

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 167 of 2008****Reserved on 01.03.2021****Pronounced on 23.03.2021**

1. Life Insurance Corporation Of India through Divisional Manager, Shahdole Division, Ahuja Market Budhar Road Shahdole, District Shahdole, Madhya Pradesh.
2. Manager, Life Insurance Corporation Of India, Branch Office Chirmiri, Tehsil - Manendragarh, District - Korea C.G.

---- Appellants**Versus**

1. Rajkumar S/O Vishwanath Vishwakarma, aged about 21 years, residence of Korea Colliery, School Dafai Post Office Korea Colliery, District Korea, Chhattisgarh.
2. Vineshwar Kumar S/o Shri Rudan Ram Padwar, L.I.C. Agent, Chowki Defai Korea Colliery, Police Station - Chirmiri, District - Korea C.G.

---- Respondents

For Appellants:	Shri H. B. Agrawal, learned senior counsel along with Shri G. V. K. Rao, Advocate.
For Respondent No.1:	Shri Sachin Singh Rajput, Advocate.
For Respondent No.2:	Shri Sourabh Sharma, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Order/Judgment**

1. This appeal has been preferred by the Defendants/Life Insurance Corporation of India (hereinafter referred to as 'the Corporation') under Section 100 of the Code of Civil Procedure, 1908 questioning the legality and propriety of the judgment and decree dated 18.01.2008 passed by the 1st Additional District Judge, Manendragarh, Koriya (C.G.) in Civil Appeal No.30-A/2007, whereby, the lower appellate Court, while reversing the judgment and decree dated 23.07.2007 passed by Civil Judge, Class I, Manendragarh, District Koriya (C.G.) in Civil Suit No.3A/2005 has decreed the Plaintiff's claim.

2. Briefly stated the facts of the case are that one Smt. Girijadevi, the

predecessor-in-interest of the Plaintiff had taken a life insurance policy on 28.03.2001 for a sum of Rs.50,000/- and had nominated her son, the Plaintiff Rajkumar, as her nominee. After the death of Smt. Girijadevi on 23.03.2003, her son approached the authorities of the Corporation for availing the benefit of the said policy, but it was refused giving rise to the institution of the suit seeking declaration to the effect that he is entitled to avail the benefit of the said policy. According to the Plaintiff, the third installment of the premium amount payable by 28.12.2002 was received by Defendant No.3 Vineshwar Kumar, the agent of the Corporation, on 12.01.2003 from his mother Smt. Girijadevi and after collecting the same, it was deposited with the Corporation on 29.03.2003. Therefore, being a nominee of his mother, he is entitled to avail the benefit of the same which was, however, refused by the Corporation on the ground that the third installment of the said policy payable by 28.12.2002 was not paid within a grace period of 30 days, as such, the policy has lapsed. The Plaintiff has, therefore, been constrained to institute the suit in the instant nature.

3. While contesting the aforesaid claim, it was pleaded by the Corporation that since the third installment of the premium amount payable under the said policy was neither paid nor got it renewed under the terms and conditions of the policy during the lifetime of the said policy holder, namely, Smt. Girijadevi, therefore, the alleged policy has lapsed. While, Defendant No.3, the agent of the Corporation, pleaded in his written statement that after collecting the premium amount, he deposited the same with the Corporation and the receipt thereafter has been given to the Plaintiff.

4. After considering the evidence led by the parties, it has been held by the trial Court that the third installment of the premium amount payable by 28.12.2002 was not deposited by the policy holder Smt. Girijadevi within a grace period of 30 days nor was it got renewed during her lifetime. In consequence, the alleged policy has lapsed and the claim has, thus, been refused vide judgment and decree dated 23.07.2007.

5. The aforesaid judgment and decree of the trial court has been reversed by the appellate Court in appeal preferred by the Plaintiff on finding that the agent of the Corporation, after collecting the premium amount of Rs.1,112/- payable by 28.12.2002 from Smt. Girijadevi, the policy holder, deposited the same with the Corporation on 29.03.2003. It, therefore, cannot be held that the policy holder has violated the terms and conditions of the policy nor the alleged policy could be treated to be lapsed on account of her death. As a consequence, the claim has been decreed.

6. Being aggrieved, the Corporation has preferred this appeal, which has been admitted vide order dated 01.09.2008 on following substantial question of law:-

“Whether payment of premium to the agent of the insurer after the death of insured, constitutes legal liability against the insurer to pay the sum assured under the policy?”

7. Shri H. B. Agrawal, learned senior counsel appearing along with Shri G. V. K. Rao for the Appellants/Corporation, while referring to conditions No.2 & 3 of the policy, submits that since the third installment of the premium amount payable by 28.12.2002 was not paid by Smt. Girijadevi even within the grace period of 30 days, therefore, the alleged policy has lapsed and cannot be held to be renewed after the death of said policy holder. It is contended further that the agent of the Corporation was

not authorised to collect the premium amount from the policy holder, therefore, the Corporation is not bound by the act of the said agent. In support, he placed his reliance upon the decision rendered in the matter of ***Harshad J. Shah and Another vs. L.I.C. of India and Others*** reported in **(1997) 5 SCC 64** and, during the course of arguments, he moved an application enumerated under Order 41 Rule 27 of CPC on 19.01.2021 seeking to produce the additional documentary evidence, like the photocopy of the appointment order of his agent as Annexure 'A' in order to show that he was not authorised to collect the amount from its policy holder.

8. On the other hand, Shri Sachin Singh Rajput, learned counsel appearing for Respondent No.1/Plaintiff submits that in absence of placing the appointment order of the said agent, it cannot be said that he was prohibited from collecting the premium amount from the said policy holder, namely, Smt. Girijadevi on behalf of the Corporation. It is contended further that since the said agent, while acting as such, has not only collected the premium amount from the said policy holder, but has deposited the same also with the Corporation. Therefore, in such circumstances, the Corporation cannot be escaped over from its liability and would, thus, be liable for the alleged act of his agent and has placed his reliance upon the decision rendered by the Supreme Court in the matter of ***Delhi Electric Supply Undertaking vs. Basanti Devi and another*** reported in **(1999) 8 SCC 229**. In reply to the aforesaid application filed by the Appellant under Order 41 Rule 27 of CPC, it was stated that it has been filed in order to fill up the lacuna and that too without assigning the reasons as to why it was not filed before the Courts below and contended further that the alleged

document sought to be produced is neither the original one nor was it readable, and therefore, liable to be rejected.

9. I have heard learned counsel for the parties and perused the entire record carefully.

10. First of all, I would like to deal with the said application filed by the Corporation under Order 41 Rule 27 of CPC seeking production of the alleged document on record.

11. From a bare perusal of the aforesaid application, it appears that the Appellant-Corporation sought to produce the alleged document, which was not only a photocopy, but was sought to be produced on record even without assigning any reasons for it. However, under the said provision, it was incumbent upon him to establish the fact that as to why the alleged document could not be produced in an earlier occasion before the Court below. No explanation, whatsoever, has been offered in this regard and in a casual manner, has tried to produce the same after such a long span of time. It is, however, a settled principles of law that a party to an appeal has no right to produce the additional evidence unless he establishes to the satisfaction of the appellate Court that in spite of due diligence, it could not be produced earlier, as held by the Supreme Court in the matter of ***K.R. Mohan Reddy vs. Net Work Inc. represented through MD*** reported in **(2007) 14 SCC 257**. Yet in the matter of ***Satish Kumar Gupta etc. etc. Vs. State of Haryana and others, Etc.*** reported in **AIR 2017 SC 1072**, it was observed by the Supreme Court while referring to the said provision at para 20 as under:-

“20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it

could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances.”

12. In view of the aforesaid principles and in absence of any reasons being assigned, I am not inclined to allow this application permitting the Appellant to patch up the said lacuna at this stage. The said application is accordingly rejected.

13. Undisputedly, Smt. Girijadevi, the mother of the Plaintiff had taken a policy, being policy number 377594624, for Rs.50,000/- on 28.03.2001 under the terms and conditions as stipulated therein through Vineshwar Kumar, who was the agent of the Corporation. The third premium amount of Rs.1,112/- fell due on 28.12.2002 was not deposited within the prescribed grace period of 30 days, though it was collected by the said agent from the Plaintiff's mother, the policy holder, on 12.01.2003. It was, however, deposited by him subsequently with the Corporation on 29.03.2003 after the prescribed grace period of 30 days and after the death of said Smt. Girijadevi, who died on 23.03.2003. The said amount of premium, thus, neither appears to have been paid in time nor was it got renewed as per the terms and conditions of the alleged policy.

14. Conditions 2 & 3 of the alleged policy are relevant for the purpose which read as under:-

"2. Payment of premiums: A grace period of one month but not less than 30 days will be allowed for payment of yearly, half-yearly or quarterly premiums and 15 days for monthly premiums. If death occurs within this period and before the payment of the premium then due, the Policy will still be valid and the Sum Assured paid after deduction of the said premium as also the unpaid premiums falling due before the next anniversary of the Policy. If the

premium is not paid before the expiry of the days of grace, the Policy lapses. If the Policy has not lapsed and the claim is admitted in case of death under a Policy where the mode of Payment of premium is other than yearly, unpaid premiums, if any falling due before the next Policy anniversary shall be deducted from the claim amount."

"3. Revival of discontinued Policies: If the Policy has lapsed. It may be revived during the lifetime of the Life Assured, but within a period of 5 years from the date of the first unpaid premiums and before the date of maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half yearly. The Corporation reserves the right to accept or decline the revival of discontinued Policy. The revival of discontinued Policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the life Assured."

15. The grace period as provided by virtue of Condition 2 mentioned herein above is 30 days, and Condition 3 provides that if the policy has lapsed, then it may be revived during the lifetime of the policy holder. It provides further that the revival of the discontinued policy shall take its effect only after its approval by the Corporation and upon its due communication to the policy holder.

16. True it is that in view of the aforesaid conditions, the alleged premium amount was required to be paid by 28.01.2003 as it fell due on 28.12.2002. It, however, appears as reflected from the record that it was paid to the said agent of the Corporation on 12.01.2003 and which was deposited by him with the corporation as well. The alleged policy (Ex.D.3) was issued on 28.03.2001 based upon the proposal number 7837, which was filled up by said Mr. Vineshwar Kumar, the agent, as evidenced by its proposal form, marked as Ex.D.2. Ex.D.5 is the particulars of the premium

amount paid by the policy holder and a bare perusal of it would show that since the date of issuance of the said proposal form, the premium amount was made by the said policy holder regularly upto 30.11.2002 and even the premium amount of Rs.1,137/- was paid to the Corporation on 29.03.2003 through its agent Vineshwar Kumar, who collected the same from the said policy holder on 12.01.2003. It, therefore, appears that in all the material times, the premium amount was not only collected by the said agent but was also deposited by him with the Corporation. In view of that, it cannot be said that he was not authorised to collect the same from the said policy holder as alleged herein by the counsel for the Corporation. That apart, in absence of any order placed on record, it cannot be presumed that he was not authorised to act as such on behalf of the Corporation.

17. It is now noted at this juncture certain provisions of the regulations known as Life Insurance Corporation of India (Agent) Regulations, 1972, which has its statutory effect framed by the Corporation with the previous approval of the central government in exercise of the powers enumerated under Section 49 of the Life Insurance Corporation Act, 1936 are to be seen:-

17(i). Regulation 3(1)(b) defines "agent" as under:-

3. Definitions:

- (1) xxxx xxxx xxxx xxxx
- (a) xxxx xxxx xxxx xxxx
- (b) "agent" means a person who has been appointed under regulation 4 of these regulations and includes an absorbed agent;
- (c) xxxx xxxx xxxx xxxx

17(ii). Regulation (4) provides the appointment of agents and, sub-clause

(2) of it, which is relevant for the purpose, reads as under:-

4. Appointment of agents:

- (1) xxxx xxxx xxxx xxxx
- (2) All appointments shall be made by the competent authority after interviewing the candidates and satisfying itself about their suitability.
- (3) xxxx xxxx xxxx xxxx
- (4) xxxx xxxx xxxx xxxx

17(iii). Functions of agents are provided under regulation 8, which reads as under:-

8. Functions of agents:

(1) Every agent shall solicit and procure new life insurance businesses which shall not be less than the minimum prescribed in these regulations and shall endeavour to conserve the business already secured.

(2) In procuring new life insurance business, an agent shall :

(a) take into consideration the needs of the proposers for life insurance and their capacity to pay premiums;

(b) make all reasonable inquiries in regard to the lives to be insured before recommending proposals for acceptance, and bring to the notice of the Corporation any circumstances which may adversely affect the risk to be underwritten ;

(c) Take all reasonable steps to ensure that the age of the life assured is admitted at the commencement of the policy ; and

(d) not interfere with any proposal introduced by any other agent.

(3) Every agent shall, with a view to conserving the business already secured, maintain contact with all persons who have become policy-holders of the Corporation through him and shall:

(a) advise every policy-holder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf ;

(b) endeavour to ensure that every instalment of premium is remitted by the policy-holder to the Corporation within the period of

grace ;

(c) endeavour to prevent the lapsing of a policy or its conversion into a paid-up policy ; and

(d) render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

(4) Nothing contained in these regulations shall be deemed to confer any authority on an agent to collect any moneys or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever :

Provided that an agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified.

18. It appears from a bare perusal of the aforesaid clause (4) that, the agents are not authorised to collect any money or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever, but a bare perusal of its proviso clause would, however, show that the Corporation may authorise its agents to collect and remit renewal premium under policies as such conditions as may be specified.

19. Pertinently to be noted here that in all the material times, as found herein above, Shri Vineshwar Kumar has acted as an agent of the Corporation. It is, therefore, incumbent upon the Corporation to establish the fact that he was not authorised in any manner whatsoever to collect the premium amount from the said policy holder as collected by him on 12.01.2003 by placing the appointment order of him, which was required to be issued under Regulation No.4 of the said Regulation, 1972. Having failed to produce the same, it is difficult to hold that he was not authorised or prohibited from any manner to collect the premium amount on behalf of the Corporation from its policy holders. On the contrary, it reveals that after

collecting the premium amount as such, it was deposited thereafter by him with the Corporation on 29.03.2003 as evidenced by the particulars of the premium amount marked as Ex.D.5.

20. At this juncture, the principles laid down in the matter of ***Delhi Electric Supply Undertaking vs. Basanti Devi and another*** (supra) are to be seen where the Supreme Court has observed at paragraphs 12 & 14 as under:-

“12. Agent in Section 182 means a person employed to do any act for another, or to represent another 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 premium direct to LIC. Under the agreement between LIC and DESU, premium was payable to DESU who was to deduct every month from the salary of Bhim Singh and to transmit the same to LIC. DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of LIC. There was, thus, valid payment of premium by Bhim Singh. The authority of DESU to collect premium on behalf of LIC is implied. In any case, DESU had ostensible authority to collect premium from Bhim Singh on behalf of LIC. So far as Bhim Singh is concerned DESU was an agent of LIC to collect premium on its behalf

14.Formation of the contract of insurance is between LIC and the employee of DESU. Scheme has been introduced by LIC purely on business considerations and not for any particular benefit of insurance conferred on the employee working in an Organisation. Though in the pro forma letter written by DESU to LIC it is mentioned that DESU would be an agent of its employee and not that of LIC but this understanding between LIC and DESU was not communicated or made known to the employee. As far as the employee is concerned he is told that premium will be deducted from his salary every month and remitted by DESU to LIC under an agreement between LIC and DESU. For the employee of DESU, therefore, DESU had implied authority as an agent of LIC to collect premium on its behalf and then pay to LIC. There is nothing on the record to show

that Bhim Singh was ever made aware of the fact that DESU was not acting as agent of LIC. Rather in the nature of the Scheme, the employee was made to believe that it is the duty of the employer though gratuitously cast on him by LIC to collect premium by deducting from the salary of each employee covered under the Scheme every month and to remit the same to LIC by means of one consolidated cheque. Now, it could be said that DESU would not be liable as an agent of its principal, i.e., LIC and also it was rendering service of collecting the premium and remitting the same to LIC free of any cost to the employee. As to what is the arrangement between LIC and DESU the employee is not concerned. In these circumstances DESU cannot perhaps be held liable under the Act. But then the question arises if the widow of Bhim Singh can be left high and dry in this legal rigmarole when it is clear that as far as Bhim Singh was concerned he did pay the premium and it was the fault of the agent of LIC, i.e., DESU in not remitting the premium in time. In these circumstances LIC was wrongly discharged of its liability under the insurance policy taken out by Bhim Singh.....”

21. Applying the aforesaid principles to the case in hand, where the Corporation, as found herein above, has permitted Shri Vineshwar Kumar to act on its behalf with the said policy holder and he made her believed that he is acting on its behalf. The Corporation would, therefore, under such circumstances legally bound by the act of him and cannot be escaped over from its liability.

22. In so far as the reliance of Shri Agrawal in the matter of **Harshad J. Shah and Another** vs. **L.I.C. of India and Others** (supra) is concerned, the same would, however, noted to be distinguishable. As in the said matter, an appointment order was made on 05.12.1962 and there was a condition expressly prohibiting the agent of the Corporation from collecting the premium on its behalf. Since the Corporation has failed to produce such an order here in the instant matter in order to show that his said agent was prohibited from collecting the premium on behalf of it, the

principles laid down therein would, therefore, be of no use for him.

23. In view of the foregoing discussions, the substantial question of law is answered accordingly in positive by holding that the act of the said agent collecting the premium on behalf of the Corporation would constitute the legal liability upon it to pay the assured under the said authority.

24. Consequently, the appeal is dismissed and the judgment and decree passed by the First Additional District Judge, Manendragarh, Koriya in Civil Appeal No.30-A/07 is hereby affirmed and the Plaintiff's claim is decreed. No order as to costs.

25. A decree be drawn accordingly.

Sd/-

(Sanjay S. Agrawal)
JUDGE