

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-547 of 1990 (O&M)
Date of decision: 28.04.2020

Sukhminder Singh & Ors.

... Appellants

versus

Life Insurance Corporation of India.

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Mr. Rishabh Bajaj, Advocate for
Mr. Gaurav Chopra, Advocate,
for the appellants.

Ms. Baani Chhibber Mahajan, Advocate for
Mr. Prateek Mahajan, Advocate
for the respondent.

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ARUN MONGA, J.

1. This is plaintiffs' regular second appeal against the judgment and decree dated 29.11.1989 passed by the First Appellate Court vide which the judgment and decree dated 05.12.1984 passed by the trial Court decreeing the suit of the plaintiffs for recovery of Rs.1,00,000/- along with interest and costs, has been reversed. Consequently, the suit of the plaintiffs has been dismissed.

2. For convenience, parties herein have been addressed as per their recital before the trial Court. The facts leading to the filing of the instant regular second appeal are that, plaintiff Sukhminder Singh filed a suit seeking recovery of insurance amount of Rs.1,00,000/- along with interest and other benefits accrued thereupon. It was averred that his son

Hardip Singh(deceased) during his lifetime had purchased insurance policy No. 22980324 on 28.05.1980 and had paid first half yearly installment. It is the case of the plaintiff that the next installment falling due on 28.11.1980 was belatedly paid with next due installment along with interest on 28.05.1981. Unfortunately, the policy holder died on 31.05.1981. Sukhminder Singh, being nominee, submitted the claim of the sum insured of Rs.1,00,000/-, but it was declined by the insurance company, leading to the filing of civil suit.

3. The defendants No.1 to 3- Life Insurance Company contested the claim of the plaintiff on the ground that policy in question had already lapsed as on 28.05.1981 i.e. the date on which premium was deposited. It was also pleaded that Hardip Singh was already dead prior to 28.05.1981 and not 31.05.1981, as claimed.

4. Defendants No.4 to 7 i.e. legal representatives of deceased Hardip Singh filed written statement admitting the claim of the plaintiff. Later they were, however, permitted to be transposed as plaintiffs.

5. Based on the pleadings of the parties, the trial Court framed the following issues:-

“1. Whether the plaintiff is entitled to recover the amount of Rs.1 lac along with other benefits as per Policy of Hardeep Singh son of the plaintiff being his nominee?OPP

2. Whether Hardeep Singh died on 31.5.81?OPP

3. Whether the suit is bad for non-joinder of necessary parties?OPD

3-A Whether the suit is not maintainable as pleaded in preliminary objections No.1 and 2 of the written statement?OPD

4. Whether Policy of Hardeep Singh had lapsed before his death, If so its effect?OPD

5. *Whether this court has no jurisdiction to entertain the present suit as alleged in para No.11 of the written statement?OPD*

6. *Relief.”*

6. The trial Court, on the basis of oral as well as documentary evidence adduced by the parties, negated the plea of Insurance Company that Hardeep Singh died prior to 28.05.1981. On the basis of death certificate produced at the trial, it was held that presumption of truth to the effect that the policy holder died on 31.05.1981 is in favour of the plaintiffs. The policy got revived prior to the death of the policy holder. The Insurance Company failed in rebuttal as neither original death register was produced nor it examined the village functionary.

7. The case of the Insurance Company hinges on the leave of absence of the wife of the deceased from 27.05.1981 to 29.05.1981 and 30.05.1981 to 01.06.1981. Trial Court held that the leave application was neither scribed by the wife of the deceased nor it bore any date. It was held that words ‘Husbands Death’ under the cause of leave column in the leave application were written subsequent to the death of the policy holder. Based on the cross examination of the Administrative Officer and Assistant Branch Manager of the Insurance Company, trial Court held that the policy could be revived even without a certificate of fitness provided the premium had been paid within 6 months of the last unpaid premium. Consequently, the suit of the plaintiffs was decreed for recovery of Rs.1,00,000/- along with interest @ 6% per annum from the date of filing of suit till actual realization of the decreetal amount. Besides this special costs of Rs.2500/- was also granted to the plaintiffs.

8. The First Appellate Court vide impugned judgment set aside

the judgment and decree of the trial Court. Based on the undated leave application of the wife of the deceased for her absence from duty with effect from 27.05.1981 to 29.05.1981 and from 30.05.1981 to 01.06.1981 which mentions 'Husband's death' in the column of cause of leave, it concluded that death took place prior to 28.05.1981. The colleague(DW3-Chander Kanta) working with the wife of the deceased, who scribed the leave application in her testimony deposed that leave application was because of the death. Basis thereof, First Appellate Court reversed the findings of trial Court and dismissed the suit of the plaintiffs. Hence, this regular second appeal.

9. I have heard learned counsel for the parties and have gone through the paper-book with their able assistance.

10. Learned counsel for the appellants Mr. Rishabh Bajaj, Advocate, *inter alia*, argued that no doubt as per the Clause 3 of the policy provided a grace period of 30 days, but the policy could be revived within 5 years from the date of the last unpaid premium. He emphasised on the fact that up to date premium for two installments with interest was paid on 28.05.1981 but as sheer unfortunate and cruel coincidence the policy holder died on 31.05.1981. According to learned counsel for appellant, these material aspects of the matter were taken into consideration by the trial Court. Relying on the death certificate of the deceased, as per which Hardeep Singh had died on 31.05.1981, the trial Court rightly decreed the suit of the plaintiffs and the learned First Appellate Court erred in reversing the well reasoned findings. He further argued that the first Appellate Court ignored the death certificate and on the basis of surmises and conjectures held that Hardeep Singh had died prior to 28.05.1981 and wrongly

dismissed the suit.

11. On the other hand, Ms. Baani Chhibber Mahajan, Advocate learned counsel for Insurance Company supported the judgment passed by the First Appellate Court. She argued that the death certificate was found surrounded with suspicious circumstances. The Appellate Court thus rightly excluded it from the zone of consideration. On the basis of evidence on file, it rightly came to the conclusion that the policy holder had died prior to 28.05.1981. There was no valid policy in force as on 28.05.1981. The policy had since already lapsed and could only be renewed on production of certificate of good health. Thus, the suit of the plaintiffs was rightly dismissed.

12. Perusal of record herein, *inter alia*, shows that the plaintiffs have relied upon Death Certificate(Exh.P/1) which clearly mentions that policy holder Hardeep Singh died on 31.05.1981. The Death Certificatedated 08.06.1981 has been issued by Additional District Registrar of Births and Deaths Ferozepur. The presumption of truth seemingly lies in favor of the said document unless, of course, proved otherwise, in rebuttal by the defendant. It has come also on record that entry in the death register (Exh. C/1) had certain over-writing, based on which the Insurance Company asserted that there was tempering of the death register. The death certificate was, therefore, could not be considered as valid evidence, is the defence of Insurance Company. However, what has to be borne in mind is that the said over writing has the signatures of the Lambardar, Beant Singh who prepared the copy Ex.C1 certifying that the over writing was a fault of the scribe. This Court is of the view that as per Section 17 of the Registrations of Births and Deaths Act,1969 and Section 76 of the Indian Evidence Act,

1872 the said certificate is a public document. In this regard reliance may be had on Resham Singh v. Union of India (P&H)(DB)2008(1)R.C.R.(Civil) 131).

13. Qua rebuttal of presumption of death certificate, the Insurance Company has heavily relied on the testimony of one S.K Malhotra (DW4) to assert that the date of death of the policy holder is prior to 28.05.1981. Said S.K.Malhotra(DW4) who was a Administrative Officer of Insurarnce Company has stated as under:-

"I met the village chowkidar and asked him to show me his register regarding the death of residents of the village but he declined to do so. I also examined a few other residents of the village who offered me the information that the case of death of Hardeep Singh had been manipulated in the death register to due to some claim of policy but those witnesses refused to come forward in order to depose either before me or the court for fear of anonymity with the heirs of the deceased."

There was no independent corroboration of the testimony of this witness (S.K.Malhotra-DW4) and his self serving, one sided and that too completely uncorroborated version lacks the evidentiary value worthy of being acceptable.

14. The Death certificate herein and the entry made in the death register is thus a valid document as Insurance Company has failed to prove that it is not authentic or not genuine. The learned Lower Appellate Court erroneously did not appreciate that the presumption was in favor of the plaintiff and the onus was on the defendant to lead positive evidence to rebut the said presumption.

15. The case of the defendant also rests on the leave application of

the wife of the deceased(Exh.D/1). Learned First Appellate Court has also placed implicit reliance thereupon. However, the First Appellate Court has erred in overlooking and ignoring the fact that the leave of application (Exh. D/1) was not been scribed by the wife of the deceased but one Chander Kanta(DW3), who in her statement admitted as under

"I scribed the application D/1 on the instructions of Smt. Surinderjit Brar staff nurse. I scribed the said application on the same day when she left the hospital."

Further, Chandan Lal (DW 1) in his cross examination admitted that he recognized the signatures of wife Surinderjit Brar on leave application Ex D 1/A but denied that the application was in her hand writing. First Appellate Court overlooked and ignored the fact that the leave application neither bore any date nor was there any date for leave recommendation nor any forwarding date of the letter. On the other hand, Chander Kanta (DW3) in her cross examination admitted as under:-

"It is correct that no date was affixed on the day when this application was scribed. It is also correct no date was given by the matron and there is no date under the sanctioning authority. The number bearing No.316/ 02.06.81 is the dispatch number issued by the matron Miss G.K. Chand."

The evidence adduced thus clearly establishes that the leave application (Exh.D/1) was neither made by the wife of the deceased nor any date was affixed on the leave application. The only date available was 02.06.1981 which was the date of dispatch of the application. Trial Court thus rightly returned the finding that the leave application was apparently made at a later date when the wife of the deceased rejoined the duty on

2.06.1981. The First Appellate Court also failed to appreciate that Trial Court had given a specific finding to the effect that words 'Husbands Death' were written subsequently and thus the so-called interpolation.

16. Adverting now to the policy, that too had already been revived at the time of death of the policy holder on account of the premium having been paid prior to date of death i.e. on 28.05.1981. Apropos, condition 3 of the policy(Exh.DW4/2) is relevant which is as under:-

Revival of Discontinued Policies: *When the premium is not paid within the days of grace the policy passed. It may be revived during the life time of the Life Assure, but within a period of 5 years from the date of the first unpaid premium and before the date of maturity, on submission if proof of continued insurability to the satisfaction of the Corporation and the payment of all arrears of premium together with interest at such rates as may be prevailing at the time of the payment but not exceeding 9%per annum compounding half yearly.*

When the payment was made on 28.05.1981, an interest on account of delayed payment was also charged. Interest of 6 months from the last unpaid premium was charged as on 28.05.1981 even though period of 6 months expired on 27.05.1981. The payment was thus categorized a payment received within 6 months, although the same was to be categorized as a payment made after the expiry of 6 months. S.K. Malhotra, Administrative Officer, LIC (DW 4) in his cross examination also admitted that the interest was charged was for 6 months and not 7 months. Similarly, BL Gandhi (DW 5) too stated that in case a payment of premium is delayed by one day beyond the said six months, the Life Insurance Corporation charges interest for seven months along with a certificate of good health. In case of payment of premium within 6 months, the amount of interest is

calculated by the cashier and checked by the Supervisor. In case the delay is more than six months, then interest chargeable is calculated by the Revival Section along with other requirements to the revival of policy.

The reason for acceptance of premium after 6 months is contained in a Circular dated 22.09.1981 (Ex.DX/1) issued by LIC regarding 'Relief to Policy holders affected by the recent strike by the LIC employees from 2.04.1981 to 15.04.1981. Clause 2 of the above mentioned circular provides as under:-

"While calculating the interest on over-due premium which will be paid late i.e. on or after 16.04.1981 the period between 2.04.1981 and 25.04.1981 may be excluded."

17. There was thus a specific concession to be provided to policy holders for the period of strike 2.04.1981 to 25.04.1981. The payment herein was, therefore, rightly considered to have been made within a period of 6 months. Accordingly, once the payment was made and accepted within time the contract of insurance got revived. S.K. Malhotra, Administrative Officer, LIC (DW 4) in his cross examination also admitted and rightly so, that in case a late premium is paid with interest within 6 months and the premium is accepted, receipt is issued, the contractual obligation between the parties is complete.

18. From the evidence on record it emerges that there was a deemed revival of the policy. It is also borne out therefrom that if late premium was paid within 6 months from the date of last unpaid premium, then there is no requirement to furnish a certificate of good health. In his cross examination S.K. Malhotra, Administrative Officer, LIC (DW 4) has stated that if the premium due on 28.11.80 was paid up to 27.05.1981, the same would have been accepted without production of evidence of good

health.

19. From the perusal of evidence on the whole, this Court is of the view that a certificate of good health was required only if the premium was paid after the expiry of 6 months from the date of the last unpaid premium. Further, it is evident that due to the strike of the employees of Insurance Company from 02.04.1981 to 25.04.1981 there was a concession provided of 14 days. Clause 3 of Circular issued by LIC dated 22.09.1981 regarding 'Relief to Policy holders affected by the recent strike by the LIC employees from 2.04.1981 to 15.04.1981'(Exh.DX/1)provided that in case of revival of policies which had lapsed period of 14 days may be excluded. On the basis of the said concession there was thus no requirement for providing any kind of certificate of good health and the policy of the deceased had revived on payment of the premium amount.

20. From the above discussion, this Court is of the considered view that the findings returned by the First Appellate Court are not sustainable and are liable to be set aside.

21. In the premise, the appeal is allowed. Judgment passed by the trial Court is restored and that of First Appellate Court is set aside. The suit of the plaintiffs is decreed in terms of judgment and decree passed by the trial Court.

22. Pending applications, if any, stand disposed of.

23. No order as to costs.

(ARUN MONGA)
JUDGE

April 28, 2020

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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No