LIFE INSURANCE CORPORATION OF INDIA A

v.

JAYA CHANDEL

(Civil Appeal No. 1089 of 2008)

FEBRUARY 7, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Insurance Act, 1938 – Revival of discontinued Policies – Claim of – Cheque for annual premium of lapsed LIC Policy along with late fee issued before the death of insured but C *received by LIC Corporation after death of insured –Held: Discontinued policy could be revived only after Policy was approved by Corporation and it was communicated to the insured – On facts, cheque was received after the death of insured – Payment was made much beyond the grace period* D *– Also s. 64 VB was not applicable – Thus, Order by the forums below that claim could not have been repudiated set aside.*

K obtained a LIC policy on 28.3.1994 and failed to pay annual premium on or before 28.3.1995. In terms of the policy, the same became inoperative after one month. E **One P issued cheque for annual premium with late fee on 27.6.1995. The insured died on 1.7.1995 and the cheque was received on 12.7.1995. The appellant-Life Insurance Corporation of India repudiated the claim. The widow of the deceased filed a claim petition. The District Forum,** F **the State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission held that the claim could not have been repudiated. Hence the present appeal.**

Allowing the appeal, the Court G

HELD: 1.1 In terms of the conditions of the Life Insurance policy the grace period is one month and therefore the State Commission was not justified in

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holding that the payment was made within the grace period. Condition 3 relates to revival of discontinued policy. A bare reading of the condition shows that it can be revived during the life time of the assured. In the instant case, the cheque was admittedly received after the death of the assured. Further the revival takes effect only after the same is approved by the Corporation and is specifically communicated to the life insured. In the instant case, this was not the situation. [Para 6] [563-E, F]

1.2 Section 43 of the Life Insurance Corporation Act, 1956 enumerates the various Sections of Insurance Act which have application to the Act and section 64-VB of the Insurance Act, 1938 is not one of them. That being so also the National Commission was not justified in its conclusion about the applicability of that provision. [Para 7] [564-G; 565-A]

1.3 The orders passed by the District Forum, the State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission cannot be maintained and are set aside. [Para 8] [565-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1089 of 2008.

From the final Order dated 17.1.2005 of the National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 2068 of 2001.

P.S. Patwalia, Indra Sawhney for the Appellant.

Pragati Neekhra, Suryanarayana Singh and Dharmendra Kumar Sinha for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission (in short

the "National Commission") dismissing the Revision Petition filed by the appellant. Challenge before the Commission was to the order passed in appeal by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla (in short the 'State Commission') which in turn had upheld the order passed by the District Forum, Shimla (in short the 'District Forum').

Background facts in a nutshell are as follows:

One Karan Singh Chandel (hereinafter referred to as the 'deceased') had taken a Life Insurance Policy and was insured for a sum of Rs.1,50,000/-. The annual premium payable was Rs.12,821/-. The policy was taken on 28.3.1994. The annual premium which was to be paid on or before 28.3.1995 was not paid. In terms of the policy, the same became inoperative after one month. The insured died on 1.7.1995. A cheque drawn on Jogindra Cooperative Bank Ltd. for an amount of Rs.12,821/- purportedly on account of premium along with late fee of Rs.189/- was issued by one Prakash Chand Thakur on 27.6.1995. The same was received on 12.7.1995. According to the claimant i.e. widow of the deceased, the cheque was issued before the death of the insured and therefore, the appellant could not have repudiated the claim.

3. The stand of the present appellant was that the policy had lapsed due to non-payment of premium in time. This plea was not accepted by the District Forum on the ground that the cheque was claimed to have been issued on 12.7.1995, but is presumed to have been received earlier than that date. The State Commission held that in any event the amount was received within the grace period and therefore, the claim could not have been repudiated. Accordingly the appeal filed by the appellant was dismissed. The National Forum dismissed the Revision holding that Section 64-VB of the Insurance Act, 1938 (in short the 'Insurance Act') was applicable where the premium is tendered by postal money order or cheque sent by post and the risk may be assumed on the date on which the money order is

A booked or the cheque is posted, as the case may be. Therefore, it was held that there was revival. It did not accept the stand of the appellant that the revival was not a matter of right.

4. In support of the appeal, learned counsel for the appellant submitted that the District Forum, the State Commission and
B the National Commission failed to notice certain relevant factors. It was not explained as to why the cheque was issued by Prakash Chand Thakur and not by the insured. This is sufficient to show that subsequently a cheque was issued to regularize the policy. Further the cheque was received on 12.7.1995 much after the
C death and this itself is sufficient to show that the cheque was not issued prior to the death of the insured. The extract of the receipt register has been filed which shows that the cheque was received on 12.7.1995. The State Commission came to the conclusion that the cheque was issued during the grace period.
D This is also factually incorrect because the grace period is 30 days, the premium was due on 28.3.1995 and the cheque was issued much beyond the grace period. Additionally, Section 64-VB does not apply to the appellant. In this context Section 43 of the Life Insurance Corporation Act, 1956 (in short the 'Act') has
E relevance. Reference is also made to Condition 2 of the policy.

5. In reply learned counsel for the claimant submitted that it is not Condition 2 of the policy which is applicable, but Condition no.3 which is applicable. It is stated that no adverse inference can be drawn because the insured had not signed
F the cheque and merely because the cheque was received after the death of the deceased that does not entitle the appellant to refuse a genuine claim.

Conditions 2 & 3 of the policy read as follows:

G "2. Payment of premium: 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 premium then due, the Policy will still
H be valid and the sum assured paid after deduction of the

said premium as also the unpaid premiums falling due before the next anniversary of the Policy. If premium is not paid before the expiry of the days of grace the Policy lapses. If the Policy has not lapsed and the claim is admitted incase of death under a Policy where the mode of payment of premium is other than yearly, unpaid premiums if any failing due before the next Policy anniversary shall be deducted from the claim amount."

"3. Revival of discontinued Policies: If the Policy has lapsed it may be revived during the life time of the Life Assured, but within a period of 5 years from the date of the first unpaid premium and before the date of maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half yearly. The Corporation reserves the right to accept or decline the revival of discontinued policy. The revival of a discontinued policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the life assured."

6. The grace period is one month and therefore the State Commission was not justified in holding that the payment was made within the grace period. Condition 3 relates to revival of discontinued policy. A bare reading of the condition shows that it can be revived during the life time of the assured. In the instant case the cheque was admittedly received after the death of the assured. Further the revival takes effect only after the same is approved by the Corporation and is specifically communicated to the life insured. In the present case this is not the situation.

Further Section 43 of the Act reads as follows:

43. Application of the Insurance Act.

(1) The following section of the Insurance Act shall, so far as may be, apply to the Corporation as they apply to any

A other insurer, namely:-Sections 2, 2B, 3, 18, 26, 33, 38, 39, 31, 45, 46, 47A, 50, 51, 52, 110A, 110B, 110C, 119, 121, 122 and 123.

(2) The Central Government shall as soon as may be after the commencement of this Act, by notification in the Official
B Gazette, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification, namely:-Sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 43, 44,102 to 106, 107
C to 110, 111, 113, 114 and 116A.

1[(2A)]Section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a licence to act as an agent for the purpose of soliciting or procuring life
D insurance business for the Corporation as if the reference to an officer authorised by the Controller in this behalf in sub-section (1) thereof included a reference to an officer of the Corporation authorised by the Controller in this behalf.]

E (3) The Central Government may, be notification in the Official Gazette, direct that all or any of the Insurance Act other than those specified in sub-section (1) or sub-section (2) shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification.

F (4) Every notification issued under sub-section (2) or sub-section (3) shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so
G laid or the session immediately following.

(5) Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation."

7. Section 43 of the Act enumerates the various Sections
H of Insurance Act which have application to the Act and Section

64-VB is not one of them. That being so also the National Commission was not justified in its conclusion about the applicability of that provision. A

8. Looked at from any angle the orders passed by the District Forum, the State Forum and National Commission cannot be maintained and are set aside. B

9. Appeal is allowed. There shall be no order as to costs.

N.J. Appeal allowed.