

CASE NO.:
Appeal (civil) 4806 of 2005

PETITIONER:
LIFE INSURANCE CORPORATION OF INDIA

RESPONDENT:
MANI RAM

DATE OF JUDGMENT: 05/08/2005

BENCH:
CJI R.C. Lahoti, C.K. Thakker & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T
(@ SPECIAL LEAVE PETITION (CIVIL) No.2795 of 2003)

C.K. Thakker, J.

Leave granted.

This appeal is filed by the Life Insurance Corporation of India ("Insurance Company" for short) against the order passed by the District Consumer Disputes Redressal Forum, Bilaspur (Himachal Pradesh), confirmed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla and also confirmed by the National Consumer Disputes Redressal Commission, New Delhi.

The short facts giving rise to the present appeal may now be stated.

Mani Ram-respondent herein son of one Budhu Ram, resident of village Khatehar, Pargana and Tehsil Sadar, District Bilaspur (HP) filed a complaint under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"), before the District Consumer Forum, Bilaspur. In the complaint, it was inter alia alleged by the complainant that his son Ashok Kumar had been insured with the appellant-Insurance Company on August 21, 1995 and premium amount of Rs. 5215/- was paid on the same day. According to the complainant, the next instalment of premium was due on August 21, 1996. Ashok Kumar \026 insured, however, died in an accident on August 2, 1996 at Barmana as the boundary wall of the D.A.V. School fell on him and he was crushed under the debris. The complainant, in view of the subsisting policy, requested the appellant-Insurance Company to pay the insurance claim amount of Rs.2,50,000/- to the complainant, but under the lame and false excuses, the Insurance Company did not pay the amount. Finally, by a communication dated August 11, 1997, the Insurance Company refused to pay any amount. The deceased was unmarried. It was asserted by the complainant that he was the nominee of deceased Ashok Kumar as the father. Since the amount was not paid, the complainant was constrained to approach the District Forum. Accordingly a claim of Rs.2,50,000/- was made along with interest and damages on account of mental torture and financial loss suffered by the complainant.

The appellant-Insurance Company resisted the claim of the complainant by filing a written reply. A preliminary objection was

raised against the maintainability of the complaint on the ground that the policy had lapsed due to non-payment of premium within the prescribed period and hence, the complainant had no right to claim anything. The complaint was, therefore, liable to be dismissed. It was stated that deceased Ashok Kumar was insured with the Insurance Company. It was also admitted that the premium amount was paid to the Insurance Company on August 21, 1995 but the policy holder got the policy effected from a back date, i.e. from April 28, 1995. According to the Insurance Company, therefore, the next premium was due and payable after one year, i.e., on April 28, 1996. Giving benefit of grace period of one month, the premium amount was required to be paid latest by May 28, 1996. No premium, however, was paid on April 28, 1996 nor till May 28, 1996 and the policy lapsed. Since the deceased Ashok Kumar met with an accident on August 2, 1996, there was no subsisting policy in favour of the insured inasmuch as it lapsed on May 28, 1996, the Insurance Company could not be held liable and the complainant was not entitled to any amount.

The District Forum considered the rival contentions of the parties and held that the deceased was assured for Rs.50,000/- on August 21, 1995. It observed that no doubt the policy was back-dated to April 28, 1995, but as the premium was paid on August 21, 1995, next premium became due on August 21, 1996. Since Ashok Kumar met with an accident and died on August 2, 1996, the Insurance Company was liable. It accordingly awarded an amount of Rs.50,000/- with interest @ 12% p.a. and costs of Rs.500/-.

Being aggrieved by the order passed by the District Forum, both, the complainant as well as Insurance Company filed appeal before the State Commission. The grievance of the Insurance Company was that since the policy lapsed on April 28, 1996, it could not have been held liable for an accidental death of Ashok Kumar on August 2, 1996 and the District Forum had committed an error of law in holding the Insurance Company liable. The grievance of the complainant, on the other hand, was that since Ashok Kumar died due to accidental death, as per the terms and conditions of the Policy, the complainant was entitled to a sum of Rs.2,50,000/- and the District Forum was in error in awarding Rs.50,000/- only. The State Commission heard both the appeals and dismissed them by a common judgment. The State Commission relied upon the decision of this Court in *Life Insurance Corporation of India and Another v. Dharam Vir Anand*, (1998) 7 SCC 348 : JT (1998) 7 SC 167.

The Insurance Company approached the National Commission against the orders passed by the Fora below. The National Commission, however, dismissed the Revision Petition by observing that concurrent findings had been recorded that the policy was subsisting and the Insurance Company was liable under the said policy. According to the National Commission, since the first premium was paid on August 21, 1995, the next premium was due on August 21, 1996.

We have heard the learned counsel for the parties. Mr. G.L. Sanghi, learned senior counsel for the Insurance Company submitted that the Fora below have committed an error of law in holding that the policy was subsisting. The counsel admitted that the first premium was paid on August 21, 1995, but in the proposal dated August 19, 1995, a request was made to make the policy effective with back date from April 28, 1995. The request was granted by the Insurance Company and the policy was issued. The period of policy was thus from April 28, 1995 to April 28, 1996. The counsel submitted that deposit/payment of premium amount

was not at all relevant as the policy was for a period of one year from April 28, 1995. It was submitted that the next premium was due on April 28, 1996 and the amount ought to have been paid. Grace period of one month was available to the insured and payment ought to have been made by May 28, 1996. It is not disputed even by the complainant, submitted the counsel, that no payment was made on or before May 28, 1996. The policy, therefore, lapsed on May 28, 1996. Since the assured died on August 2, 1996, the Insurance Company was not liable. It was also submitted that the ratio laid down in Dharam Vir Anand does not apply to the facts of the case.

The learned counsel for the respondent, on the other hand, submitted that the contentions raised by the appellant Insurance Company were considered by the For a below and in the light of the facts and circumstances as also the decision of this Court, orders were passed which call for no interference.

The question for our consideration, therefore, is whether on August 2, 1996, the policy could be said to be valid and subsisting. If the reply is in affirmative, obviously, the complainant was entitled to the amount awarded. If, on the other hand, the policy lapsed, as contended by the Insurance Company, no claim could have been put forward by the complainant and the Insurance Company was right in rejecting the claim.

So far as the factual position is concerned, there is no dispute between the parties. Deceased Ashok Kumar was insured by the Insurance Company and the first premium was paid on August 21, 1995. At the request of the insured, however, the policy was back-dated with effect from April 28, 1995. In our opinion, therefore, the learned counsel for the Insurance Company is right in submitting that one year came to an end on April 28, 1996 and the insured was liable to pay premium on that date as it became due and payable. Taking into account grace period of one month, premium amount ought to have been paid latest by May 28, 1996. Admittedly, no such payment was made either in April, 1996 or in May, 1996. We are impressed by the argument of the learned counsel for the Insurance Company that in the circumstances, the policy lapsed on May 28, 1996.

In this connection, it may be profitable to refer to the terms and conditions of the policy. The policy stated that the date of commencement was April 28, 1995 and the date of maturity would be April 28, 2010 as it was for a period of fifteen years. It is further stated that the policy of assurance "shall be subject to the conditions and privileges" printed on the back of the policy. On the back of the policy, those conditions and privileges have been printed. Condition 2 thereof, is material for our purpose and reads thus:

2. "Payment of premium: A grace period of one month i.e. 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 premium then due, the Policy will be valid and the sum assured paid after deduction of the premium as also the unpaid premium/s falling due before the next anniversary of this Policy. If the premium is not paid before the expiry of the days of grace, the Policy lapses." (emphasis supplied)

From the above condition, it is abundantly clear that payment of premium due had to be made within a grace period of one month. If such payment was made within the said period, the

policy would be treated as valid and the assured would be paid the amount to which he was entitled after deducting the premium amount. But it was also made clear that if the premium was not paid before the expiry of the days of grace, the policy would lapse. As we have already observed hereinabove, the material date was not the date of deposit/payment of premium amount which was August 21, 1995, but the date of policy which was April 28, 1995. Since it was yearly, the payment was due on April 28, 1996, but the assured was entitled to grace period of one month up to May 28, 1996. Neither the premium was paid on April 28, 1996 nor on May 28, 1996. As per condition No. 2, policy lapsed on May 28, 1996. In the eye of law, there was no subsisting policy, on August 2, 1996. Insurance Company was, therefore, wholly justified in rejecting the claim of the complainant and no exception can be taken against such a decision.

The learned counsel for the respondent no doubt relied on the decision of this Court in Dharam Vir Anand. The State Commission also referred to the said decision and observed that the point was covered by the ratio laid down therein and the complainant was entitled to the benefit of that decision. In our opinion, however, the submission of the learned counsel for the Insurance Company is well-founded that it was in the light of the fact-situation of that case that the Court decided the matter in favour of the complainant.

In Dharam Vir Anand, the complainant had taken a policy of insurance on the life of his minor daughter. The policy was issued on March 31, 1990. The risk under the policy was, however, back-dated at the request of the complainant taking advantage of the option given to him in that regard by the Insurance Company which was May 10, 1989 and the premium was paid. On November 15, 1992, the assured committed suicide. The complainant lodged a claim which was refuted by the Company. The question before this Court was whether on that date i.e. November 15, 1992, the policy was subsisting or not? If the date of issuance of policy was to be taken into account, the policy was subsisting. But if back-date would be considered as relevant and material, three years were over and there was no subsisting policy. The Court considered Clause 4-B of the policy which read as under:-

"4-B. Notwithstanding anything mentioned to the contrary, it is hereby declared and agreed that in the event of death of life assured occurring as a result of intentional self-injury, suicide or attempted suicide, insanity, accident other than an accident in a public place or murder at any time, on or after the date on which the risk under the policy has commenced but before the expiry of three years from the date of this policy, the Corporation's liability shall be limited to the sum equal to the total amount of premiums (exclusive extra of premiums, if any), paid under the policy without interest. Provided that in case the life assured shall commit suicide before the expiry of one year reckoned from the date of this policy, the provisions of the clause under the heading "Suicide" printed on the back of the policy". (emphasis supplied)

The Court observed that Clause 4-B made it crystal clear that the date on which the risk under the policy commenced was different from the date of the policy. The Court took into consideration two expressions, viz., "the date on which the risk under the policy has commenced" and "the date of the policy".

The Court held that since two expressions were used which obviously referred to two different periods, effect must be given to both of them. If the contention of the Insurance Company that the relevant date was the date on which the risk under the policy had commenced alone would be considered, the second expression ("the date of the policy") would become redundant. The Court noted the argument on behalf of the Insurance Company that the second date had a limited application for the purpose of giving certain tax relief but negated it. It was further observed by this Court that in construing contractual clauses, the words and terms therein must be given effect to and a part of the contract cannot be rendered meaningless while construing and interpreting the other part of the same contract. According to the Court, when the parties agree to the terms of the contract, it was not open to contend that a particular term was never intended to be acted upon. Accordingly, this Court held that on November 15, 1992, the policy was in existence and the respondent-claimant was entitled to the amount.

In the instant case, Condition 2 expressly provided the period during which the payment was to be made. It also in no uncertain terms stated that if premium was not paid before the expiry of grace period, the policy would lapse. In our view, the ratio in *Dharam Vir Anand* would support the Insurance Company rather than the complainant. If all the terms and conditions of the policy (contract between the parties) have to be kept in mind and given effect to, acceptance of argument on behalf of the complainant would make the last part of Condition 2 redundant, otiose and inoperative; and a court of law cannot construe a document in the manner suggested by the counsel for the complainant. As the premium was due on April 28, 1996 and was not paid till May 28, 1996, the policy lapsed. The *Fora* below hence, committed an error of law in allowing the complaint of the respondent herein and the orders are liable to be set aside.

For the reasons stated above, the appeal deserves to be allowed and is accordingly allowed. The orders passed by all the three Commissions are hereby set aside. The learned counsel for the appellant-Insurance Company, however, stated that the assured died in 1996 and the District Forum upheld the claim of the complainant in December, 2000. He fairly stated that the amount was not 'very high' and has also been paid and the Insurance Company was not so serious about the amount, but since the question of law had been wrongly decided, the Insurance Company had to approach this Court so that the law is settled. Therefore, though we hold the orders not to be in accordance with law and we set aside them, but we direct that no recovery will be effected from the respondent-complainant pursuant to this order.

The appeal is allowed to the extent indicated above. In the facts and circumstances of the case, however, there shall be no order as to costs.