

Harshad J. Shah & Anr vs L.I.C. Of India & Ors on 4 April, 1997

Equivalent citations: AIR 1997 SUPREME COURT 2459, 1997 (5) SCC 64, 1997 AIR SCW 2395, 1997 ALL CJ 2 1136, (1997) 4 JT 505 (SC), 1997 (2) COM LJ 184 SC, 1997 (3) SCALE 423, (1997) 3 SCR 617 (SC), 1997 (4) JT 505, 1997 (3) SCR 617, (1998) 1 CIVLJ 199, (1997) 2 CIVILCOURTC 216, (1997) 3 LJR 553, (1998) 1 RECCIVR 240, (1997) 4 LANDLR 168, (1997) 2 CIVILCOURTC 95, (1997) 1 ALL WC 645, (1997) 2 RAJ LW 189, (1997) 2 SCJ 25, (1997) 25 CORLA 189, (1997) 3 SUPREME 587, (1997) 2 RECCIVR 657, (1998) 1 CIVLJ 420, (1997) 89 COMCAS 109, (1997) 2 CURCC 149, (1997) 2 GUJ LR 1577, (1997) 3 SCALE 423, (1997) 3 CPJ 9

Author: S.C. Agrawal

Bench: S.C. Agrawal

PETITIONER:
HARSHAD J. SHAH & ANR.

Vs.

RESPONDENT:
L.I.C. OF INDIA & ORS.

DATE OF JUDGMENT: 04/04/1997

BENCH:
S.C. AGRAWAL, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.C. AGRAWAL. J. :

The question that falls for consideration in these appeals by special leave is whether payment of premium in respect of a life insurance policy by the insured to the general

agent of the life insurance Corporation of India [for short 'LIC'] can be regarded as payment to the insurer so as to constitute a discharge of liability of the insured. The question arises on the following facts :

Jaswantrai G. Shah, the husband of appellant No.2, hereinafter referred to as 'the insured') took out four insurance policies for Rs.25,000/- each with double accidental benefits on March 6, 1986 through Shri Chaturbhuj H. Shah [respondent No.3] who was a general agent of the LIC [respondent No. 1]. Premium under the said policies was payable on half yearly basis. The insured deposited the first half yearly premium was deposited on September 6, 1986 and the second half yearly premium fell due on March 6, 1987 but it was not deposited within the prescribed period. On June 4, 1987 respondent No.3 met the insured and obtained. from him a bearer cheque dated June 4, 1987 for Rs.2,730/- drawn on Union Bank of India, Malad, Bombay, towards the half yearly premium on all the four policies. The cheque was encashed by the son of respondent No.3 on June 5, 1987. The said amount of premium was deposited by respondent N.3 with the LIC on August 10, 1987. In the meanwhile on August 9, 1987 the insured met with a fatal accident and he died on the same day. Appellant No. 2, the widow of the insured, as the nominee under the policies, submitted a claim to the LIC on the basis of the said four policies but the claim was repudiated by the LIC on the ground that the policies had lapsed on account of non-payment of the half yearly premium which fell due on March 6, 1987 within the period of grace. Appellant No.2 along with the Consumer Education & Research Society [appellant No.1], a society registered under the Societies Registration Act and mainly devoted to the promotion and protection of consumer interest, submitted a complaint before the Gujarat State Consumer Disputes Redressal Commission at Ahmedabad wherein a claim was made for payment of Rs. 4,32,000/- to appellant No.2. The said claim comprised Rs. 1,00,000/- payable under the four policies Rs. 25,000/-each, Rs.1,00,000/- payable towards double accidental benefit, Rs.1,32,000/- payable by way of interest @ 18% Per annum on the aforementioned amount of Rs.2,00,000/- from June 6, 1987 to March 31, 1991 and Rs.1,00,000/- as compensation for annoyance, agony, hardship and humiliation caused to the dependents of the insured. The said complaint was transferred by the Gujarat State Consumer Disputes Redressal Commission to the Maharashtra State Consumer Disputes Redressal Commission at Bombay, (hereinafter referred to as 'the State Commission').

Before the State Commission the case of the appellants was that the amount of premium collected by respondent No.3 from the insured was collected by him on behalf of premium collected by the General Agent cannot be said to have been received by the LIC. It was stated that the agents are not authorised to collect the premium amount. The State Commission, by its judgment dated June 5, 1992, directed the LIC to settle the claim in respect of the four policies within 30 days from the receipt of the order and to pay the amount of the claim to appellant No.2 after deducting the amount of interest, if any, necessary to treat the policies as surviving.

The State Commission held that in order to collect more business the agents of the LIC collect the premiums from the policyholders either in cash or by cheque and then deposit the money so collected in the office of the LIC and that this practice had been going on directly within the knowledge of the LIC administration despite the departmental instructions that the agents are not authorised to collect the premiums. The State Commission was of the view that when the practice of accepting money by the LIC Agent from policyholders is in existence and the money is collected by agent in his capacity and authority the reasonable inference was that the LIC was negligent in its service towards the policyholder.

Appeals were filed against the said judgment of the State Commission by the appellants as well as by respondent Nos. 1 and 2. The National Consumer Disputes Redressal Commission (hereinafter referred to as 'the National Commission') by its order dated July 26, 1994 has dismissed the appeals filed by the appellants and has allowed the appeals filed by the respondent Nos. 1 and 2. The National Commission has held that the insurance Agent in receiving a bearer cheque from the insured towards payment of the insurance premium was not acting as the Agent of the LIC nor could it be deemed that the LIC had received the premium on the date the bearer cheque towards the premium was received by the insurance Agent, namely, June 4, 1987 even though he deposited the same with the LIC on August 10, 1987, one day after the death of the insured. Feeling aggrieved by the said decision of the National Commission, the appellants have filed these appeals.

It is not disputed that the third half yearly premium had become payable on the four insurance policies of the insured on March 6, 1987 and it was not paid within the grace period of one month prescribed in the insurance policies. In condition No. 2 of the conditions set out in the Insurance Policy it is stated that if the premium is not paid before the expiry of the days of grace, the Policy lapses. The case of the appellants is that since the payment was made to respondent No.3 who was the agent of the LIC on June 4, 1987 by bearer cheque dated June 4, 1987 for Rs.2,730/-, the policies did not lapse on account of nonpayment of the premium within the period of grace and that in any event the said policies could be revived on payment of the interest payable for the delayed payment of the premium amount. The case of the LIC, on the other hand, is that respondent No.3 had not been empowered by the LIC to receive payment from the insured in the policies and that handing over of the cheque of Rs.2,730/- by the insured to respondent No.3 on June 4, 1987 cannot be regarded as payment of premium by the insured to the LIC on June 4, 1987. The premium on the said policies was paid to the LIC only on August 10, 1987 but before that the insured had died on August 9, 1987 and, therefore, the policies, which had lapsed on account of nonpayment of premium, could not be revived. The LIC, in this context, places reliance on the Life Insurance Corporation of India [Agents] Regulations, 1972, (hereinafter referred to as 'the Regulations') framed by the LIC, in exercise of the powers vested in it under Section 49 of the Life Insurance Corporation Act, 1956, (hereinafter referred to as 'the Act'). Regulation 8 dealt with functions of

agents and clauses (3) and (4) of the said Regulation provide as follows :

"(3) Every agent shall, with a view to conserving the business already secured, maintain contact with all persons who have become policyholders of the Corporation through him and shall :

[a] advise every policyholder to effect nomination or assignment in respect of his policy and offer necessary assistance in this behalf;

[b] endeavour to ensure that every instalment of premium is remitted by the policyholder to the Corporation within the period of grace;

[c] endeavour to prevent the lapsing of a policy or its conversion into a paid-up policy; and [d] render all reasonable assistance to the claimants in filling claim forms and generally in complying with the requirements laid down in relation to settlement of claims.

(4) Nothing contained in these regulations shall be deemed to confer any authority on an agent to collect any moneys or to accept any risk for or on behalf of the Corporation or to bind the Corporation in any manner whatsoever :

Provided that an agent may be authorised by the Corporation to collect and remit renewal premiums under policies on such conditions as may be specified."

By the Life Insurance Corporation [Amendment] Act, 1981 [Act 1 of 1981], clause (cc) was inserted in sub-section (2) of Section 48 and as a result, rule-making power was conferred on the Central Government to make rules providing agents of the LIC including those who became employees and agents of the LIC on the appointed day under the Act and Corresponding provision in Section 49 of the Act which empowered the LIC to make regulations in that regard was deleted. By virtue of sub-section (2-A) of Section 48, which was also introduced by Act 1 of 1981, it was provided that the regulations and other provisions as in force immediately before the commencement of the Life Insurance Corporation [Amendment] Act, 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the LIC on the appointed day under the Act, shall be deemed to be rules made under clause (cc) of sub-section (2) and shall, subject to the other provision, have effect accordingly, In view of the said provisions, the Regulations by legal fiction introduced by Section 48(2A) of the Act became Life Insurance Corporation (Agents) Rules (hereinafter referred to as 'the Rules') with effect from January 31, 1981, the date of coming into force of Act 1 of 1981.

On behalf of the LIC it has also been stated that one of the conditions of appointment of respondent No.3 as General Agent, as laid down in the letter of appointment dated

December 5, 1962, was:

"10. As a probationary agent you are not authorised to collect moneys, accept risks or bind the Corporation in any way other than to collect the Deposit towards the First Premium and Fees as stated in booklet entitled "Hints to Agents", nor are you authorised or allowed to advance premium to the Corporation on behalf of policyholders or to become an assignee except with the prior permission in writing of the Divisional Manager, under policies on the lives of persons other than your own or your very near relatives such as wife or minor children, or major children if they are members of a joint family, or to get assigned to such very near relatives' policies on the lives of persons other than their near relatives. You are also not authorised to collect or pass receipts for moneys paid towards premiums, in respect of which remittances should be made to the Branch Office of the Corporation concerned and receipt in the Corporation's official form obtained. In respect of any unauthorised collection, you will be acting as an agent of the party concerned and not as an agent of the Corporation and alone you will be answerable to the party for consequences of such unauthorised action."

On the basis of the aforesaid provisions contained in the Regulation/Rule 8 of the Regulations/Rules and clause 10 of the conditions on which respondent No.3 was appointed as the agent, the LIC claims that respondent No.3 had not been authorised by the LIC to collect the premium from the insured and the action of respondent No.3 in receiving the cheque of Rs.2,730/- from the insured on June 4, 1987 cannot be regarded as receipt of premium by respondent No.3 on behalf of the LIC and, therefore, the said payment cannot be treated as payment of premium to the LIC on June 4, 1987 and that insofar as the LIC is concerned the premium was paid only on August 10, 1987 after the death of the insured.

In condition No. 2 in the Insurance Policy it was provided that "if the premium is not paid before the expiry of the days of grace, the policy lapses". The grace period allowed for payment of yearly, half yearly or quarterly premiums was one month. The said grace period for payment of half yearly premium on the policies of the insured expired on April 6, 1987 the policies had lapsed. For revival of discontinued policies condition No. 3 of the Insurance Policy makes the following provision.:

"3. Revival of Discontinued Policies : If the policy has lapsed, it may be revived during the life time of the Life Assured, but within a period of 5 years from the date of the first unpaid premium and before the date of maturity, on submission of proof of continued insurability to the satisfaction of the Corporation and the payment of all the arrears of premium together with interest at such rate as may be fixed by the Corporation from time to time compounding half-yearly. The Corporation reserves the right to accept or decline the revival of discontinued policy. The revival of a discontinued policy shall take effect only after the same is approved by the Corporation and is specifically communicated to the Life Assured."

In view of this condition the matter of revival of the policies of the insured could be considered only upon submission of proof of continued insurability to the satisfaction of the LIC and the payment of all the arrears of premium together with interest at such rate as may be fixed by the LIC. In other words the question of revival of the policies could arise only if the premium can be said to have been paid to the LIC during the life time of the insured, i.e., before August 9, 1987. Therefore, it becomes necessary to consider whether the half yearly premium was paid by the insured to the LIC on June 4, 1987 when the bearer cheque of Rs. 2,730/- was delivered by the insured to respondent No. 3, as claimed by the appellants, or on August 10, 1987 when the said amount of Rs. 2,730/- was deposited with the LIC, as claimed by the LIC. This raises the question whether receipt of the amount of Rs. 2,730/- by cheque by respondent No. 3 can be regarded as receipt of the said amount by the LIC through its agent.

Shri Naresh S. Mathur, the learned counsel appearing for the respondents, has submitted that in view of the fact that large number of policyholders are residing at places where there is no branch office of the LIC and the facility for depositing the premium with the LIC is not available within a reasonable distance it has been the prevailing practice in the LIC for the agents to collect the premium from the policyholders and to deposit the same at the LIC office later and since the agents receive commission on the amount of premium which they collect on the policies the receipt of the premium by the agents must be treated as an act within the scope of their authority as agents of the LIC and the limitation imposed on the authority of the agents to receive the premium in the Regulations/Rules or in the letter of appointment cannot be binding as against third parties viz., the policyholders. The learned counsel has, therefore, urged that the payment of premium by the insured in the present case by bearer cheque on June 4, 1987 to respondent No. 3 should be treated to have been paid to respondent No.3 in his capacity as the agent of the LIC.

Shri Harish Salve, the learned senior counsel appearing for the LIC, on the other hand, has submitted that in view of the Regulation/Rule 8 as well as clause 10 in the letter of appointment of respondent No.3 as agent it cannot be said that the LIC had conferred an authority on respondent No.3 to collect the premium on behalf of the LIC and, therefore, the receipt of the cheque for Rs.2,730/- by respondent No.3 from the insured on June 4, 1987 cannot be regarded as payment received by him on behalf of the LIC. The learned counsel has, in support of the aforesaid submission, placed reliance on the law relating to agency governing the scope of authority of the agent.

Under the Law of Agency, as applicable in England, the authority of an agent may be : (i) actual or (ii) apparent.

Actual authority results from a manifestation of consent that he should represent or act for the principal made by the principal to the agent himself. It may be express if it is given wholly or in part by means of words or writing or it may be implied when it is regarded by the law as the principal having given him because of the interpretation put by the law on the relationship and dealings of the two parties. Implied authority may arise in the form of incidental authority, i.e., authority to do whatever is necessarily or normally incidental to the activity expressly authorised, or usual authority, i.e., authority to do whatever an agent of the type concerned would usually have authority

to do, or customary authority, i.e., authority to act in accordance with such applicable business customs as are reasonable. The authority of the agent may also be implied from the circumstances of the particular case.

The authority of the agent is apparent where it results from a manifestation made by the principal to third parties. The doctrine of apparent authority involves the assumption that there is in fact no authority at all. It is the authority of an agent as it appears to others. Under this doctrine where a principal represents, or is regarded by law as representing, that another has authority, he may be bound as against a third party by the acts of that other person within the authority which that person appears to have though he had not in fact given that person such authority or had limited the authority by instructions not made known to the third party. The notion of apparent authority is essentially confined to the relationship between principal and third party. [See : Bowstead on Agency, 15th Edn., Article 22, pages 92 to 94].

The position is not very different in the law in India. Section 186 of the Indian Contract Act, 1872 lays down that the authority of an agent may be express or implied. An authority is said to be express when it is given by words spoken or written and an authority is said to be implied when it is to be inferred from the circumstances of the case and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case [Section 187]. Section 188 prescribes that an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. In Section 237 it is provided that when an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Under the law governing Contracts of Insurance the premium may be paid by the assured to the insurers or to an insurance agent acting on behalf of the insurers or to an insurance agent acting on behalf of the insurers and if the agent has authority to receive it the payment binds the insurers. The authority need not be an express authority; it may be implied from the circumstances. [See : Halsbury's Laws of England, Vol.25, p.254, para 460].

In the instant case, it cannot be said that respondent No.3 had the express authority to receive the premium on behalf of the LIC because in the letter of appointment dated December 5, 1962 there was a condition expressly prohibiting him from collecting the premium on behalf of the LIC. Nor can it be said that respondent No.3 had an implied authority to collect the premium on behalf of the LIC because in 1972 the LIC has made a regulation [Regulation 8(4)], which in 1981 became a rule, prohibiting the agents from collecting premium on behalf of the LIC. This shows that collection of premium was not necessary for or ordinarily incidental to the effective execution of his express authority by an agent. In view of this express prohibition in the Regulations/Rules which were published in the Gazette it is not possible to infer an implied authority by the LIC authorising its agents to collect premium on behalf of the LIC.

The only question is whether the LIC can be held liable on the basis of the doctrine of apparent authority. Shri Mathur has invoked the said doctrine and has relied upon Section 237 of the Indian

Contract Act. He has urged that, by its conduct in receiving the premium through its agents, the LIC had induced the policyholders to believe that acts of the agents in receiving the premium from the policyholders were within the scope of the agents' authority. Shri Mathur has laid stress on the fact that respondent No.3 was permitted to deposit the amount of Rs.2,730/- towards premium with the LIC on August 10, 1987 on behalf of the insured. we, however, find that in the complaint that was filed on behalf of the appellants before the State Commission no such case was set up by the appellants that the LIC, by its conduct, had induced the policyholders, including the insured, to believe that the agents [including respondent No.3] were authorised to receive the premium on behalf of the LIC. Nor is there any material on record which may lend support to the submission urged on behalf of the appellants that by its conduct the LIC had induced the policyholders, including the insured, to believe that agents were authorised to receive premium on behalf of the LIC. The only circumstance relied upon by the learned counsel for the appellants is the receipt of the amount of Rs.2,730/- by the LIC on August 10, 1987. In this regard, the submission of Shri Salve is that issuance of the receipt for the said amount of Rs.2,730/- by the LIC in the name of the insured does not indicate that the amount was received through respondent No.3 and that on the basis of the said receipt it cannot be said that the LIC had induced the insured to believe that respondent No.3 was authorised to receive the amount of premium on behalf of the LIC. We find considerable merit in this submission. From the mere fact that respondent No.3 had obtained bearer cheque for Rs. 2,730/- from the insured on June 4, 1987 and after encashing the same from the Bank on June 5, 1987, had deposited the said amount with the LIC on August 10, 1987, it cannot be said that the LIC induced the insured to believe that respondent No.3 had been authorised by the LIC to receive premium on behalf of the LIC. We are, therefore, unable to hold that the doctrine of apparent authority underlying Section 237 of the Indian Contract Act can be invoked in the facts of this case especially when the LIC has been careful in making an express provision in the Regulations/Rules, which are statutory in nature, indicating that the agents are not authorised to collect any moneys or accept any risk on behalf of the LIC and they collect so only if they are expressly authorised to do so.

Shri Mathur has placed reliance on the observations of this Court in LIC of India & Anr. vs. Consumer Education & Research Centre & Ors. 1995 (5) SCC 482, where in this Court has stressed that since the LIC is 'state' under Article 12 of the Constitution it has a duty to act fairly in view of the mandate contained in Article 14 of the Constitution. It is no doubt true that the LIC, being 'state' under Article 12 of the Constitution, must act within the confines of the rights guaranteed under Part III of the Constitution. But we are unable to appreciate as to how this constitutional obligation has any bearing on the present case. In disclaiming its liability the LIC is acting in accordance with the provision in Regulations/Rules framed by it whereby the agents have been prohibited from collecting the moneys on behalf of the LIC. The said provision has been made in public interest in order to protect the Corporation from any fraud on the part of an agent. It cannot be said that in making such a provision in the Regulations/Rules and in acting in accordance with the same the LIC has not acted fairly or in consonance with its obligations under Part III of the Constitution.

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 No.3 in receiving the bearer cheque for Rs.2,730/- 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 No. 2 along with interest @ 15% per annum. The interest will be payable from the date of receipt of the amounts of premium. We are also of the opinion that having regard to the fact that the appellants had succeeded before the State Commission and the questions raised by them are of sufficient importance requiring a decision by this Court respondent No.1 shall pay to appellants a sum of Rs. 10,000/- [Rupees ten thousand only] as costs. The amount of premiums with interest and the costs shall be paid within a period of one month. The appeals are disposed of accordingly.