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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 31.01.2018

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RFA 773/2005

BIMLA

..... Appellant

Through: Mr. N.S. Dalal, Mr. Aman Mudgal
and Ms. Toral Banerjee, Advs.

Versus

L.I.C. & ANR.

..... Respondents

Through: Mr. Kamal Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant impugns the judgment dated 20.07.2015 passed by the learned Additional District Judge which dismissed her suit on the ground that there was no concluded contract between the parties to support her claim for benefits apropos the life insurance policy which was taken by her deceased son.

2. The facts of the case are that on 13.12.2001, the appellant's son - Ravinder Saroha, submitted an Insurance Proposal Form along with a cash deposit of Rs.1,260/- to the Life Insurance Corporation (LIC) against a Proposal Deposit Receipt. The policy opted for by the proposer was to indemnify death by accident as well. The appellant was the son's nominee.

The proposal for insurance was submitted for internal approval of the insurer – LIC on 18.12.2001. It was approved on 18.12.2001 by the LIC Branch Manager concerned vide a Proposal Review Slip. However, the approval was to be communicated to the assured from an earlier date i.e. 15.12.2001, as per the insurer's business practices. The acceptance was to be communicated by a 'Premium Acceptance Receipt'. As fate would have it, the proposer – appellant's son, passed away on 17.12.2001. On knowledge of the said demise, the insurer did not despatch the Premium Acceptance Receipt to the assured.

3. The appellant claimed benefit under the policy vide a Claim Form dated 06.03.2002. The insurer informed her by a letter dated 26.02.2003 that since the assured had passed away prior to the issuance of the acceptance letter, there was no concluded contract between the proposer and the insurer; thus the latter was not liable for any indemnity except to refund the amount of Rs.1,260/- which was deposited by the proposer. The appellant/plaintiff filed a suit for recovery of Rs.7,28,000/- against the insurer before the learned Additional District Judge (ADJ), Delhi on 12.09.2003.

4. On the basis of the pleadings of the parties, the learned ADJ framed six issues for trial, of which Issue no. 2 reads: *"Whether proposal of insurance was accepted by defendant on 15.12.2001 or on 18.12.2001 i.e. after death of the insured and whether there was any concluded contract between the insured and the defendant or not ? Onus to proof on both the parties."*

5. While adjudicating the aforesaid issue no. 2 which was later decided in favour of the defendant/insurer and against the plaintiff/appellant, the learned ADJ observed as under:

“The proposer had already died on 17.12.2001. The money which is deposited is converted into first premium only after acceptance of the proposal and not before. Before the proposal could be converted into contract, the proposer had died. If we take a look at the documents filed by the LIC, we find that the insurance from or proposal no. 20811L filed by the proposer was dated 13.12.2001. Alongwith the proposal form, the proposer had also deposited premium amounting to Rs.1,256/-. The original receipt issued by LIC is Ex. DW1/3. It says very clearly that the proposal had been accepted by the Corporation. The said receipt is dated 15.12.2001. On the fact of it, it seems as if a valid and concluded contract had come into existence on 15.12.2001 after the receipt DW1/3 had been issued by the LIC. But there is a Proposal Review Slip which is Ex. DW1/2. If we take a look at it, we find that the proposal was accepted by the branch manager of LIC on 18.12.2001.”

6. As the proposal was accepted on 18.12.2001 but the assured had passed away one day earlier, the impugned order has reasoned that there was no concluded contract between the parties, to affix any liability upon LIC. This Court finds no reason to conclude otherwise. Approval of the proposal for insurance on 18.12.2001 is established by the Proposal Review Slip (PRS) on the same date. The said PRS was submitted by the insurer's agent and approved by the Branch Manager on the same date. The defendant had

submitted before the Trial Court that it is a well known and accepted practice that the first fortnight “closing of business” of the insurer LIC goes on till the 18th of every month and all life insurance proposals reviewed between 16th and the 18th of the month can be backdated to 15th. Thus, while the date of the acceptance, upon the receipt showed 15th December, 2001, the underwriting of the assured had been approved by the Branch Manager, as per norm via the Proposal Review Slip only on 18.12.2001.

7. Apropos the communication of the premium receipt dated 15.12.2001, the impugned order referred to the case of **LIC v. Raja Vasireddy**, AIR 1984 SC 1014 relied upon by the appellant herein, as under:

"the general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer (...) that mere receipt and retention of the premium cannot amount to acceptance. Acceptance is complete only if it is communicated to the proposer. It was never done in the case in hand. I, therefore, hold that the proposal of the assured was accepted by the LIC not on 15.12.2001 but on 18.12.2001 a day after the death of the proposer. This there was no concluded contract between the parties."

8. The impugned order refers to Section 4 the Indian Contract Act which stipulates that:

"The communication of an acceptance is complete- as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the

acceptor; as against the acceptor, when it comes to the knowledge of the proposer."

9. The appellant impugns the order on the grounds that: (i) a concluded insurance contract comes into existence the moment the first premium amount has been received and accepted along with all the formalities (ii) upon the receipt of the insurance premium along with the Medical Test Report on 13.12.2001, it was evident that all formalities had been concluded (iii) the act of the respondents in accepting the proposal deposit of Rs. 1,260 and not denying the proposal form, leads to only one conclusion that the insurer had accepted the same; as even after the death of the assured, no information was given by the insurer/LIC as to non-acceptance of the proposal, (iv) no hard and fast rule has been admitted by the LIC regarding the acceptance date and the date of 18.12.2001 has been written to deprive the appellant of her rights.

10. This Court is unable to accept the appellant's contention that nothing else was to be done by them after the payment of the proposal deposit amount and hence, the respondents could not have refused to issue the policy. The appellants have submitted that it was not the case that acceptance was dependant on certain contingencies or that some inquiry had to be carried out, or that any more formalities had to be done.

11. The receipt dated 13.12.2003 is titled as 'Proposal Deposit Receipt' and does not create any liability upon the respondent Corporation merely upon its receipt by the insurer. A Life Insurance Proposal submitted by a proposer cannot be deemed to have been accepted in any manner by an insurer, only on the basis of the initial proposal deposit, even before a competent officer had reviewed and approved the underwriting of the said

proposal. The Supreme Court has held in ***Raja Vasireddy*** (supra) "*that the test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the company's executive officers.*"

12. The initial proposal deposit on the 13th was adjusted to the first premium. It was conditional upon the acceptance of the proposal. It is to be noted that the 'premium Deposit Receipt' dated 15.12.2001 placing the Corporation at risk was never despatched to the assured.

13. Ordinarily, in general insurance policies or motor vehicle insurance policies the insurance cover would become operative the moment a Cover Note; with receipt of the insurance premium is issued by the insurer, because the goods or the vehicle, as may be, would have by then been assessed by the agent and then Cover Note is issued. The insurance policy itself may follow later. However, in the case of a life insurance policy, the proposal is looked into by the insurer and till such time that the insurer accepts the proposal, the monies deposited as Proposal Deposit would not be termed as deposit of premium for the policy. Once the proposal deposit is accepted as premium deposit and the same is communicated to the proposer, the concerned person becomes insured/assured and the insurer would be deemed to have indemnified him in terms of the policy. However, till such time that acceptance of the proposal deposit as premium towards policy is not communicated to a proposer, he remains just a proposer and not an insured. Unfortunately, in the present case, that is what has happened.

14. The impugned order has appropriately applied the principles laid down in the above-mentioned precedents that, acceptance is only complete

when it is communicated to the proposer/offeror. Silence of the insurer about the proposal or mere receipt and retention of the proposal cannot be construed as its acceptance by the insurer. Therefore, the lack of response from LIC, after 13.12.2001 cannot be construed against it.

15. This Court finds no merit in the appellant's contention regarding the malafides by the respondent. The LIC/ insurer is entitled to its Internal Review Procedure to assess the merits of the proposal for insurance. There is no evidence to conclude that the time taken by the LIC was unfairly long. Besides, the time taken by it in appraisal of the proposal cannot be held against the insurer. Lastly, the evidence led by the appellants regarding the non-production of the Despatch Register that could possibly specify the date of submission of the proposal is of no consequence, as no evidence has been led to dispute the reliability of the Proposal Review Slip which lists the date of submission and acceptance as 18.12.2001.

16. In ***Raja Vasireddy*** (supra), the Supreme Court has further held that "*a mere delay in giving an answer cannot be construed an acceptance, and prima facie acceptance must be communicated to the offeror. (...).*"

17. The tenuous grounds raised in the appeal dissipate in the face of the precedents relied upon by the Trial Court apropos the conclusion of an insurance contract. In the circumstances, there is no occasion to interfere with the reasoning of and the conclusion arrived at in the impugned order. Appeal is dismissed without costs.

JANUARY 31, 2018

NAJMI WAZIRI, J.