**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH AT NAGPUR**

**SECOND APPEAL NO.140/2007**

1. The Senior Divisional Manager, LIC of India, Jayanti Complex, Amravati.

2. The Senior Branch Manager, LIC, Branch No.1, Tower Road, Akola. .....**APPELLANTS**

**...V E R S U S...**

1. Janardhan s/o Ankush Tandra, aged 56 years, Occ. Retired, r/o near Dakshata Nagar, Christian Compound, Akola, District Akola.

2. Medical Superintendent, District Hospital for Women, Akola.

3. Collector, Akola.

4. Collector, Buldana.

5. Civil Surgeon, General Hospital, Buldana. ...**RESPONDENTS**

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Mr. T. T. Mirza, Advocate instructed by Mr. A. M. Quazi, Advocate for appellant.
None for respondent no.1.
Mrs. H. S. Dhande, A.G.P. for respondent nos. 2 to 5.

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**CORAM:- ANIL L. PANSARE, J.**
**DATED :- 30.01.2024**

**ORAL JUDGMENT**

The appeal has been admitted on the following substantial questions of law.

*"Whether the First Appellate Court erred in directing the Life Insurance Corporation to pay the claim arising out of death of wife of respondent No.1, though the wife as well as the employer had failed to remit the insurance premium to the L.I.C. for 14 months?"*

2. The appellants – original defendant nos. 3 and 4, have preferred the appeal under Section 100 of the Civil Procedure Code, 1908 (For short the 'CPC'). The respondent no. 1 – original plaintiff had filed the suit for recovery of amount of policy of insurance issued by the appellants. The wife of respondent no.1 – original plaintiff was in employment as nurse with respondent no.2 – original defendant no.1. The respondent nos.3 and 4 were original defendant nos. 5 and 6. Original defendant no.2 is the one where the wife of respondent no.1 was transferred on promotion. The parties will be hereinafter referred to by their original nomenclature.

3. The defendant nos.3 and 4 – Insurance Company had issued policy of insurance to the wife of plaintiff for an amount of Rs.2,55,000/-. The policy commenced on 28.02.1989. The plaintiff's wife expired on 23.06.1992. The claim under the policy was refused by the insurance company as it did not receive the premium from the policy holder and her employer for 14 months

and as such the policy was lapsed in terms of conditions of the policy.

4. The plaintiff's husband filed Regular Civil Suit No.244/1995 before the trial court, which came to be dismissed by judgment dated 06.04.1999. The trial court referred to the authorisation letter Exh.-50 given by the plaintiff's wife. The defendant no.1 was authorised to deduct the amount of premium and to pay it to the insurance company. The plaintiff's wife, in authorisation letter, has stated that she would be entirely responsible for any consequence on account of non payment of premium of her policy for the reason beyond the control of employer. The trial court noted that on 01.08.1991, the plaintiff's wife was transferred on promotion from Akola (defendant no.1's Hospital) to Buldhana (defendant no.2's Hospital). She has withdrawn the salary from the office at Buldhana from 01.08.1991 till her death but never raised objection before the authority in respect of non deduction of premium. She has also not inquired about non remittance of the premium. The defendant no.2 at Buldhana did not deduct and pay premium to insurance company for 14 months; though was responsible to deduct premium from salary and to remit it to the insurance company.

5. The plaintiff in evidence has admitted that his wife has collected salary for 11 months from office at Buldhana. He has further admitted that his wife has not made any arrangement to ensure that premium is paid to the insurance company. The trial court has taken a view that the plaintiff's wife had a complete knowledge that hospital where she was working is not remitting premium of her policy and accordingly held that insurance company was not at fault nor responsible for the claim of plaintiff and has correctly repudiated the claim as the policy had lapsed.

6. The first appellate court has reversed the finding solely on the ground of non compliance of Section 50 of the Insurance Act, 1938, which reads thus:

> *"50. Notice of options available to the assured on the lapsing of a policy. —An insurer shall, before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid, give notice to the policy-holder informing him of the options available to him unless these are set forth in the policy."*

The first appellate court held that the insurance company was duty-bound to issue notice in terms of Section 50 of the Act, which has been not done.

7. The first appellate court, however, appears to have ignored that under Section 50 of the Act, the insurer has to give notice to the policy holder informing him of the option available unless these options are set forth in the policy. Thus, if options are set forth in the policy, the insurance company will not be required to issue notice. Learned counsel for the appellant has invited my attention to condition no. 5 of the policy, which reads thus:

> *"5. Forfeiture in certain events:- In case premiums shall not be duly paid or in case any condition herein contained or endorsed hereon shall be contravened or in case it is found that any untrue or incorrect statement is contained in the Proposal, Personal Statement, declaration and connected documents or any material information is withhed, then in every such case but subject to the provisions of Section 45 of the Insurance Act, 1938 wherever applicable, this Policy shall be void and all claims to any benefit in future hereof shall cease and determine and all moneys that h ave been paid in consequence hereof shall belong to the Corporation excepting always in so far as relief is provided in terms of the privileges herein contained or may be lawfully granted by the Corporation."*

Perusal of the condition indicates that in case the premiums are not duly paid, the policy shall be void and all claims to any benefit in virtue thereof shall cease and determined and all moneys that have been paid in consequence thereof shall belong to the insurance corporation, except the reliefs that can be lawfully granted by the insurance corporation.

8. The appellate court thus committed serious error by reversing the well reasoned finding of the trial court. The evidence and the record would clearly establish that the plaintiff's wife had knowledge that her office is not deducting the amount of premium and further that the premium is not being paid to the insurance company. The fault, if any, has been thus committed by the plaintiff's wife or her office. The insurance company is in no way responsible. That being so, the first appellate court could not have fastened the liability of the payment upon insurance company. In such eventuality, the plaintiff could have sued the department/ office for damages on the ground of non remittance if he has suffered losses because of the faults committed by the defendant no.2/office.

9. Unfortunately, none appeared for the plaintiff to point out to the court any valid reason to not disturb the finding rendered by the first appellate court.

10. Accordingly, the substantial question of law is answered in the affirmative. Judgment of the first appellate Court is, thus, not sustainable. Hence, following order is passed.

**ORDER**

(i) The appeal is allowed.

(ii) Judgment and order dated 24.12.2004, passed by 3rd Ad hoc Additional District Judge, Akola in Regular Civil Appeal No. 241/1999 is set aside.

(iii) Judgment and order dated 06.04.1999 passed by Civil Judge Senior Division, Akola in Regular Civil Suit No.244/1995 is restored.

No order as to costs.

**(Anil L. Pansare, J.)**

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