IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.28043 of 2013 (O&M)
Date of Decision: February 13, 2017

HDFC Standard Life Insurance Co.Ltd., Gurgaon

...Petitioner

Versus

Permanent Lok Adalat Public Utility Services, Gurgaon & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Harish Bhardwaj, Advocate for
Mr.Joydip Bhattacharya, Advocate,
for the petitioner.

Mr.Rakesh Gupta, Advocate,
for respondent No.2.

None for respondent Nos.1 & 3.

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AMIT RAWAL, J. (Oral)

Petitioner-HDFC Life Insurance Company Limited is aggrieved of the impugned award dated 7.10.2013 (Annexure P-8) rendered by the Permanent Lok Adalat, Gurgaon on an application under Section 22-C of the Legal Services Authority Act, 1987, whereby the petitioner has been directed to pay a sum of Rs.2,27,467/- to the respondent-insured.

Mr.Harish Bhardwaj, learned counsel representing the petitioner submits that respondent No.2 Mohd.Jahid Khan, father of Arifana (since deceased) had submitted a Proposal Form bearing No.13468279 dated 4.2.2010 (Annexure P-2) with plan description HDFC Money Back Assurance along with initial premium of Rs.6000/-. The said premium was received by the petitioner company vide Receipt No.3408139, whereas Arfina died on 12.3.2010.

He further submits that the Proposal Form dated 4.2.2010 was with an intention to issue the insurance policy in favour of Arifana, but the terms and conditions of the proposal did not entail upon assuming the risk in case of any eventuality, i.e., death, which has unfortunately happened in this case. In view of such condition, the beneficiary is entitled to only refund of the premium amount as the insurance plan was valid for thirty years and only one premium of Rs.6,000/- was received. The finding with regard to payment of Rs.2,27,467/-, by taking into consideration the terms and conditions of the policy could not have been there in the absence of the contract, in essence the policy was never issued. Once there was no contract, the terms and conditions of the policy cannot be read into, resulting into passing of the impugned award.

On the contrary, Mr.Rakesh Gupta, learned counsel representing respondent No.2-insured does not dispute the validity of the insurance cover/risk and payment of the premium aforementioned, but submits that it was the duty of the insurer to issue the policy in due course. The Proposal Form accompanied by a sum of Rs.6,000/- as premium submitted and received is a deemed acceptance. The issuance of the insurance policy was only a mere formality. Assuming for the sake of argument that the policy would not have been issued for another period of six months and the insured had died, the insurance company cannot take the benefit of the terms and conditions, i.e., declaration of the life to be assured as envisaged in Section-E of the Proposal Form, thus, prays for dismissal of the writ petition with exemplary costs.

I have heard the learned counsel for the parties and appraised the paper book.

The terms and conditions, i.e., Section-E of the Proposal Form read thus:-

"*Section E-Declarations*

Declaration of the life to be assured

I declare that I have read and understood the products as described in the sales literature. I further declare that I have also understood the questions in this application and that all the information given by me or on my behalf in this application is true and I have not withheld material fact within my knowledge. I consent to HDFC Standard Life Insurance Company Ltd.seeking medical information from any doctor who at any time has attended me concerning anything which affects my physical or mental health or seeking information from any insurance office on this nominee to which an application has been made for insurance on my life and I authorise the giving of such information to a central agency.

I understand that in the event of my being medically examined, the answers given by me to the medical examiner acting on behalf of HDFC Standard Life Insurance Company Ltd., shall be deemed to be incorporated in this application.

I do hereby agree and declare that these statements, any information sought by you from any person authorised by me to provide such information, all declarations, affidavits and other statements made by me and relied upon by HDFC Standard Life Insurance Company Ltd.to assess the risk on my life under this proposal shall form the basis of the contract of assurance between the proposed policy holder and HDFC Standard Life Insurance Company Ltd.I agree and understand that the information provided by me and disclosures made by me hereinabove shall be the basis of assessment, assumption and acceptance of risk by HDFC Standard Life Insurance Company Limited. If any statement made by me to you or to any other person or any information provided by me to you or to any other person are inaccurate or false, or are found to be *inaccurate or false, or if there has been any non-disclosure, withholding or suppression of any fact pertaining to my financial position or health condition, physical or mental, or if any information provided or disclosure made by me at the time of proposal are in variance with my financial position or health condition, physical or mental, as at the time of proposal, HDFC Standard Life Insurance Company Limited shall have the right to vary the benefits under the insurance policy or to treat the policy as void since inception.*

I undertake to notify HDFC Standard Life Insurance Limited any changes in my health condition or my financial condition between the date of this application and prior to acceptance of the risk.

I understand the significance of the contract & that the contract will be governed by the provisions of the Insurance Act, 1938 and that the same will not commence until written acceptance of this application by HDFC Standard Life Insurance Limited is received.

I agree to any of the information provided by me in the proposal as well as the results of the medical tests, if any, being made known by HDFC Standard Life Insurance Limited to any statutory authority or to any other person as may be required from time to time.

I understand that the premium payable as well as the Sum Assured (main benefit as well as additional benefits) may vary upon assessment of risk by HDFC Standard Life Insurance Limited. I also understand and agree that HDFC Standard Life Insurance Ltd.shall be entitled to retain the premium paid along with this proposal, as an initial deposit to be adjusted against premium payable upon issue of the policy. Such deposit shall not accrue any interest and in the event of the proposal not being accepted by HDFC Standard Life Insurance Ltd., the deposit shall be refunded.

I understand that any statutory levy, taxes or charges including any indirect tax may be charged to me either now

or in future by the company and I agree to pay the same. I confirm that I have received the Sales illustration provided by HDFC Standard Life Insurance Limited in the prescribed manner and that I have read and understood the same and further understand that the rates assumed therein are not guaranteed."

The highlighted portion does not enable the Insurance Company to assume the risk, one of the condition to be complied with on account of the death of the insured. At the best, the insured is entitled to refund of the premium. The conceded position on record is that the policy was not issued. It does not lie in the mouth of the respondent that it was the duty of the Insurance Company to issue the policy. The acceptance of the premium cannot be said to be deemed consent in the absence of the issuance of the policy. The aforementioned aspect has not been examined by the Permanent Lok Adalat and, thus, there is gross illegality and perversity.

In my view, the award of the Permanent Lok Adalat is not sustainable vis-a-vis the grant of the risk to the tune of Rs.2,27,467/- and the same is liable to be modified. At the best, the Insurance Company is liable to refund of Rs.6,000/- paid as premium along with interest @ 9% per annum.

With the aforementioned modification in the order under challenge, the writ petition stands disposed of.

February 13, 2017 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No