

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.49-50 OF 2019
(@SLP(C) Nos.24070-24071/2015)

MADHAV HARI JOSHI

Appellant(s)

VERSUS

DIVISIONAL MANAGER,
LIFE INSURANCE CORPORATION OF INDIA & ANR.

Respondent(s)

J U D G M E N T

Delay condoned.

Leave granted.

The present appeals arise from the decisions of the National Consumer Disputes Redressal Commission ("the National Commission") dated 26 February, 2015¹ and 29 April, 2015².

The appellant submitted a proposal to the Life Insurance Corporation (LIC) under its Jeevan Aastha Plan on 31 January, 2009. On 15 April, 2009, the Branch Officer of LIC responded to the proposal in the following terms:

"We are in receipt of your proposal for plan Jeevan Astha on 31.1.2009.

Alongwith special reports the case was referred to our divisional office for decision. We have received the decision to complete the proposal with class V health extra.

1 Revision Petition No.4493 of 2014

2 Review Petition No.80 of 2015

Shree Jeevan Astha Plan was a close ended plan up to 21.2.2009. We can offer you another plan. Kindly inform us the plan and accordingly so that we can proceed further in completion of your proposal.”

It is not in dispute that together with the proposal, the appellant had paid an amount of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) inclusive of an amount of Rs.10,000/- towards additional risk premium.

The Jeevan Aastha Plan was open for subscription for 45 days between 8 December, 2008 and 22 January, 2009.

Upon receipt of the above letter dated 15 April, 2009, the appellant addressed a communication to the Chairman of LIC recording his grievance that he had already complied with all formalities, including the payment of additional premium and had undergone a medical test.

In response to his representation, the appellant was issued a communication dated 23 July, 2009 by the Manager (Admn.), LIC. The letter reads thus:

“We are in receipt of your letter dt.27.06.2009 originally addressed to our Chairman. In this regard we would like to inform you that the proposal was accepted by our higher office on 02.03.2009 subject to the following requirements:

- 1) Consent for Cl. V extra
- 2) Reason for nomination if favour of Sister-

in-law

3) Moral Hazard Report by Development Officer

The above decision was informed to the agent (Sri S.S. Joshi) who has introduced the proposal's to convey the same to you in time. It is learnt from the agent that you have not given your consent for extra premium."

Eventually, as it transpires, neither was a policy issued to the appellant nor were his moneys refunded. That led him to institute a complaint before the District Consumer Disputes Redressal Forum, Thane ("the District Forum") in 2012. By his complaint, as amended, the appellant sought a refund of his investment of Rs.1,75,000/- together with interest and compensation in the amount of Rs.5,00,000/-.

The District Forum allowed the complaint by directing LIC to refund the amount of Rs.1,75,000/-. In addition, compensation in the amount of Rs.4,25,000/- was granted on the ground that the appellant had been deprived of his moneys for a period of five years.

The State Consumer Disputes Redressal Commission, Mumbai ("the State Commission") confirmed the order of the District Forum.

LIC instituted revisional proceedings before the National Commission. The direction for the payment of Rs.1,75,000/- has been maintained by the National Commission. The appellant was also granted interest at

the rate of 12% per annum from the date on which the principal amount was paid to LIC till the date on which it was deposited with the District Forum. However, the direction for the payment of compensation has been deleted.

A review petition instituted against the order in revision was dismissed.

Learned counsel appearing on behalf the appellant submits that by the order of the National Commission, all findings of fact recorded in favour of the appellant were confirmed. However, the direction for the payment of compensation has been deleted without any reason or justification.

Learned counsel further submitted that both in the letter dated 15 April, 2009 as well as in the subsequent letter dated 23 July, 2009, the appellant was called upon to pay an extra premium which as a matter of fact, had already been paid. The remaining two conditions in regard to the nomination which was made in favour of a relative and for a 'moral hazard report' by the Development Officer were required to be fulfilled by LIC. Hence, the appellant completed all necessary formalities. Once the proposal was accepted, it has been submitted that there was no justification to deny the issuance of a policy. Moreover, it was submitted that the policy was an equity-based plan. As a result of the retention of the moneys by LIC for nearly five years, the

appellant lost the benefit of an enhancement in the value of his investment in a booming equity market and should be suitably compensated. Hence, it has been urged that the refund ordered with 12% interest would not be a sufficient recompense.

On the other hand, learned counsel appearing on behalf of LIC submitted that LIC had, by its letters, informed the appellant that the plan stood closed on 21 February, 2009 and he could apply for an alternative plan. The appellant having failed to do so, it has been urged that there is no warrant for the grant of compensation and the order of the National Commission does not call for interference.

From a reading of the impugned judgment of the National Commission, it emerges that all findings of fact have, in fact, been recorded in favour of the appellant. For convenience of reference, we extract paragraphs 6, 7 and 8 from the impugned order hereafter:

"6. On a perusal of the letters dated 15-04-2009 and 23-07-2009 issued by LIC we find that the proposal submitted by the complainant was kept pending till he submitted (i) consent for Clause V Express, (ii) the reasons for nomination in favour of sister in law and (iii) moral hazard report from the development officer was received. Thus, the petitioner found the complainant eligible for the Jeevan Aastha policy on his

completing the aforesaid requirements.

7. As regards extra premium amounting to Rs.10,000/-, it is an admitted case that the complainant had paid Rs.1,75,000/- as against the regular premium of Rs.1,65,000/-. In view of the aforesaid payment, the requirement to submit the consent to pay an additional premium became redundant. As regards reasons for nominating sister in law, a perusal of the relevant policy would show that if the person nominated was a distant relative or not related to the life to be assured, such cases were not to be considered and nomination in favour of a close relative was to be insisted upon. If the proposer insisted for nomination in favour of a person not related (included a distant relative) to him/her then a letter was to be sent at his/her address to obtain consent for the desired nomination and a special MHR is to be obtained at least from a Development Officer regarding the genuineness of the nomination to ensure that no moral hazard was involved. In the case before us it is obvious that the complainant was insisting upon nomination in favour of his sister in law. The LIC, therefore, should have sent a letter to her seeking consent for the said nomination. However, no such letter was addressed by the

petitioner to the sister in law of the complainant. As far as special MHR is concerned, it was to be obtained by LIC and not by the proposer so as to verify the genuineness of the nomination and to ensure that no moral hazard is involved. That also was not done in this case and the matter was simply kept pending till the last date for issuing the said policy expired on 21.02.2009.

8. That is petitioner's own case that Jeevan Astha policy was to close on 21.02.2009. Therefore, if any consent was to be obtained from the nominee or any verification was to be done, that ought to have been done well before the date on which the scheme was to close. The proposer cannot be made to suffer on account of the delay and the negligence on the part of the petitioner LIC in not processing the proposal expeditiously and well before the Scheme was to close on 21.02.2009."

These findings are borne out from the record.

It appears from his letter dated 15 April, 2009 that the Branch Manager of LIC had already received a decision to complete the proposal with extra premium. Admittedly, even the extra premium of Rs.10,000/- was paid by the appellant as part of his payment of Rs.1,75,000/-. The remaining formalities that were required to be observed

were to be fulfilled by the Development Officer and not by the appellant. LIC retained the moneys of the appellant for a period of nearly five years. No effort was made to refund the moneys.

In this view of the matter, a deficiency of service was clearly established. The National Commission has awarded interest at 12% per annum on the principal sum of Rs.1,75,000/-. The District Forum had quantified the compensation payable to the appellant at Rs.4,25,000/-. The District Forum did not indicate the basis on which the above computation was made.

Learned counsel appearing on behalf of the appellant submitted that the plan for which he had applied was an equity based market plan and, hence, he has lost the benefit of an escalation in his investment value. There is merit in this submission. The plan in question was not exclusively an insurance based product. By being linked to the equity market, it had an investment element. LIC held on to the moneys of the appellant wrongfully for five years. Its omission to refund has deprived the appellant of the use of his moneys. Hence, a mere direction for the payment of interest on the principal sum will not provide sufficient redress.

In our view, the ends of justice would be met, if the direction, which has been issued by the National Commission, is modified and an additional amount of

Rs.2,00,000/- is directed to be paid towards all the claims, demands and outstandings, including litigation expenses.

The addition which has been directed to be made by this Court shall be paid over to the appellant within a period of one month from today.

Learned counsel appearing on behalf of LIC states that the amount which has been ordered to be paid by the National Commission has already been deposited in the District Forum. The additional amount which has been directed by this Court shall also be deposited before the District Forum within the period stipulated. The amount shall be released to the appellant by the District Forum on proper identification.

We clarify that the above amount of Rs.2,00,000/- shall be in addition to what has been ordered by the National Commission.

The appeals are accordingly disposed of. There shall be no order as to costs.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
JANUARY 04, 2019

ITEM NO.38

COURT NO.12

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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VERSUS

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Respondent(s)

Date : 04-01-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Subodh S. Patil, AOR

For Respondent(s) Mr. R. Chandrachud, AOR
Mr. Karan Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are disposed of in terms of the signed reportable judgment. There shall be no order as to costs.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable judgment is placed on the file)