Kesari Devi Vs. Dharma Devi

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SooperKanoon Citation : sooperkanoon.com/456487

Court : Allahabad

Decided On : Oct-30-1961

Reported in : AIR1962All355; [1963]33CompCas93(All)

Judge : M.C. Desai, C.J. and ;T. Ramabhadran, J.

Acts : Insurance Act, 1938 - Sections 39

Appeal No. : F.A.F.O. 226 of 1954

Appellant : Kesari Devi

Respondent : Dharma Devi

Advocate for Def. : N.D. Pant, Adv.

Advocate for Pet/Ap. : S. Sadiq Ali, Adv.

Disposition : Appeal dismissed

Judgement :

Desai, C.J.

1. This is an appeal from an order of a District Judge granting a succession certificate to the respondent. There is no dispute about the facts. The appellant is the widow of Jhunnoo Lal, while the respondent is the widow of his brother Mannu Lal. In 1948 Jhunnoo Lal took an insurance policy from the Hindustan Co-

operative Insurance Society Ltd., for Rs. 5,000/-. According to its terms the Company promised to pay the amount of Rs. 5,000/- on Jhunnoo Lal's surviving the 10th April of the year immediately preceding the expiry of thirty years from the date of the commencement of the insurance, or, off his prior death, to him, or 'his Nominees, Executors, Administrators, Assigns or other Representatives, as the case may be,' subject to proofs being given of the title of the claimants to the policy. Under Section 39 of the Insurance Act the assured nominated Mannu Lal as his nominee.

Thus under the policy, the Insurance Company bound itself to pay Rs. 5,000/- to the assured) if the remained alive for thirty years, andto Mannu Lal, if he died before completingthirty years. He died within a short period leaving Mannu Lal, and the appellant, his widow. Before the Insurance Company could pay themoney to Mannu Lal, as the nominee of the assured, Mannu Lal died leaving the respondentas his legal representative and she applied formoney to the Company, which directed her toobtain succession, certificate in proof of her titleto it. Consequently the respondent applied tothe District Judge for a succession certificate.Her application was contested by the appellant,who claimed that she was entitled to the succession certificate, being the widow and heir of theassured. The learned District Judge holdingthat, if Mannu Lal had been alive he wouldhave been entitled to receive the money, grantedthe succession certificate to the widow, and hencethis appeal.

2. Under the insurance policy the money became payable to Mannu Lal; this means that the Company was bound to pay it to him. Since he died before it could be paid to him, it must be paid to his heir or representative, that is, to the respondent. It must be paid in such a manner as to amount to payment to him. It is onlyif it is paid into his estate that it can be said to be paid to him (though posthumously), and the respondent is the person who undisputably, represents it. If it had been paid to him as it ought to have been on his death it would have gone to the respondent as part of his estate, and the respondent must be pleased in the position in which she would then have been. The mere accidental fact that he died within a short time of the death of the assured and before the Company could pay the money to him should not make any difference to the respondent and cannot

confer any title upon the appellant to receive it.

According to the policy the money was to be paid to the assured, it he remained alive for the full period of thirty years, or to his nominees, executors, administrators, assigns or other representatives, if he did not. Since he did not remain alive for the full period of thirty years, it was to be paid to his nominees, executors, administrators, assigns or other representatives-He had nominated Mannu Lal and so it was to be paid to him and not to any executor, administrator, assign or other representative. The conjunction ''or' joining the words 'Nominees', 'Executors' etc., shows that it is to be paid to any one of them depending on the circumstances. If there is a nominee, it is to be paid to him and not to an executor, administrator, assign or any other representative. An executor, or administrator or any other representative will be entitled to it only if there is no nominee. So the appellant would be entitled to it only if there was no nominee.

It is not open to the company to say that it cannot pay the money to the respondent because she is neither a nominee, nor an executor, administrator, assign, or any other representative of the assured. To whom the money is payable is to be seen with reference to the date on which it becomes payable; it became payable according to the policy itself, on the death of the assured, and oh that date there was in existence his nominee, who alone was entitled to receive it. The Company must pay the money to him, and, if he has died in the meanwhile, to his estate. It cannot pay if to the appellant, who does not answer the description 'his Nominees, Executors, Administrators, Assigns or Other Representatives in interest'. She cannot receive it, and the only other person who can receive it is the respondent, as representing the estate of the nominee.

3. This is also what follows from the provisions of Section 39(1), (5) and (6) of the Insurance Act. Sub-section (1) provides that an assured may nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death; it follows that the insurance company must pay the money in the event of his death to his nominee. The money become payable to the nominee on the death of the assured, and, if the nominee happens to die before actually receiving it, it must naturally be paid into his estate. Sub-section (5) provides that where the

nominee dies, before the policy matures for payment, the amount will be payable to the assured or his heirs, orlegal representatives, or the holder of a succession certificate, as the case may be. 'This provision evidently makes a distinction between a nominee dying before the policy matures and a nominee dying after it matures but before receiving the payment; in the former case the money will be payable to the assured or his heirs or legal representatives, and it impliedly follows that in the latter case the money will be payable to the estate of the nominee. This is made clear by Sub-section (6) which lays down that the nominee, if he survives the assured will be entitled to receive the money. Mannu Lal would have been entitled to receive the money without any question of succession certificate and, if he died before receiving it, his widow should be entitled to receive it without the necessity of any certificate to the effect that she is succeeding to the estate of the assured; if any certificate is required it would be in respect of her succeeding to the estate of Mannu Lal.

4. We were referred to 22 Halsbury's Laws of England (3rd Edn.) 'Insurance' para 570, in which it is said that when a policy money is expressed to be payable to a third party he is 'prima facie' merely the agent for the time being of the legal owner and has his authority to receive the money and to give a good discharge, and to In re A Policy No. 6402 of Scottish Equitable Life Assurance Society, (1902) 1 Ch 282, in which it was held that when a policy of insurance was taken out by A on his own life 'for behoof of B' (his wife's sister) and it provided that B and her executors, administrators and assigns would be entitled to receive the Policy money on his death, and B died before A, B's representatives who received the money on A's death received it as trustees for the legal Representatives of A.

We are also referred to the decisions in (a) Krishna Lal v. Promila Bala Dasi 0065/1928 : AIR1928 Cal518 in which it was held that a nominee is not entitled to enforce his claim against the insurer because he was no party to the contract of insurance and the policy money farmed part of the assets of the assured and was liable for his debts; (b) Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd., Salem : AIR1957 Mad115 laying down that as in England and America a nominee is no more than an agent to receive the money and that it remains the Property of the assured and on his death forms part of his estate, (c)

Brahmamma v. Venkataramana Rao, AIR 1957 Andh Pra 757 laying down that an assured continues to have interest in the policy notwithstanding the nomination and that the nominee gets the policy money, subject to the liabilities of the assured, and (d) Shanti Devi v. Shri Ram Lal : AIR1958 All569 in which it was simply held that a policy effected by a man does not become a policy effected for the benefit of his wife within the meaning of Section 6 of the Married Women's Property Act simply because of the fact that subsequently he nominates her to receive the money. We do not think it is the universal rule or rule of justice, equity and good conscience which must be said to be binding upon this Court, that the policy money that is paid to a nominee under Section 39(6) of the InsuranceAct is held by him as a trustee for the legal representative of the assured.

There is nothing in Section 30 to suggest thathe receives the money merely as a trustee oragent of the assurer's legal representative Section 39 does not lay down that he is under anyliability to account for the money received toany person. The obvious meaning of the language used in Sub-sections (1) and (6) is that the insurance company must pay the money to him andhe is left free to deal with it in any manner helikes. When the money becomes payable on thedeath of the assured and on account of the death,we do not understand how it can be said to formpart of his estate. It is payable to his nomineeand not to one representing his est te. Nothingcan form part of his estate which could not possibly belong to it immediately preceding hisdeath. As we pointed out, it is only when thereis no nominee that it is payable to his executoror administrator, assign or other representative.The right to proceeds of life insurance policiesis governed by the provisions of the policy underthe law of contracts: vide 46 Corpus Juris Secundum 'Life Insurance'' para 1154. In para 1157it is said that the proceeds of a life insurancepolicy in which a third person is a nominee asa beneficiary being exclusively to him as anindividual, and are not the property of the heirsor next of kin of the assured and generally defect constitute any part or asset of his estate. Inpara 1158 it is emphasised that when the proceeds are payable to the heirs of the assumethey do not form part of his estate but belongto them personally. Though the designation ofa nominee is a policy of life insurance has beendeemed to be in the nature of a declaration oftrust, in general the nature of his interest dependson the terms of the insurance contract and theexisting statutes by which

the insurer and theassured are bound--29 American Jurisprudence,'Insurance,' para 1274. We find that the contract of insurance and the statutory law areboth against the appellant.

5. The appellant cannot derive any support to his claim from the fact that under Section 38 of the Act an assignment of a policy automatically cancels the nomination. A nominee has a rights to sue and so also an assignee, and if there is an assignment of a policy which contains a nomination there might be a clash between the nominee and the assignee and, therefore, the statutory rule has been enacted laying down that the nomination will stand automatically cancelled.

6. In the result we maintain the order passed by the learned District Judge and dismiss this appeal, but having regard to the nature of the controversy we shall let the parties bear their costs themselves.