NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2216 OF 2018
[Arising out of SLP (C) No. 14021 of 2017]

D. SRINIVAS **… APPELLANT**

VERSUS

SBI LIFE INSURANCE CO. LTD.AND ORS. **… RESPONDENTS**

J U D G M E N T

S. ABDUL NAZEER, J.

1. Leave granted.

2. In this appeal, the appellant has questioned the legality and correctness of the order dated 03.02.2017 in First Appeal No.560/2012, passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'the National Commission') whereby the National Commission has allowed the appeal filed by the first respondent herein and rejected the complaint of the appellant.

3. Brief facts necessary for disposal of this appeal are that the appellant along with his wife, Smt. D. Suguna and son Mr. D. Venugopal obtained housing loan of Rs.30,00,000/- (Rupees thirty lacs) in the month of September, 2008 from the respondent Nos. 2 and 3 for construction of a house in Hyderabad. On 29.09.2008, a sum of Rs.78,150/- (Rupees seventy eight thousand one hundred fifty) was debited from their loan account towards SBI Life Insurance Cover under Group Insurance Scheme for home loan borrowers, through master policy holder i.e. State Bank of Hyderabad, covering the Life of Mr. D. Venugopal, who was one of the joint loanees. The proposal form dated 29.09.2008 was accompanied by good health declaration by the insured. D. Venugopal expired on 17.12.2009 due to a massive heart attack. Consequently, the said life insurance obtained in his name came into force, obligating the insurer, the first respondent herein, to pay the outstanding amount in their loan account. The appellant approached the insurer and the bank informing them about the demise of D. Venugopal and requested them to settle the insurance claim and to discharge the outstanding loan amount in their house loan account. Since the insurer did not accede to his request, he filed a consumer complaint before the State Commission.

4. The insurer contested the complaint mainly on the ground that the proposal for the policy was not accepted as the insured did not present himself for medical

examination in spite of repeated requests made by the insurer. It was asserted that the amount of premium of Rs.78,150/- was refunded by cheque dated 10.12.2008 to the State Bank of Hyderabad. Thus, the insurer pleaded no deficiency in service and denied its liability in connection with the payment to the insured.

5. The State Commission allowed the complaint by its order dated 16.07.2012. However, the National Commission, by majority, allowed the appeal and dismissed the complaint filed by the appellant.

6. Learned counsel for the appellant submits that the insurance policy was taken in the name of D. Venugopal in terms of the Insurance Scheme. The proposal was sent along with the premium of Rs.78,150/- on 29.9.2008. Admittedly, the insurance company has received the premium on 13.10.2008. D. Venugopal died on 17.12.2009. This was intimated to the State Bank of Hyderabad on 3.4.2010. Thereafter, several letters were sent to the bank for discharge of the loan amount in terms of the insurance policy. The deceased - D. Venugopal was never called for medical examination. It was only on 18.1.2011 the insurance company had called for medical examination for coverage of life insurance of the deceased and, therefore, the policy could not be completed pending examination and that the proposal was returned. It is clear that there was presumption of acceptance of the proposal in favour of the

deceased as the proposal form along with good health declaration form was accepted by the bank and sent to the insurance company and the premium was debited by the bank from his loan account. Neither the appellant nor the deceased were intimated by the respondents to appear for medical examination. They did not receive any intimation from the respondents that the policy has not been issued even though he continued to remain alive for more than 1 year 3 months. The premium was refunded only after the appellant insisted for clearance of dues vide cheque dated 23.2.2011, nearly 2½ years after the death of the insured. In this view of the matter, the majority view of the National Commission is clearly unsustainable.

7. Learned counsel for the respondents, on the other hand, submits that there is no concluded contract between the parties. Therefore, the insurer is not bound to discharge loan merely on the ground of receipt of premium for issuing policy. The deceased did not appear for medical examination. Therefore, the policy could not be completed on receipt of the death intimation. The premium amount has been refunded. He prays for dismissal of the appeal.

8. We have carefully considered the submissions of the learned counsel for the parties. It is not in dispute that the appellant, his wife and his son D. Venugopal had obtained a housing loan of Rs. 30 lacs from the bank in the month of September, 2008 for the construction of the house. A sum of Rs.

78,150/- was debited from their loan account towards life insurance cover, covering the life of D. Venugopal, who was one of the joint loanees. The proposal form dated 29.09.2008 was also accompanied by good health declaration by the insured. The insurance company received the premium on 13.10.2008. D. Venugopal died on 17.12.2008. This was intimated to the bank on 13.4.2010. A notice dated 14.5.2010 was issued to the bank to settle the loan account. However, the bank did not send any reply to this notice. For the first time on 18.1.2011 the bank sent a reply stating that the insurance company vide reference No.15365 dated 17.10.2008 had called for medical examination for coverage of life insurance of D. Venugopal in respect of the housing loan in question. It was also informed that a communication was sent on 16.12.2008 regarding refund of the proposal amount as the insurance policy could not be completed pending medical examination and the proposal was rejected. The appellant submitted a reply dated 25.2.2011 stating that at no point of time any letter from the insurance company was received calling for medical examination nor did they receive any amount under cheque dated 10.2.2008 said to have been issued. Neither the bank nor the insurance company had ever informed the proposer or the appellant herein about the non-issuance of policy for want of medical certificate though they have

alleged that they have intimated the said fact. The letter dated 17.10.2008 was not sent to the appellant herein.

9. From the scheme it is clear that in the case of joint housing loan the full loan amount will be insured even if the policy is issued in the name of only one loanee. In this case, the insured was D. Venugopal son of the appellant, whereas the loan is the joint loan in the name of the appellant, his son - the insured and wife of the appellant. The insured had signed a declaration which is as under:

> **Good Health Declaration:**
>
> "I declare that I am in sound health, do not have any physical defect/deformity, perform my routine activities independently and, that I have never suffered or have been suffering, or have been hospitalized for any critical illness @ or a condition requiring medical treatment for a critical illness as on date."

10. In cases of loan amount exceeding Rs.7.5 lacs, the provision in the policy is as under:

> **Where the loan Amount Exceeds Rs.7.5 Lacs**
>
> "As I am willing to join for life insurance cover from SBI Life Insurance Co. Ltd. subject to my under-going the medical examination and satisfying the health underwriting criteria of the Company, I authorise the Bank to debit my

> account for the standard gross premium plus any additional premium that may be required by SBI Life based on medical underwriting.
>
> I also note that in the event of SBI Life Insurance Co. Ltd. not being in a position to accept my life insurance for any reason whatsoever, the initial premium amount remitted by the Bank would be refunded and credited back to my account."

11. 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 authorized 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 lacs 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. Our attention has been drawn to the case of ***LIC** v. **Raja Vasireddy Komalavalli Kamba and Ors***., (1984) 2 SCC 719, wherein this Court has clearly stated that the acceptance of an insurance contract may not be completed by mere retention of the premium or preparation of the policy document rather the acceptance must be signified by some act or acts agreed on by the parties or from which the law raises a presumption of acceptance.

13. Although we do not have any quarrel with the proposition laid therein, it should be noted that aforesaid judgments only laid down a flexible formula for the court to see as to whether there was clear indication of acceptance of the insurance. It is to be noted that the impugned majority order merely cites the aforesaid judgment, without appreciating the circumstances which give rise to a very clear presumption of acceptance of the policy by the insurer in this case at hand. 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.

14. 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.

15. It is an admitted fact that the premium was paid on 29.09.2008. That it was only in 18.01.2011 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 re-paid on 24.02.2011, 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 willfully accepted. From the aforesaid circumstances we can easily conclude that the policy was accepted by the insurer.

16. 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.

17. In the result, the appeal succeeds and is accordingly allowed. The order of the National Commission dated 22.11.2016 is hereby set aside and the order of the State Commission dated 16.7.2012 is restored.

18. There shall be no orders as to costs.

……………………..….J.
(N.V. RAMANA)

…………………..…….J.
(S. ABDUL NAZEER)

New Delhi;
February 16, 2018.