PETITIONER:
LIFE INSURANCE CORPORATION OF INDIA

Vs.

RESPONDENT:
RAJA VASIREDDY KOMALLAVALLI KAMBA & OTHERS

DATE OF JUDGMENT27/03/1984

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1984 AIR 1014 1984 SCR (3) 350
1984 SCC (2) 719 1984 SCALE (1)561

ACT:
Insurance Law-Contract of Insurance-Proposal and acceptance-Insured filling up the proposal for insurance for Rs. 50,000 on 27.12.1960 and after undergoing medical examination on the same date issues two cheques of Rs. 300 and Rs. 220 towards consideration by way first premium-The Insurance Corporation encash the cheques on 11.1.1961 and the insured dies on 12.1.1961 whether there is a concluded contract of Insurance-When is the acceptance said to be complete in case of contract of Insurance-contract of Act Section 2(h) and 4.

HEADNOTE:
One Late Raja Vasireddi Chandra Dhara Prasad died intestate on 12th January, 1961. He had filled a proposal for insurance for Rs. 50,000 on 27th December 1960. There was medical examination by the doctor on the life of the deceased on 27th, December, 1960. The deceased issued two cheques being the consideration towards the first premium for Rs 300 and Rs. 220 respectively which were encashed by the appellant on 29th December 1960 and 11th January 1961. On 16th January 1961, the widow of the deceased wrote to the appellant intimating the death of the deceased and demanded payment of Rs. 50,000 The Divisional Manager, Masulipatam Branch denied liability on behalf of the appellant on 28th January, 1961. Thereafter there was correspondence between the parties between Ist February 1961 and 23rd December 1963. On 10th January 1964, the respondents filed a suit in the Court of Subordinate Judge, Masulipatam. The trial court dismissed the suit holding, inter alia, that there was no concluded contract, that the proposal was not accepted by the Divisional Manager for some reason or the other by the time the deceased had died, that neither the encashment of the two cheques created a contract of insurance. In appeal, the High Court after ordering certain other additional documents set aside the Trial Court Judgment. Hence the appeal by the Corporation after obtaining the special leave.
Allowing the appeal, the Court
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HELD; 1. Having regard to the clear position in law about acceptance of insurance proposal and the evidence of record in this case, it is clear that the, High Court was in

error. in coming to the conclusion that there was a concluded contract of insurance between the deceased and the Life Insurance Corporation. [360D-E]

2. Though in certain human relationship silence to a proposal might
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convey acceptance but in the case of insurance proposal, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie, acceptance must be communicated to the offer or The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depend simply on the way in which negotiations for an insurance have progressed. [359H, 360A-B]

3: 1. When an insurance policy becomes effective is well-settled by the authorities but it is clear that the expression "underwrite" signifies accept liability under that. The dictionary meaning also indicates that. It is true that normally the expression "underwrite" is used in Marine insurance but the expression used in Chapter III of the Financial Powers of the Standing order in this case specifically used the expression 'funderwriting and revivals" of policies in case of Life Insurance Corporation and stated that it was the Divisional Manager who was competent to underwrite policy for Rs, 50,000 and above. [359 B-D]

3: 2. The mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Acceptance must be signified by some acts or acts agreed on by the parties or from which the law raised a presumption of acceptance. [359D-E]

3: 3 In the instant case, the High Court was in error in coming to the following conclusions;

(i) that there was not sufficient pleading that there was no concluded contract, and non acceptance of the proposal was not sufficient averment that the Divisional Manager was the only competent authority to accept the proposal; (ii) in its view about the powers of the different authorities under Chapter III of the Standing order 1960, dealing with the financial powers; (iii) about the view that the Assistant Divisional Manager having accepted the proposal and (iv) about the assurance given by the Field officers that the acceptance of the first premium would automatically create a concluded contract of insurance' [358E-H]

The Court however directed half the amount of the insurance amount of Rs. 85,000 paid to the Respondents to be refunded to the Corporation. [360F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil appeal No. 2197

From the Judgment and order dated 16.4.70 of Andhra Pradesh High Court in appeal No. 431 of 1965.

Dr. YS Chitale, V. G. Shanker, KL Hathi, Ms. Sadhana, DK Chhaya, MK Arora and Mrs. H. Wahi for the appellant.
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T. S. Krishnamoorthi Iyer, KR. Choudhry and KS.

Choudhary for the respondents.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This appeal is by a certificate granted on 18th September, 1970 by the High Court of Andhra Pradesh under Article 133(1) (a) of the Constitution as it stood at the relevant time against the Judgment and decree of the High Court dated 16th April, 1970. By the said Judgment and decree, the High Court of Andhra Pradesh had reversed the Judgment of the learned Subordinate Judge, Masulipatam dated 19th November, 1964 dismissing the suit of the plaintiffs-respondents against the appellant. Late Shri Raja Vasireddi Chandra Dhara Prashad was the husband of respondent No. 1 and father of the respondents No. 2 to 5 herein. The respondents filed a suit in the Subordinate Court of Sub-Judge being original suit No. 2 of 1964 on 10th January, 1964. The short facts leading to this case are:

One Late Raja Vasireddi Chandra Dhara Prasad (hereinafter referred to as a 'deceased') died intestate on 12th January, 1961. He had filled a proposal for insurance for Rs, 50,000 on 27th December, 1960. There was medical examination by the doctor on the life of the deceased on 27th December, 1960. The deceased had issued two cheques for Rs. 300 and Rs. 220 respectively in favour of the appellant as first premium. Cheque for Rs. 300 was encashed by the appellant on 29th December, 1960. Cheque for Rs. 220 was dishonoured three times and finally encashed on 11th January, 1961. As mentioned hereinbefore, the deceased died on the day following i.e. on 12th January, 1961. On 16th January, 1961, the widow of the deceased, respondent No. 1 herein, wrote to the appellant intimating the death of the deceased and demanded payment of Rs. 50,000. The Divisional Manager, Masulipatam Branch, denied liability on behalf of the appellant Corporation on 28th January, 1961. Thereafter there was correspondence between the parties between 1st February, 1961 to 23rd December, 1963 wherein the respondents-plaintiffs had claimed the payment and the appellant had denied liability for the same.

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On the 10th January, 1964, the plaintiffs filed the suit in the court of Subordinate Judge, Masulipatam. It was alleged in the plaint after setting out the facts which have been set out hereinbefore, that the medical examination report was submitted to the appellant-corporation by Dr. Sri C. Sambasiva Rao, Approved Medical practitioner of the appellant in regard to the medical examination of the deceased. A report described as "All the Friend's report" was duly sent to the appellant with regard to that proposal; and all the preliminaries were completed and it was further alleged that the deceased was assured and told by the local agent and the Field officer of the Corporation that the payment of the first premium would amount to the acceptance of the proposal and advised the deceased to pay the first premium in full. It was, further, stated that the said two cheques were encashed and the appellant had duly appropriated the amount and credited in the accounts towards the premium payable by the deceased. Therefore, it was stated that the deceased had fulfilled his part of the insurance contract and the appellant-Corporation by its overt acts of encashing the cheques and crediting the amounts in its accounts accepted the proposal of the deceased. In the premises it was said in the plaint that there was a concluded and valid insurance contract between the deceased and the appellant-Corporation and that the insurance contracted commenced on 11th January, 1961 being the date of the receipt of the balance towards premium by

the Corporation. It was further stated in the plaint that the office of the Divisional Manager of Masulipatam was the concerned authority to settle the claim of the plaintiffs-respondents and to pay the amount. The contention of the Corporation that the proposal was not accepted and as such there was no concluded insurance contract between the deceased and the Corporation, was untenable, according to the plaintiffs. It was alleged that with full knowledge of the completion of all the preliminaries, the Corporation had encashed the cheques issued towards the first premium and therefore it was the case of the plaintiffs-respondents that the encashment of the cheques amounted in those circumstances in law to an acceptance of the proposal of the deceased. It was further alleged that the appropriation of the amounts by the Corporation towards the first premium by the deceased was only consistent with the acceptance of the proposal. The case of the plaintiffs further was that in this case the first premium was not only received by the Corporation completely on 11th January, 1961 but it was also appropriated by it in its accounts and the said premium amount
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was received by the Corporation without any demur or qualification and that in any event the Corporation must be deemed to have waived by its conduct the formality, if any, of sending communication of its acceptance of the proposal. In the premises, the plaintiffs claimed the said amount along with interest at six per cent per annum from the date of refusal of payment till the date of payment of the demand.

Written statement was filed on behalf of the appellant. In the said written statement, after setting out the facts, it was denied that the payment of the first premium amounted to acceptance of the proposal and the allegation about the assurance given to the deceased as alleged in the plaint was not true nor the alleged assurance if any, valid under law. It was, further stated that the two cheques were not encashed and credited towards the premium account of the proposal but these were kept only in deposit in suspense account without any liability of the appellant. It was further stated that the averments in the plaint that the defendant Corporation cashed the above two cheques and appropriated the amounts and credited these in the account towards premium payable for the proposal were false. It was stated that on the death of the deceased, the amount covering two cheques were lying in the deposit and in the suspense account of the Corporation and was not adjusted towards the premium since the proposal was not considered, the terms of acceptance was not fixed and the premium amount required for the proposal was not calculated. In these circumstances, the appellant Corporation claimed that there was no liability for the risk and as such the plaintiffs had no right to claim and there was no cause of action. It was categorically stated that the cheques were not credited and adjusted towards the premium accounts.

During the trial before the learned Subordinate Judge, five different issues were raised. It is not necessary to set out in detail those issues but the important and main issue was whether there was a concluded valid insurance contract between the deceased and the Life Insurance Corporation of India.

Both documentary and oral evidence were adduced at the Trial. The respondents-plaintiffs examined Shri R.V. Bhupala Prasad, son of the deceased and the Corporation on its behalf examined Shri Jagannadhachari, the Superintendent of

the Corpo-
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ration branch at Guntur. He also produced ex. B-4, the review slip, prepared by the Branch office, Guntur and sent to the Divisional officer, Masulipatam. In his deposition, he had stated that the Divisional Manager was the competent authority for accepting the proposal for Rs. 50,000. Normally it took some time for the Divisional Manager to accept. There was no communication from the Divisional office to the Branch officer accepting the proposal. He, further, stated that the amount would be transferred into the first premium register after the proposal was accepted and the risk covered. He had produced the account books, namely; deposit account book and the first premium account book of the Branch office at Guntur.

Shri Brahmandrao Ramiah Assistant Divisional Manager of the Life Insurance Corporation office at Madras was also examined as the second witness of the defendants. He had further stated that the proposal form was sent from the office at Guntur to the Divisional office at Masulipatam, and Ex. B-1 to B-4 and B-8 were sent in this connection. He further stated that according to the financial powers Standing order, it was the Divisional Manager who was competent to accept a proposal for Rs. 50,000 Ex. B-13 is the copy of the Standing order. The purpose of review slip Ex. B-4 was to enable the Divisional officer to assess the risk and take a decision according to the deponent. In this connection we may refer Ex. B-14 which is the Life Insurance Corporation of India's Proposal Review Slip regarding proposal in the case of the deceased. The endorsement therein of the assistant Divisional Manager read as follows: "NOTES AND DECISION : may be accepted at O.R." WITH E.D.B.

Shri Brahmandrao Ramiah had further stated that the papers were scrutinised by him in addition to the scrutiny by the concerned clerks. He stated that the endorsement marked as Ex. B-14 was initialled by him. He further stated that the letters 'DM' were also written by him indicating that the papers should go to the Divisional Manager on Ex. B-4. He reiterated that the order of acceptance would not be communicated to the party if all the formalities were not complied with; this policy, he stated, was not accepted. When the acceptance was complete and when there was no requirement necessary and if the full first instalment was
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in deposit, it would be adjusted towards premium amount, he stated.

In this connection before the learned Trial Judge, reliance was placed on the Life Insurance Corporation of India Standing order, 1960 (Financial Powers). Chapter III of the Standing order dealt with the powers of the different authorities for, inter alia, 'Underwriting and Revivals of Policy'. The relevant portion of the said Standing order read as follows:-

"Nature of Power	Authority	Extent of Financial power (up to and Including)	
		Rs.	
1. Underwriting and Revivals:			
(a) Standard	Section Head	2,000	(Sum Proposed)
lives and	Supdt or J.O.	5,000	(-do-)
revival on	A.S.O.	10,000	(-do-)

original terms	A.D.M.	25,000	(-do-)
	D.M.	1,00,000	(-do-)

Note: Proposals on standard lives for more than Rs. 1,00,000 should be referred to the Central Underwriting Section."

Learned Subordinate Judge by his judgment dated 19th November, 1964 held that there was no concluded contract. He held that as per the prospectus of Life Insurance Corporation of India the risk under the Corporation policy commenced on the date of receipt of the first premium in full or the date of acceptance whichever was later and the second instalment of the premium falls due on a date calculated from such date of commencement of risk. Learned Trial Judge was of the opinion that the documents in this case coupled with evidence on behalf of the Appellant-Corporation established that the proposal sent by the deceased was for some reason
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or other not accepted by the Divisional office by the time the deceased had died. The Trial Court therefore held that there was no concluded valid insurance contract between the deceased and the Corporation. The Trial Court further noted that it was significant that the case set out in the plaint and the basis of the claim made in the notices sent to the Corporation was not that the proposal was as a matter of fact accepted by the Divisional Manager, on the other hand, claim was that it should be deemed to have been accepted. Considering the evidence and the averments, the Learned Subordinate Judge came to the conclusion that the accounts do not show the position alleged by the plaintiffs-respondents that the amounts paid were appropriated towards the premium and the Trial Court was of the opinion that encashing of the cheques and the want of any further action to be done by the deceased did not themselves create a contract of insurance between the deceased and the Corporation. The Trial Court was of the opinion that the proposal must be accepted by the Divisional Manager and that alone could give rise to a valid contract of insurance which never happened in this case. The Trial Court further expressed the view that the other averments in the claim that the deceased was assured and told by the local agent and the field officer of the Corporation that the payment of the first premium would amount to the acceptance of the proposal were not established and even if such a representation was made, that did not alter the position as under the rules the payment of the premium could never amount to the acceptance of the proposal if the proposal was not otherwise accepted. In the result, the suit filed by the respondents-plaintiffs was dismissed with costs. Being aggrieved by the said decision, the plaintiffs-respondents field appeal in the High Court. The appellants before the High Court also filed civil miscellaneous petition praying that in the circumstances stated in the affidavit filed therewith the High Court might be pleased to direct the Life Insurance Corporation to produce certain documents viz., proposals, review slips and proposal dockets and the connected papers of the present case and statements furnished by the Divisional office to the Zonal office showing the new business in the year 1960 and proposal register work of Divisional office for the year 1960.

The High Court directed the Life Insurance Corporation to produce the documents referred to above. The High Court by its judgment dated 14th April, 1970 held after considering the standing order Ex. B-13 and the various

documents produced for the first time on record that there was acceptance of proposal and like
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other contracts, the contract of insurance was complete by offer and acceptance. In coming to this conclusion the High Court relied on the alleged adjustment and the endorsement of the review slip recommending that the proposal "may be accepted" made on the relevant file by the Assistant Divisional Manager. Relying on certain other documents which were called for, for the first time by the High Court relating to certain other cases where only the Assistant Divisional Manager made similar endorsement, the High Court came to the conclusion that there was a valid contract. The High Court was of the view that the plea that Divisional Manager was the only authority to accept had not been categorically taken in the written statement filed on behalf of the Corporation. On the other hand, there was a general statement that there was no concussed contract. The High Court was of the view that having regard to the conduct of the parties, there was a concluded contract. The High Court took the view that Ex. B-13 dealing with Chapter III of the Financial Powers did not categorically deal with the acceptance of proposals. The High Court was of the view that the Corporation had not filed any evidence of any order prohibiting other officers one step below in rank, in this case the Assistant Divisional Manager, to exercise the power of Divisional Manager.

In our opinion, the High Court was in error in appreciating the facts and the evidence in this case. We cannot accept the High Court's criticism with the averment in the written statement that there was not sufficient pleading that there was no concluded contract and non-acceptance of the proposal was not sufficient averment that the Divisional Manager was the only competent authority to accept the proposal. The High Court, in our opinions was also wrong in its view about the powers of the different authorities under Chapter III of the Standing order, 1960 dealing with the financial powers. Indeed there was no evidence that the Assistant Divisional Manager had accepted the proposal on the contrary he his deposition as we have indicated before had stated otherwise. He had stated that the purpose of review slip was to enable the Divisional Manager to asses the risk and take a decision. He had never stated that he had taken a decision to accept the proposal. The allegation that there was assurance on behalf of the field officer and local agent to the deceased that the payment of first premium would amount to the acceptance of the proposal cannot also be accepted firstly because factually it was not proved and secondly because
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there was no evidence that such could have been the deposition in law.

When an insurance policy becomes effective is well-settled by the authorities but before we note the said authorities, it may be stated that it is clear that the expression "underwrite" signifies accept liability under'.

The dictionary meaning also indicates that.

(See in this connection The Concise oxford Dictionary Sixth Edition p. 1267.)

It is true that normally the expression "underwrite" is used in Marine insurance but the expression used in Chapter III of the Financial powers of the Standing order in this case specifically used the expression "underwriting and revivals" of policies in case of Life Insurance Corporation and stated that it was the Divisional Manager who was

competent to underwrite policy for Rs 50,000 and above.

The mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance.

See in this connection the statement of law in Corpus Juris Secundum, Vol. XLV page 986 wherein it has been stated as:-

> "The mere receipt and retention of premiums until after the death of applicant does not give rise to a contract, although the circumstances may be such that approval could be inferred from retention of the premium. The mere execution of the policy is not an acceptance; an acceptance, to be complete, must be communicated to the offeror, either directly, or by some definite act, such as placing the contract in the mail. The test is not intention alone. When the application so requires, the acceptance must be evidenced by the signature of one of the company's executive officers."

Though in certain human relationships silence to a proposal might convey acceptance but in the case of insurance proposal silence does not denote consent and no binding contract arises until
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the person to whom an offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as an acceptance, as, prima facie, acceptance must be communicated to the offeror. The general rule is that the contract of insurance will be concluded only when the party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Whether the final acceptance is that of the assured or insurers, however, depends simply on the way in which negotiations for an insurance have progressed.

See in this connection statement of law in MacGillivray & Parkington on Insurance Law, Seventh Edition page 94 paragraph 215.

Reference in this connection may be made to the Statement of law in Halsbury's Laws of England 4th Edition in paragraph 399 at page 222.

Having regard to the clear position in law about acceptance of insurance proposal and the evidence on record in this case, we are, therefore, of the opinion that the High Court was in error in coming to the conclusion that there was a concluded contract of insurance between the deceased and the Life Insurance Corporation and on that basis reversing the judgment and the decision of the learned Subordinate Judge.

The appeal must, therefore, be allowed. We however record that in view of the fact that such a long time has elapsed and further in view of the fact that principal amount together with interest amounting to about Rs. 85,000/- have already been paid to the wife of the deceased and his children, the Life insurance Corporation in this case does not insist on the full repayment of the sum paid and counsel on behalf of the Life Insurance Corporation has stated that they would accept if half of what has been received by the respondents, namely principal together with interest is paid back to the Corporation. We order accordingly that the respondents will therefore pay back half of the actual amount received both of the principal together with interest within three months from this date.

In the facts and circumstances of the case there will be no order as to costs in this Court.

With the above observations, the appeal is allowed.

S.R. Appeal allowed.

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