IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.491 of 1989 (O&M)
Date of decision: 06.03.2020

Gurdial Singh and ors. ... Appellants

Versus

Life Insurance Corporation of India and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : None for appellants No.1 and 2.

Mr. Baltej Singh Sidhu, Advocate
for appellants No.3 and 4.

Ms. Surabhi Kaushik, Advocate for
Mr. Prateek Mahajan, Advocate
for respondents No.1 to 3.

None for respondent No.4.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 05.11.1988 passed by the Additional District Judge, Faridkot whereby appeal against judgment and decree dated 26.08.1986 passed by the trial Court decreeing suit of the appellants-plaintiffs was accepted, impugned judgment and decree were reversed and suit filed by the appellants-plaintiffs was dismissed.

Jang Bahadur Singh (since deceased) got himself insured on 26.07.1982 under Salary Saving Scheme. Monthly premium of July and August, 1982 was paid. Jang Bahadur Singh gave letter of authorisation to the Life Insurance Corporation (hereinafter referred to as 'LIC') in favour of his employer i.e. Senior Superintendent of Police, Faridkot for deducting the premium from his pay. No deduction was made from pay of Jang Bahadur Singh for the months of September and October, 1982. Premium for the month of September,1982 was sent by money order on 15.10.1982, received in the office of LIC on 26.10.1982. Jang Bahadur Singh died on 18.11.1982 and by that time the premium for the month of October, 1982 amounting to Rs.215.20 was not paid to LIC.

The contesting respondents have raised the plea that since premium for the month of October, 1982 was not paid despite expiry of grace period of 15 days, the policy in question stood lapsed and respondent Corporation is not liable to pay the insurance amount.

The trial Court, in view of findings on issue No.1 and discussion made in paras 6 to 8 of the judgment, has held that policy did not stand lapsed for non payment of premium allegedly due on 26.10.1982. Eventually, the suit was decreed for recovery of Rs.50,000/- with costs and interest @ 12% per annum from the date of suit till realisation of the decretal amount.

The Court in appeal reversed findings of the trial Court with the observations that when the premium for the month of September, 1982 was not paid in time and that of October, 1982 was not paid, the policy stood lapsed. Further held that it was wrong impression of lower Court that premium could be paid within one month after it became due. The premium for September, 1982 was to be paid immediately but by 26/28th in the Salary Saving Scheme and 15 days grace is given. In the given circumstances, when premium for September, 1982 was not paid in time and premium for October, 1982 was not paid, the policy stood lapsed and findings of lower Court on issue No.1 are wrong and reversed.

Counsel for appellants No.3 and 4 would argue that, admittedly, in August, 1982 Jang Bahadur Singh gave letter of authorisation to LIC in favour of his employer, the Senior Superintendent of Police, Faridkot for deduction of monthly premium from his pay. As per case of the LIC, the said letter was forwarded to the office of SSP, Faridkot for making necessary deduction from pay of Sh. Jang Bahadur Singh. It is argued with vehemence that even if the employer failed to make deduction for payment of premium for the months of September and October, 1982, the LIC should have sent intimation to the insured that premium for a particular month has not been paid by his employer. It is further submitted that since in the present case, no such intimation was sent by the LIC to Sh. Jang Bahadur Singh with regard to non-payment of premium for the month of October, 1982 till his death on 18.11.1982, the LIC can neither be heard to say that policy stood lapsed nor can escape its liability to pay the assured sum of Rs.50,000/- with interest. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Delhi Electric Supply Undertaking Vs. Basanti Devi, 1999(4) SCT 417** and **Chairman, Life Insurance Corp. and ors. Vs. Rajiv Kumar Bhasker, 2005(3) SCT 670**.

Further reference has been made to judgment of Division Bench of Rajasthan High Court **Smt. Rai Devi Vs. Managing Director and ors., 2003(3) SCT 115.**

Counsel representing the contesting respondents, on the contrary, has supported the judgment passed by the appellate Court with the submissions that as premium for the month of October, 1982 that became due on 10.11.1982 including grace period of 15 days w.e.f 26.10.1982 (due date) was not paid, the appellate Court has rightly held that policy stood lapsed and appellants are not entitle to enforce the policy for recovery of Rs.50,000/- much less with interest. For this purpose, reliance has been placed upon judgments of Hon'ble the Supreme Court **Life Insurance Corp. of India Vs. Mani Ram, 2005(3) RCR (Civil) 582** and **Life Insurance Corp. of India Vs. Jaya Chandel, 2008(2) RCR (Civil) 29.** Further reference has been made to **Harminder Kaur Vs. Life Insurance Corp. of India and ors., 2014(4) RCR (Civil) 153** passed by this Court relying upon judgment in **Jaya Chandel's case (supra)** and judgment of Andhra Pradesh High Court **Ahmedunnisa Begum Vs. The Life Insurance Corp. of India, Hyderabad, 1981 AIR (AP) 50**. In addition, it is argued in the alternative that in case plea of appellants with regard to recovery of Rs.50,000/- towards amount of policy is accepted, the appellants cannot press for grant of interest as they have not claimed interest either by invoking any contractual obligation or statutory provision of Section 34 of the Code of Civil Procedure. For this purpose, reference has been made to judgment of this Court **Life Insurance Corp. of India Vs. Maman Chand and ors., 2014(4) RCR (Civil) 454.**

Before adverting to the submissions made by counsel for the parties, it is pertinent to mention that Jang Bahadur Singh obtained insurance policy under Salary Saving Scheme and judgments relied upon by appellants No.3 and 4 also deal with insurance under Salary Saving Scheme. On the other hand, the judgments referred by counsel for respondents do not deal with liability of LIC under Salary Saving Scheme but relate to LIC claim under an ordinary policy of life insurance.

In **Delhi Electric Supply Undertaking's case (supra)** Bhim Singh, an employee of DESU took a policy for an amount of Rs.50,000/- with the Life Insurance Corporation. The insurance policy was to commence on January 28, 1992. Bhim Singh had paid Rs.636/- as premium for two months to the Life Insurance Corporation. Premium for the third month was payable by March 29, 1992. The amount of premium was deducted by DESU from salary of Bhim Singh and remitted it to the Life Insurance Corporation. Premium for the subsequent months was deducted by DESU from salary of Bhim Singh but was not remitted to the Life Insurance Corporation. In the meantime, Bhim Singh died on August 17, 1992. Basanti Devi, widow of Bhim Singh informed the Life Insurance Corporation of death of her husband and requested for payment of the amount due under the policy. The Life Insurance Corporation disclaimed any liability under the policy as the instalments of premium after June, 1992, were not received by it. The Life Insurance Corporation, therefore, repudiated the claim of Basanti Devi.

In paras 12 and 13 of the judgment, the Court has held, quoted thus:-

> 12. "Agent" in Section 182 means a person employed to do any act for another, or to represent other in dealings with third persons and the person for whom such act is done, or who, is so represented, is called the principal. Under section 185, no consideration is necessary to create an agency. As far as Bhim Singh is concerned, there was no obligation cast on him to pay the premium direct to the Life Insurance Corporation. Under the agreement between the Life Insurance Corporation and the DESU, premium was payable to the DESU who was to deduct it every month from the salary of Bhim Singh and to transmit the same to the Life Insurance Corporation. The DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of the Life Insurance Corporation. There was, thus, valid payment of premium by Bhim Singh. The authority of the DESU to collect premium on behalf of the Life Insurance Corporation is implied. In any case, the DESU had ostensible authority to collect premium from Bhim Singh on behalf of the Life Insurance Corporation. So far as Bhim Singh is concerned the DESU was the agent of the Life Insurance Corporation to collect premium on its behalf.
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> 13. In the brochure which we have referred to above, there is no communication from the Life Insurance Corporation to the employee that the DESU is not its agent. Here "agent" does not mean insurance agent whose appointment is under the statute. When in para. 7 of the letter addressed by the employer to the Life Insurance Corporation it is mentioned

> that the employer shall act as agent of the employees and not as agent of the Life Insurance Corporation for any purpose, it is not referring to statutory agent being the insurance agent. Insurance agent is of the Life Insurance Corporation who appoints it and not of the employee in the present case. In the annexure to the letter from the Life Insurance Corporation to the employer all responsibility is cast on the DESU to collect the premium from all the employees under the scheme and to remit the same to the Life Insurance Corporation. Under the scheme, there is no role of the insurance agent. He does not bring any business for the Life Insurance Corporation. The scheme is introduced by the Life Insurance Corporation itself.

The Court, eventually, directed the LIC to pay Rs.50,000/- with interest @ 15% per annum from December 17, 1992 till payment, to be made by LIC in place of Delhi Electric Supply Undertaking.

Reverting to the case at hand, indisputably Jang Bahadur Singh gave an authority letter Ex.D3 and the same was forwarded by the LIC to the office of Senior Superintendent of Police, Faridkot. A relevant extract therefrom reads as follows:-

> I agree that your liability shall be confined to making arrangements for deduction for premium from my salary wherever this can be made and remitting the amount to the corporation in time, I shall be entirely responsible for any consequences on account of non-payment of my premium policy for reasons beyond your control, such as in the event of preceding on leave without pay or my drawing advance salary without deduction of premium or cancelling this authorisation or deduction of premium or my leaving your employment in any such case, or in case of withdrawal of my

> Salary Saving Scheme with you by the Life Insurance Corporation of India for any reason, whatsoever, it will be my responsibility to make arrangements for remittance of the premium directly to the corporation at the increased rate specified in the policy to prevent my policy from going into lapsed condition.

No doubt, the amount of premium was not deducted from salary of Jang Bahadur Singh for the months of September and October, 1982. There is no denial that premium for the month of September, 1982 was paid by Jang Bahadur Singh through money order though the same was received by LIC even beyond grace period of 15 days from the due date. The premium for the month of October, 1982 could be paid upto 10.11.1982 reckoned w.e.f. 26.10.1982 and extending benefit of grace period of 15 days. If employer of Jang Bahadur Singh has not deducted the premium and remitted the same to LIC despite issuance of authorisation letter which was admittedly forwarded by LIC to employer of Sh. Jang Bahadur Singh, the LIC should have informed Jang Bahadur Singh with regard to non payment/non remittance of premium by his employer, thus, enabling him to pay the requisite premium particularly in the circumstances that as per the policy Ex.D6, there was a provision for revival of dis-continued policies when the premium is not paid within the days of grace and the policy lapses. Since Jang Bahadur Singh never received any intimation from LIC with regard to non payment of premium for the month of October, 1982 or the policy having got lapsed for non payment of premium, there was no occasion with him to approach the LIC authorities for revival of the policy particularly in the circumstances that he unfortunately died on 18.11.1982. In the given circumstances, the appellants are entitle to benefit of enunciation laid down in **Delhi Electric Supply Undertaking's case (supra)**. The mere fact that Jang Bahadur Singh himself paid the premium for the month of September, 1982 would be of no consequence for his employer to escape its liability to collect premium on his behalf and remit the same to LIC, in view of authorisation letter Ex.D3. In this view of the matter, I find it difficult to sustain findings of the appellate Court that appellants can be denied enforcement of the policy merely because premium for the month of October, 1982 could not be paid upto death of Jang Bahadur Singh on 18.11.1982. In this view of the matter, judgment and decree of the appellate Court is set aside and the appellants shall be entitle to recover Rs.50,000/- minus the amount of premium of Rs.215.20 with interest @ 6% per annum from the date the same became due till calculation of outstanding liability of the respondent Corporation.

This brings the Court to issue of payment of interest. Indisputably, neither there was any contract between the parties with regard to payment of interest nor there was a clause in the policy in the negative with regard to interest. The appellants did not raise a specific plea with regard to their entitlement to payment of interest nor they claimed interest at a particular rate. This Court in **Maman Chand and others's case (supra)** set aside payment of interest @ 12% per annum on twin grounds namely there was a clause in the policy that Corporation will pay the sum assured (together with such further sum or sums as may be allocated by way of Bonus in the case of with profits policies) but without interest. Secondly, no claim for interest was made as respondents sought a decree for Rs.30,000/-. In para 14 of the referred judgment, the next issue before the Court was 'whether it would be equitable to allow the appellant insurance company to recover the amount of interest @ 12% which already stood paid to the claimants/plaintiffs'. In the succeeding para, the Court has noticed that counsel for the appellant/insurance company fairly and graciously stated that it would not be recovered from the plaintiffs at that belated stage, particularly when it was not a huge amount that already stood paid long back. However, the Court eventually affirmed the decree for recovery of the sum assured but without interest but the insurance company was not allowed to recover the amount of interest in the peculiar fact situation.

In the case at hand, the appellants have been denied payment of outstanding amount since 1982 till date, for no fault attributable to them, in view of discussion made hereinbefore. As the LIC has utilised that amount for its business purpose and appellants have been denied benefit thereof for the past about three decades, on equitable considerations, the appellants are held entitle to interest @ 6% per annum from the date the outstanding amount became due till actual realisation.

In view of what has been discussed hereinbefore, the appeal is partly allowed and suit of the plaintiffs is partly decreed in the aforesaid terms, leaving the parties to bear their own costs.

06.03.2020 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No