

(1997) 02 NCDRC CK 0035

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Sureshta Devi

APPELLANT

Vs

Life Insurance
Corporation of India

RESPONDENT

Date of Decision: Feb. 25, 1997

Citation: 1997 1 CPC 391 : 1997 1 CPJ 459 : 1997 1 CPR 477

Hon'ble Judges: P.N.Nag , I.D.Bali J.

Final Decision: Complaint dismissed

Judgement

1. THIS appeal is directed against the order of the learned District Forum, Kangra at Dharamshala dated 31.7.93, whereby the complaint of the appellants/complainants (hereinafter to be referred to as the complainants) has been dismissed on the ground that there has been no concluded and valid contract of insurance and the Insurance Company is not liable to pay the insured amount.

2. THE facts of the case, briefly stated, are that the complainants are the wife and children of late Shri Hukam Chand Ambiya, who made a proposal for insurance for an amount of Rs. 50,000/- with the respondent-Life Insurance Corporation of India (hereinafter to be referred to as the L.I.C.). Alongwith the proposal, a premium amounting to Rs. 546.30 was paid and later-on, a sum of Rs. 42.50 was further paid as demanded by the L.I.C. as the premium originally paid was found short. According to the complainants, once the premium was paid as demanded by the L.I.C., which undisputedly has been acknowledged by the L.I.C., the proposal for insurance stands accepted and there is a concluded contract and they are entitled to the insured amount of the policy entered into by the deceased, Hukam Chand Ambiya.

The stand of the L.I.C. is that no doubt the premium was received by them in pursuance of the policy and that was kept in suspense account and vide letter dated 23.11.89, Ex. R-3, for the purpose of final consideration of acceptance of the proposal for insurance, they had sought-after the scrutiny of the proposal, the compliance of the requirements of age proof and special report by M.I., which requirement was never complied with by the deceased Hukam Chand Ambiya with the result that the proposal could not be accepted and communicated to the insured, therefore, there is no subsistence of contract between the parties and as such there is no negligence and deficiency in service on the part of the L.I.C.

Mr. Ajay Sharma, learned Counsel for the complainants vehemently submits that once the premium is accepted in view of the proposal for insurance policy and that the deceased Hukam Chand Ambiya or the complainants had not heard about the rejection of this policy, such a proposal is deemed to have been accepted. Secondly, further the so-called letter dated 23.11.89, according to which, the age proof and special report of M.I. was asked for by the L.I.C. was never received by the complainants and, therefore, the compliance of the requirements aforementioned does not arise.

3. WE have considered the submission of Mr. Ajay Sharma, the learned Counsel for the complainants. No doubt, one Mr. Jaspal Singh, an Officer of the L.I.C., vide his affidavit dated 22.6.93 has deposed that letter dated 23.11.89 addressed to Shri Hukam Chand Ambiya resident of Dari Tehsil Dharamsala, District Kangra, H.P., was despatched to him by Shri Gian Chand, Clerk, by ordinary post under his supervision. However, there is no affidavit of Shri Gian Chand, Clerk, who despatched this letter. Further the letter was sent by ordinary post. Ordinarily, the presumption of truth could have arisen regarding the despatch of this letter but these facts have completely been denied by the complainants. Having regard to the fact that there is no affidavit of Shri Gian Chand, Clerk, who despatched the letter and the letter was despatched by ordinary post, we are of the opinion that the letter dated 23.11.89 addressed to Shri Hukam Chand Ambiya must not have been received by them and submissions in this regard of the complainants must be accepted.

The next question that arises for consideration is whether the proposal of Shri Hukam Chand Ambiya, deceased, for insurance was accepted by the L.I.C.? Unless the proposal is accepted by the L.I.C., and communicated to the insured, the contract is not concluded. There is absolutely no material on record to show that the proposal was accepted by the L.I.C. and the acceptance was communicated to Shri Hukam Chand Ambiya. As such, it cannot be said that the proposal has been accepted by the L.I.C.

4. THE next submission of Mr. Sharma, learned Counsel for the complainants is that once the premium has been paid and the letter dated 23.11.89 is kept out of consideration as the same was not received by Shri Hukam Chand, deceased, it was the duty of the L.I.C., to communicate the acceptance of the proposal as whatever he was supposed to do he had already done. THE Insurance Company is clearly liable for payment of the insurance amount and as such contract should be construed to have been concluded.

Such a submission is again devoid of force. Such precise question infect arose for consideration in a case Life Insurance Corporation of India v. Raja Varireddy Komalavalli Kamba and Others, AIR 1984 SC 1014. The Supreme Court has unequivocally settled the position in respect of the contract of insurance and the position of the Supreme Court in paragraphs 13 & 14 of the judgment may be reproduced below which is a complete answer to the arguments of the complainants. "When an insurance policy becomes effective is well-settled by the authorities but before we note the said authorities, it may be stated that it is clear that the expression "underwrite" signifies "accept liability under". The dictionary meaning also indicates that, (See in this connection the Concise Oxford Dictionary Sixth Edition p. 1267). It is true that normally the expression "underwrite" is used in Marine insurance but the expression used in Chapter III of the Financial powers of the Standing Order in this case specifically used the expression "underwriting and revivals" of policies in case of Life Insurance Corporation and stated that it was the Divisional Manager who was competent to under- write policy for Rs. 50,000/- and above. The mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance. See in this connection the statement of law in Corpus Juris Scandium, Vol. XLIV page 986 wherein it has been stated as: The mere receipt and retention of premiums until after the death of applicant does not give rise to a contract, although the circumstances may be such that approval could be inferred from retention of the premium. The mere execution of the policy is not an acceptance; an acceptance, to be complete, must be communicated to the offerer, either directly, or by some definite act, such as placing the contract in the mail, the test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the Company's executive officers." Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie, acceptance must be communicated to the offerer. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it

unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed. See in this connection statement of law in MacGillivray & Parkington on Insurance Law, Seventh Edition page 94 paragraph 215." Having regard to the clear position in law about the contract of Insurance Policy aforementioned and in the absence of no evidence at all on the file about the communication of acceptance of insurance proposal by the Competent Authority of the Insurance Company, we have no hesitation to hold that there is no contract between the insured and the L.I.C.

In view of the foregoing, there is no substance in the appeal and the appeal is accordingly dismissed.

5. THERE is no orders as to costs. Complaint dismissed.