IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1061 of 2015
IN
Civil Writ Jurisdiction Case No. 5109 of 2011

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1. The Managing Director, Bihar State Food and Civil Supplies Corporation Ltd Sone Bhawan, 5th Floor Birchand Patel Marg, Patna-1.
2. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Nalanda, Biharsharif.

.... Respondents/Appellants

Versus

1. Smt. Usha Sinha, Widow of Late Rajendra Prasad Sinha, the then Assistant Accounts Officer , Bihar State Food and Civil Suppllies Corporation Ltd, a permanent resident of East Indira nagar, Road no. 1, P.O.- Lohia Nagar, P.S.- Kankarbagh, Patna-20. … …. Petitioner/Respondent
2. The Manager (P & Gs) Life Insurance Corporation of India, P & Gs unit, Patna

.... Respondent/Respondent

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr. Rajeev Ranjan Prasad, Advocate with Ms. Surabhi, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 19-12-2016

I.A.No.4389 of 2015

The interlocutory application has been filed for condoning the delay of 133 days in filing the appeal.

On a consideration of the facts and circumstances mentioned in the application and upon hearing learned counsel for the appellants and learned counsel for the respondent-Life Insurance Corporation of India, the delay in filing the appeal is condoned.

I.A.No.4389 of 2015 is, accordingly, disposed of.

Heard learned counsel for the appellants and learned counsel for the respondent Life Insurance Corporation of India on the merits of the matter.

In the present appeal the appellant Bihar State Food and Civil Supplies Corporation has challenged the order dated 7.11.2014 passed by a learned Single Judge of this Court in CWJC No.5109 of 2011 by which it has been held that the liability to pay the amount of Group Insurance is not of the LIC but of the appellant Bihar State Food and Civil Supplies Corporation with respect to the death of the husband of the writ petitioner, respondent No.1.

The facts of this case lie in a narrow compass. The husband of the writ petitioner, who was an employee of the Bihar State Food and Civil Supplies Corporation, working at Nalanda, District Biharsharif, died on 25.2.2008. Like other employees he was covered under the Group Insurance Scheme operated by the Life Insurance Corporation of India for which premium was payable monthly by the appellant-Corporation to the LIC on or before 20th of the month. There is no dispute that the appellant-Corporation was otherwise regular in the payment of the premium of the group insurance amount of the employees which, in fact, was recovered from the salary of the employees and even in the month of January and February, 2008 had within the time permitted paid the premium of all the employees, except of the husband of the writ petitioner, who was presumed to have died of cancer in the meantime and for the said reason the premium of Rs.100/- with respect to him was not paid. As a matter of fact, in the statement of premium submitted to the LIC in the month of February, 2008 under letter dated 9.2.2008 the appellant-Corporation had paid a total amount of Rs.1900/- but no amount was deposited for the deceased employee, Rajendra Prasad Sinha, showing him as having died in January, 2008. The discovery, however, was made thereafter that the employee had died, in fact, on 25.2.2008 and in the month of March, 2008 a statement was enclosed showing payment of an amount of Rs.200/- against the name of the said deceased employee, Rajendra Prasad Sinha but without any remarks whatsoever. According to the respondent LIC, later on again a statement of premium for the month of February, 2008 was submitted and against the name of the said deceased employee, Rajendra Prasad Sinha, by using whitener the earlier remark was erased and then Rs.100/- against premium was written in its place and again cancelling it, in the remark column showing that in March, 2008 premium has been sent, which according to learned counsel for the respondent is a clear fraudulent act on the part of the appellant-Corporation as on 9.2.2008 no information with respect to the premium having been sent to the LIC could have been shown.

On the aforesaid facts, the LIC while paying the amount under the group insurance scheme has paid the saving portion but refused to pay the amount on the life insurance part of the group insurance to the widow of the deceased employee, who, accordingly, approached this Court by filing the writ petition, out of which the appeal arises.

Before the learned Single Judge the appellants sought to rely upon a Division Bench decision of this Court dated 30.10.2007 in CWJC No. 10282 of 2006 : Sarita Verma vs. The State of Bihar and others in which after considering Clause-4 of the LIC Policy granting an option to LIC to terminate the policy for non-payment of premium for a particular month, but also granting yet another option to LIC to accept delayed payment of premium on such terms and conditions as may be imposed by the LIC, it has been held as follows :-

> “Further more, the Clause, which grants an option to LIC to terminate the policy for non payment of premium for a particular month, also grants yet another option to LIC to accept delayed payment of premium on which terms and conditions as may be imposed by LIC. Therefore, while accepting the premium for the months of August and September, 2000 on 24th October, 2000, LIC could impose any term and condition and thereby could put some hindrance to the otherwise entitlement of the deceased employee of the benefit of his life assurance covered by the policy, but the LIC did nothing.
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> In those circumstances, the conclusion would be that once the policy has been issued and the same is for one year, during the period of one year if death of a member covered by the policy occurs, LIC is bound by the contract of the policy to compensate such member or his heirs with the benefit of life assurance it has covered by the said policy, unless prior to coming to an end of the period of one year, the policy has been terminated by LIC for non payment of monthly premium or it has accepted delayed payment on such terms and conditions imposed by it, which prevents

> such life coverage. That being not the situation in the instant case, the one and the only conclusion would be that it was unjust on the part of the LIC in refusing to pay the life assurance benefit covered by the said policy payable to the petitioner on account of her deceased husband."

The Learned Single Judge, however, distinguished the said case holding that the deposit of the premium was done by the Corporation without any clarification or declaration with regard to the earlier mis-declaration of death of the employee in the return of January, 2008. It was accordingly held by the learned Single Judge that if the Corporation could have established before the Court that this was done with due consent and knowledge of LIC then may be, the ratio of the case of Sarita Verma could have come to the rescue of the Corporation but from the material and pleadings emerging from the counter affidavit, filed on behalf of the LIC, obviously, there was an effort made to cover up a serious omission committed by the Corporation and its employees in relation to non-deposit and mis-declaration of the death of the employee. For the said reason while allowing the writ petition the appellant-Corporation was directed to pay the amount of Group Insurance to the petitioner without any delay.

Before us learned counsel for the appellants has sought to place reliance on the same decision in Sarita Verma's case (supra) stating that no such option was exercised by the LIC either to terminate the policy for non payment of premium or to accept delayed payment of premium with respect to the deceased employee in the month of March, 2008 and therefore the decision in Sarita Verma's case would apply in the present matter.

Learned counsel for the respondent LIC, on the other hand, submits that the husband of the writ petitioner was already declared dead and while no premium was paid for the month of January, 2008 with respect to him and similarly in the statement of premium for the month of February, 2008 he was shown in the list dated 9.2.2008 as having died in the month of January and in view of the said disclosure the deceased employee went out of the list of beneficiary under the scheme and thereafter surreptitiously premium for the months of January and February, 2008 was made in the month of March, 2008, hence, no benefit could have been given to the appellant-Corporation in the matter. It is submitted that the appellant could have informed the LIC about the correct fact and thus mere deposit at the counter of the LIC without specifically bringing the said correct fact to the notice of the LIC would not confer any right upon the Corporation in the matter.

We have considered the submissions of learned counsels for the parties and do not find any force in the submission of learned counsel for the appellants. The reliance upon Sarita Verma's case (supra) appears to be without any relevance as the same was rendered in entirely different circumstances. Clause-4 of the Master Policy of the Life Insurance Corporation of India with respect to premium deposit condition is in the following terms :-

> "If the premium is not paid in respect of all the members for a particular month the Grantees shall be deemed to have discontinued payment of premium in respect of this Policy as a whole and the Corporation reserves the right to terminate the Policy forthwith. The Grantees shall not, thereafter, be entitled to resume payment except with the consent of the Corporation and on such terms and conditions as the Corporation may prescribe in this regard."

It is clear from the said provision that it applies to a situation where the grantee has discontinued payment of premium with respect to all the members and only then there is deemed to discontinuation and a right to LIC to terminate the policy and thereafter there is no entitlement to resume payment except with the consent of the Corporation and on such terms and conditions as the Corporation may prescribe in this regard. In the present matter there is no discontinuation of the payment of premium as a whole, rather amount with respect to all other employees except the deceased employee have clearly been paid in the month of January stating in the remark column in statement for February that the deceased employee had died in the month of January. Subsequent payment in the month of March, 2008 without intimating the Corporation about it at the counter of the Corporation cannot create any right in favour of the appellant-Corporation. As a matter of fact, the very condition No.4 with regard to payment of premium will not be applicable in the present matter; rather it will be applicable only when discontinuation is made with respect to all the employees and not a particular employee. In Sarita Verma's case (supra) there was discontinuation of payment of premium with respect to all the employees for a period of two months, which is not the situation in the present matter. Hence, no benefit can be derived by the appellants from the said case.

In that view of the matter, we are in agreement with the decision of the learned Single Judge and of the view that liability to pay the amount of Group Insurance with respect to the life assurance part would be not of the Life Insurance Corporation of India but of the Bihar State Food and Civil Supplies Corporation. The appeal being devoid of merit is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Arun Kumar, J)

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