2022 INSC 1287

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(Arising out of SLP (C) No. 14140 OF 2020)

GOKAL CHAND (D) THR. LRS. Appellant(s)

VERSUS

AXIS BANK LTD. & ANR. Respondent(s)

J U D G M E N T

Hrishikesh Roy, J.

Leave granted.

2. Heard Mr. Harshit Khanduja, the learned counsel appearing for the appellants. Also heard Ms. Suman Bagga, learned counsel representing the Max Life Insurance Corporation (respondent No. 2). The first respondent is represented by Mr. Devendra Kumar Singh.

3. The appeal arises out of a home loan secured by the appellants for which obtaining the life insurance in the name of Gokal Chand (now deceased) was a pre-requisite, as set out by the Axis Bank (respondent no.1).

4. The appellants project that respondent No. 1 bank acting as an agent for respondent No. 2 Insurance Company, on 25.7.2017 sanctioned home loan of Rs. 70,99,172/-. From the disbursed loan amount, insurance premium of Rs. 6,24,172/- was paid on behalf of the insured Gokal Chand by the bank to the insurance company. The loan account has since been settled by the borrowers on 19.3.2020 during the pendency of the appeal.

5. Gokal Chand had faced a medical test on 30.7.2017 as a pre-condition for securing the home loan and although, he died of cardiac arrest soon thereafter on 8.8.2017, the respondent No. 2 refused to settle the loan account when the insurance claim was made. Consequently, a Consumer Complaint was filed by the appellants before the State Consumer Disputes Redressal Commission, Haryana (for short "State Commission"). The State Commission, however, dismissed the Consumer Complaint with the observation that there was no privity of contract between the insurer and the insured.

6. The resultant appeal was dismissed by the National Consumer Disputes Redressal Commission (for short

"National Commission") by the impugned order which has led to the present appeal before this Court.

7. In the impugned judgment, it was noted that the Complainant along with her husband, late Gokal Chand approached the bank for a home loan for which the respondent bank had insisted that a life insurance cover should be obtained from respondent No. 2 on the life of Gokal Chand. The bank accordingly deducted a sum of Rs.6,24,172/- on 25.7.2017 towards the insurance premium. The insured Gokal Chand was subjected to medical tests on 30.7.2017 and although he died on 8.8.2017, the insurance claim was repudiated by respondent No. 2.

Counsel's Submissions

8.1. Mr. Harshit Khanduja, the learned counsel for the appellant would submit that the death of the insured Gokal Chand was intimated on 16.8.2017 with a request to process the insurance claim, however, instead of acting on the information furnished by the appellants, a letter (purportedly dated 3.8.2017) was served on the appellant with the information that the proposal for insurance cover for Gokal Chand is postponed by six

months. The reason disclosed for postponement was "Treadmill Test Finding."

8.2. The appellants have set up a specific case of the respondent no. 2 ante-dating the purported letter indicating postponement of the proposal and unilaterally reversing/refunding the insurance premium, much after the death of the insured was informed to the insurance company.

8.3. According to the appellants, both Forums failed to consider the fact that the insurance company retained the insurance premium for some time after the death of the insured on 8.8.2017 and returned the same only after the appellant, on 16.8.2017, visited the bank for giving information about the death of the insured. This was immediately informed by telephone by the bank to the insurance company and to the insurance company in the late evening of 16.8.2017 (date of death intimation), posted an ante-dated letter (bearing the date as 3.8.2017 on it) which was received by the appellant on 17.8.2017. In the said letter, it was mentioned that the proposal has been postponed for six months. On the next date i.e., on 17.8.2017, the amount debited towards insurance premium was

unilaterally refunded and was adjusted in the loan account.

8.4. The contention here is that when the medical/treadmill test result of the insured was normal, there was no reason to either postpone or to reject the insurance policy when the payable premium was ascertained and debited by the bank to the insurance company. It is, therefore, argued that the act of the insurance company was an afterthought triggered only after the intimation of death and a request for processing claim. Moreover, such an action was unreasonable and this would amount to malafide action.

9.1. Representing the insurance company (respondent No. 2), Ms. Suman Bagga, learned counsel on the other hand submits that the proposal was postponed by six months, and eventually the policy was declined and the insurance company refunded the premium sum to the bank with intimation to the appellant and therefore no concluded life insurance policy existed in this case.

9.2. Ms. Bagga, the learned counsel, therefore argues that the respondent No. 2 is not bound to honor the

insurance claim since notwithstanding the collection of the premium amount the policy was at the proposal stage only. Moreover, unless acceptance of the proposal leads to issuance of an insurance policy, there can be no relationship of insurer and the insured for a valid claim.

10.1. For the respondent bank, Mr. Devendra Kumar Singh, the learned counsel while supporting the stand of the insurance company would submit that they had forwarded the proposal to the insurance company well before Gokal Chand died, and had already remitted the payable insurance premium, and therefore the bank cannot be said to be deficient in rendering service either to the Complainant or to the insured (Gokal Chand).

Reasoning & Decision

11. As can be noted, the home loan document issued by the bank to the applicant Gokal Chand (Annexure P-1) makes it a *condition precedent* to obtain the life insurance cover for getting the home loan. The relevant clause 4.1(k) reads as under: -

> *(k) comprehensively insure and keep insured, with the Bank as a sole beneficiary, (i) the Property for*

its full market value or replacement cost, and (ii) whenever required by the Bank, the risk of death and injury of the Borrower, and

- *shall assign in favour of the Bank and submit to the Bank the original insurance policy document(s) and premium/payment receipts;*

- *Shall promptly inform the Bank of any loss or damage to the Property due to any force majeure or Act of God;*

- *shall do all acts as may be required to maintain the Bank's status of sole beneficiary (under the said insurances) and receive money thereon;*

12. The applicant's declaration in Loan Letter (Annexure P-1) authorizing bank to disburse premium to the insurance company became effective only when all the formalities as required by insurance company were satisfied. The satisfaction of the insurance company's necessary requirements was a *condition precedent*, for disbursal of the premium, as is clear from the following: -

> *"Opting for the loan amount along with life/property insurance in the loan downsize letter shall be considered as the written intent of the customer to avail the insurance. Such selection shall be considered to be explicit instruction from the borrower to the bank in writing to disburse the premium to the insurance company directly and will become effective only on the borrower complying with the all formalities as required by the insurance company..."* [Emphasis supplied]

13. While sanctioning the home loan, the respondent bank, debited the premium amount from the sanctioned loan, and credited the same to the account of the

insurance company. This appears to be the business arrangement of the bank and the insurance company. The policy accordingly was issued by respondent No. 2 in the name of *"Axis Bank Group Credit Life Policy No. 35002367"*.

14. The treadmill test undergone by the insured Gokal Chand on 30.7.2017, did not bring forth any health issue, as the extract thereof would show: -

RESULTS	:	MAX WORK LOAD : 7.28 METS
EXERCISE DURATION	:	6.11
MAX HEART RATE	:	155 bpm 95 % of target heart rate 163 bpm
MAX BLOOD PRESSURE	:	136/80 mm Hg
REASON OF TERMINATION	:	Achieved THR,
BP RESPONSE	:	Normal,
ARRYTHMIA	:	None,
H.R. RESPONSE	:	Normal Chronotropic Response
IMPRESSIONS	:	
Negative for provocable myocardial ischemia		

15. The reason for deferment is surprisingly shown as treadmill test finding, although, no abnormality as such was detected in the said test report, as noted earlier. Yet, the insurance company dispatched an ante-dated letter (written after getting intimation about the death of the insured), informing about 6 months postponement of the proposal.

16. The above would suggest that the insurance company hurriedly dispatched the ante dated letter, purporting to postpone the proposal, only after getting information about the death of Gokal Chand on 16.8.2017. Interestingly, even in this first ante-dated communication of the insurance company, there was no mention of rejection of the proposal or refund of the insurance premium (Rs. 6,24,172), remitted by the bank to the insurance company on 25.7.2017 i.e., the date when the loan amount was sanctioned.

17. The tracking details of the insurance postponement communication of the respondent No. 2 sent through the Blue-Dart Courier reflects that the insurance company's letter was dispatched only at 19:38 hours on 16.8.2017. Significantly, there was no mention in this letter, about the refund of the premium. Thereafter only on 17.8.2017, the premium amount was unilaterally returned by the respondent No. 2 to the loan account, followed by the communication dated 31.8.2017 purporting to decline the insurance policy for the housing loan, sanctioned by the bank.

18. As earlier indicated, firstly, it was a pre-requisite for the home loan borrower to obtain life

insurance coverage and the records show that the loan amount was sanctioned on 25.7.2017. On that very day, Rs. 6,24,172/- was remitted towards insurance premium by the bank to the insurance company. This would suggest that all the requirements for the policy as prescribed by insurance company were satisfied at that stage.

19. On 30.7.2017, the insured was called for medical examination and Gokal Chand's treadmill test, did not flag any health issue. In such backdrop, the communication of the insurance company for postponing the life insurance coverage by six months by adverting to the treadmill test report and that too at a stage after intimation about the death of the insured to the respondents, appears to be a malafide act. Moreover, the decision by the insurance company declining the policy by unilaterally refunding the insurance premium in the given circumstances, would suggest that the respondent No. 2 were deficient in rendering services to the appellant.

20. The respondents, however, contend that there was no binding life insurance contract between the respondent No. 2 and the appellant and the learned

counsel cited *Life Insurance Corporation of India vs. Raja Vasireddy Komalavalli Kamba and Others*[1] to argue that acceptance of an insurance contract may not be completed by mere retention of the premium or preparation of the policy document. The acceptance must be signified by some act by which the law raises a presumption of acceptance.

21. The ratio of above decision in *LIC vs. Raja Vasireddy Komalavalli Kamba* (*supra*) was considered by this Court in *D. Srinivas vs. SBI Life Insurance Company Limited and Others*[2], and it was clarified that while there is no quarrel with the proposition laid in *Raja Vasireddy Komalavalli Kamba* (*supra*), the former only laid down a flexible formula for the court to see as to whether there was a clear indication of acceptance of insurance. The forums below have blindly relied on the same, and failed to take into cognizance the later ratio in *D. Srinivas (supra)*, which stressed on considering the unique facts of the case to determine whether there is a presumption of acceptance of the policy by the insurer.

[1] (1984) 2 SCC 719.
[2] (2018) 3 SCC 653.

22. The latter was a case where a housing loan was obtained by the complainant, his wife, and his son as joint borrowers and thereafter, Rs. 78,150/- was debited from their account towards life insurance premium for the home loan borrowers. The son of the complainant who was covered under the insurance policy died of a heart attack and only after the death, the insurance company informed that the policy was not accepted, and this was followed by refund of the premium amount.

23. When the resultant complaint was not entertained by the National Commission and this was challenged before this court, Justice S. Abdul Nazeer writing for the Court observed, that when medical examination is compulsory before acceptance of premium, it would be logical to say that premium acceptance was based on medical examination, and in a situation where premium is accepted, the pre-condition of medical examination stands waived. In such circumstances, a concluded contract governs the parties and when such claim is repudiated, the same was held to be a case of deficiency of service in a concluded insurance contract.

24. The following relevant passages from *D. Srinivas* (*supra*) which merit our endorsement in the present facts are extracted below, for ready reference: -

> *"**10.** It is clear from the above that the proposer was willing to join the life insurance coverage from the respondent Insurance Company subject to his undertaking medical examination and for his willingness he authorised the bank to debit his account for payment of the premium. This clearly implies that medical examination was to take place prior to the premium being debited from the bank account of the proposer. The specific condition in the policy is that in case the loan amount exceeds Rs 7.5 lakhs the medical examination was compulsory. If the medical examination was compulsory for such cases it should have been done along with filing of the proposal form before the payment of the premium. If the proposal was not accepted for any reason the premium would have been credited to the account of the proposer. The premium has been refunded after 23-2-2011. From this, it is clear that the Insurance Company had not rejected the proposal before 23-2-2011.*
>
> ***** ***** ***** *****
>
> ***12.** …The insurance contract being a contract of utmost good faith, is a two-way door. The standards of conduct as expected under the utmost good faith obligation should be met by either party to such contract.*
>
> ***13.** From the aforesaid clause, it may be seen that the condition precedent for acceptance of the premium was the medical examination. It would be logical for an underwriter to accept the premium based on the medical examination and not otherwise. Therefore, by the very fact that they accepted the premium waived the condition precedent of medical examination.*
>
> ***14.** It is an admitted fact that the premium was paid on 29-9-2008. That it was only on 18-1-2011 that the respondent Insurance Company informed the appellant that the policy was not accepted by them. We are unable to fathom the reason for such excessive delay in informing the appellant, which cannot be excused. We are of the opinion that the rejection of the policy must be made in a reasonable time so as to be fair and in consonance with the*

> *good faith standards. In this case, we cannot hold that such enormous delay was reasonable. Moreover, it is borne from the records that the premium was only repaid on 24-2-2011, after a delay of more than one year five months. If we consider above aspects, it can be reasonably concluded that the insurer is only trying to get out of the bargain, which they had wilfully accepted. From the aforesaid circumstances we can easily conclude that the policy was accepted by the insurer.*
>
> ***15**. In the circumstances, there is no reason to believe that there was no complete contract. There is clear presumption of the acceptance of the proposal in favour of the proposer. Therefore, the majority view of the Commission would not sustain."*

25. Guided by the above judgment in like circumstances, the latter ratio is applicable to the facts at hand. Though, we acknowledge that there is no excessive delay in the current case between medical test & repudiation unlike in *D. Srinivas (supra)*, where the period was over 2 years, what needs to be focused upon in the interest of justice is the trigger & surrounding circumstances which led to the rejection of proposal by the insurance company. In that light, the conduct of the respondent No. 2 cannot be countenanced against the good faith standards that an insurance contract warrants. In this case, the pre-condition for the home loan as stipulated by the respondents was that life of the borrower will have to be insured. Only after assessment of the applicant's credentials, the loan was approved. When the loan amount was sanctioned, the premium amount was

kept aside and was credited to the insurance Company and the insured was subjected to a medical test which showed normal health status. Thus, premium was accepted and retained for the life insurance and no change of this position was found necessary even after the treadmill test result of the insured. This entire procedure would suggest, at least from the insurer's perspective, that the insurance process was complete & all mandatory requirements were met. Significantly, there was no contrary communication by the respondent No. 2 indicating otherwise as well. Moreover, when the death information was conveyed to the respondents, most surprisingly, that was the trigger that led to the insurance company to issue a back dated letter deferring the insurance process, which was followed by refund of the premium a few days later, and then the repudiation after that.

26. The case at hand shows clear malafide on the part of respondent No. 2 in the manner they dealt with the insurance policy, after learning of the death of the insured person on intimation from the affected persons. The way the issue was addressed by the respondent No. 2 following the information conveyed does fail, in our

opinion, the test of Reasonable Conduct. On top of that, to cover up their late reaction, most tellingly, the ante dated letter under the garb of an unfounded medical reason was dispatched. These in our opinion, amount to a clear case of deficiency of service and a non-bonafide conduct by the respondent no.2. The contrary finding in the impugned order do not pass our judicial scrutiny.

27. We are, therefore, persuaded to conclude that the impugned judgment is unsustainable and the same is set aside. With this order, the appeal and the complaint stand allowed. The respondent No.2 is accordingly directed to process the complainant's insurance claim and remit the payable sum. The parties to bear their own costs.

……J.
[K.M. JOSEPH]

……J.
[HRISHIKESH ROY]

NEW DELHI
DECEMBER 15, 2022