affect the liability of the company with regard to the risk it had undertaken to insure the assured; in that case, the cash premium had been accepted without any further condition ; on the proposal and the cover note having been dispatched by the insurance company ; it was held to be a binding acceptance upon the defendant corporation. In AIR 1995 SC 1367 Smt. Shashi Gupta Vs. Life Insurance Corporation of India & another, the Supreme Court while dealing with the amount payable to assured had observed that where there are two interpretations which are reasonably possible, the one which favours the policy holder should be favoured as the same advances the purpose for which a policy is taken and would be in consonance with the object to be achieved for getting lives assured.

23 There is no merit in this appeal. Appeal as also the pending application are dismissed.

INDERMEET KAUR, J.

MARCH 11, 2011

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RSA No.164/2004