

Controller of Insurance, Simla Vs. Vanguard Insurance Co. Ltd.

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Court : Chennai

Decided On : Oct-13-1965

Reported in : AIR1966Mad437; [1966]36CompCas119(Mad)

Judge : Anantanarayanan and ;Ramakrishnan, JJ.

Acts : [Insurance Act, 1938](#) - Sections 2(6), 21(1), 21(2), 40-C, 40-C(1), 40-C(2) and 110

Appeal No. : O.S. Appeal No. 102 of 1963 and Memo of Objections

Appellant : Controller of Insurance, Simla

Respondent : Vanguard Insurance Co. Ltd.

Judgement :

Anantanarayanan, J.

(1) Though this appeal has been argued very elaborately before us, we have ultimately come to the conclusion that it can be disposed of within a comparatively restricted compass. Adverting first to the nature of the proceedings, O. P. 95 of 1960 was instituted before Srinivasan J. by the Vanguard Insurance Co. Ltd. by its General Manager, the respondent being the Controller of Insurance, Simla, under S. 21(2) of the Insurance Act 1938, (Act IV of 1938). That sub-section enacts that if the Controller has declined to accept a return furnished to him by the insurer,

under the provisions of the Act,

'the court may on the application of an insurer and after hearing the Controller..... direct the acceptance of any return which the controller has declined to accept, if the insurer satisfies the court that the action of the Controller was in the circumstances unreasonable'.

It was with reference to the scope of this provision that certain items of the return were objected to by the Controller, with the consequence that he declined to accept the return under S. 21(1) of the Act. Thereupon, the insurer brought forward this application under S. 21(2) of the Act, with the prayer that the court might direct the Controller to accept the return.

(2) A question of jurisdiction was mooted before the learned Judge and this depends really upon an interpretation of S. 21(1)(b) of the Act read with S. 21(2), as well as the definition of 'court' in S. 2(6) of the Act, and also S. 110 of the Act which provides for appeals. It is now not necessary for us to dilate on this issue at any length, in view of certain significant developments. When the Controller contended that this court had no jurisdiction to entertain the application, and that such an application could only be instituted in the court of competent territorial jurisdiction with regard to the address of the Controller of Insurance, namely, Simla, it is conceded that the Vanguard Insurance Co. Ltd. (Petitioner before the learned Judge) filed a similar application before the District Court of Ambala, as a matter of abundant caution. Learned counsel for the Controller of Insurance is compelled to admit that, as a question of fact, the Controller of Insurance took the attitude in that court that the Madras High court would alone be the court of competent jurisdiction. It is also further not in dispute that, following the decision of the learned Judge (Srinivasan J.) that he possessed the requisite jurisdiction, the court at Ambala ultimately dismissed the proceeding before it.

In this situation, it is a matter for surprise that we have been invited to proceed into the question of jurisdiction at all, as a question of law. Even apart from the academic merits of that issue, it is manifest that the Controller of Insurance cannot both approbate and reprobate. One of the two courts would have the necessary jurisdiction, as a matter of logic, and the Controller cannot be heard to contend in

one court that the other court alone had the requisite jurisdiction, and to contend precisely to the opposite effect in the other court. In other words, there is a clear estoppel against this kind of pleading, and we must hold that the Controller is barred from raising the issue of jurisdiction either before the learned judge or before us. We may add here that, upon two other grounds also, the Controller must fail. Territorial jurisdiction does not proceed to the root of jurisdiction, and the Civil Procedure Code recognises that a party could acquiesce in it. More importantly, the learned Judge (Srinivasan J.) clearly seems to be right in holding that this court had jurisdiction, on the interpretation of the words 'the principal place of business of the insurer'.

(3) The other matters, proceeding now to the merits, concern four items with regard to which the Controller took the objection that the return filed by the Insurance company did not comply with the provisions of the statute and the rules framed thereunder. We shall dispose of these items seriatim, and we might immediately state that only one of them (item 3) appears to require discussion at any length.

(4) As far as item 1 is concerned, this was an amount of Rs. 6122-29 as on 31-12-1957, for which the company took credit in its balance sheet as constituting an income-tax refund due to the company under law. The learned Judge has found, and this is not really disputed before us, that the total refund comprising two separate amounts of Rs. 5455-52 and Rs. 676-87 is due to the company under the relevant provisions of the Income-tax law, while it may be strictly true that the ultimate sanction has not yet been given by the income tax authorities. So long as this is made clear, we are quite unable to see how any rule is infringed, or how any principle of accounting is violated, if the amount is shown in the balance sheet as an asset, with reference to which the company can legitimately take credit, at least to the extent that it can be properly regarded as a potential asset. All that is necessary is that a note should be added against this item, to the effect that the formal orders sanctioning refund are expected, but have not yet been passed. This may be done, if the orders have yet not been received; obviously this will not be necessary, if the orders sanctioning refund are received by the time any action has to be taken upon our judgment.

(5) The next item relates to a sum of Rs. 10772 shown as expenses of management in the profits and loss account. Under S. 40-C of the Act, the expenses of management can be debited to the profit and loss account only in certain contingencies. There was a circular issued by the Controller dated 11-1-1952, and a further circular issued, in view of certain representations by the insurers, dated 23-5-1952, permitting the company to debit the profit and loss account with expenses relating to the management of capital dealings with shareholders and, added thereto, a proper share of the managerial expenses which would be referable to this purpose. The company claims that the amount of Rs. 10772 is covered by the concession, in the sense that such a debit in the profit and loss account is within the ambit of the Act. Learned counsel for the Controller does not say how the inclusion of this debit in the profit and loss account is an encroachment upon any provision either under the Act, or under any rules framed under the act.

(6) Item 3 can be conveniently dealt with now, since the scope is related. The point here is that when S. 40-C of the Act is carefully perused, it will at once be obvious that that section applies to limitation of expenses of management in general insurance business transacted in India, namely, excluding life insurance. Under Section 40-C(1) of the Act, a limit has been prescribed for the incurring of expenses of management, apparently in the interests of shareholders and policy holders. It seems to be the intendment of the Act, that if there is no such limit, expenses of management might be swollen, for beyond a legitimate degree, to the detriment of the interest of the shareholders and policy holders. In the present return, as far as the figures furnished by the company are concerned, that limit has not been exceeded.

(7) Nevertheless, It is contended for the Controller with regard to item 3 that a certain debit to the profit and loss account viz, of expenses apportioned by the company with regard to its branch in Ceylon, is unjustifiable. It is pointed out by learned counsel for the Controller that under rule 17(f) of the rules framed under the Act, a minimum of five per cent has been permitted, with regard to the operation of S. 40-C(2), Explanation (b). Now S. 40-C(2), explanation (b) has no application to the present instance, for that relates to 'expenses of management',

of a concern which has its 'principal place of business outside India'. It is only with regard to an apportionment of expenses arising in that context, that rule 17(f) provides a minimum of five per cent towards the debit to be made in respect of the foreign headquarters. In the present case, we have the converse instance of an insurance concern whose main office is in this country, and which has a branch office in Ceylon. The question is: how are we to assign expenses of management in India, to be apportioned as between expenses which are debitable to the head office, and the expenses debitable to the maintenance or conduct of the Ceylon branch office

This, as far as we can ascertain, appears to be a *casus omissus*. No rule has yet been framed under the Act, for a limit of apportionment in such case. Further, under the proviso to Sec. 40-C(1), where an insurer has spent any amount in excess of what is permissible under s. 40-C(1) as expenses of management the excess could also be regularised, within the limits to be determined by the Controller after consultation with the executive committee of the General Insurance Council. We simply do not know whether any such limit has been determined, with reference to the present debits.

(8) The argument of learned counsel for the Controller is that either the total 'expenses of management' in India should be debitable as such to the expense account, with not even a naya paise thereof being taken over to the profit and loss account, is one interpretation of S. 40-C, or that only five per cent of the expenses should be debitable to the profit and loss account, having reference to the expenses for the maintenance and conduct of the Ceylon branch.

(9) This argument obviously has no substance, and fails even on a superficial scrutiny. We can take it that the expenses in India for the Ceylon branch would probably be somewhat less than the expenses incurred for the main concern itself in India. Actually, the insurance company has apportioned the total expenses, upon a mercantile principle which is not at all unreasonable, namely, apportionment as between the headquarters and the branch, in the ratios of the business carried on or obtained by each. This might have no sanction under the section of the rules. But, equally, the suggestion of the Controller that this should

be only at five per cent, has no sanction whatever. It is based merely on an imperfect analogy, which does not apply. Under these circumstances, unless the casus omissus is rectified by a proper statutory rule, providing for this case, we are unable to see how the Insurance company can be taken to task or be penalised for apportioning the expenses in the manner that it has done. It is important that we should stress that this is not a case of concealment, fraud, or suppression of any item of revenue or expenditure.

All the items of expenditure held under objection relate strictly to book-keeping principles; nor has the controller been able to show that the book-keeping principles actually adopted by the Insurance company are either opposed to the Act, and the rules, or opposed to mercantile practice. Further, it has not been shown that the manner of debit entries adopted by the company was mala fide in any sense, or likely to prejudice the interests of the shareholders and policy holders, in any particular mode.

(10) Finally, there are expenses (item 4) which the company claimed to debit in respect of 'amounts incurred as expenditure in settling claims'. This is covered by foot-note (a) to form F, which states that all expenses strictly incurred in settling claims, may be shown in this category. The company has debited a total sum of Rupees 1,31,809 consisting of the sub-heads: (1) survey & other fees, (2) fees for obtaining police report; (3) legal fees and court expenses, (4) travelling and conveyance expenses, and (5) salary of staff. There is a cross-appeal by the company with regard to the last item aggregating to Rs. 78877 which was disallowed by the learned Judge. The other items were allowed by the learned Judge, and learned counsel for the Controller has not been able to show how that allowance is, in any way, erroneous.

(11) As regards the last sub-item namely Rs. 78877 we have carefully perused the counter affidavit, and we find that the averment of the Insurance company was not traversed, namely, that there was a separate claims section maintained by the company, and that this amount relates to the total salaries paid for the members of this establishment, exclusively segregated for dealing with claims as and when they arise. The argument rather was that claims might not arise during a parties

period, when the employer was hardly likely to dismiss all these persons. If he maintained them and paid their salaries, it could not be pretended, so the argument ran, that these amounts were spent strictly in the settlement of claims. There is an obvious fallacy underlying an argument of this kind, though the argument, in a modified form, seems to have found favour with the learned judge. It is not claimed before us that the contentions of the Insurance Company are incorrect that there is a claims section, that there is a special staff employed therefor, and that this amount is the total amount of salaries paid for the staff, who would be normally segregated entirely for the performance of these duties. It appears to us to be quite speculative to surmise whether, in a particular period, there might be no claims and what the staff would do, if there were no claims. Actually, on the record it has been incontrovertibly established that during, this relevant period, there were 800 to 1000 claims, and that nearly four lakhs of rupees had to be spent for meeting those claims. Hence, as far as the present return is concerned, in any event, the facts would appear to strictly justify this debit of Rs. 78877 claimed as expenses incurred with reference to the note (a) to form F.

(12) In the result, therefore, the appeal by the Controller of Insurance is dismissed, and the cross-appeal is allowed in respect of the last sub-item of item 4, with costs to the insurance company (one set).

DJ/VRB/D.V.C.

(13) Appeal dismissed.