IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1085 of 2010

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Life Insurance Corporation of India through its Manager, Patna Divisional Office, Jeevan Prakash, Mazaharul Haque Path, Patna-800001

.... Appellant

Versus

1. Lalita Devi W/O Sri Anil Manjhi R/O Vill.- Shivgarh, P.S. Bikram, Distt.- Patna
2. Sumitra Devi W/O Vinod Manjhi R/O Vill.- Siwalapur, P.S. Sherpur, Distt.- Patna
3. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
4. Secretary, Higher Education, Government of Bihar, Patna
5. Magadh University, Bodh Gaya through its Registrar
6. Vice Chancellor, Magadh University, Bodh Gaya, Distt.- Gaya
7. Registrar, Magadh University, Bodh Gaya, Gaya
8. Principal, G.J. College, Rambagh, Bihta, Patna

.... Respondents

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Appearance :

For the Appellants :	Mr. Rajeev Ranjan Prasad, Advocate
	Mr. Rajendra Kumar, Advocate
For the Respondents:	Mr. Dilip Kumar, Advocate
For the State :	Mr. Arbind Ujjawal, SC-25

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 02-11-2015

Heard learned counsel for the appellant, learned counsel for the respondents and learned counsel for the State.

2. With consent of the parties, as pleadings are complete, this case is taken up for its disposal at this stage itself.

3. Life Insurance Corporation of India (in short the "L.I.C.") is in this Intra Court Appeal, challenging the judgment and order of the learned Single Judge dated 30.03.2010 passed in C.W.J.C. No. 9580/2004 (Lalita Devi Vs. State of Bihar and others). The learned Single Judge held that L.I.C. is liable to pay Group Savings Linked Insurance claim in respect of one Mahendra Manjhi, an employee of G.J. College, Rambagh, Bihta, Patna, a constituent unit of Magadh University, Bodhgaya, Gaya.

4. Learned counsel for the L.I.C. submits that there was admitted default in payment of the last premium in respect of the deceased employee by the College concerned, and accordingly, in terms of the policy, the policy stood lapsed. L.I.C. was thus required by law to pay 35% of the assured part of the premium which are apportioned in a separate deposit and they cannot be saddled with the liability to pay the entire claim amount.

5. Learned counsel for the University/College has disputed this fact and also submitted that to that extent the observation of the learned Single Judge is not consistent with the pleadings on record as before the writ court. In order to substantiate this, the College has filed additional counter affidavit in these appellate proceedings to substantiate the letters and documents appended to the writ petition by the writ petitioners, who were the heirs of the deceased employee.

6. In this Intra Court Appeal under Letters Patent, we have to first see what the true facts are. The writ petition was filed by the beneficiary/heirs of Late Mahendra Manjhi, a Class – III employee of G.J. College aforesaid, claiming the said full group insurance amount. In the writ petition itself, Annexure – 15 was the letter of the College to the L.I.C. dated 15.03.2001, clearly stating that the policy premium payment started from 31st March, 1991 and the premium for the month of December 1999 was paid on 7th December 1999, similarly, premium for the month of January 2000 was paid on 12.01.2000, the premium for the month of February 2000 was paid on 17.02.2000 and premium for the month of March 2000 was paid on 16.03.2000. Let it be noted that this was the group insurance policy taken by the College for the benefit of its employees, and it is by a singular cheque, premium on behalf of each employee at the rate of Rs. 100/- (hundred only) per month is deposited. Let it also be noted that premium for a month has to be paid within that month itself.

7. If we keep these two things in mind, Annexure – 15 to the writ petition is clear that, *inter alia,* premium for the month of February 2000 was paid on 17.02.2000 and that of March 2000 was paid on 16.03.2000. Thus, on this basis itself, the finding of the learned Single Judge to the contrary that, the premium for the month of February 2000 was paid on 16.03.2000 is wrong, being contrary to records and is to that extent set aside.

8. In fairness to learned counsel for the L.I.C., we must refer to Annexure – 16, which is virtually the letter repudiating the claim on behalf of the deceased employee, being letter dated 16.08.2001. All that it says is that, the premium that was due on 28.02.2000 has been paid on 16.03.2000, which does not include the contribution of the deceased employee. Meaning thereby that, in the last month prior to the death of the deceased employee, premium in respect of his insurance was not paid and the policy stood lapsed.

9. Let it be noted that L.I.C. does not deny either in that letter or anywhere in the writ proceedings or these appellate proceedings that, the reference to various premium payments, as in Annexure – 15, was all consistently wrong. Again, in fairness to learned counsel for the L.I.C., a bald statement is there in the counter affidavit in the writ proceeding that, this premium that was paid on 16.03.2000, was in fact, premium for the month of February 2000, which was due and payable by 28th February 2000. There were no documents to support this. It is well established that, in a writ proceeding, if a point on fact has to be established, it has to be duly supported by documents on affidavit, may it be the writ petition or the counter affidavit. Reference may be made to ***Bharat Singh vs. State of Haryana*** since reported in ***AIR 1988 SC 2181***; and in paragraph 13 which reads as such:

> *"13. ………………… In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter*

affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. ……..”

10. It may also be noted that, once L.I.C. chose to file this Intra Court Appeal and again merely asserted this fact again i.e. that premium for the month of February was deposited on 16.03.2000, without there being premium for the dead employee therein. The College has filed a counter affidavit, they have substantiated their Annexure –

15 to the writ petition by specific letters in respect of premium payment for the month of December, January, February and March. Those letters are Annexures – B, C, D, E, F, G, H. These Annexures have only corroborated of what was already stated in Annexure – 15 to the writ petition. If we refer to these letters they clearly state that, so far as the premium for the month of December 1999 is concerned, it is being deposited on 07.12.1999 and a receipt is also issued by L.I.C. in that regard. Similarly, premium for the month of January 2000 is being deposited on 12.01.2000 and L.I.C. grants a receipt. Similarly, premium for the month of February 2000, the same is deposited on 17.02.2000 and receipt is granted.

11. Again, it may be noted that, all along L.I.C. had been accordingly accepting the premium and granting receipt without demur. Not one document is there on record or any pleadings on behalf of the L.I.C. either in the writ proceedings or before this Court in Appeal, that at any time they had informed the College concerned that, in fact, what they were depositing was the premium of previous month. There could not have been such a letter also, otherwise. The reason is, if the fact which has now been asserted by L.I.C., is correct, then the entire policy stood lapsed years earlier. The premium, as noted above, in a month, had to be deposited in that month itself, but L.I.C. has not, even pleaded, muchless, brought on record any chit of paper to show that, at any point of time, till the claims were raised on behalf of the dead employee, informed the college of his default. Rather, to the contrary, they kept accepting the premiums as valid payments in accordance with letter of the College concerned. There was no protest, no repudiation the acceptance being without demur for long years. If anything, the present case is the right case to invoke the doctrine of estoppel by conduct, even if, what L.I.C. says now is to be believed to be correct. They are thus, estopped now from denying the fact as was written in the letter of the College. They are stopped from saying that, the payment, as was made on 16.03.2000, was not the payment for month of March 2000, but payment in respect of premium due in February 2000. If we look to Annexure – G to the counter affidavit filed in these appellate proceedings i.e. the letter in respect of payment of premium for the month of March, which was sent on 16.03.2000, that clearly refers that, the premium for the month of March is now being paid without paying premium in relation to the deceased employee as he had died on 07.03.2000. It is only when claims are raised that L.I.C. is turning around, they are contrary, and are to be stopped by their own conduct. Had they, at any point of time, prior to the death of employee, informed the College that the premium were delayed and beyond time prescribed, resulting in the policy lapsing, College would have taken remedial steps, but L.I.C. went on receiving the premiums without demur, being premium for the month, in which they were paid, and only when, claim is being raised, they raised this objection, for the first time, repudiating the claim. Surely, they cannot be permitted to do so.

12. In our view, the only question that has been raised in the Letters Patent Appeal is with regard to liability of L.I.C. It is not disputed that the employee is not at fault, and therefore, the right of the dependants of the employee who will receive the payment, there is not denying.

13. Now, on the facts, we have held that L.I.C. cannot escape from its liability by reason of its conduct, by reason of the doctrine of estoppel by conduct and by its own documents, as noticed above, we find no merit in this appeal, it is, accordingly, dismissed. As the dependants of the deceased employee have been kept waiting for payment for now over 15 years, we deem it a fit case to dismiss this appeal with cost of Rs. 10,000/- (ten thousand only) payable to the writ petitioner by L.I.C. within a period of one month from today. Order of the learned Single Judge will be complied along with this order within one month.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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