

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

316

RSA-193-2005 (O&M)
Date of Decision: 11.10.2023
Reserved on: 19.09.2023

Life Insurance Corporation of India

... Appellant

Versus

Smt. Darshna Devi

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Prateek Mahajan, Advocate and
Ms. Perna Malhotra, Advocate,
for the appellant.

Mr. Tribhuwan Singla, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The present appeal has been filed by the appellant-defendant No.1 against the judgment and decree dated 26.11.2004 passed in Civil Appeal No.32 of 2003 by the Court of the then learned District Judge, Jind whereby the judgment and decree passed by learned trial Court had been modified, the appeal was partly allowed and the respondent-plaintiff was held entitled to renewal commission in respect of the policies effected through her as an agent of the appellant Corporation.
2. For the sake of convenience, the parties shall be referred to hereinafter as per the original nomenclature as given in the suit.

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3. The factual matrix of the case is given as hereunder:-

The plaintiff Smt. Darshna Devi filed the aforementioned suit on the averments that she was an agent of the defendant No.1-Corporation since the year 1988 and had been performing her duties as an agent to the utmost sincerity. On 21.08.1983, a show cause notice was served upon her by the defendant-Corporation levelling false allegation to the effect that she had attempted to defraud the defendant No.1-Corporation by submitting a proposal form on 06.04.1991 bearing date 30.03.1991 for extending benefit of a life insurance policy qua a person who had infact died on 31.03.1991. The plaintiff submitted reply to the show cause notice but the defendant No.1 suspended her agency vide letter dated 16.08.1993. Then after a gap of almost about 4 years, the defendant No.3 issued an order dated 26.11.1998 thereby imposing penalty of termination of agency of the plaintiff and also for forfeiture of renewal commission payable to the plaintiff as per rules. The plaintiff firstly filed a representation before the defendant No.3 and on rejection of the same, preferred an appeal before the defendant No.2 but the said appeal was dismissed vide order dated 18.11.1999 passed by defendant No.2. The plaintiff prayed for declaring the orders passed by defendant Nos.3 and 2 On 26.11.1998 and 18.11.1999 respectively as illegal on the grounds that the same were passed without giving any opportunity of hearing to her and without conducting any inquiry and she had been condemned unheard. She alleged that no fraud had been committed upon the defendant No.1 by herself. The proposal form in dispute was dated 30.03.1991 and the same had been filled by Development Officer Sh. Bhalle Ram and the policy holder had been medically examined on 30.03.1991. She submitted that his death on 31.03.1991 did not prove any fraud on her

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part. It was also asserted that she deserved to receive the renewal commission and deserved to continue as agent of the defendant No.1. A prayer had been made accordingly by her.

4. The defendants filed a joint written statement raising preliminary objections as to maintainability, lack of jurisdiction and on the ground that the suit had not been properly valued for the purposes of Court fees and jurisdiction. On merits, it was submitted that the plaintiff had attempted to defraud the defendant No.1-Corporation by passing spurious business. She had submitted a proposal form dated 30.03.1991 qua the life of one Vishnu Chand Saini on 06.04.1991 whereas the said Vishnu Chand Saini died in an accident on 31.03.1991 and by doing so, the plaintiff had attempted to defraud the Corporation and acted in a manner detrimental to its interest. Consequently, she was instructed vide order dated 16.08.1993 to not to procure any new business on behalf of the defendant No.1-Corporation and a show cause notice under Life Insurance Corporation of India (Agents) Regulations, 1972 (For short "Regulations, 1972") had been issued against her. She was given reasonable opportunity to file reply to the same and thereafter the impugned orders were passed. It was denied that the plaintiff had been deprived of principles of natural justice or was entitled to the relief claimed by her. Accordingly, dismissal of the suit had been prayed for.

5. The plaintiff filed replication controverting the pleas as taken in the written statement and re-asserting those of the plaint. On the pleadings of the parties, the following issues were settled by the learned trial Court vide order dated 19.11.2001:-

"1. Whether order dated 26.11.98, passed by the defendant

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No.3 and order dated 18.11.98 passed by defendant No.2 are illegal, null and void, against the principles of natural justice and not binding upon the rights of plaintiff as prayed for? OPP.

2. Whether the plaintiff is entitled to all the benefits of service and is also entitled to renewal commission alongwith interest @18% per annum? OPP.

3. Whether the suit is not maintainable in the present form? OPD.

4. Whether the civil court has no jurisdiction to try and decide the present suit? OPD.

5. Relief.”

6. The parties adduced evidence in support of their respective assertions. Besides placing reliance upon documentary evidence, the plaintiff examined herself as PW-1 whereas the defendants examined three witnesses namely, DW-1 Manoj Kumar Jain, DW-2 K.K. Kaushik, Advocate and DW-3 Deepak Bindal, Advocate.

7. On appraising the evidence produced on record and after hearing the contentions raised by both the sides, the learned trial Court held that the plaintiff had failed to prove her case and dismissed the suit vide judgment and decree dated 03.03.2003. Dissatisfied from the same, the plaintiff had preferred appeal before the First Appellate Court who vide judgment and decree dated 26.11.2004, partly allowed the same and held the plaintiff entitled to renewal commission in respect of the insurance policies effected through her before she ceased to act as an agent of the appellant-defendant No.1 in view of the Regulation No.19 of the Regulations, 1972 and the decree of trial Court was modified to that extent.

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8. Feeling aggrieved from the order passed by First Appellate Court of granting renewal commission to the respondent-plaintiff, the present appeal has been filed by the appellant-defendant No.1. It was argued by learned counsel for the appellant that the impugned judgment and decree as passed by learned First Appellate Court was liable to be reversed to the extent to which it had modified the judgment and decree passed by learned trial Court and had given direction for payment of renewal commission to the respondent-plaintiff in respect of the policies effected by her as an agent. He argued that it was explicit in the Regulations, 1972 that if agency of an agent is terminated for having committed fraud with the Corporation, then the amount of renewal commission can be forfeited and it was exactly what had been done by the appellant. He argued that there was no illegality in the order so passed by the appellant while forfeiting the renewal commission of the respondent and the learned First Appellate Court therefore, was not justified in awarding the same to the respondent. He further argued that the respondent had failed to perform the duties of an agent sincerely. No relationship of employee and employer existed between the parties. Her act and conduct proved that she had made an attempt to defraud the Corporation. Her agency had been terminated after giving due notice and opportunity of filing reply and putting her case to the respondents. The appellant was well within its rights to invoke Regulation 19 of the Regulations, 1972 and to forfeit renewal commission and hence, it was argued that the impugned judgment and decree as passed by learned First Appellate Court was liable to be reversed and the appeal deserved to be accepted. To fortify his argument, learned counsel for the appellant placed reliance upon judgment dated 02.02.1996 passed in W.A. No.2413

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of 1992 titled as **S.P. Habbu v. LIC of India and others**, as pronounced by High Court of Karnataka; **Shayam Sunder Tripathi v. Life Insurance Corporation of India and another**, 2006 (13) S.C.T. 868; **B.K. Vadiraja and another v. Managing Director, L.I.C. of India and others**, AIR 2002 Karnataka 113; **Kuldeep Tiwari v. Oriental Insurance Co. and others**, AIR 2004 Madhya Pradesh 114 and **Chandra Prabha Dogra v. LIC of India**, 2004 (4) S.C.T. 5.

9. Per contra, it was argued by learned counsel for the respondent that the principles of natural justice were violated by the appellant while terminating the agency of the respondent. No fraud had been proved to be committed by her. Therefore, he argued that the order passed by learned First Appellate Court was justified and urged that the appeal was liable to be dismissed.

10. I have heard learned counsel for both the parties at a considerable length and have minutely scrutinized the evidence available on record and have also gone through the authorities cited.

11. At the outset, it would be proper to mention that since the regular second appeals in the State of Punjab, Haryana and UT Chandigarh are regulated by Section 41 of Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, therefore, this Court can certainly reappraise evidence if the judgments passed by the Courts below reflect misreading of evidence and suffer from any perversity. Reference in this regard, can be made to a Constitutional Bench judgment of Hon'ble Supreme Court in **Pankajakshi (Dead) through LRs v. Chandrika**, (2016) 6 SCC 157. More so, it is also well recognized that the rule that in second appeal, the Court must not disturb facts established by trial Court or First

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Appellate Court, is not an absolute one or in other words, it is not a rule set in stone and a decision based on no evidence or misappreciation of evidence can certainly be interfered with. Reliance in this regard can be placed upon authority cited as **Nazir Mahamed v. J. Kamala**, (2020) 19 SCC 57, wherein it was observed by Hon'ble Supreme Court that the Court of second appeal may disturb findings of fact in the following conditions:-

- (i) The Courts below have ignored material evidence or acted on no evidence;
- (ii) The Courts have drawn wrong inferences from proved facts by applying the law erroneously; or
- (iii) The Courts have wrongly cast the burden of proof.

Reliance can further be made to **Balasubramanian v. M. Arockiasamy (Dead) through LRs**, (2021) 12 SCC 529, wherein the Hon'ble Supreme Court observed that the restraint in interfering with question of facts under the jurisdiction of second appeal, is not an absolute rule. Where the Court is of the view that the conclusions drawn by the Courts below do not have a basis in the evidence led or it is of the view that the appreciation of evidence "suffers from material irregularity", the Court will be justified in interfering with such findings.

12. Admittedly, the respondent-plaintiff was an agent of the appellant-Corporation since the year 1988. It is also not in dispute that in the year 1993, her agency was suspended on the allegations that she had attempted to defraud the appellant by recommending the case of one Vishnu Chand Saini for issuance of insurance policy by submitting a proposal form bearing No.29503-171 dated 30.03.1991, on 06.04.1991 despite knowing that the said Vishnu Chand Saini had died in an accident on 31.03.1991. A

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show cause notice was issued to her on the allegation that she had acted to the prejudice of the appellant-Corporation. Subsequently, her agency was terminated and the renewal commission which was to be given to her was also ordered to be forfeited. The respondent challenged the action of the appellant of terminating her agency as well as forfeiture of renewal commission before learned trial Court. However, in the appeal filed before the learned First Appellate Court, she had restricted her claim to the extent of setting aside the order of forfeiture of renewal commission. It is well settled proposition that the relationship between an agent of the Corporation is not of an employee and employer. The appellant-Corporation has framed regulations which are known as Life Insurance Corporation of India (Agents) Regulations, 1972 (For short “Regulations, 1972”) in exercise of powers vested under Section 49 of the Life Insurance Corporation Act, 1956. These regulations entitle the Corporation to appoint agents for the purpose of soliciting or procuring life insurance business and also deals with the termination of agency on account of certain disqualifications or lapses. The regulations also provide for commission on the premiums received in respect of the business secured by the agent subject to certain exceptions. These regulations do not contemplate holding of an enquiry like a trial in a Criminal Court or like a departmental inquiry against an employee while terminating the agency of an agent due to some lapse and it is settled position that reasonable opportunity to show cause against termination is sufficient. Reference in this regard can be made to **S.P. Habbu’s** case (Supra) wherein High Court of Karnataka had observed so.

13. In this case, admittedly and evidently, the agency of the respondent had been terminated after issuing a show cause notice to her and

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by giving reasonable opportunity to her to explain the same. As already discussed, she had not challenged the order of termination of her agency and, therefore, there is no need to go into that question at this stage. Since the respondent had restricted her claim with regard to issuance of renewal commission and the learned First Appellate Court had granted relief qua the same which is the subject matter of challenge before this Court, therefore, it is to be seen as to whether the learned First Appellate Court had rightly allowed the respondent to seek renewal commission from the appellant. As per Regulation 19 of the Regulations, in the event of termination of appointment of an agent, except for fraud, the commission on the premiums received in respect of business secured by him, shall be paid to him, if he has continuously worked for at least five years since his appointment and subject to fulfillment of certain other conditions. There is no dispute about the fact that the respondent-plaintiff had worked as an agent of the appellant for a period of more than five years till the termination of her agency. The appellant-Corporation had passed order Ex.P-5 on 26.11.1998 thereby terminating her agency and forfeiting renewal commission payable to her. This order had been passed after considering the reply to the show cause notice as served upon her. The respondent had filed an appeal against the said order with the appellate authority of the appellant i.e. defendant No.2 which had been dismissed vide order dated 18.11.1999. It was alleged against the respondent that she had recommended proposal for issuance of insurance policy in favour of one Vishnu Chand Saini by antedating it with the date of 30.03.1991 and though the said proposal was submitted on 06.04.1991 but the fact was concealed that the abovesaid Vishnu Chand Saini had died in an accident on 31.03.1991. The authorities of the appellant

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had observed that the respondent had acted mala fide and had caused prejudice to it by making an attempt to defraud it. In the considered opinion of this Court, recommendation and submission of a proposal form for issuance of insurance policy in the name of a dead person, on the part of the respondent-plaintiff was obviously a deliberate suppression of facts from her side. She being an agent of the Corporation, it was her duty to convey the correct facts to the Corporation which she had not disclosed.

14. Further, it is revealed from a reading of Para No.17 of the judgment of learned trial Court that wife of the above named Vishnu Chand Saini had even filed a suit against the appellant-Corporation calling upon it to make payment of insurance amount on the basis of the same policy which was made as per the recommendation of the respondent and which was in dispute. The said suit had been dismissed vide judgment and decree dated 29.09.1997 as wife of Vishnu Chand Saini had failed to prove that any valid contract existed between the latter and the appellant-Corporation with regard to issuance of insurance policy in his favour. Copy of the judgment passed in the said suit is also part of learned trial Court record. It was also observed in the said judgment that the proposal form of deceased Vishnu Chand Saini was submitted in the office of the appellant-Corporation on 06.04.1991 in a deceitful manner. This finding admittedly has remained unassailed. In the opinion of this Court, this fact clearly points out that an attempt had been made by the respondent-plaintiff to commit fraud upon the appellant for the purpose of securing insurance policy for a person who had died on 31.03.1991 by antedating proposal form and by concealing material facts. The learned trial Court while considering this fact and after making a detailed discussion, had not granted relief release of renewal commission to

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the respondent-plaintiff. However, the learned First Appellate Court while observing that since the respondent had worked as agent of the appellant for more than five years and as the insurance policies effected through her were in full force on the date when she ceased to act as agent of the appellant-Corporation, had modified the judgment and decree passed by learned trial Court and had held her entitled to renewal commission. In the opinion of this Court, the learned First Appellate Court while modifying the order passed by learned trial Court had not considered the fact that by way of Regulation 19 (1) (a) of the Regulations, an exception had carved out to the effect that in case of fraud, commission on the premiums received in respect of business secured by agent might not be paid to such agent. Since the respondent-plaintiff did not challenge the order of termination of her agency as passed by the appellant, therefore, the same had attained finality and proved that an insurance policy in the name of Vishnu Chand Saini had been sought to be procured by concealment of material fact which certainly proved an attempt to commit fraud upon the appellant and, therefore, the latter was certainly entitled to forfeit renewal commission of the respondent. The reasons assigned by learned First Appellate Court for holding the respondent entitled to receive the renewal commission, hence cannot be considered to be a plausible reasoning. As such, the same does not deserve to be sustained. Accordingly, the findings as given by learned First Appellate Court are reversed and set aside and it is held that the respondent-plaintiff was not entitled to receive renewal commission from the appellant in view of her act and conduct and nothing wrong had been done by the appellant by forfeiting the same. Consequently, the judgment and decree passed by First Appellate Court thereby modifying the judgment and decree

of the trial Court are reversed. The judgment and decree of learned trial Court are ordered to be restored. The appeal is allowed. There is no order as to costs.

15. Miscellaneous application(s), if any, also stand disposed of.

11.10.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No