

Mrs. Bhumikaben N. Modi & Ors.
v.
Life Insurance Corporation of India

(Civil Appeal No.270 of 2012)

08 May 2024

[A. S. Bopanna and C. T. Ravikumar,* JJ.]

Issue for Consideration

Whether the issuance of Acceptance-cum-First Premium Receipt gave rise to a presumption of acceptance of the policy by the insurer; whether the NCDRC was justified in dismissing the appellants' complaint and reversing the concurrent orders of the forums below, in exercise of its revisional jurisdiction, wherein directions were issued for payment of benefits in terms of the subject life insurance policy and for grant of compensation.

Headnotes[†]

Consumer Protection Act, 1986 – s.21(b) – Revisional power – Insurance – Life Insurance Policy – Deceased submitted proposal for Life Insurance Policy on 06.07.1996 – Issued cheque towards premium on 09.07.1996 – Met with an accidental death on 14.07.1996 – Appellants (widow and children of deceased) claimed benefits based on Insurance Policy – Claim repudiated by respondent primarily contending that the proposal form was accepted only on 15.07.1996 whereas the death of the deceased was on 14.07.1996 and therefore, there was no concluded contract as mere preparation of the policy document is not acceptance so as to create a concluded contract – District Forum allowed the complaint filed by appellants – Appeal thereagainst dismissed by State Commission – In revision, NCDRC reversed the said orders of the forums below and dismissed the complaint – Sustainability:

Held: It is the case of the appellants that the first premium was accepted and a duly signed receipt (Acceptance-cum-First Premium Receipt-Annexure B) therefor was issued by the respondent on 09.07.1996 – The factum of receipt of cheque amount cannot be disputed by the respondent – The cheque amount was received prior to the death of 'the deceased' is also not in dispute – In Annexure B, it is specifically stated that the acceptance of

* Author

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payment would place the insurer on risk with effect from the date of the said Acceptance-cum-First Premium Receipt, subject to the realization of the amount in cash and the terms and conditions of acceptance printed overleaf – What is printed overleaf is not on record as the same was not produced – The circumstances justify the conclusion of acceptance of the proposal prior to the death of ‘the deceased’ – Annexure B would justify drawing of presumption of acceptance of the policy and not otherwise – Thus, in view of the entire circumstances based on the documents in the orders of the District Forum and the State Commission, in the light of the decision in D. Srinivas’s case, the proposal was accepted – No material irregularity or illegality in the conclusions drawn with regard to the acceptance of proposal by the District Forum confirmed by the State Commission with reasons – In the absence of anything suggesting that the State Commission acted in the exercise of its jurisdiction illegally or with material irregularity, interference with an order of the State Commission confirming the order of the District Forum, in exercise of the limited revisional power u/s.21 (b), by NCDRC, is unsustainable – Impugned order set aside and that of the District Forum which was confirmed by the State Commission, is restored. [Paras 19, 23, 24-27, 29]

Consumer Protection Act, 1986 – s.21(b) – Revisional power – Despite reversing the concurrent orders of the forums below in revision and thus, dismissing the appellants’ complaint seeking benefits in terms of the subject policy, NCDRC directed for payment of ex-gratia taking note of the offer made by the respondent to the appellant:

Held: Powers u/s.21(a) and (b) are different and distinct – Powers u/s.21 (b) is very limited – Further, ex gratia is an act of gratis and has no connection with the liability, payable as a legal duty – Also, such an offer was made by the Respondent much earlier even before the matter reached the District Forum, but the appellant had denied to accept such an offer – The impugned order virtually partakes the character of an order modifying the order of the District Forum which was confirmed by the State Commission – No justification for NCDRC to upturn the concurrent orders and to order for the dismissal of the complaint and at the same time issue a direction only to grant Rs.1 lakh as ex gratia merely because such an offer was made by the respondent-insurer in the memorandum of the revision petition – There cannot be any doubt with respect to the position that in the absence of anything suggesting that the State

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Commission had acted in the exercise of its jurisdiction illegally or with material irregularity, interference with an order of the State Commission confirming the order of the District Forum, in exercise of the limited revisional power under Section 21 (b) of the Act, by NCDRC, is without rhyme or reason and cannot be sustained. [Paras 10, 11, 27]

Practice and Procedure – Decision of the Supreme Court, applicable to all cases irrespective of the stage of pendency thereof:

Held: Normally, the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of the stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. [Para 16]

Words and Phrases – “ex gratia” – Discussed.

Case Law Cited

Life Insurance Corporation of India v. Raja Vasireddy Komalavalli Kamba and Ors. [\[1984\] 3 SCR 350](#) : (1984) 2 SCC 719 – held inapplicable.

D. Srinivas v. SBI Life Insurance Co. Ltd. & Ors. (2018) 3 SCC 653; *Murthy v. State of Karnataka & Others* [\[2003\] Supp. 3 SCR 327](#) : (2003) 7 SCC 517 – relied on.

Kongaraananthram v. Telecom Distt. Engineer, Ma-Habubnagar 1990 SCC OnLine NCDRC 24; *Sudesh Dogra v. Union of India & Ors.* (2014) 6 SCC 486; *Gokal Chand (D) Thr. Lrs. v. Axis Bank Ltd. and Anr.* [\[2022\] 17 SCR 739](#) : 2022 SCC OnLine 1720 – referred to.

Books and Periodicals Cited

Oxford Dictionary of Law, 5th Edition.

List of Acts

Consumer Protection Act, 1986; Life Insurance Corporation Act, 1956.

List of Keywords

Insurance; Life Insurance Policy; Proposal form; Accidental death; District Forum; State Commission; Acceptance of the policy by insurer; Revisional jurisdiction; Compensation; Cheque towards

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premium; Repudiation of claim; Premium accepted; Duly signed receipt; Acceptance-cum-First Premium Receipt; Cheque amount received prior to the death of deceased; Acceptance of the proposal prior to the death of deceased; Concluded contract; “ex gratia”.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 270 of 2012

From the Judgment and Order dated 09.12.2010 of the National Consumers Disputes Redressal Commission, New Delhi in RP No. 3384 of 2006

Appearances for Parties

Ms. Manisha T. Karia, Ms. Nidhi Nagpal, Adarsh Kumar, Aditya Kesar, Rohan Trivedi, Advs. for the Appellants.

Kailash Vasdev, Sr. Adv., Ms. Indra Sawhney, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

C.T. Ravikumar, J.

1. The appellants herein were the respondents before the National Consumer Disputes Redressal Commission, New Delhi (for short ‘the NCDRC’). As per the impugned order, the NCDRC allowed revision petition No. 3384 of 2006 filed by the Life Insurance Corporation of India, the respondent herein and reversed the concurrent orders of the forums below passed in favour of the appellants herein and dismissed their complaint that culminated in a direction in their favour for grant of compensation.
2. Succinctly stated, the facts that led to the captioned appeal, are as follows: -

The appellants are the widow and the children of one Shri Narender Kumar Kantilal Modi (hereafter referred to as ‘the deceased’) who met with an accidental death due to electric shock on 14.07.1996. Prior to his death, the deceased submitted a proposal form for Life Insurance Policy on 06.07.1996 and issued cheque of Rs. 3388/- towards premium on 09.07.1996 through cheque No. 187009 dated 08.07.1996 of Dhokla Branch of State Bank of Saurashtra.

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At this juncture, it is to be noted that there is no dispute regarding the permissibility of effecting premium in the said mode. After the death of the deceased the appellants herein claimed benefits based on Insurance Policy Diary No. 832471906. Even after 14 months since the death of the policy holder, the respondent did not give any benefit and as such the appellants were constrained to cause legal notice. The stand of the respondent for repudiating the claim was that the proposal submitted by the deceased was not accepted and therefore there is no concluded contract between the deceased and the respondent. In fact, the respondent had blocked policy No.832471906 and issued Acceptance-cum-First Premium Receipt showing the policy No. 832471906.

3. In the aforementioned circumstances, aggrieved by the repudiation, the appellants herein approached the District Forum by filing complaint No. 1044 of 1997 in terms of Section 11 of the Consumer Protection Act, 1986 (for short "the Act"). As per order dated 19.07.2001, the District Forum allowed the complaint and directed the respondent to pay total outstanding amount payable to the appellants as per terms and conditions of Insurance Policy No. 832471906 along with interest at the rate of 12% per annum till realization within 30 days from the date of receipt of the copy of the order. Further, it was directed to pay Rs. 5000/- to the appellants towards compensation for mental agony and harassment as also Rs. 2000/- towards costs. Aggrieved by the order of the District Forum, the respondent herein/the opponent therein filed an appeal viz. appeal No. 464 of 2002 before the State Commission. The State Commission dismissed the appeal as per order dated 25.07.2006 against which the respondent herein filed a revision petition before the National Commission in terms of the provisions of the Section 21 (b) of the Act. The impugned order was passed thereon and it resulted in reversal of the concurrent orders of the forums below and dismissal of the complaint.
4. Heard, learned counsel for the appellant and also the learned Senior Counsel appearing for the respondent. The factum of submission of proposal for Life Insurance Policy on 06.07.1996 by the deceased and also issuance of cheque bearing No. 1870092 therewithal towards premium are not in dispute. The allotment of policy No. 832471906, rather its blocking in the name of the deceased is also not in dispute. The contention of the appellants before the District Forum was that the respondent had accepted the first premium amount and issued

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Acceptance-cum-First Premium Receipt on 09.07.1996 and in view of the nature of the receipt issued the respondent could not have repudiated the claim and wriggled out of the liability to assume the risk.

5. *Per contra*, the respondent took the stand that the policy prepared was not actually communicated to the deceased and it was blocked on 15.07.1996 owing to the demise of the proposer Shri Narender Kumar Kantilal Modi. Further, it was contended that in the aforesaid circumstances there was no concluded contract between the deceased and the respondent. It is to be noted that even after taking such a stand the respondent offered Rs. 1 Lakh on *ex gratia* basis to the appellants. However, the appellants refused to accept the same and claimed the amount payable in terms of the terms and conditions in Policy No. 832471906. Obviously, the District Forum took note of the rival factual contentions and also the further fact of payment of commission in respect of the policy to the agent and consequently, the defence raised on behalf of the respondent herein to justify that the repudiation of the claim was rejected and the complaint was allowed.
6. In the appeal before the State Commission, the respondent reiterated the contentions unsuccessfully taken before the District Forum. As noticed before, the core contention was that on the date of death of “the deceased” there was no concluded contract between the insurer and the deceased. The contentions raised did not find favour with the State Commission and the State Commission found that the acceptance of the proposal was unconditional and in favour of the deceased and therefore the contract should relate back to the date from which the insurance coverage was granted i.e., w.e.f. 28.06.1996. Assigning such a reason, the State Commission dismissed the appeal. It is the order of the appeal confirming the order of the District Forum that was taken up in revision before the NCDRC by the respondent herein, which culminated in the impugned order.
7. A perusal of the impugned order would reveal that for reversing the concurrent orders and dismissing the complaint, the NCDRC assigned the reason that mere receipt and retention of the premium until after the death of the deceased-applicant or even the mere preparation of the policy and its blocking would not amount to acceptance of the proposal for insurance policy. To arrive at such conclusions, it relied on the decision of this Court in [*Life Insurance Corporation*](#)

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of India v. Raja Vasireddy Komalavalli Kamba and Ors.¹. It was held that the fora below had erred in directing for payment of benefits in terms of the subject policy.

8. Various contentions were raised on behalf of the parties before us to support their rival contentions. We have already taken note of the factual contentions raised on behalf of the parties. In the light of the contentions the question to be considered is whether the NCDRC was justified in reversing the concurrent orders of the forums below and in dismissing the complaint. It is to be noted that even after dismissing the complaint NCDRC took note of the offer made by the respondent to the appellant for payment of an amount of Rs. 1 Lakh *ex-gratia* vide paragraph 4 (d) of the memo of the revision petition, and issued a specific direction to the respondent to pay a sum of Rs. 1 Lakh to the appellant by way of *ex-gratia*. Before advertng to the rival contentions and looking into the correctness or otherwise of the reversal of the concurrent orders we find it appropriate to dilate this aspect of the impugned order.
9. As noted hereinbefore, as per the impugned order the NCDRC dismissed the complaint. Therefore, the question is how can an order carrying a specific direction for payment, even by way of *ex-gratia*, be issued in a complaint after dismissing the same. It is to be noted that such an order was passed in a revision petition filed by the respondent herein. Jurisdiction of the NCDRC under the Act is provided under Section 21 thereof. Section 21 (a) has two Sub-clauses and Sub-clause (i) thereof deals with the original jurisdiction of NCDRC to entertain complaints and Sub-clause (ii) thereof deals with appeals against orders of the State Commission. Section 21 (b) deals with its revisional power. Section 21 of the Act reads thus: -

“21. Jurisdiction of the National Commission.—

Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds [rupees one crore]; and

¹ [1984] 3 SCR 350 : (1984) 2 SCC 719

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(ii) *appeals against the orders of any State Commission; and*

(b) *to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.”*

10. A bare perusal of Sections 21 (a) and 21 (b) would reveal that the powers thereunder are different and distinct and the powers under Section 21 (b) is very limited. The NCDRC itself, in the decision in **Kongaraananthram v. Telecom Dist. Engineer, Ma- Habubnagar**², held that its revisional powers under the said Section are very limited. The said Section provides power to call for the records from the State Commission and to set aside its order issued *sans* jurisdiction vested in it by law or if the State Commission failed to exercise a jurisdiction so vested or if the State Commission has acted in exercise of its jurisdiction illegally or with material irregularity.
11. As noticed hereinbefore, a specific direction was issued under the impugned order by NCDRC after dismissing the complaint which was allowed by the District Forum and got confirmance from the State Commission. It is true that what was ordered by NCDRC is not for payment of benefits based on the policy bearing No.832471906 but only payment of Rs.1 lakh by way of *ex gratia*, as offered in the memorandum of the revision petition. *Ex gratia* is an act of gratis and has no connection with the liability, payable as a legal duty. Going by the Oxford Dictionary of Law, 5th Edition, the term “*ex gratia*” is payment not required to be made by a legal duty.
12. In the contextual situation, it is relevant to refer to the decision of this Court in **Sudesh Dogra v. Union of India & Ors.**³. This Court held therein that *ex gratia* is an act of gratis and it got no connection with the liability of the State under law and the very nature of the relief

² 1990 SCC OnLine NCDRC 24

³ (2014) 6 SCC 486

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and its dispensation by the State could not be governed by directions in the nature of mandamus unless, of course, there is an apparent discrimination in the manner of grant of such relief.

13. In the context of the directions, it is also to be noted that such an offer was made by the Respondent much earlier even before the matter reached the District Forum, but the appellant had denied to accept such an offer. The specific direction, in such circumstances issued in exercise of the revisional power dissuade us to accept the impugned order as one dismissing the complaint in toto and in the aforesaid circumstances, the impugned order virtually partakes the character of an order modifying the order of the District Forum which was confirmed by the State Commission. Be that as it may, we will further consider the question whether the NCDRC is justified in reversing the concurrent order in the complaint filed by the appellants in exercise of its revisional jurisdiction.
14. A perusal of the impugned order would reveal, as noted earlier, that the reversal of the concurrent order(s) of the forums below and the consequential rejection of the complaint made by the NCDRC after coming to a conclusion of non-existence of a concluded contract was by relying on a decision of this Court in [*Raja Vasireddy Komalavalli Kamba's*](#) case (supra). It is true that in the said decision this Court held thus:-

“15. 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 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 offerer. 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 & Parkinson on Insurance Law, Seventh Edn., p. 94, para 215.”

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15. The factual position obtained in the case on hand tend us to hold that the NCDRC had failed to bestow proper consideration of the factual position which consequently led to the mis-application of the decision in [Raja Vasireddy Komalavalli Kamba's](#) case (supra). In view of the decision in **D. Srinivas v. SBI Life Insurance Co. Ltd. & Ors.**⁴, wherein this Court distinguished the decision in [Raja Vasireddy Komalavalli Kamba's](#) case (supra), we are of the view that NCDRC had misdirected itself in considering the relevant question involved, which was rightly considered by the District Forum. In the decision in **D. Srinivas** case, this Court held thus:-

“12. 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.”

16. Paragraph 11 of the decision in **D. Srinivas** case (supra) would reveal that the afore-quoted recital was made thereunder after considering the decision in [Raja Vasireddy Komalavalli Kamba](#) case (supra). In short, the decision in **D. Srinivas** case (supra) would obligate us to consider whether the circumstances obtained in this case give rise to a very clear presumption of acceptance of the policy by the insurer instead of merely giving imprimatur to the impugned order of NCDRC on the ground that it was rendered relying on the decision in [Raja Vasireddy Komalavalli Kamba's](#) case. In this context, it is only apposite to note that though the orders were passed by the District Forum which was confirmed by the State Commission would reveal that the analysis and the consequential conclusion arrived at thereunder lie in conformity with the exercise

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expected to be undertaken based on the aforementioned exposition of law in **D. Srinivas's** case (supra). We are not oblivious of the fact that the decision in **D. Srinivas's** case (supra) was rendered much later to the order impugned in this appeal. But then, in view of the exposition of law in [Murthy v. State of Karnataka & Others](#)⁵ as also in view of **D. Srinivas's** case (supra), if the analysis and the ultimate conclusions of the District Forum is in tune with the decision in **D. Srinivas's** case, we are bound to restore the same. In [Murthy's](#) case (supra), this Court held that normally the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of the stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception.

17. The decision in **D. Srinivas's** case was followed by this Court again in the decision in [Gokal Chand \(D\) Thr. LRs v. Axis Bank Ltd. and Anr.](#)⁶, after rejecting a defence relying on the decision in [Raja Vasireddy Komalavalli Kamba's](#) case.
18. Now, we will proceed to consider the question whether circumstances obtained in this case carry clear presumption of the acceptance of the policy by the insurer, as has been obligated under the decision in **D. Srinivas's** case (supra).
19. Evidently, it is the case of the appellants that the first premium was accepted and a duly signed receipt therefor, noting policy No.832471906 was issued by the respondent on 09.07.1996. The contents of the same has been reproduced in the synopsis of this case at page 'E' as hereunder.

“Annexure B

Dear Sir/Madam

Your proposal for Assurance as per particulars noted in the schedule has been accepted by the corporation as proposed at ordinary rates with E.D.B

.....

5 [\[2003\] Supp. 3 SCR 327](#) : (2003) 7 SCC 517

6 [\[2022\] 17 SCR 739](#) : 2022 SCC OnLine 1720

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We have also received amount noted in the schedule being the First Premium on the policy of assurance for the plan and amount indicated therein. The acceptance of this payment places the corporation on risk with effect from the date of this Acceptance cum First Premium Receipt or if the proposal is under the Children/Deferred or Children Anticipated Assurance Plan from the deferred date on terms & conditions of the policy of assurance which will be sent shortly.

The issue of this receipt is also subject to this realisation of the amount in cash and the terms and conditions of acceptance printed over leaf.

Policy will be despatched shortly, if you do not receive the same within next 90 days please write to us."

20. The photocopy of the Acceptance-cum-First Premium Receipt is produced by the respondent along with its written submission as Annexure B. In fact, Annexure B would reveal the accuracy and correctness of what is stated at page 'E' of the synopsis of the captioned appeal. A perusal of the same would make it clear that the acceptance of the payment would place the Corporation to assume the risk with effect from the date of the Acceptance-cum-First Premium Receipt. True that in Annexure B, it is stated that it would be subject to the realization of the amount in cash and the terms and conditions of acceptance printed overleaf. Though this Court called upon the respondent to produce the original, the same was not produced and what was produced was only a photo copy as Annexure B. In this context, as also in view of the decision in **D. Srinivas's** case, it is only appropriate to refer to certain recitals from the order of the District Forum. They, in so far as relevant, read thus:-

*"1.....
.....*

The deceased had filled up the proposal form of the said disputed policy on 06.07.1996 and issued cheque of Rs. 3388/- towards premium on 09.07.1996 through' cheque of Rs. 187009/- of State Bank of Saurashtra and the opponent accepted the said premium and issued said policy no. 832471906. The opponent also prepared cover note with the details of said policy. The opponent also issued receipt

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for the said premium. The deceased has accordingly accident benefit policy. The policy holder insured Narendra Kumar K. Modi, the complainant husband died due to electric shock and it is proved by death certificate issued the Medical caused by electric shock passing through the body. He died at young age. It was sudden and accidental death.....

.....This complaint was filed before this forum on 19.07.1997. the complainant has engaged learned advocate Shri A.V. Modi and D. V. Modi under Vakalatnama and produced 22 documentary evidence as stated in the list of documents including Suspense Memorandum dated 09.07.1996 and copy of the police i.e. disputed policy no. 832471906, copy of opponent's notice to call for second installment premium, copy of death certificate and policy papers and certificate issued by Police Inspector, Dholka Police Station and documents issued by the Medical Officer of Sheth G.K. Municipal Hospital and all relevant documents issued by the opponent and notice given by the complainant to the opponent dated 10.09.1996 and opponent letter dated 29.08.1996 and copy of other correspondence including notice given by Shri T.S. Nanavati dated 25.03.1997 to the opponent and notice dated 21.04.1997 notice given through Shri A.V. Modi dated 14.08.1997 to the opponent.

4. *The complainant's advocate notice to the opponent on 03 .07.1998 and requested the opponent to produce required original documents and requested the opponent's authorized person Shri Mukund Krishnarao Joshi (Shri. M. K Joshi) to remain present with the said documents. In response to that Shri. M. K. Joshi, Manager (Lega) of opponent LIC of India has filed affidavit. He has explained about the documents produced by the complainant along with complaint.*

5.....
.....The complainant have produced documentary evidence with complaint from no. 6061830 and the opponent issued policy no. 832417906 and as per the suspense memorandum BOC No. 600392 dated

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*09.07.1996 issued by the opponent LIC of India, SM Market, Bavla, Dist. Ahmadabad. It was issued against policy/proposal no. F.P. of Rs. 3388/- and as per the case of the complainant the opponent LIC accepted the proposal form and accepted the premium thereof of Rs.3388/- and issued receipt dated policy no.832471906 and in the said receipt issued by the opponent, policy number is written and date of commencement of policy is written as 28.06.1996 and maturity is 27.06.2016 and all the details including sum insured Rs. 1.00 lakh, instatement premium Rs. 3388/- table and term no. 75/20, short name of insured N. K. Modi, due date, mode of payment half yearly, date of birth, age whether admitted: yes and all other details about BR. DO. DO code, Agent code etc are written and full address of policy holder Mr. Narendra Kumar Modi is written and office of the LI C of India has issued the legal receipt and the same original receipt is produced by the complainant along with complaint. The opponents have also produce copy of the insurance policy issued by the opponent, the policy no.832471906 all the details of commencement of policy, mode of premium, date of proposal, name. and address of proposer and life assured of Shri. Narendra Kumar Kantila Modi and full address is written and it was signed by the office of the LIC and the opponent have of commencement of policy and policy no. is written 832471906 and commencement of policy 28.06.1996 and all necessary details are stated. The State Bank of Saurashtra, Dholka Branch has issued certificate that the . cheque no. 187009 dated 8.07.1996 favoring LIC of India Rs. 3388/- drawn by Narendra Kumar Modi paid by them as on 12.07.1996. The opponent also issued first premium commission bill in the favour of Shri. P.B. Shah, the agent of the policy issued in the favour of complaint and in the said bill policy no. - 832471906, sum insured Rs. 1.00 lakh, mode of payment, table and term, all details are stated. The said first premium commission bill issued by the opponent.....
..... We have to note that when policy number itself is stated in the said letter dated 29.08.1996 of disputed*

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policy, means all procedure prior to issuance of policy were completed and then only the policy number can be allotted to the proposer and in this case when policy number was already given to the proposer, means the contract was started or concluded so the opponent cannot go back with the terms and conditions of the said contract i.e. policy no.832471906.....

..... The opponent wrote letter dated 17.06.1997 in connection of complaint's notice given through advocate dated 25.03.1997 and 21.04.1997. We have noted that the title of the letter is stated by the opponent that the title of the letter is stated by the opponent that "Re: Policy No. 832471906 addressed to Shri T.S. Nanavati, who gave two legal notices on behalf of the complainants, the opponent have shown their failings to pay exgratia payment sum insured only in full and final settlement of the dues under the aforesaid policy. At this juncture, we have to interpret the said all words used by the LIC i.e. Ex- gratia or basic sum insured only in full and final settlement of the dues under the · above policy all the said words are proving that the opponent have issued the policy and accepted the risk

..... We have also noted that the opponent has deliberately not examined any witness to prove that the decision to accept the proposal was taken by the opponent on 15.07.1996 and the death of the proposer has taken place on 14.07.1996, the contract could not be said to have been concluded and the contract was never in existence. We have noted that the contract was already concluded prior to the death of the policy holder Shri Narendra Kumar Modi, if the opponent were and are in possession of the documentary evidence to prove that the decision to accept the proposal was taken by the opponent on 15.07.1996, then definitely, the opponent would have produced oral or documentary evidence to prove the said facts as this is a crucial point, but the opponent has not taken . any action to produce oral or documentary evidence oat this point i.e. only defense of the opponent in the written statement which amounts to

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crush the object of LIC act and other prevailing act to give protection and risk coverage

.....The opponent have not produced their own record to prove that after the receipt of the proposal and cheque of premium of Rs3388/- dated 09.07.1996, the decision to accept the proposal was not taken on 09.07.1996 or immediately within reasonable period 213 days and took only on 15.07.1996.....”

21. Obviously, the said First Premium Receipt contains the number of the policy as 832471906 and the next premium date was shown therein as 28.12.1996. In addition to the aforesaid recitals from the order of the District Forum, we are of the view that certain other emerging aspects also assume relevance.
22. Though it is stated, as can be seen from the extracted portion, that the issue of the receipt is subject to the realization of the amount in cash and the terms and condition of acceptance printed overleaf, the printing on overleaf is conspicuously absent in Annexure B. So also, there is no case for the respondent that the cheque issued was dishonored.
23. The factum of receipt of cheque amount cannot be disputed by the respondent. In fact, the statement in the counter affidavit of the respondent in this appeal that the appellant's entitlement is only to get refund of the amount tendered as initial deposit at the time of submitting proposal would reveal the said position. Another circumstance is also relevant in the context of consideration based on the decision in **D. Srinivas's** case (supra) viz., the stand of the respondent that mere preparation of the policy document is not acceptance so as to create a concluded contract. The cheque amount was received prior to the death of 'the deceased' is not in dispute. Paragraph 5 of the order of the District Forum would reveal that the Dhokla Branch of the State Bank of Saurashtra issued certificate that Cheque No.187009 favouring the respondent herein for Rs.3388/- drawn by 'the deceased' was paid by him on 12.07.1996. The order of the State Commission in paragraph 3 would reveal the consistent stand of the respondent that the proposal form was accepted only on 15.07.1996 whereas the death of 'the deceased' was on the previous day viz., on 14.07.1996 and therefore, there was no concluded contract. The documents pertaining to the proposal were perused by

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both the District Forum and the State Commission and the said fact is discernible from their respective orders. The various documents were referred to in the orders with reference to the page numbers, in which they are available. In the said context, paragraph 6 of the orders of the State Commission assumes relevance and the same to the extent it is relevant, read thus:-

“6. Page 125 is the proposal form. Perusal of the same suggests that the amount of Rs. 3,388/- is shown as deposit amount and the risk date is shown to be 28.06.1996. Thus, it will be seen that the policy was desired to be effective and risk commenced retrospectively with effect from 28.06.1996. It is also suggested that the said proposal form was filled in on 09.07.1996. Page 126 reads the same to be suspense memorandum with BOC No. 600392 dated 09.07.1996 and the policy of proposal number is shown as F.P. Page 130 reads that next premium would become due on 28.12.1996.....”

24. In the circumstances, referred to in the orders of the District Forum and the State Commission as also noted hereinbefore, the question is whether a clear presumption as to the acceptance of the policy by the insurer is available in the case on hand. In Annexure B receipt of the first premium, it is specifically stated that the acceptance of payment would place the Corporation on risk with effect from the date of the said Acceptance-cum-First Premium Receipt, subject to the realization of the amount in cash and the terms and conditions of acceptance printed overleaf. What is printed overleaf is not on record as the same was not produced, though it should be a part of Annexure B. Thus, the entire circumstances discussed based on the documents in the orders of the District Forum and the State Commission hereinbefore in this judgment, in the light of the decision in **D. Srinivas's** case (supra) constrain us to hold that the proposal was accepted.
25. When the aforesaid being the circumstances revealed from the conclusions and concurrent findings by the District Forum and the State Commission entered with reference to the documents perused by them, in exercise of revisional power the NCDRC could not have arrived at a finding that the forums below acted in the exercise of jurisdiction illegally or that there occurred a material irregularity. In

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fact, all the circumstances discussed above justify the conclusion of acceptance of the proposal prior to the death of 'the deceased'.

26. There is no case for the respondent that Annexure B viz., the First Premium Receipt carrying the assurance, as mentioned earlier, was not issued. Annexure B would justify drawing of presumption of acceptance of the policy and not otherwise. We have also found that no material irregularity or illegality could be found in the conclusions drawn with regard to the acceptance of proposal by the District Forum which was confirmed by the State Commission with reasons. We are fortified in our view by the following further reasons/ circumstances.

The entry 15.07.1996 in Annexure B and the contentions that the factum of death was made known on 15.07.1996 and the acceptance of policy also on 15.07.1996 cannot co-exist. If the amount received on account of encashment of cheque is kept as deposit/suspense and was not accepted by way of premium, as has been contended before the State Commission and duly recorded in paragraph 3 of its order what was the necessity to prepare the First Premium Receipt on 15.07.1996. There is incongruity in the contentions and the documents. Along with the written submission on behalf of the respondent herein, true copy of the suspense memorandum/First Premium Receipt is produced in this proceeding as Annexure B. A perusal of the same with reference to what is extracted from paragraph 6 of the order of the State Commission, would reveal certain disturbing aspects. As stated in paragraph 6 thereunder Annexure B would reveal that the date for next premium would become due on 28.12.1996. At the same time a dubious entry 'NIL' is also appearing thereon. Another dubious entry is the writing on the right top corner of Annexure B i.e., 15.07.1996. The dubiousness on account of that entry is because of the specific stand taken by the respondent. As noted earlier, the stand of the respondent is that the policy was prepared on 15.07.1996 and that the First Premium Receipt was issued earlier. If it be so why an entry of 15.07.1996 should be made in Annexure B. As stated in paragraph 6 of the order of the State Commission, the next premium date is shown as due as 28.12.1996. The name and address of Narendra Kumar Kantilal Modi and the policy number are also specifically entered therein.

27. In the aforesaid circumstances, there was absolutely no reason or justification for NCDRC to upturn the concurrent orders and to order

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for the dismissal of the complaint and at the same time issuing a direction only to grant Rs.1 lakh as *ex gratia* merely because such an offer was made by the respondent-insurer in the memorandum of the revision petition. There cannot be any doubt with respect to the position that in the absence of anything suggesting that the State Commission had acted in the exercise of its jurisdiction illegally or with materially irregularity, interference with an order of the State Commission confirming the order of the District Forum, in exercise of the limited revisional power under Section 21 (b) of the Act, by NCDRC, is without rhyme or reason and cannot be sustained.

28. Before the year 1956, life insurance business was in the hands of private companies which were operating mostly in urban areas. The avowed objects and reasons of the Life Insurance Corporation Act, 1956 would reveal that the main object and reason is to ensure absolute security to the policy-holder in the matter of his life insurance protection.
29. In the circumstances, the impugned order is set aside and the order of the District Forum in complaint No.1044 of 1997 dated 19.07.2001 which was confirmed by the State Commission as per order dated 25.07.2006 in appeal No.464 of 2002 is restored. The respondent is granted two months' time to effect payment in terms of the order thus restored.
30. The appeal is allowed.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Divya Pandey