

CASE NO.:
Appeal (civil) 4492 of 2000

PETITIONER:
Life Insurance Corporation of India & Anr.

RESPONDENT:
Smt. S Sindhu

DATE OF JUDGMENT: 04/05/2006

BENCH:
B N Srikrishna & R V Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

The short question that arises for consideration in this appeal is whether in the case of a lapsed life insurance policy, the Life Insurance Corporation of India ('the LIC' for short) while paying the reduced sum payable by treating it as a paid-up policy, is liable to pay interest in regard to premiums paid from the respective dates of payment of premiums to date of settlement.

2. A policy of insurance dated 11.3.1994 for an assured sum of Rs.5 lakhs with risk commencing from 4.12.1993 was issued in regard to the life of K. Thankachan under the 'money back policy' scheme for a period of 20 years. The premium payable was Rs.8,306/- every quarter. The conditions of the policy made it clear that the policy will be in force only if the premiums were paid regularly, every quarter, and that if the premium was not paid before the expiry of the grace period provided, the policy will lapse. K. Thankachan paid the premiums till 4.6.1994 and did not pay the premiums thereafter. In August, 1996, he opted for revival of the policy by paying the arrears of premium from 4.9.1994 to 4.6.1996 with interest. Accordingly, the policy was revived and he paid the premium till 4.12.1996. Thereafter, the policy again lapsed from 4.3.1997 as premium was not paid. K. Thankachan died on 5.12.1997 and his widow/nominee (the respondent herein) made a claim for payment of the amount under the policy, by letter dated 1.1.1998.

3. Condition No.4 of the policy contains the exceptions to lapsing of the policy. The portion of the said condition relevant for our purpose, is extracted below :-

"4. Non-forfeiture Regulations: If, after atleast three full years premiums have been paid in respect of this Policy, any subsequent premium be not duly paid this policy shall not be wholly void, but shall subsist as a paid-up policy for a reduced sum payable on the Date of Maturity or at the Life Assured's prior death provided the paid up sum assured is not less than Rs.250. The amount of paid up assurance for integral number of years' premiums paid will be calculated as per Table given below. The policy so reduced shall thereafter be free from all liability for payment of within mentioned premium but shall not be

entitled to participate in future profits. The existing bonus additions if any, will remain attached to the reduced paid up policy.

(Emphasis supplied)

4. The 'paid up value' of the policy was arrived at Rs.1,13,750/- as per Condition (4) of the policy and was paid by the LIC to the respondent on 26.3.1998, on her executing a full and final settlement discharge. As the policy of insurance with profit plan was eligible for bonus only if premiums are paid at least for a period of 5 years and as the insured had paid premium only for a period of three and quarter years, the policy was found to be ineligible for bonus.

5. The respondent approached the Consumer Disputes Redressal Forum, Kollam, on 30.4.1998, praying for a direction to the LIC to pay her the entire sum assured under the policy namely, Rs.5 lacs with accrued bonus and interest at 12% per annum, as also Rs.25,000/- as compensation for deficiency of service and Rs.5,000/- as costs.

6. The Appellant (LIC) resisted the said claim pointing out that it had released the paid-up value of Rs.1,13,750/- in terms of the policy, in full and final settlement and it had no liability either to pay the assured sum or bonus or any interest. The District Forum by order dated 28.8.1998 rejected the contention of the respondent that she is entitled to the assured sum of Rs.5 lacs or bonus. It held that the respondent was only eligible for payment of Rs. 1,13,750/- as paid-up value in terms of Condition No.4 of the policy. The District Forum, however, directed the LIC to pay interest at 15% per annum (on the sum of Rs.1,13,750/-) from the respective dates of receipt of the amounts of premium to date of settlement. For grant of such interest, the District Forum relied on the decision of this Court in Harshad J. Shah v. L.I.C. of India [1997 (5) SCC 64].

7. An appeal was filed by the LIC before the Kerala State Consumer Disputes Redressal Commission contending that it was not liable to pay interest from the date of receipt of the premiums, and the decision in Harshad J. Shah (supra) did not require payment of such interest. The Commission allowed the appeal in part, on 31.3.1999. It held that the direction to pay interest from the dates of payment of premium was in accordance with the decision in Harshad J. Shah (supra) and did not call for interference. The rate of interest was, however, reduced from 15% to 12% per annum. The revision filed by LIC against the order of the State Commission was rejected by the National Commission on 2.11.1999, on the ground that order of the State Commission did not suffer from any illegality or jurisdictional error. The said order is challenged in this appeal.

8. At the outset, what should be noticed, is that the amount that is paid by LIC in regard to a lapsed policy, is not "refund of the premiums paid on various dates", but a reduced lump sum (calculated as per condition no. 4 of the policy) instead of the assured sum. When what is paid by LIC is not refund of premiums, the question of treating the amount paid by LIC as refund of premiums paid and then directing payment of interest thereon from the respective dates of payment of premium does not arise. That would amount to treating the premiums paid in respect of a policy which lapsed by default, as fixed deposits repayable with a hefty rate of interest. Surely, the intention is

not to reward defaulting policy holders. Moreover, the courts and Tribunals cannot rewrite contracts and direct payment contrary to the terms of the contract, that too to the defaulting party. Be that as it may.

9. We will now examine whether award of interest can be sustained in any manner. It is now well-settled that interest prior to the date of suit/claim (as contrasted to pendente-lite interest and future interest) can be awarded in the following circumstances :

(a) Where the contract provides for payment of interest; or

(b) Where a statute applicable to the transaction/liability, provides for payment of interest; or

(c) Where interest is payable as per the provisions of the Interest Act, 1978.

10. In this case, the contract, that is the insurance policy, provides that if the premium is not paid (after regularly paying premiums for a period of three full years), the policy shall subsist only as a paid up policy for a reduced sum (calculated as per Table given in Condition No. (4) of the policy) payable on the date of maturity or at the prior death of the life assured. It does not provide for payment of interest on the premiums paid. In fact, the operative portion of the policy specifically provides that no interest will be paid. The relevant portion extracted below :

"The Life Insurance Corporation of India \005 do by this policy agree, in consideration of and subject to the due receipt of the subsequent premiums as set out in the Schedule, to pay the sum assured (together with such further sum or sums as may be allocated by way of Bonus in the case of 'with profits' policies) but without interest, \005to the person or persons to whom the same is payable in terms of the said Schedule \005 This policy of assurance shall be subject to the condition and privileges printed on the back hereof\005"

(emphasis supplied)

Payment of interest on the premium amounts, from the respective dates of remittance of premiums, is alien to the concept of life insurance. In this case, the assured died on 5.12.1997 prior to the date of maturity. Therefore the reduced sum as a paid up policy became due and payable without any interest on 5.12.1997. The claim was settled by payment of Rs.113,750/- on 26.3.1998, within three months from the date of intimation of death. Therefore, under the contract, no interest is payable by LIC.

11. Where a statute provides for payment of interest, such interest will have to be paid in accordance with the provisions of such statute. Admittedly there is no enactment, or rules made under any enactment, either relating to contracts in general or insurance in particular, which provides for payment of interest in regard to amount payable under such a policy.

12. Let us now consider the provisions of Interest Act, 1978 ('Act' for short) which deals with payment of interest upto the date of suit/claim. The Act was enacted to consolidate and amend the law relating to the allowance of interest in certain cases. The objects and reasons states that the Act was enacted to

prescribe the general law of interest in a comprehensive and precise manner, which becomes applicable in the absence of any contractual or statutory provision specifically dealing with interest. Sub-section (1) of Section 3 of the Act provides that in any proceedings for the recovery of any debt or damages, or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, --

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in that regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

Sub-section (3) of Section 3 makes it clear that nothing in Section 3 shall apply in relation to any debt or damages upon which interest is payable as of right, by virtue of any agreement, or any debt or damages upon which payment of interest is barred, by virtue of an express agreement. Clause (a) of section 2 of the Act defines 'court' as including a tribunal and an arbitrator; clause (c) of Section 2 defines 'debt' as any liability for an ascertained sum of money and includes a debt payable in kind but does not include a judgment debt; and clause (b) defines 'current rate of interest'. Sub-section (1) of Section 4 of the Act provides that notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law. Sub-section (2) of section 4 provides that notwithstanding what is stated in section 3 or section 4(1) of the Act, in the cases of money deposited as security for performance of an obligation, interest is payable from the date of deposit; and in the case of money payable by virtue of a fiduciary relationship, money/property obtained/retained by fraud and money due as dower/maintenance, interest is payable from the date of cause of action. A claim for interest on the amounts of premium paid, from the respective dates of payment of premium to date of settlement of claim, does not find support from any of the provisions of the Act.

13. Even assuming that interest can be awarded on grounds of equity, it can be awarded only on the reduced sum to be quantified and paid from the date when it becomes due under the policy (that is on the date of death of the assured) and not from any earlier date. We do not propose to examine the question as to whether interest can be awarded at all, on equitable grounds, in view of the enactment of Interest Act, 1978 making a significant departure from the old Interest Act (of 1839). The present Act does not contain the following provision contained in the proviso to section (1) of the old Act : "interest shall be payable in all cases in which it is now payable by law." How far the decisions of this Court in *Satinder Singh v. Umrao Singh etc.* [AIR 1961 SC 908] and *Hirachand Kothari (D) by LRs. v. State of Rajasthan & Anr.* [1985 Supp SCC 17] and the decision of the Privy Council in *Bengal Nagpur Railway Co. Ltd., vs. Rultanji Ramji* [AIR 1938 PC.67], holding that interest can be awarded on equitable

grounds, all rendered with reference to the said proviso to section (1) of old Interest Act (Act of 1839), will be useful to interpret the provisions of the new Act (Act of 1978) may require detailed examination in an appropriate case.

14. In this case, we have already noticed that the reduced sum calculated as per the Table in Condition No. (4) of the Policy, became due only on the death of the assured. No interest is payable either under the contract of insurance, or under any statute, or under the Interest Act, 1978 from the respective dates of payment of premium to date of settlement of claim. Therefore the District Forum, the State Commission and the National Commission committed a serious error in awarding such interest.

15. This takes us to the question whether the decision in Harshad J. Shah (supra) lays down any principle of law that LIC should pay such interest on the premium amounts, from the dates of payment of premium, as assumed by the Consumer Forum, State Commission and National Commission. We have carefully examined the said decision and find that no such principle is enunciated therein. In that case, one J. took out four insurance policies on 6.3.1986 through a general agent of LIC. The insured paid the first and second premiums. The third half-yearly premium which fell due on 6.3.1987 was not paid within the prescribed period. On 4.6.1987, the general agent of LIC obtained from J a bearer cheque dated 4.6.1987 for Rs.2,730/-, (being the half-yearly premium in regard to the four policies), encashed the cheque through his son, and deposited the premium with LIC on 10.8.1987. In the meanwhile, the insured died on 9.8.1987. The widow of the deceased, as the nominee under the policy, made a claim with LIC for payment of the sum assured under the four policies. It was repudiated by the LIC on the ground that the policies had lapsed on account of non-payment of half-yearly premium which fell due on 6.3.1987, within the grace period. The widow of the insured submitted a complaint to the State Commission claiming the sum assured under the said 4 policies, namely, Rs.4,32,000/-. The State Commission held that LIC was negligent in its service to the policyholder and directed LIC to settle the claim. On the other hand, the National Commission held that the Insurance Agent was not acting as agent of LIC in receiving the bearer cheque from the insured and therefore, LIC was not liable. That order was challenged by the claimant before this Court. The question that arose for consideration of this Court in that case was whether the payment of premium in respect of a life insurance policy by the insured to the general agent of the LIC can be regarded as payment to the insurer so as to constitute a discharge of liability of the insured. This Court answered the said question in the negative. No other question was raised or considered by this Court. Consequent to its decision, the appeal was disposed of by this Court with the following directions :

"For the reasons aforementioned, we are unable to uphold the claim of the appellants. No ground is made out for interfering with the decision of the National Commission that Respondent 3 in receiving the bearer cheque for Rs.2730 from the insured was not acting as an agent of the LIC. But keeping in view the facts and circumstances of the case we direct the LIC to refund the entire amount of premium paid to the LIC on the four insurance policies to Appellant 2 along with interest @ 15% per annum. The interest will be payable from the date of receipt of the amounts of premium. "

[Emphasis supplied]

What requires to be noticed in that case, is that the default having occurred after payment of premium for only one year, there was no question of application of any 'non-forfeiture provision', nor was it permissible to treat the policy as subsisting as a paid-up policy for a reduced sum. Therefore nothing was payable by LIC under the policy. Consequently there was no direction to pay any amount under or in pursuance of the policy, nor any direction for payment of interest. The claim based on the policy was completely rejected. This court however found that a sum of Rs.2730/- had been remitted after the death of the insured, which was not legally due or payable to LIC. Therefore, it directed refund of the said sum of Rs.2730/- wrongly paid as 'premium' with interest from the date of its payment. Therefore what was awarded was not interest on any sum payable by LIC under the policy or in pursuance of the policy, but interest on the sum of Rs.2730/- which was found to have been remitted to LIC, de hors the policy, on 10.8.1987, to retain which, LIC had no legal right. The sum of Rs.2730/- though paid as 'premium' on 10.8.1997 and referred to by this Court as 'premium' for convenience, was not really due to LIC as 'premium' as the policy had lapsed and the insured had died before that date. There was no claim for refund of Rs.2730/- and the question relating to refund or S.2730/- was not the subject matter of the claim. Therefore, it is clear that the direction to refund Rs.2730/- with interest from the date of its payment was not by way of elucidation of any principle of law nor based on interpretation of any contractual term. This Court while rejecting the claim in toto, apparently, in exercise of power under Article 142, to do complete justice between the parties, directed refund of Rs.2730/- with interest from the date of its payment, on the special facts of that case.

16. As contrasted from Harshad J. Shah's case (supra), in this case the amount paid (Rs.1,13,750/-) is a contractual liability of LIC under condition No.4 of the policy to pay a reduced sum by treating the policy as a paid up policy, on default. The award of interest in Harshad J. Shah's case (supra), being followed by the forum and commissions, is a classic case of a direction issued by this Court in exercise of Article 142 on the special facts, being wrongly interpreted as a general principle of law laid down by this court.

17. We, therefore, allow this appeal and hold that the LIC is not liable to pay any interest on the sum of Rs.1,13,750/-.

18. However, we find that the following order had been passed on 7.8.2000 while granting leave :

"Learned Solicitor General has placed on record copy of the communication received by the instructing counsel dated 26th July, 2000, according to which amount payable to the respondent, as per directions of the Consumer Disputes Redressal Commission, have already been paid. It is submitted that irrespective of the result of the appeal, the amount which stands paid, shall not be sought for any adjustment, in the peculiar facts and circumstances of the case and no relief would be sought in that behalf against the respondent. It is submitted that the question of law involved in the case is of great importance and likely to arise in other cases."

In view of it, this decision does not render the respondent liable to refund any amount already received in pursuance of the order of the consumer forum, even though we have held that the respondent is not entitled to any interest on Rs.1,13,750/-. We may clarify the contents of this para is purely based on a concession made on 7.8.2000.

JUDIS