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

% *Judgment delivered on: 25th July, 2013*

+ MAC.APP. 1109/2012

NEW INDIA ASSURANCE COMPANY LTD..... Appellant
Through: Mr. Abhishek Kumar and Mr.
Vijay Singh, Advs.

versus

PUSHPA & ORS. Respondents
Through: Mr. Jayendra Mishra and Mr. K.
Pramod, Advs. for R1 to R5.
Mr. Manoj Kr. Verma, Adv. for R6.
Mr. Krushanu Pundir, Adv. for R7.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

+ **MAC.APP. 1109/2012**

1. Instant appeal has been preferred against the impugned order dated 18.08.2012, whereby Id. Tribunal has granted compensation of Rs.4,30,500/- (less interim award) with interest @ 9% from the date of filing of the petition till realization.

2. Ld. Counsel appearing on behalf of the appellant has argued as a sole issue that on the date of accident, i.e., 31.07.2010, no policy was issued in favour of the insured. He submits that in the absence of the policy, the appellant is not liable to pay the compensation amount as directed by the Id. Tribunal.

3. Ld. Counsel for the appellant has relied upon a case of ***Life Insurance Corporation of India v. Raja Vasireddy Komallavalli Kamba & Ors. 1984 AIR 1014***, wherein it is held as under:

‘Though in certain human relationship 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 offer or 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, depend simply on the way in which negotiations for an insurance have progressed.

.....

In our opinion, the High Court was in error in appreciating the facts and the evidence in this case. We cannot accept the High Court's criticism with the averment in the written statement that there was not sufficient pleading that there was no concluded contract and non- acceptance of the proposal was not sufficient averment that the Divisional Manager was the only competent authority to accept the proposal. The High Court, in our opinions was also wrong in its view about the powers of the different

authorities under Chapter III of the Standing order, 1960 dealing with the financial powers. Indeed there was no evidence that the Assistant Divisional Manager had accepted the proposal on the contrary he his deposition as we have indicated before had stated otherwise. He had stated that the purpose of review slip was to enable the Divisional Manager to asses the risk and take a decision. He had never stated that he had taken a decision to accept the proposal. The allegation that there was assurance on behalf of the field officer and local agent to the deceased that the payment of first premium would amount to the acceptance of the proposal cannot also be accepted firstly because factually it was not proved and secondly because there was no evidence that such could have been the deposition in law.

When an insurance policy becomes effective is well-settled by the authorities but before we note the said authorities, 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 Life Insurance Corporation 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. XLV page 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 be 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."

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 & Parkinson on Insurance Law, Seventh Edition page 94 paragraph 215.

Reference in this connection may be made to the Statement of law in Halsbury's Laws of England 4th Edition in paragraph 399 at page 222.

Having regard to the clear position in law about acceptance of insurance proposal and the evidence on record in this case, we are, therefore, of the opinion that the High Court was in error in coming to the conclusion that there was a concluded contract of insurance between the deceased and the Life Insurance Corporation and on that basis reversing the judgment and the decision of the learned Subordinate Judge.”

4. On perusal of the record, it is revealed that R1W1 deposed before the Id. Tribunal that he had insured the vehicle with appellant through one Mr. Rohit, the authorized agent of respondent no. 7. The said authorised agent had issued the documents in question and had also accepted the premium amount at their office at Jahangir Puri.

5. In cross-examination, he admitted that he had not paid the insurance premium to the appellant, however, deposited with respondent no. 7. Thereafter, he repeatedly visited their office for the

insurance policy. Respondent no. 6 produced the original proposal form of policy bearing their seal and serial no.

6. Ld. Counsel appearing on behalf of the appellant submits that said proposal form has been issued from Mumbai office not from Delhi.

7. On this issue, the appellant has not taken any ground that the said form was forged and fabricated and to that effect there is no verification from the appellant side. Moreover, respondent no. 7 has not filed any reply nor led any evidence to clarify their stand in reply to the said proposal form.

8. Ld. Tribunal, based on the evidence and material on record observed as under:-

“The original proposal form available on record is a printed form of respondent no. 2 with serial no. 105741 issued on 21/07/2010 in the name of respondent no. 1 against an amount of Rs.1,650/- paid. The period of insurance is shown to be from 21/07/2010 to 20/07/2011. It also bears the seal of respondent of its Mumbai office. Respondent no. 2 has not stated that the proposal form was not of their office or that the stamp on the said document was forged and fabricated. They have also not given any suggestion that no premium amount was paid to any person on their behalf. Their simple stand is that the proposal form was not a insurance policy and was not issued by them. Respondent no. 1’s stand is that the respondent no. 3 acting as an agent of respondent no. 2 had accepted the insurance premium and issued the proposal form which was bearing their agent code and seal of

respondent no. 2. Respondent no. 2 has not shown any steps taken by them in regard to the said proposal from either to be shown to be forged or manipulated. Respondent no. 3 on the other hand has not taken any stand in regard to said document. The document and payment of premium amount is thus deemed to be admitted by respondent no. 3. Respondent no. 2's witness also did not specifically deny that respondent no. 3 was not their agent. In these circumstances the entire onus to disprove the insurance document was on respondent no. 2. They could have examined respondent no. 3 as to in what circumstances the said proposal form was issued and why the amount of Rs.1,650/- as premium was accepted by them. It is also not explained by respondent no. 2 as to what was the need and purpose of filling and issuing the said form, if, in fact the said form was of no consequence. As far as respondent no. 1 is concerned he has proved to have paid insurance premium and produced original printed proposal form bearing serial number, stamp, code and form number of respondent no. 2. The contract between respondent no. 1 & 2 was complete on accepting of premium amount by respondent no. 3 on behalf of respondent no. 2. The absence of certificate of insurance cannot dis-entitle respondent no. 1 for the indemnification of the liability of the present case.

Accordingly, respondent no. 1 is liable. Respondent no. 2 to indemnify the claim."

9. After having heard ld. Counsel for the appellant and perusal of the evidence on record, I do not find any discrepancy in the opinion of the ld. Tribunal to come to the conclusion that respondent no. 6 is

liable and the appellant would indemnify the claim. Accordingly, same is affirmed.

10. Statutory amount, if any, be released in favour of the appellant.

11. I note, vide order dated 15.10.2012, stay was granted on the execution of the award subject to deposit of the award amount with up-to-date interest with UCO Bank, Delhi High Court, New Delhi. Accordingly, Branch Manager, UCO Bank, Delhi High Court Branch is directed to release the deposited amount with interest thereto in terms of the order dated 18.08.2012 passed by the Id. Tribunal.

12. Accordingly, the instant appeal is disposed of.

CM.NO. 17865/2012

With the dismissal of the appeal itself, the instant application has become *infructuous*. The same is disposed of accordingly.

SURESH KAIT, J

JULY 25, 2013

jg