

Life Insurance Corporation of India and Another

Vs

Dharam Vir Anand

Civil Appeal No. 5063 of 1998

(CJI M.M. Punchhi, G.B. Pattanaik, A.P. Misra JJ)

09.10.1998

JUDGMENT

G. B. PATTANAİK, J. -

1. Leave granted.

2. This appeal by special leave is directed against the order of the National Consumer Disputes Redressal Commission, New Delhi dated 30-3-1998, dismissing the revision filed by the appellant and confirming the decision of the State Forum, which in turn affirmed the decision of the District Forum. The question that arises for consideration in this appeal is whether under clause 4-B of the policy, the date of the policy is the date on which the policy was issued or the date on which the risk under the policy has commenced. The aforesaid question arises under the following circumstances :

The respondent took a policy of life insurance on the life of his minor daughter Kumari Rajan Anand. The proposal was submitted on 25-3-1990 and the policy was issued on 31-3-1990. The policy contained a clause, clause 4-B which reads as follows :

"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 (sic will apply)."

3. The insurer called upon the insured to indicate whether the policy is to be backdated and if so, the date from which it should be dated back. The insured indicated that the policy should be dated back to 10-5-1989 and the premium for the period 10-5-1989 till 25-3-1990 was accordingly paid. The policy was issued to the insured on 25-3-1990 (sic 31-3-1990). The minor girl whose life had been insured under the policy committed suicide on 15-11-1992. The respondent thereafter lodged a claim for payment of the entire sum for which the life of the deceased had been insured. The Corporation gave a reply to the respondent that his claim for the full sum assured could not be entertained as the assured had committed suicide within three years of the date of the issue of

policy and clause 4-B of the policy would be attracted, The respondent then filed a complaint under Section 12 of the Consumer Protection Act contending, inter alia, that the risk under the policy having commenced w.e.f. 10-5-1989 and the assured having committed suicide on 15-11-1992, clause 4-B will not apply and therefore, the entire sum for which the life of the minor girl had been insured should be paid to the respondent together with the bonus and interest which accrued due. The appellant took the stand before the District Forum contending that though risk under the policy has commenced w.e.f. 10-5-1989 but the date of the policy is 31-3-1990 and therefore, death of the assured having occurred before expiry of three years from the date of the policy, the liability of the Corporation shall be limited to the sum equal to the total amount of premium paid under the policy as per clause 4-B of the terms of the policy. The District Forum however rejected the contention of the appellant and being of the view that the policy in the eye of law having commenced w.e.f. 10-5-1989, the three years' period under clause 4-B of the policy would run from the said date and not from the date of issuance of the policy and, therefore, the Corporation cannot have a limited liability as per clause 4-B of the policy. The said view of the District Forum was upheld in appeal by the State Forum as well as in revision by the National Forum and hence the present appeal.

4. Mr. Salve, the learned Senior Counsel appearing for the appellants, submitted that clause 4-B itself has used the two expressions namely "the date on which the risk under the policy has commenced" and "the date of the policy" and, therefore, the said two expressions cannot have the one and the same meaning. According to Mr. Salve, the date of the policy is the date on which the policy is issued though for the purpose of giving certain tax relief, the insurer has allowed the proposal to have the policy dated back w.e.f. 10-5-1989 and on such an interpretation being given and the assured having committed suicide before the expiry of three years of the date of the policy, clause 4-B is squarely attracted and, therefore, the Corporation will have a limited liability. Mr. Salve, the learned Senior Counsel further contended that if the expression "the date of the policy" and the expression "the date on which the risk under the policy has commenced" is given one and the same meaning, then in a case where a policy is dated back, the proviso in clause 4-B will not operate and such a situation would not have been intended by the parties to the agreement. According to Mr. Salve, while construing a policy of insurance which is nothing but an agreement between the parties, the commercial practice cannot be ignored and, therefore, the dating back of the policy being merely to confer certain relief in tax to the insured, the date of the dating back cannot be held to be the date of the policy itself.

5. Mr. Chadha, the learned counsel appearing for the respondent, on the other hand, submitted that the insured having being called upon to indicate as to whether the policy should be dated back and if so, to indicate the date with effect from which such dating back is to operate and the insured having indicated the same and thereafter the entire premium from the date from which the policy commenced having been paid by the insured and accepted by the insurer, there is no reason to construe the date of the policy to be the date on which the policy was issued. According to Mr. Chadha, the date of the policy must be held to be the date on which the policy has commenced and on being construed in this manner, the death of the assured having taken place after three years from the date of the policy, clause 4-B will not be attracted and, therefore, the appellant-Company will be liable to pay the entire sum for which the life has been insured together with interest thereon and the Forums under the Act did not commit any error in allowing the claim of the respondent.

6. Having examined the rival submissions and having examined the policy of insurance which is nothing but a contract between the parties and having considered the expressions used in clause 4-B of the terms of the policy, we are persuaded to accept the submissions made by Mr. Salve, the learned Senior Counsel appearing for the appellants. In construing a particular clause of the

contract, it is only reasonable to construe that the words and the terms used therein must be given effect to. In other words, one part of the contract cannot be made otiose by giving a meaning to the policy of the contract. Then again, when the same clause of a contract uses two different expressions, ordinarily those different expressions convey different meanings and both the expressions cannot be held to be conveying one and the same meaning. Bearing in mind the aforesaid principle of construction, if clause 4-B of the terms of the policy is scrutinized, it becomes crystal clear that the date on which the risk under the policy has commenced is different from the date of the policy. In the case in hand, undoubtedly the date on which the risk under the policy has commenced is 10-5-1989 but the date of the policy is 31-3-1990 on which date the policy had been issued. Even though the insurer had given the option to the insured to indicate as to whether the policy is to be dated back and the insured indicated that the policy should be dated back to 10-5-1989 and did pay the premium for that period, thereby the risk under the policy can be said to have commenced with effect from 10-5-1989 but the date of the policy still remains the date on which the policy was issued, i.e., 31-3-1990. The death of the life assured having occurred as a result of suicide committed by the assured before the expiry of three years from the date of the policy, the terms contained in clause 4-B of the policy would be attracted and, therefore, the liability of the Corporation would be limited to the sum equal to the total amount of premium paid under the policy without interest and not the entire sum for which the life had been insured. The Forums under the Consumer Protection Act committed gross error in construing clause 4-B of the policy and giving the same meaning to the two expressions in the aforesaid clause 4-B namely "the date on which the risk under the policy has commenced" and "the date of the policy". The construction given by us to the provisions contained in clause 4-B get support if the proviso to clause 4-B is looked into. Under the proviso, if the life assured commits suicide before expiry of one year reckoned from the date of the policy, then the provisions of the clause under the heading "Suicide" printed on the back of the policy would apply. In a case therefore where a policy is dated back for one year prior to the date of the issue of the policy, the proviso contained in clause 4-B cannot be operated at all. When the parties had agreed to the terms of the contract, it is impermissible to hold that a particular term was never intended to be acted upon. The proviso to clause 4-B will have its full play if the expression "the date of the policy" is interpreted to mean the date on which the policy was issued and not the date on which the risk under the policy has commenced. In the aforesaid premises, we are of the considered opinion that under clause 4-B of the policy, the date of the policy is the date on which the policy had been issued and not the date on which the risk under the policy had commenced by way of allowing it to be dated back. In view of our aforesaid construction to clause 4-B, in the case in hand, the respondent in law would be entitled to only the sum equal to the total amount of premium paid under the policy without any interest inasmuch as the death of the life assured has occurred before the expiry of three years from the date of the policy, i.e., 31-3-1990. Even though we have construed the provisions of clause 4-B as aforesaid but so far as the amount of compensation payable to the respondent is concerned, we find from the letter of the Corporation dated 2-2-1995 that the Claims Review Committee has examined the facts of the case and had decided to pay a sum of rupees two lakhs on ex gratia basis and we see no reason why the respondent should not be entitled to receive the said amount together with the interest thereon. The said offer of the Corporation having been made on 2-2-1995, and more than three-and-a-half years having been elapsed since then, we think that the appellant-Corporation should pay a total sum of rupees three lakhs to the respondent-claimant in full satisfaction of the claim of the respondent and this amount should be paid within eight weeks from today. This appeal is disposed of accordingly.