

CWP No.2473 of 2015

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.2473 of 2015
Date of decision:22.11.2017**

Suman Devi ...Petitioner

Versus

Union of India and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vinay Kumar Pandey, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Advocate,
for respondent no.1.

Rakesh Kumar Jain, J.

The petitioner is the widow of Naib Subedar (TA) Ram Niwas who has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 05.02.2014, by which her claim for payment of the amount of insurance has been turned down in terms of Rule 56(2) of the Post Office Life Insurance Rules, 2011 (hereinafter referred to as the "Rules").

In brief, JC-279013A Late Nb. Sub. (TA) Ram Niwas had obtained a Postal Life Insurance policy bearing No.APS-1179243-L on 06.02.2011 from the Army Postal Services for ₹9,00,000/- on a monthly premium of ₹4,995/- which, on instructions of the deceased insured, was deducted from his pay by the Pay Accounts Officer (ORs), Arty Lekha Nagar, Nasik. Ram Niwas died on 19.02.2013 due to acute anterior wall myocardial infarction. Admittedly, the premium of the insurance policy

from the month of February 2011 to November 2011 was not paid by the insured and on 31.01.2014, the PAO (ORs) Arty intimated respondent no.2 that due to some technical issues, deduction of the premium from the salary of the deceased from February 2011 to November 2011 was not made by the system and the office of respondent no.2 was advised to recover the outstanding premium amount from the matured amount or ask the NOK to deposit the same in Civil Post Offices and the balance may be paid to the NOK for providing financial relief. However, the premium from December 2011 till February 2013 was deducted but the claim set up by the petitioner, who was the nominee in the insurance policy, was declined in terms of Rule 56(2) of the Rules.

Learned counsel for the petitioner has submitted that the deceased had requested for recovery of the premium amount from his pay commencing from February 2011 but due to mistake on the part of respondent no.3, the premium amount for the period from February 2011 to November 2011 was not deducted, for which the deceased cannot be held liable and no notice of discontinuance of the policy was given by respondent no.2. In support of his contention, he has relied upon a judgment of the Supreme Court rendered in the case of **Chairman, Life Insurance Corporation & Ors. vs. Rajiv Kumar Bhasker**, 2005(6) SCC 188.

In reply, the respondents have alleged that Rule 44 of the Rules provides that the insured person is to ensure that the amount of the premium, which is due on the first day of each month, shall be deducted from his pay for the said month. If the premium due for any month is not

deducted due to any reason from the pay drawn, the insured person should pay the premium in cash for that month and inform that fact to the Pay and Accounts Officer/Drawing and Disbursing Officer. It is further submitted that the deceased had never approached the Pay Accounts Office (ORs) during his lifetime regarding non-deduction of the premium though he was serving in the rank of a Junior Commissioned Officer, the Supervising Cadre of the Indian Army, and was fully aware and eligible to monitor the recovery of the premium in his statement of the accounts, which was given to him every month. It is further submitted that on the review of the premium ledger in respect of PLI Policy No.APS-1179243-L, it was found that there were some non-credits in the policy and a letter was issued to the Pay Accounts Office (ORs), Arty for confirmation of the recovery of the premium. The Pay Accounts Office (ORs), Arty had intimated that premium has been deducted from January 2012 to April 2013 @ ₹4,995/-. After getting confirmation of recovery of premium from the Pay Accounts Office (ORs), Arty, a letter No.APS-NM-134365-L/DC-Apr 13 (111 & 112)/Arty/APS-7D II dated 05.02.2014 was issued to the petitioner to intimate the aforesaid facts and after seeing the plight of the petitioner, as a special case, DDG APS sanctioned an *ex-gratia* amount of ₹78,973/- under the discretionary powers as per Rule 56(2) Note-1 to mitigate the financial hardship of the widow of the deceased insured. It is also submitted that the Pay Accounts Office (ORs) is maintaining around 1,45,000 IRLAS of Arty personnel and it is quite impossible to verify the non-recovery of initial premium against any policy and it was for the insured to have looked into this aspect at the appropriate time but he kept quiet for about 10 months

though he had been receiving the details of his pay slip from which he could have easily ascertained as to whether the amount of premium for the insurance policy has been deducted or not.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The respondents have basically relied upon Rules 44 and 56(2) of the Rules in order to decline the claim of the petitioner, which are reproduced as under for the ready reference:-

“44.. The first premium paid on any date shall represent the premium for that calendar month. The first premium must always be paid in cash or cheque by the proposer. In respect of ‘pay recovery policies’, the premium for a particular month shall be deducted from insurant’s salary of the same month but not later than the last day of the said month except in the case of the month of March, where the salary is payable on 1st working day of April. The insured person is responsible that the amount of the premium, which is due on the first day of each month, shall be deducted from his pay for the said month. If the premium due for any month is not deducted due to any reason from the pay drawn, the insured person should pay the premium in cash for that month and inform the fact to Pay and Accounts Officer/Drawing and Disbursing Officer. In case of such policies, where it is found that an extra premium has been received as result of switching over from ‘Pay recovery’ to ‘Cash recovery’ and vice versa, such premium shall be refunded at the time of maturity/settlement of claim. And if the premium is to be paid in cash the insured person must pay the premium at the post office selected by him either on the first day of the month for which the premium is due, or during the period of grace, which shall extend up to the last day of the calendar month⁴¹ for which the premium is due, or the day before the last day if the last day of the month falls on Sunday or postal holiday, and obtain the Postmaster’s receipt for it in his premium receipt book. Payment of premia by insured person who has quit the service of Government

is governed by Rule 49. The insured person may pay premium for his/her policy for any number of months at one time in cash in a post office, provided the premia are paid strictly in advance.

Exception: Under special arrangements existing in Tamilnadu, the deductions on account of premium from the pay bills of establishments employed in certain commercial undertakings of Government whose accounts are maintained on a commercial system, are made at the time of disbursement and cash for the total amount recovered is remitted to the treasury. Such deductions will be treated in the same manner as if they had been made by short drawals in the bill encashed at the treasury.

56. (2) (a) If, in the case of a policy where death takes place before the completion of thirty six months from the date of acceptance of the policy and where any premium/premia have become due, not paid either on first day of the month for which the premium is due or within the period of grace allowed as per Rule 44, the policy shall become void and all claims to any benefit in virtue thereof shall cease and all money that have been paid in consequence thereof shall be forfeited except in cases mentioned hereafter;

- (i) Provided that for the purpose of this rule, an insured person is not to be considered as in arrears of premium for any months so long as he has not been able to draw his pay, pension, or subsistence allowance during suspension, or if the insured person is on leave in India, any leave allowance though due for the month next before it is due because of circumstances beyond his control.
- (ii) Provided further that the provisions of (i) above shall not be applicable to the insurants who pay their premium/premia in cash.
- (b) Notwithstanding what is stated above, if death of the life assured occurs within thirty six months from the date of acceptance of the policy, a further period of remission shall be allowed in respect of such policies where premia remain unpaid beyond the period of grace permitted under Rule 44 in the following manner;
 - (i) If the death of the life assured occurs within six months of the date of acceptance of the policy, no remission period beyond the period of grace shall be allowed.

- (ii) If the death of the life assured occurs within twelve months but not before completion of six months from the date of acceptance of the policy, a remission period of 30 days shall be allowed in addition to the period of grace.
- (iii) If the death of the life assured occurs within twenty four months but not before the completion of twelve months from the date of acceptance of the policy, a remission period of sixty days shall be allowed in addition to the period of grace.
- (iv) If the death of the life assured occurs within thirty six months but not before the completion of twenty four months from the date of acceptance of the policy, a remission period of ninety days shall be allowed in addition to the period of grace.
- (v) In the event of death of the life assured taking place during the period of remission allowed as per Rule 56(2)(b) (i) (ii) (iii) and (iv) above and before payment of arrears of premium/premia that had become due along with interest thereon, the policy shall still be considered valid and the sum assured paid to the nominee or legal heir of the insurant as the case may be after the deduction of unpaid premium/premia from the claim amount along with interest thereon at such rate as may be prescribed by Director General of Posts.

NOTE 1:- The Postmaster General, however, has discretionary powers in special cases to allow ex-gratia payment of the value of a policy or a part thereof, or ex-gratia refund of premia paid by the insurant or part thereof, with interest or without interest, provided he is satisfied that there has been no deliberate infringement of rules with the object of using the insurance fund in a manner adversely affecting its interest, and circumstances warrant payment of policy money.”

Admittedly, the policy was obtained by the deceased Ram Niwas and was not procured by his regiment on his behalf. The only intervention of the Pay Accounts Office was to deduct the premium of the policy, to be paid every month, from his pay for onwards transmission to the

insurance company. There is also no doubt that the premium amount from February 2011 to November 2011 was not paid by the insured and respondent no.3 has alleged that the premium could not be deducted from his pay on account of failure of system but there is no denial that the pay slip was issued to the deceased insured every month from which he could have easily ascertained that the premium has not been deducted and could have made an inquiry in this regard or could have paid the same in cash as provided in Rule 44 of the Rules. The responsibility was, thus, of the insured to ensure the payment of premium to avoid the rigours of Rule 56(2) of the Rules, which has been applied to the case of the petitioner.

Insofar as the decision in **Chairman, Life Insurance Corporation & others' case (supra)** is concerned, it is not applicable to the facts of this case because in that case, the Court was dealing with the 'Salary Savings Scheme' floated by the Life Insurance Corporation (LIC) which envisaged a life insurance policy for the salaried class employees and a proposal wherefor was made to the concerned employers and there was a contract between the employer and the insurance company. The employer was the agent and because of the failure of the agent for not paying the premium of the insurance, because of the tripartite agreement, the agent was held liable, otherwise it was held by the Supreme Court that in a plain and simple contract of insurance either the Corporation or the agent, on the one hand, and the insured, on the other, is liable to comply with their respective obligations thereunder. In other words, when a contract of insurance is entered into by and between the insurer and the insured, no third party would have any role to play. However, in the policy like 'Salary Savings Scheme', which was the subject

matter of dispute before the Supreme Court in that case, the liability was fastened upon the agent, i.e. the employer, which are not the facts of the present case.

Thus, keeping in view the aforesaid facts and circumstances, I do not find any merit in the present case and hence, the present writ petition is hereby dismissed, though without any order as to costs.

November 22, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No