IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.25 OF 2017

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned Addl. District Judge, Berhampur in RFA No.71 of 2012 by dismissing the judgment and decree passed by the learned Civil Judge (Senior Division), Berhampur in Civil Suit No.323 of 2007.

Managing Director, LIC of India & Others	:::	***Appellants.***

-versus-

Smt. Soyandri Sethy & Another	:::	***Respondents.***

Appeared in this case by Hybrid Arrangement (virtual/physical mode)

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For Appellants	**::::**	M/s. S.K. Mohanty, Advocates.
For Respondents	**::::**	M/s. S.K. Pradhan, Advocate, (Res. No.2)

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING::24.09.2022, DATE OF JUDGMENT::20.10.2022

D.Dash, J. The Appellants by filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code') have assailed the judgment and decree passed by the learned Addl. District Judge, Berhampur in RFA No.71 of 2012.

By the same, the Appeal filed by the present Respondent No.1(Plaintiff) under Section-96 of the Code in challenging the judgment and decree passed by the learned Civil Judge (Sr. Division), Berhampur in Civil Suit No.323 of 2007 have been set aside. The Trial Court having decreed between the suit filed by the Respondent No. 1 as the Plaintiff in part directing the Appellants (Defendant Nos. 2 to 4) to refund entire amount of premium pay by the Respondent No.1, namely, Hari Sethi on 17.05.2004 with interest @ 15% per annum till payment; in the Fist Appeal, the following order has been passed:-

> "The appeal of Appellant/ Plaintiff is allowed on contest with cost. The impugned judgment and decree passed by the learned lower Court earlier is set aside. As such, the Insurance Company No.2 to 4 are directed to pay a sum of Rs.1,28,00/- (Rupees one lakh twenty eight thousand) towards the sum assured and accidental benefit as per Ext.1 in favour of the beneficiary Appellant/Plaintiff with interest @ 12% per annum from 15.05.2004 in respect of Policy No.570725939. Again as the husband of the Appellant/Plaintiff died due to untoward incident and Appellant/Plaintiff is running from pillar to post from 2007 for her legitimate claim/right and Insurance Company has not paid her legitimate claim even though Policy meant for benefit of beneficiary (nominee), therefore, a compensation of Rs.10,000/- (Rupees ten thousand) is imposed on Life Insurance Corporation of India to pay the same within three months hence. Since an amount of Rs.24,383/- (Rupees twenty four thousand three hundred eight three) has already been paid to the Appellant/Plaintiff on 29.10.2004 as per lower Court decree. So said sum be deducted while making payment under the Policy."

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. Hari Sethi, the husband of the Plaintiff has taken a policy bearing No. 570725939 at the Berhampur Branch Office No.1 on Life Insurance Corporation of India for a sum assured of Rs.64,000/- under Plan & Term 93-25, the Policy commenced w.e.f. 28.06.2001, the half yearly premium was fixed of Rs.1684/- under the said Policy. The present Plaintiff being the wife of said Hari Sethi, the Policy holder was the nominee under the said Policy, the Policy holder Hari Sethi died on 15.05.2004.

It is stated that on the death of Hari Sethi, the agent of the Life Insurance Corporation that is Defendant No.1, contacted the Plaintiff then asked her to arrange a sum of Rs.5,000/- for settlement of the death benefit of her husband under the said Life Insurance Policy. The Plaintiff accordingly, get Rs.5,000/- to Defendant No.1 and waited for receiving the claim amount. On 19.02.2006, a letter was received from the Life Corporation of India that on the death of the Policy holder that the Policy held by Hari Sethi having lapsed, no sum is payable to the Plaintiff. It is further stated that Hari Sethi was paying the premium for the said Policy to the Defendant No.1, the authorized agent of the Life Insurance Corporation and he had never paid the premium himself to the

Life Insurance Corporation. It is stated that Hari Sethi was paying premium in due time to the Life Insurance Corporation, so the Plaintiff is extended to get the sum assured i.e. Rs.64,000/-, accidental benefit of Rs.64,000/- and also compensation to the tune of Rs.50,000/- for cheating her and the mental harassment cost to her. She also claimed interest over the said amount. Notice being given to the Life Insurance Corporation on 22.06.2007, when was responded in negative manner, the suit has been filed.

4. The Defendant No.1, the agent of the Life Insurance Corporation while igniting status as such has denied about the receipt of premium amount from Hari Sethi towards the said Policy at any point of time. He also denied to have payment a sum of Rs.5,000/- from the Plaintiff with an assurance of settlement of the Policy.

5. The Defendant Nos.2 to 4, the officials of the Life Insurance Corporation in their written statement had admitted that Hari Sethi was issued with the said Life Insurance Policy under that plan term-92-25 commencing from 28.06.2001. They said that the agent of the Life Insurance Corporation is not authorized to receive or collect any premium from the Policy holder. Since the Policy holder failed to pay the premium regularly and as the premium payable in the month of December, 2003 was not paid in time, the Policy stood lapsed as per the terms and contract of Insurance. Moreover, the Policy holder Hari Sethi having died on 15.05.2004 when the deposit of premium was made on 17.05.2004, which was long after the due time in December, 2003 in the cash counter when it was also not commenced that the Policy holder by then get and the Policy was no more in force, no money is payable under the said Policy to the Plaintiff.

7. On the above rival pleadings, the Trial Court on going through the evidence on record and in the backdrop of the rival case of the parties has answered crucial issues as to the liabilities in the Defendants in the matter of payment of the sum assured and the death benefit under the said Insurance Policy has answered against the case/claim of the Plaintiff. While holding so, taking a cue from the decision of the Apex Court in case of ***Harshad J. Shah and Another Vrs. Life Insurance Corporation of India and Others***; AIR1997 SC 2459, it has simply directed the Defendants to pay the entire amount of premium paid, the Policy holder along with the amount paid on 17.05.2004 with interest @ of 15% per annum.

8. The Plaintiff being aggrieved by the said judgment and decree passed by the Trial Court having carried the Appeal, the First Appellate Court has passed the order as stated in the foregoing paragraph.

9. The present Appeal has been admitted to answer the following substantial question of law:-

1) Whether the learned 1st Appellate Court below fell into error, while distinguishing the authority, cited by the Appellants (*Harshad J. Shah and Another-vrs-LIC of India and Others*, AIR 1997 SC 2459) from which the following principles, as applicable to the instant case, emerge:-

(a) The LICI Agent has no express authority to receive the Policy Premium on behalf of the LICI (Appellants) in view of the express prohibition, enacted in Life Insurance Corporation (Agents) Rules, 1981;

(b) The LICI cannot be held liable on the basis of the misconduct/ fraud committed by the LIC Agent; and

(c) View of the express provision in the statutory Rules, framed by the LICI, indicating that the Agents are not authorized to collect any money or accept any risk on behalf of the LICI, the LIC is not liable for any acts committed by the Agent in the said regard.

10. Mr. S. Mohanty, learned Counsel for the Appellants submitted that the view taken by the First Appellate Court that the half yearly premium dues for 2003 December having deposited with the Life Insurance Corporation of India, which had been admitted by their letter dated 26.06.2006, proved and marked Ext.11, the Policy in question had not lapsed; is completely erroneous. He further submitted that the First Appellate Court has committed mistake by holding that the premium be due from June, 2004 when the last challan deposit was made on 17.05.2004, two days after the death of the Policy holder, the Plaintiff being a rustic illiterate lady since had no idea about the Insurance Policy of her husband and does not clear as to who had deposited the amount for the deceased Policy holder, the plaint is entitled to get all the benefit under the said Policy.

11. None appears on behalf of the Respondent No.1 (Plaintiff) despite notice and opportunity.

12. Learned Counsel who had appeared on behalf of Respondent No.2 did not advance any argument for having no instruction.

13. Keeping in view the submissions made, I have carefully gone through the judgments passed by the Courts below.

14. Admittedly, the deceased Hari Sethi was the life Insurance Policy holder, the half yearly premium fixed under the Policy was Rs.1684/-. The total sum assured under the Policy is Rs.64,000/- and it was under the Plan and Term, 93-25 having accidental benefit of equal sum.

It is also not in dispute that Hari Sethi having died on 15.05.2004. the unpaid premium for December, 2003 with the grace period of 30 days had expired. The payment of the half yearly premium has been made on 17.05.2004, and that is two days after the death of the Policy holder. For non-payment of the premium; the Policy had already stood expired during the lifetime of the Policy holder. In the matter of revival of the Policy of the insured, the consideration stands only upon the submission of proof of continued insurability to the satisfaction of the

Insurer, here the Life Insurance Corporation and the payment of all the arrears and the premium together with interest as such rate as may be fixed by the Life Insurance Corporation. In other word, the question of revival of the Policy arises only if the premium would have been paid to the Life Insurance Corporation during the lifetime of the insured that is before 15.05.2004. This important aspect appears to have not at all been touched upon by the Courts below. Thus even if it is taken that the premium was received by the Life Insurance Corporation on 17.05.2004, the same does not come to the aid of the Plaintiff because by then the insurability was not continuing and it had completed its run coming to an end for ever leaving no option/choice to the parties to the Insurance Contract which then stood foreclosed. So, under the circumstance, mere receipt of said sum towards premium after such cessation of insurability could not have relegated the legal representatives of the Insured to a position to revive the policy for the purpose of advancing the claim based upon the death of the Insured-policy holder prior to that date of payment.

Furthermore, when it is the case of the Plaintiff that the premium was paid through the agent in time and he did not deposit the same with the Life Insurance Corporation, in the absence of any authority resting with the agent to receive the same for and on behalf of the Life Insurance Corporation deeming it to be as if the receipt by the Life

Insurance Corporation; as has been held in clear terms in the decision of the Apex Court in case of ***Harshad J. Shah and Another*** (supra), the First Appellate Court is found to have completely erred in holding the Life Insurance Corporation liable in terms of its order.

In that view of the matter, the substantial questions of law are answered against the claim of the Plaintiff which leads to set aside the judgment and decree passed by the First Appellate Court.

Keeping in view the submission of the learned Counsel for the Appellants that the Life Insurance Corporation has already made the payment of the paid premium amount deposited after death of the deceased with interest etc, it is hereby observed that the Executing Court would do well to verify the same and pass appropriate order in the matter of payment of said sum only to the Plaintiff if not already paid.

14. In the result, the Appeal stands allowed. There shall however be no order as to cost.

(D. Dash),
Judge.

Narayan