

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI**

**RESERVED ON: 02.12.2024
PRONOUNCED ON: 29.04.2025**

FIRST APPEAL NO. 34 OF 2012

(Against the Order dated 10.10.2011 in Complaint No. 8/2008 of the State
Commission Kerala)

1. Sophia, W/o late Antony Issac
E-209, T. C. 37/2028, Prasanth Nagar
Fort, Thiruvananthapuram-23 Kerala
 2. Jagat Issac Antony
Minor aged 9, Rep. by his mother Sophia
W/o late Antony Issac
E-209, T. C. 37/2028, Prasanth Nagar
Fort, Thiruvananthapuram-23 Kerala ... Appellants
- Versus**
1. State Bank of Travancore
Vikas Bhavan Brach, Vikas Bhavan
Thiruvananthapuram, Kerela
Rep. by its Manager
 2. State Bank of India Life Insurance
Cental Processing Centre
Kapas Bhavan, Plot No. 34
Sector No. 10, CBD Belapur
Navi Mumbai- 400 614 ... Respondents

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

- For the Appellants : Mr. Shyam Pdman, Sr. Advocate with
Mr. Jaimon Andrews, Mr. Piyo Harold
Jaimon and Mr. Aswati Shyam, Advocates
- For the Respondents : Mr. Ritesh Khare, Mr. Siddharth Sangal,
Mr. Saksha Jha and Ms. Namrat
Chandorkar, Advocates for R-1
Mr. Bharat Malhotra and Mr. Taksh Suri,
Advocates for R-2

JUDGMENT

AVM J. RAJENDRA, AVSM, VSM (Retd), MEMBER

1. Smt Sophia (complainant No. 1) and Mr Jagat Issac Antony are the spouse and the son respectively of late Antony Issac. This Appeal is against the order of the learned State Commission in CC No. 08 of 2008 dated 10.10.2011 granting partial relief to the complainants. The parties in this Appeal are being referred to as stated in the complaint.

2. Brief facts of the case, as per the complainants are that, they are the wife and minor son of the late Antony Issac who died on 05.11.2007. The deceased, along with wife (complainant No. 1) availed a loan under SBT Home Loan Scheme of OP-1/SBT of Rs.18,94,000 for purchase of a flat constructed by M/s Artech Realtors Pvt. Ltd., Kowdiar, Thiruvananthapuram. A Tripartite Loan Agreement dated 17.02.2007 in which the Builders are also parties was signed. As per the terms of the agreement, the loan amounts are to be disbursed to Builders directly by the Bank. As per the schedule of payment in the said agreement, the loan was to be repaid in 180 instalments of Rs.21715 per month. As per the agreement a sum of Rs. 11 lakh was also to be initially advanced by them to the builder, and they paid. Thereafter the bank persuaded late Antony Issac to insure himself under the Super Suraksha Home Loan Scheme for the borrowers of State Bank Group and accordingly the

proposal form was sent to him. The insurance coverage provided that in the event of death of the insured, the entire outstanding loan amount including interest will be liquidated by using the insurance amount, and the surplus if any will be payable to the nominee. It was also informed that the insurance contract will come into force within 15 days from the date of receipt of proposal and that the single premium fixed for the insurance coverage will be debited in the loan account. The proposal form was filled up and returned to the bank on 31.07.2007 by registered post from Dubai. After 10 days she and her husband contacted the Bank and enquired about the proposal. The bank responded that they have received the proposal and that they have forwarded the same to OP-2 /insurer with the requisite premium. The insurance certificate was not received by the complainants and the policy number was also not disclosed. The insured Mr. Antony Issac died on 05.11.2007 due to intra cerebral haemorrhage. She contacted the Chief Manager of the Bank and was handed over the required forms and documents to lodge the claim and disclosed the policy No. On 14.03.2008 the insurer issued a letter repudiating the claim mentioning that the policy come into effect only on 09.10.2007, and that the death occurred within 27 days from the date of commencement of the policy. As per the exclusion clause in the policy, if the death occurs within 45 days from the date of commencement of risk, the claim is liable to be rejected. It is contended

that certificate of insurance or the policy with its terms and conditions were not issued to the insured. It is further contended that the proposal was dispatched by registered post on 31.07.2007. The OP shall bound to take a decision on the proposal within 15 days of the date of receipt of the proposal. In the instant case the insurer effected insurance contract only 09.10.2007 i.e. after 97 days from the date of dispatch of the proposal. It is contended that the entire processing of the insurance papers were done by OP-1 for and on behalf of OP-2. OP-1 acted as counter part of OP-2 in the matter of insurance contract. Subsequent to the repudiation of the claim, OP-1 insisted on her to execute a fresh loan agreement and also to furnish further documents such as salary certificate to prove the repayment capacity etc. Although it is pointed out that she and her deceased husband are the joint borrowers and the agreement has been executed jointly, the bank threatened not to disburse any further loan instalment, unless a fresh loan agreement is executed. This attitude of the Bank also amounted deficiency in service and unfair trade practice. As a result, she suffered severe trauma and monetary sufferings and was forced to pay the loan amount outstanding as well as the purchase price of the flat directly to the builder. The OPs are jointly and severally liable to compensate them by paying the entire loan amount of Rs. 18,94,000 with interest at 18% from 05.01.2008; Rs.1,00,000 as compensation for mental agony; and Rs.10,000 as cost.

3. On issue of notice, OPs-1 and 2 filed respective written versions specifically refuting the contentions of the complainants. OP-1 Bank filed version denying the allegation. It is mentioned that the loan was sanctioned on 22.02.2007. The proposal form for insurance was to be signed by both Mr. Antony Issac and the complainant No. 1 as they are joint borrowers. It was specifically instructed that the proposal must be signed by both of them and forwarded immediately. But the proposal form signed by Mr. Antony Issac alone was forwarded by him after lapse of 5 months. The OPs immediately informed and instructed Mr. Antony Issac and the complainant to forward the proposal signed by both of them. In spite of repeated demands, they did not submit the proposal signed by both. Hence the proposal forms signed by Mr. Antony Issac alone was forwarded to OP-2 after debiting the insurance premium. The OP-2 Insurer issued the Certificate of Insurance with effect from 09.10.2007 for a sum of Rs.18,94,000 as per the terms of the Master Policy. There is no insurance cover during the first 45 days from the date of commencement of the policy and hence the claim was repudiated. It is stated that the policy and conditions have been given to Mr. Antony Issac and also the certificate of insurance. The delay was on the part of the borrowers in not submitting the proposal signed by both of them in time. It is denied that there was any deficiency in service or unfair trade practice on the part of OP-1 bank.

4. OP-2 SBI Life Insurance Co. Ltd. has filed separate version contending that in case of Group Insurance Schemes one single master policy is issued to the group policy holder on behalf of all the individuals covered by the group scheme containing all the terms and conditions. Subject which, the insurance coverage as provided as Group Insurance Scheme. The privity of contract is between the master policy holder of the insurer. As per the Schedule II Condition No.6, it is specifically provided that in the event of death of the member at any time after 45 days (except accidental death) from the date of commencement of risk, to pay the grantees or any persons who are authorized by the grantees the sum assured. In the instant case, the risk cover started on 09.10.2007 and the policy holder unfortunately died on 05.11.2007 i.e. within 27 days from the date of commencement of the policy. As there is no coverage in the first 45 days, the claim was repudiated. In the instant case the death was due to natural causes and not due to accident. The commencement of risk is from the date on which the premium is paid vide Clause No.3, General Conditions, Schedule IV. OP-2 contended that there is no deficiency or negligence in service on the part of the insurer. The premium was remitted vide DD.No.6605 dated 09.10.2007 and thus the person was admitted into the insurance scheme with effect from 09.10.2007 for the sum assured which was Rs. 18,94,000. OP-2 repudiated the claim on the ground that the claim amount is not liable to

be honoured, if the life assured expires within the period of 45 days from the date of commencement of risk vide Clause 6 of Schedule 2 of the policy. The date of commencement of the policy is 09.10.2007 and the assured died on 05.11.2007 i.e. within 27 days from the date of commencement of the policy. There is no dispute with respect to the above dates and the above condition in the policy. Hence as such in the repudiation letter is issued as per the terms of the policy.

5. The learned State Commission vide Order date 10.10.2011 partly allowed CC No. 08 of 2008 with the following directions:

“Hence we find that the amount which would have been due to the complainant as per the policy would be the loan amount released by the 1st opposite party. Further as it can be seen from as per Ext. P9 copy of the plaint OS 25/10 filed by the 1st opposite party against the complainants the amounts due is mentioned as Rs. 6,53,260.84/- as per the statement of accounts. We find that the complainants are entitled to have the above amounts fully repaid and if the complainants have repaid the amount the 1st opposite party is liable to refund the same to the complainants with interest at 12% from the date of payment. If the amount has not been repaid by the complainants the Bank is not entitled to realize the same. The complainant will also be entitled for a compensation of Rs. 15000/- for the sufferings as the 1st opposite party has insisted for repayment and instituted the suit to recover the same. Complainants also will be entitled cost of Rs. 10,000/-. It is held that the 2nd opposite party insurer will not be liable to honour the claim. The 1st opposite party/Bank will make the payments as the above within 2 months from the date of receipt of this order failing which the complainant will be entitled for interest at 15% per annum on the amounts due from 10.10.2011 the date of this order.”

6. In his arguments, the learned counsel for the complainant asserted that the said loan was availed for purchase of flat and he insured himself under Super Suraksha Home Loan for borrowers of State Bank Group. It was assured by the OP that the policy covers the risk of death of the borrower due to any reason during the tenure of loan and, in the event of death of the insured (borrower) due to any cause the outstanding loan amount including interest will be liquidated by using the insurance amount, and surplus, if any, will be payable to the nominee. He argued that OP-2 admitted in evidence that the premium was remitted vide DD No. 66501 dated 09.10.2007 for sum assured of Rs. 18.94,000 fixed at the stage of proposal itself and a premium was Rs 70,482 and the same was paid by the insured. He argued that the State Commission order found that certificate of insurance covers the entire loan amount i.e. Rs.18,94,000 and there is deficiency on the part of OP-1 Bank and hence the bank is liable to compensate for the loss sustained by her and that loss is equal to the amount liable to be obtained from the insurer. He argued that the bank is holding the loan amount as a trustee of the complainant and hence benefit under insurance policy has no bearing on the disbursement of loan amount to the builder. The insurance under the policy is the life of the assured/loanee and not the building/apartment. In the event of death of the assured, the sum assured is liable to be paid by the Insurance Company to liquidate

the loan. He asserted that, on death of the borrower, the OP-1 recalled the loan, and she was forced to pay the entire balance amount, while OPs were bound to liquidate the loan on the death of the borrower and ought to have issued discharge certificate. But they refused to do so which constitute deficiency in service. He asserted that the State Commission ought to have directed the OPs to refund the amounts paid by her to the builder towards the price of the apartment. The State Commission went wrong in holding that sum assured constitutes only the loan disbursed. The claim of exclusion clause was not included to the deceased and hence exclusion Clause (5) to that effect that if the death occurs within first 45 days from the date of admission, has no application to the insured. She specifically pleaded in the complaint and tendered evidence to the effect that the policy certificate was handed over to the insured and OP-1 disclosed that the death of the insured to the complainant that the certificate of insurance, which contains the exclusion clause was retained by the bank as security. Bank alleged that the Certificate of Insurance was sent to the insured but did not corroborate. If there is ambiguity in the terms of contract, and the same is capable of two interpretations then one beneficial to the insured should be accepted. The State Commission ought to have held that the OP-1 acted as the agent of the OP-2 and for any lapse, omissions on the part of OP-1 both are liable to jointly and severally.

7. On the other hand, the learned counsel for OP-1 argued that it is important to understand the Policy (Home Loan borrowers) in question was not a 'life insurance' or 'term insurance' as understood in normal parlance. The said policy was suggested by the Bank only to secure its outstanding loan amount in the event of untimely death of the borrower and not to secure the dues of the builder or dues of the borrower to the builder. If the borrower/insured turns 70 years of age or when the loan account is liquidated, the policy comes to an end and the insured is not entitled to any amount from the insurer. At the same time, if the borrower/insured makes the outstanding payment in the loan account prematurely and liquidates the entire amount, the policy comes to an end and nothing is payable to the borrower/insured by the insurance co. The purpose of the policy is to secure the interest of the Bank and the interest of the Bank is only the amount which is outstanding in the loan account of the borrower/insured, thus, the borrower/insured cannot be the beneficiary of any amount which the Bank cannot claim from the insurance co. The Bank can only claim what is outstanding to close the loan account. The Bank is not the agent of the SBI Life, thus, receiving of the proposal form by the Bank is not acceptance of the proposal form by the SBI Life. In any case, the IRDA Regulations are not applicable or binding on the Bank. Thus, the Bank was not bound to send the proposal form to the SBI Life in any particular timeframe. It is not her

case that the premium was deducted much before. However, the proposal form was sent later, or policy came into existence later. The premium was deducted in the loan account only on 09.10.2007 and the risk commenced from the same date. Thus, no deficiency on the part of the Bank. The Bank did not charge any interest on the premium amount until 09.10.2007, and the borrower/insured did not pay "anything to the Bank to take insurance from SBI Life, thus, the appellant was not the consumer of the Bank for the purposes of the insurance cover from SBI Life. There is no document/evidence, on the record to suggest that she enquired from the Bank about the acceptance of the proposal form and/or issuance of the policy. She never requested for the policy document. The complainant was free to avail any other policy of their own choice, and the Bank never mandated her to take any policy from SBI Life. It is not the case that the Cover Note was issued to the appellant, but the policy document with exclusions never reached the appellant. She claimed under the Policy (and not cover note) which includes the exclusions. Thus, she is bound by it. The complainants is not entitled to any sum under the Policy as the death has occurred within 45 days of commencement of risk. In any case, even if she could have been entitled to any "sum on the death of her husband, It would have been the Sum Assured under the Policy. Sum Assured, under the policy, means the outstanding home loan account, including interest, in the

name of the Member in the books of the Grantees and calculated as per the original EMI repayment schedule, in respect of which the premium is payable. Thus, what is covered under the policy as 'sum assured' is the outstanding home loan amount and not the sanctioned home loan amount. There was no tripartite agreement between the SBI, SBI Life and the appellant. Thus, the SBI is not bound by any agreement so far as the policy is concerned, except the payment of the premium from the loan account. The relief as prayed for is against both the respondents and not from the Bank alone. The case laws cited by the complainants are not applicable to the facts and situation of the present case and are distinguishable. Although, the State Commission is wrong in holding the Bank liable for deficiency in service, the Bank did not prefer an Appeal on equity grounds, since the awarded amount was only Rs.6,53,260.84. However, the Bank maintains that the appellants are not entitled to any relief in the facts and circumstances of this case.

8. The learned counsel for OP-2 argued that the Complainants are the wife and minor Son of late Antony Issac, who died on 05.11.2007. The Deceased along with complainant No.1 availed a loan under SBT Home Loan Scheme of OP-1 and Rs18,94,000 was the loan amount granted for the purchase of a flat to be constructed by Artech Realtors Pvt. Ltd, Kowdiar. The loan Agreement was a tripartite Agreement dated

17.02.2007 in which the Builders were also parties. As per the terms of payment in the above agreement, the loan was to be repaid in 180 instalments of Rs 21,715 per month. As per the agreement a sum of Rs.1,00,000 was to be initially advanced by the borrowers to the builder. That the appellant further alleged that OP-1 Bank persuaded her deceased husband to insure himself under the Super Suraksha Home Loans Scheme for the borrowers of State Bank Group. Accordingly, the proposal form was sent. The insurance coverage provides that, in the event of the death of the insured, the entire outstanding loan amount including interest will be liquidated by using the insurance amount and surplus if any will be payable to the nominee. He argued that the insurance amount contract will be come to force within 15 days from a date of receipt of proposal and that the single premium fixed for the insurance coverage will be debited in the loan account. The proposal amount was filed and returned to the bank on 31.07.2007 by registered post from Dubai. The OP-1 bank responded that they have received the proposal and that they have forwarded the same to OP-2 along with the requisite premium. The insured Mr. Antony Issac died on 05.11.2007 due to intra cerebral haemorrhage. The complainant No. 1 contacted the Chief Manager of the Bank and handed over the required form to lodge the claim and also disclosed the policy number. On 14.03.2008 the insurer repudiating the claim mentioning that the policy came into

effect only on 09.10.2007 and the death occurred within 27 days from the date of commencement of policy and further as per the exclusion clause in the policy if the death happens within 45 days from the date of commencement of the risk the claim is liable to be rejected. He argued while the complainants contended that certificate of insurance of the policy with its terms and conditions were not issued to the insured, the proposal was dispatch by the registered post on 31.07.2007 and that the OPs were bound to take a decision on the proposal within 15 days from the date of proposal, in the instant case, the insurer effected insurance contract only on 09.10.2007 i.e. after a period of 97 days from the date of dispatch of the proposal. He argued that the contention of the complainants that OP-1 and OP-2 acted as counterparts, is untenable as they are entirely different entities. He argued that in Group Insurance Schemes, the privity of contract is between the Master policy holder and the Insurer. As evidence of Contract, a Master policy containing all the terms and conditions of the insurance coverage will be issued to the Master policy holder. As per Schedule II. Condition no.6, "In the event of the death of the Member at any time after 45 days (except for accidental death), from the date of commencement of risk, subject to the policy being in full force, but not later than the Member completing the age of 70 years, to pay the Grantees or any person so authorized by the Grantees the Sum Assured." In the instant case, the

risk cover started on 09.10.2007 and the policy holder is reported to have died on 05.11.2007 i.e. within 27 days from the date of commencement of the policy. As there is no risk cover, during the first 45 days from the date of commencement of the policy, and the Life Assured died within 27 days from the date of Commencement of risk, the claim was repudiated which is just and legal and well within the contractual terms and conditions. Therefore, the complaint itself was not maintainable. In the master policy, as per the terms, the exclusion of claim within 45 days of the commencement of cover will not be applicable if death occurs due to accident. In the instant case, the death is due to natural cause. Hence the complaint is not maintainable and deserves to be dismissed. In the instant case also, the commencement of policy was as per the said terms of the policy which ta cam 09.10.2007 which is certified by the Master policy holder and the death occurred on 05.11.2007 i.e, within 27 days of the commencement of the policy. Thus, the repudiation of claim is just and legal and as per policy terms. Hence the complaint ought to have been dismissed in limine. The preamble to the master policy states that the grant of the benefits subject to the payment of the appropriate premium and the terms and conditions contained the document. Thus, as per the terms and conditions, the benefit will be paid in the event of the death of the member after 45 days from the commencement of the policy.

9. We have examined the pleadings and associate documents placed on record and rendered thoughtful consideration to the arguments about advanced by learned counsels for both the parties.

10. It is undisputed that the deceased Antony Issac and the complainant No.1 have obtained the said home loan from OP-1. The Home Loan was sanctioned on 24.02.2007. While the DLA was advised to take insurance as part of Group Insurance Policy, and was handed over the documents on 24.02.2007, he had submitted the duly signed proposal form on 09.10.2007 and the Certificate of insurance issued on 10.10.2007. As per Schedule II. Condition No.6 of the policy terms, **In the event of the death of the Member at any time after 45 days (except for accidental death), from the date of commencement of risk, subject to the policy being in full force, but not later than the Member completing the age of 70 years, to pay the Grantees or any person so authorized by the Grantees the Sum Assured.** In the instant case, the risk cover started on 09.10.2007 and the policy holder is reported to have died on 05.11.2007 i.e. within 27 days from the date of commencement of the policy. Therefore, as per the terms of agreement the risk cover had not even commenced, as there is no risk cover, during the first 45 days from the date of commencement of the policy. As the Life Assured died within 27 days from the date of

Commencement of risk, the claim was repudiated by OP-2 on 14.03.2008, under 45 days exception clause. It is the grievance of the complainants that the policy should have been issued along with loan sanction itself and that there was gross delay on the part of OPs and such delayed action constitute deficiency in service. However, the records produced by OPs indicate the specific dates of the processes undertaken by OPs. However, considering the fact that the premium was deducted from the DLA, submission of proposal by DLA to OP-1, the issue of Certificate of Insurance and contentions with respect to delay, non-receipt of insurance details by the complainants etc, the learned State Commission considered it fair to partly allow the complaint vide order 10.10.2011. We find no further merit in the present Appeal as substantial relief was already given.

11. In view of the foregoing, after due consideration of the entire facts and circumferences of the case including the detailed and well-reasoned order of the learned State Commission dated 10.10.2011, we find no reason to interfere with the same. FA No. 34 of 2012 is, therefore, dismissed.

12. There shall be no orders as to costs.

13. All pending Applications, if any, are also disposed of accordingly.

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(SUBHASH CHANDRA)
PRESIDING MEMBER

.....
(AVM J. RAJENDRA, AVSM VSM (Retd.)
MEMBER

Sangeeta/