

RAJASTHAN HIGH COURT

Life Insurance Corporation of India

Vs.

Mukesh Devi

Civil Special Appeal No. 443 of 1998

(Dr. Ar. Lakshmanan, C.J. and K.S. Rathore, J.)

08.08.2001

JUDGEMENT

AR. Lakshmanan, C.J.

1. Heard shri M.D. Agarwal, for the appellants, Shri Rinesh Gupta, for respondent No. 1 and Shri Ajay Rastogi, for respondents Nos.2 and 3.
2. This special appeal has been filed by the appellant Life Insurance Corporation of India against the order dated 6-3-1998, passed by the learned single Judge in S. B. Civil Writ Petition No. 288/1992, by which, the writ petition filed by the respondent No. 1- herein has been allowed.
3. The husband of the respondent No.1 herein, namely Rajilal, was employed with Kotputli Rural Electric Co-operative Society Ltd, which was subsequently taken over by the Rajasthan State electricity Board (RSEB). Ramjilal was insured with the appellant corporation under the "Salary Saving Scheme endorsement Policy" with Policy No. 012197041 for an amount of Rs. 50,000/- Ramjilal had authorised his employer namely ; respondents No. 2 and 3 herein to deduct a sum of Rs. 216.70 from his salary every month in respect of the said policy and after deduction, to pay the same to the appellant corporation.
4. According to the appellant corporation, the premium of the said policy for the month of February and March, 1990 was not deducted from the salary of Shri Ramjilal and not remitted to the appellant corporation. Ramjilal expired on 22-5-1990 and, as such, the policy stood lapsed due to the non payment of monthly premium in time and even within the grace period allowed as per the condition of the said policy. The above

contention was reiterated by Shri MD Agarwal, learned counsel appearing for the appellant corporation at the time of hearing.

5. The respondent No.1 herein filed a writ petition for payment of insurance amount. The learned single Judge, after hearing the parties and considering the rival submissions, allowed the writ petition vide order dated 6-3-1998, against which the present appeal has been filed by the appellant corporation.

6. According to Mr. M.D. Agarwal, the learned single Judge has allowed the writ petition in spite of the observations made in the order itself that in case the amount of premium had been delayed or not paid by employer, the liability can be fixed on the employer. According to Mr. M.D. Agarwal, in the present case, it is an admitted fact that the premium for the months of February, 1990 and March, 1990 was not deducted and remitted by the employer to the corporation before the death of the deceased Ramjilal, but in spite of this fact, the writ petition has been allowed, which is an error on the face of the order itself.

7. Mr. M.D. Agarwal has further submitted that there is no obligation on the part of the appellant corporation for payment of the sum insured as the policy was in a lapsed condition at the time of death of the life assured. Moreover, the deceased has fraudulently suppressed the material fact of his sickness, for which he has taken medical leave.

8. According to Mr. Agarwal, the learned single Judge has failed to consider that the deceased had made the deliberate mis-statement in reply to the question Nos. 20 and 21 of the proposal form and hence, the deceased was guilty of deliberate mis-statement and fraudulently suppression of the material information in the proposal form, which formed the basis of the contract between the insurer and insured.

9. We have perused the averments made in the present special appeal as well as the order passed by the learned single Judge on 6-3-1998.

10. The learned single Judge, in our opinion, has considered the rival submissions and on the basis of the material placed before him, came to the conclusion, rightly so and allowed the writ petition filed by the first respondent herein, issuing a mandamus to the appellant-corporation to pay the insured amount of Rs. 50,000/- with interest at the

rate of 12% from the death i.e. 22-5-1990 till actual payment within two months. This judgment was rendered on 6-3-1998. The appellant -corporation has presented the present appeal on 30-4-1998, which is pending before this Court till date.

11. The learned single Judge has further directed that if the payment is not made within the stipulated period, the interest shall be enhanced to 15%. A direction in regard to payment of cost was also issued and the cost was assessed at Rs. 5000/-. The learned single Judge has also directed the respondent - RSEB herein to pay the additional cost to the widow- respondent No.1 herein immediately for the mental agony, she had to suffer. The cost has been assessed at Rs. 5000/- to be paid by the respondent RSEB immediately apart from the cost to be paid by the appellant corporation.

12. It is now represented by Shri Ajay Rastogi, learned counsel for the respondents No. 2 and 3 that the cost, as ordered amounting to Rs. 5000/-, has already been paid by the respondent RSEB. Because of the pendency of the present appeal, the appellant corporation has not made any payment as directed by the learned single Judge. We have already noticed that the deceased has insured his life at Rs. 50,000/?. The wife of the deceased is, therefore, entitled to receive the said sum of Rs. 50,000/- together with the interest for the delayed payment and cost also.

13. Shri Agarwal has argued that since the employer has failed to remit the monthly premium and because of their negligence, the monthly premium could not be deducted, therefore, the liability should be on the management namely; the respondent- RSEB herein.

14. We are unable to accept the said contention. The appellant -corporation, being an insurer, in our opinion, cannot repudiate the claim on account of the policy lapsed due to non payment by the employer; namely; RSEB. This contention was countered by the learned counsel for the first respondent herein by placing before us a judgment of the Supreme Court, reported in *Delhi Electric Supply Undertaking v. Basanti Devi*.¹ In that case also, an identical argument was advanced by the learned counsel for the Insurance Corporation of India, in which the Supreme Court held that an employee is not being given any separate premium notice nor any receipt for the premium received. In that event, it is for the LIC, the insurer, to intimate the employer that the employer has not remitted the premium, which was deducted by it. Under these

circumstances, the Supreme Court held that it will be too onerous a condition to be of any validity in asking the employer to pay the insurance corporation for the fault in paying the monthly premium. Considering the said scheme, the Supreme Court held that such a condition cannot be imposed on an employee. So far as employee, in the instant case, is concerned, he was told by the management that premium will be deducted from his salary every month and the same will be remitted by the employer to the appellant -corporation as per the agreement between the appellant corporation and the respondent RSEB (employer). Therefore, the RSEB, the employer, as an agent of the appellant corporation herein, was to collect the premium on behalf of the appellant-corporation and then to pay the same to appellant-corporation. The RSEB is certainly not an insurance agent within the meaning of the Insurance Act, but is certainly an agent under the provisions of the Contract Act. Mode of collection of premium has been indicated in the scheme itself and the employer has been assigned the role of collecting premium and remitting the same to LIC.

15. As far as employee as such is concerned, employer will be agent of the LIC. When there is no insurance agent as defined in Regulations and the Insurance Act, general principles of the law of agency as contained in the Contract Act are to be applied. The employee was also made to believe that it is the duty of the employer to collect the premium by deducting from the salary of the employee covered under the agreement every month and to remit the same to the LIC. It cannot be said that the RSEB was not liable for deducting and remitting the same to the LIC.

16. The above judgment, in our opinion, directly applies to the facts and circumstances of the present case. We, therefore, have no hesitation in directing the appellant corporation to pay a sum of Rs. 50,000/? with interest at the rate of 6% per annum to the respondent No.1 from the date of death of Ramjilal (insurer deceased) i.e. 22-5-1990 till the actual payment is made, within one month from today. The rate of interest is reduced from 12% to 6% per annum by consent of both the parties. The cost is also reduced from 5,000/- to 2,500/- by consent of both the parties. The payment of cost has already been made by the RSEB.

17. With the above directions, the present appeal stands disposed of.

Order accordingly.

Cases Referred.

1. 1999 (7) JT 486 : (AIR 2000 SC 43)