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

105

**RSA No.1938 of 2013 (O&M)
Date of decision: 22.01.2018**

Life Insurance Corporation of India ...... **Appellant**

Versus

Pardeep Kumar and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Prateek Mahajan, Advocate
for the appellant.

Ms. Aashna Gill, Advocate, for
Mr. Aman Pal, Advocate
for respondents No.1 and 2.

*****

ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant-Life Insurance Corporation of India is in appeal against the judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiffs with an exemplary cost of Rs.1 lac.

Late Smt. Tejo Devi had purchased three policies in her name. She died on 15.02.2005. Her husband, nominee filed an application staking claim of insurance amount from the insurance company on 18.07.2005. It is the case of the Insurance Company that claim was repudiated vide communication dated 08.05.2006. However, it is also admitted that the communication sent to the plaintiffs had been received back unserved on account of incomplete address. Tek Chand, her husband unfortunately also expired. The plaintiffs are children of late Smt. Tejo Devi and late Sh. Tek Chand.

It is the case of the plaintiffs that they had sent letters to the

Insurance Company for getting the insurance amount, however, the same was not paid. In these circumstances, the plaintiffs filed a suit for mandatory injunction on 07.08.2010. Initially, the suit was filed without affixing the Court fee, however, the learned trial Court dismissed the suit without noticing this fact. Before the First Appellate Court, the plaintiffs were directed to pay the Court fee which has been affixed.

The defence of the Insurance Company is that the insurance policies purchased by Smt. Tejo Devi were result of concealment of fact as she was suffering from Cancer.

Learned First Appellate Court after appreciating the evidence available on the file has returned a finding that the Insurance Company has failed to prove that Smt. Tejo Devi was suffering from cancer on the day the insurance policies were purchased. Such finding of the learned First Appellate Court although been challenged but no material has placed on file to reverse such finding.

Learned counsel for the appellant has vehemently argued that the suit filed by the plaintiffs was barred by time. He has relied upon Article 44(a) of the schedule attached to the Limitation Act to contend that the limitation for filing the suit begins from the date of death or where the claim is denied from the date of such denial. He submits that in either case, the suit is barred by limitation as Smt. Tejo Devi died on 15.02.2005 and the claim was repudiated on 08.05.2006.

No doubt, Article 44(a) provides that limitation would begin from the date of death or from the date when the claim is denied. However, the denial of claim will have to be interpreted in accordance with law. There is no evidence available on the file that legal heirs of Smt. Tejo Devi were ever informed of the fact that the claim made by them has been denied or rejected. It has come in evidence that the communication sent by the Insurance Company repudiating the claim dated 08.05.2006 was returned by the postal authorities with the remark incomplete address. Such being the position, once it is proved on the file that legal heirs of Smt. Tejo Devi were never informed about repudiation of the claim, the limitation cannot said to have begun against the plaintiffs. In the considered opinion of this Court, the limitation would begin to run only from the date of repudiation of the claim is brought to the notice of the legal heirs. Hence, this Court does not find any substance in the argument of learned counsel for the appellant.

Learned counsel for the appellant has further submitted that the suit for mandatory injunction was not maintainable. The argument is just to be noticed and rejected as the learned First Appellate Court had treated such suit to be a recovery suit and directed the plaintiffs to affix the Court fee. Once the Court fee has been affixed, the nature of the suit has to be treated as a suit for recovery.

Learned counsel for the appellant in last has submitted that the learned First Appellate Court has imposed exemplary cost of Rs.1 lac and directed it to be recovered from the salaries of the erring officials. He has submitted that in the present case on receipt of application by Tek Chand, Insurance Company had appointed an Investigating Officer who had reported that Smt. Tejo Devi was suffering from cancer on the day the policy was purchased. He submits that it is because of the report of the Investigator that the claim was repudiated.

On the other hand, learned counsel for the respondents has made sincere efforts to support the judgment of the learned First Appellate Court with respect to cost. She has submitted that the legal heirs of Smt. Tejo had been deprived from the fruits of the insurance policy for more than 10 years.

Taking into consideration the facts involved in the present case, this Court is of the considered opinion that the plaintiffs-respondents can be compensated for delay in payment of the amount under the insurance policies by awarding suitable interest. Hence, this Court feels that the end of justice would be met if the plaintiffs are awarded the amount along with interest @ 12% per annum from the date of filing of the suit till the date of payment. However, the order passed by the learned First Appellate Court qua imposition of cost shall stands set aside.

With these observations, the appeal is partly allowed. Insurance Company is mandated to pay the insured amount to the plaintiffs along with interest @ 12% per annum from the date of filing of the suit till realization within a period of one month from today, if not already paid.

(ANIL KSHETARPAL)
JUDGE

22.01.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No