

(2024) 11 NCDRC CK 0089

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 95 Of 2022

Life Insurance Corporation Of

India & Anr

APPELLANT

Vs

Satwinder Kaur

RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Consumer Protection Act, 2019 - Section 58(1)(b)

Hon'ble Judges: A. P. Sahi, President Member; Dr. Inder Jit Singh, Member

Bench: Division Bench

Advocate: Rajesh Mahindru, Anupam Dwivedi, Saumya Dubey, Vikas Kumar Sinha

Final Decision: Dismissed

Judgement

Dr. Inder Jit Singh, Member

1. The present Revision Petition (RP) has been filed by the Petitioners against Respondent as detailed above, under section 58(1)(b) of Consumer Protection Act against the order dated 06.12.2021 of the State Consumer Disputes Redressal Commission, U.T., Chandigarh (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 96/2019 in which order dated 04.04.2019 of District Consumer Disputes Redressal Forum-I, U.T. Chandigarh (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 152/2008 was challenged, inter alia praying for setting aside the order dated 06.12.2021 and dismissing the complaint No. 152/2018.

2. While the Revision Petitioners (hereinafter also referred to as Opposite Parties) were Appellant before the State Commission and Opposite Parties before the District Forum and the Respondent (hereinafter also referred to as Complainant) was Respondent before the State Commission in FA/96/2019 and Complainant before the

District Forum in Complaint No. 152/2008.

3. Notice was issued to the Respondent on 21.02.2022. Parties filed Written Arguments on 16.12.2023 (Petitioners) and 09.10.2024 (Respondent) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that: -

Late Tarandeep Singh son of Respondent had taken Life Insurance Policy from Petitioner-1, which was a money back policy for the term of 20 years, under which the sum assured on death was of Rs.8,00,000/-. The Respondent was the nominee of the insured. The insured died of heart attack on 01.02.2015. The Respondent, being the nominee, filed the claim for the sum assured. No response was given by the Petitioners. Hence, the Respondent/complainant filed complaint before the District Forum.

5. Vide Order dated 04.04.2019, in the CC No. 96/2019 the District Forum has partly allowed the complaint. Aggrieved by the said Order dated 04.04.2019 of District Commission, Petitioners appealed in State Commission and the State Commission vide order dated 06.12.2021 in FA No. 96/2019 dismissed the appeal and upheld the order passed by the District Forum.

6. Petitioners have challenged the said Order dated 06.12.2021 of the State Commission mainly on following grounds:

i) the impugned order on the face of it is illegal and against the law and evidence on record and is liable to be set aside. Both the Fora below failed to consider that premium due on 09.01.2015 was not paid, the ECS had dishonored due to insufficient funds and with 15 days of grace period the premium was not paid as the policy was lapsed on 24.01.2015. Therefore on the date of death of the policy holder on 01.02.2015 the policy being in lapsed condition nothing was payable by the Petitioner. (Relied upon LIC Vs. Mani Ram 2005 (6) SCC 274, LIC V. S. Sindhu 2006 (5)SCC258 and LIC Vs. Ranganath 2014 (2) CPJ 178).

ii) Both the Fora below committed illegality in observing that just because the ECS was presented late the grace period would start from 21.01.2015 and not from the stipulated date in the policy. The State Commission failed to consider that it is the duty of the policy holder to make arrangements for the encashment of ECS from the due date and the delayed non-presentation would not give any benefit to the policy holder. Even if the ECS was presented late it would not give amount to change in the terms and conditions of the policy as ECS are electronic cheque only the petitioner is not bound to present the cheque on the date of cheque, the same can be presented as per the convenience of the petitioner keeping in view large number of policies. (Relied upon LIC & Anr. Vs. Sunita, Civil Appeal No. 6537 of 2021 SPL (Civil) No. 13868 of 2019),

decided on 29.10.2021.

iii) The State Commission failed to consider that the ECS were being continuously failed to consider that the ECS was being continuously dishonoured from January 2014 and the policy holder was depositing the premium in cash for the last about 11 instalments were deposited in cash and ECS were dishonoured for insufficient balance thus the policy holder was fully aware that ECS are being dishonoured for insufficient balance as such he was duty bound to deposit the premium before the expiry of grace period i.e. by 24.01.2015 but due to his own acts the policy was in lapsed condition on the date of his death therefore no amount was payable. The State Commission committed illegality in holding that despite no payment received towards the monthly premium the policy was in force on the date of his death. (Relied upon LIC Vs. Mani Ram 2005 (6)SCC274).

7. Challenge is to order dated 06.12.2021 of the State Commission, vide which appeal filed by the petitioner herein was dismissed and order of the District Commission allowing the complaint and directing the petitioner to pay sum assured of Rs.8 lac alongwith interest was upheld.

8. The short point for consideration in the present case is whether on the date of death of the insured, the policy in question has lapsed or not and whether it was reviveable being within the grace period. It is not in dispute that under the said policy the premium was payable monthly with a grace period of 15 days and for the month of January, 2015 the premium was due on 09.01.2015. It is the case of the insurance company that the grace period expired on 24.01.2015, the insured died on 01.02.2015, hence on the date of the death of the insured, the policy had lapsed. It is not in dispute that although the insured had given standing instructions for payment of premium through ECS to his bank, but in the past most of the times the ECS was getting dishonoured and subsequently the insured used to pay the premium in cash, which used to be accepted by the insurance company. Payment of the premium upto December, 2014 is not in dispute. As regards premium for the month of January, 2015, it is the case of the petitioner that the premium was due on 09.01.2015, but the invoice was sent by ECS centre for collection on 15.01.2015 and the same was dishonoured by the bank on 21.01.2015.

9. District Commission while allowing the complaint has observed that as the ECS bounced/dishonoured on 21.01.2015, having a harmonious construction to the terms & conditions of the policy, the grace period would commence from 21.01.2015 and the grace period expired on 06.02.2015, hence on the death of the insured on 01.02.2015, the insurance policy was in operation, subsisting, existing and had not lapsed, hence there was a deficiency in service on the part of the petitioner/insurance company. Extract of relevant part of the District Forum's order is reproduced below: -

"It is the case, as per proposal form, the monthly installment was to be deducted from the SB account through electronic clearance system and it is the own case as per annexure-4 of the OP under clause (f) that risk coverage was available upto 23.01.2015 as in ECS grace period was 15 days. A perusal of other documents produced on record dhow, ECS was bounced and dishonoured by the bank of the complainant on 21.01.2015 due to insufficient funds and at that juncture deceased DLA was struggling for his life due to heart attack in the PGI. Therefore, grace period having harmonious construction to the terms and conditions was to commence from 21.01.2015 and this grace period expired on 06.02.2015 while the DLA had died on 01.02.2015 meaning thereby on the date of his death, the insurance policy was in operation, subsisting, existing and had not lapsed. Therefore, there was a deficiency in service on the part of OPs."

10. Same contentions were raised by the insurance company before the State Commission in appeal filed by it. However, State Commission agreeing with the findings of the District Forum dismissed the appeal. Extract of relevant portion of the State Commission's order is reproduced below: -

" In this regard, it may be stated here that the due date and mode of payment, for paying the monthly premium, was 09.01.2015 through ECS and the grace period, as per Condition No.2 of the Policy, was 15 days. Both in the written statement and affidavit filed in support of the written statement, the opposite parties have admitted that the invoice was sent for collection on 15.01.2015 vide transaction No.5993574 for the month of 01/2015 by ECS/centre but dishonoured by the Bank on 21.01.2015 due to insufficient funds. This fact stands corroborated from document Annexure R-3, which is NACH Enquiry report placed on record by the opposite parties themselves. Therefore, against the due date i.e. 09.01.2015, the invoice for collection was generated late on 15.01.2015 and further ECS was put on 21.01.2015, on which date, it dishonoured due to insufficient funds. Therefore, in our view, the fault lay with the opposite parties, who put the ECS very late and not on the due date, which was 09.01.2015. In such an eventuality, we do not find any fault with the view expressed by the District Commission that the grace period of 15 days would start from 21.01.2015, which lasted up to 06.02.2015. We are not in agreement with the contention raised by the appellants that grace period would start from the due date i.e. 09.01.2015 and not from 21.01.2015. This argument of theirs is not justifiable as they failed to put ECS on the due date. The deceased life assured died on 01.02.2015 i.e. during the period the policy was in force. Therefore, we are one with the view expressed by the District Commission that on the date, the deceased life assured died, the policy was very much in operation and had not lapsed. Further, the District Commission, having regard to the peculiar facts of the case where the complainant is a widow

whose husband had expired and son also died in prime of life and the complainant was left in lurch, rightly held that liberal interpretation deserved to be given to the terms and conditions agreed inter se the parties. In this view of the matter, we are of the concrete opinion that the death claim of the deceased life assured could not be refused by the appellants on this ground. Therefore, the contention raised by the appellants in this regards stands rejected.”

11. The respondent has argued that the petitioner has relied upon clause 2, payment of premium, wherein it has been vaguely written that a grace period of 15 days will be allowed for payment of monthly premiums, however, the said clause does not specify that the grace period of 15 days would be counted from the due date, irrespective of the date of dishonor of the ECS. The said clause appears to have been vaguely drafted and in such a circumstance a harmonious construction and legal interpretation of the said clause becomes necessary and it would not tantamount to rewriting any terms as alleged by the petitioner herein. The respondent has also contended that even for making payment towards dishonoured cheques, there is grace period of 15 days from the date when the drawer of the cheque receives the notice from the payee informing about the dishonour of the cheque and such grace period does not start from the date of presentation of the cheque or ECS nor does it start from the date when the liability to pay occurs. In the absence of any clear definition of the term “grace period” in the policy document, the provisions of the Payment and Settlement Systems Act, 2007 and that of Negotiable Instruments Act, 1981, apply to the dishonour of electronic fund transfer.

12. The petitioner insurance company on the other hand relied upon clauses 2 & 3 of the insurance policy, which are reproduced below: -

“Clause 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 premiums then due, the policy will still be valid and the death benefit paid after deduction of the said premium as also unpaid Premiums falling due before the next anniversary of the Policy.

If the Policy has not lapsed and the Claim is admitted 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.

Clause 3. Revival of Discontinued Policy: If the policy has lapsed the same can be revived during the life time of the life assured but within a period of 5 years of first unpaid premium and before the date of maturity on submission of the proof of continued insurability to the satisfaction of the Corporation and the payment

of arrears of premium together with interest compounding half yearly at such rate as may be fixed by the Corporation from time to time. The Corporation reserved the right to accept or accept with modified terms or decline the revival or the discontinued policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the proposer life assured.

The Petitioner Insurance Company further contended that:

-That a sum of Rs.4283/- was to be paid as monthly premium on the 9th day of each month by the policy holder.

- That the policy holder had opted for payment of premium by ECS mode which is mentioned in the proposal form itself. For which he gave instruction to his bank and the premium was to be deducted by his bank.

- That from January 2014 to January 2015 the ECS center was sending instructions to the bank of the policy holder and the same was dishonoured on 5 occasions for insufficient funds and the policy holder was depositing the monthly premium in cash due for 2-3 month in cash at the counter of the petitioner.

- That the policy holder was aware that due to insufficient funds the ECS were being denied by its bank as such he was depositing the cash for the past considerable time.

- That for the premium which was due on 9.1.2015 the ECS was send on 15.1.2015 and it was dishonored due to insufficient funds as such the policy lapsed and even within the grace period of 15 days i.e. upto 24.1.2015 the premium amount was not paid therefore the policy was in lapsed condition w.e.f. 24.1.2015.

- That the policy holder expired on 1.2.2015 and on the date of his death the said policy was in lapsed condition.

- That the respondent applied for the claim of the policy amount. Since as per the terms and conditions of the policy the on the date of death of the policy holder the policy was in lapsed condition and no claim was payable therefore the respondent was informed about the same vide letter dated 13.6.2016.

-That the district forum vide order dated 4.4.2019 erroneously observed that as ECS was dishonoured on 21.1.2015 therefore the grace period of 15 days would start from 21.1.2015 and wrongly allowed the claim petition and directed the petitioner to make the payment of sum assured of Rs.8,00,000/- within 2 month failing which with interest @9% p.a. w.e.f. 13.6.2016.

- That during hearing of appeal vide order dated 21.1.2020 it was submitted that there were instructions by which the bank was directed to make payment through ECS and the Hon'ble commission directed to place the same on record. The petitioner filed an

application for additional evidence was filed to place the Circular dt 14.8.2007 for ECS mode of payment, cancelled cheque, total premium collection receipts, Policy status report and communication from the concerned department of LIC. The said application was allowed vide order dated 21.9.2021 and the said documents were taken on record. But appeal was erroneously dismissed vide order dated 6.12.2021 without considering the law and evidence placed on record in illegal manner.

13. The petitioner insurance company has argued that the premium was due on 09.01.2015 and the ECS was sent on 15.01.2015, which was dishonoured due to insufficient fund as such the policy lapsed and the grace period of 15 days ended on 24.01.2015 and premium was not paid by this date. In support of his contentions, the petitioner has relied upon the following judgments of Hon'ble Supreme Court as well as this Commission: -

- i. LIC vs. Mani Ram 2005 (6) SCC 274
- ii. LIC vs. Sindhu 2006 (5) SCC 258
- iii. LIC vs. Ranganath 2014 (2) CPJ 178
- iv. LIC & Anr. Vs. Sunita Civil Appeal No.6537/2021 SLP (Civil) No.13868/2019 decided on 29.10.2021.

14. We have carefully gone through the orders of the State Commission, District Commission and other relevant records and rival contentions of the parties. In this case there are concurrent findings of both the Fora below against the insurance company. After careful consideration of the clauses of the insurance policy referred to above, we are of the considered view that both the Fora below have correctly interpreted the policy clauses to hold that the grace period in the present case would start from 21.01.2015 and end on 06.02.2015 and not on 24.01.2015 as contended by the insurance company. It was held by Hon'ble Supreme Court in Canara Bank Vs. United India Insurance Co. Ltd. & Ors. (2020) 3 SCC 455 that "**Insurance Policy must be read holistically so as to give effect to reasonable expectations of all the parties including the insured and the beneficiaries- it must be interpreted in a commercially sensible manner- coverage clauses to be read broadly, and ambiguity, if any, to be resolved in favour of insured-exclusions to be read narrowly.**"

15. In view of the foregoing, we are of the considered view that State Commission has given a well reasoned order and we find no reason to interfere with its findings. We find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed.

16. The pending IAs in the case, if any, also stand disposed off.