

Brahm Dutt Sharma Vs Life Insurance Corporation of India

Court: Allahabad High Court

Date of Decision: Dec. 24, 1965

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 22 Rule 10, 146

Contract Act, 1872 â€” Section 30

Insurance Act, 1938 â€” Section 45

Life Insurance Corporation Act, 1956 â€” Section 7, 9(2)

Citation: AIR 1966 All 474

Hon'ble Judges: Rajeshwari Prasad, J; D.P. Uniyal, J

Bench: Division Bench

Advocate: S.B.L. Gaur and K.B.L. Gaur, for the Appellant; Jagdish Swarup and S.D. Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

Uniyal, J.

The plaintiff has filed this appeal from the decree of the Civil Judge, Meerut, dismissing his suit with costs.

2. The facts giving rise to this appeal, shortly stated, are as follows: On the 15th January 1951 Mukhtar Singh, deceased uncle of me appellant,

made an application for insurance in the Crown Life Insurance Company, Toronto, Canada, with its branch office at Bombay (hereinafter referred

to as the Company) for a sum of Rs. 35,000. In that application he stated his occupation as landlord and mill owner, Weaving and Spinning Mills,

and his place of residence as C/o Brahma Dutta Sharma, Gujrati Well. Meerut City. On the basis of the above application the Company issued an

interim policy to Mukhtar Singh on the 19th February 1951. The interim policy was approved by the Head Office of the Company which issued

Insurance Policy No. 573766, dated 21st May 1951 in favour of the said Mukhtar Singh. In that policy the appellant was described as the

nominee of the assured after his death. The policy was issued subject to the endorsements contained therein, Clause 4 of the endorsement reads:

After the expiry of two years from the date on which it shall have been effected, this policy shall not be called in question by the company on the

ground that a statement made in the application therefore or in any other document leading to the issue of the policy was inaccurate or false, unless

the company shall show that such statement was on a material matter and fraudulently made by the insured and that the insured knew at the time of

making it that the statement was false.

Clause 4 laid down that the application for the policy and any additional statements made to the company, together with the policy and its

endorsements, shall constitute the entire contract between the parties. Clause 10 provided that on the policy becoming a claim by death, proof of

claim shall include such evidence under oath as may be required by the company of the death of the insured and the causes leading thereto, and of

the title of the claimant and proof of age as mentioned in Clause 8 and such other information as the company may deem necessary to establish the

validity of the contract.

3. The first quarterly premium on the policy was admittedly paid on the 12th February 1951 by the appellant himself. The second quarterly

premium was also paid by the appellant through a draft or mail transfer on 19/21 May, 1951.

4. Mukhtar Singh Sharma died at Meerut on the night between the 19th and 20th August 1951 and notice of his death and that of the plaintiffs

claim was sent to the defendant Company on the 15th September 1951 on the basis of the nomination of the policy in the appellant's favour. The

Company by letter, dated the 16th October 1951 wrote to the appellant to give full names and addresses of the persons who were present at the

time of the demise of the insured and stated that in accordance with endorsement No. 10 of the policy the Company was entitled to call for such

other information that it considered necessary to establish the validity of the contract. Eventually the Company refused the claim of the appellant on

the ground that Mukhtar Singh assured had made false and incorrect declarations in his application Ex. A-10 as to his status and occupation, and

also as to his residential and business address. Thereupon the appellant brought the suit for recovery of Rs. 35,000 out of which this appeal has

arisen.

5. The suit was resisted by the Company inter alia, on the ground that the statements made by the assured Mukhtar Singh Sharma in Part I and

Part II of the application for policy were false and that since these statements were agreed to be the basis for contract of insurance the suit was

liable to be dismissed. It was further pleaded that the insurance policy was not really effected by Mukhtar Singh Sharma deceased for his use and

benefit but was got effected by the appellant for his own use and benefit and that the appellant had no insurable interest in the life of the deceased,

6. The Civil judge was of the view that the defendant Company had failed to establish that the age given by Mukhtar Singh Sharma in his

application for insurance was incorrect and that there was no credible evidence to prove that the declaration made by him regarding his health was

false. These findings have not been challenged by the learned counsel for the respondent. He, however, held that Mukhtar Singh assured made

false and incorrect statements in Ex. A-10 as to his occupation and status, as well as his business and residential address. He also came to the

conclusion that the insurance policy in question was effected and financed by the appellant for his own benefit and that the appellant had no

insurable interest in the life of the deceased.

7. Before we examine the merits of the case it is necessary to dispose of a preliminary objection raised by the learned counsel for the respondent.

It was contended that during the pendency of the suit in the Court below the Life Insurance Corporation Act (XXXI of 1956) was enacted by

Parliament. By Section 7 of that Act all the assets and liabilities appertaining to the control business of all insurers became vested in the Life

Insurance Corporation of India. Sub-section (2) of Section 9 provided that all suits and appeals pending on the date of the coming into force of the

Act shall be continued against the Corporation. Mr. Jagdish Swarup, learned counsel for the respondent, argued that under Order XXII, Rule 10,

C. P. C. the insurance business of the Company stood transferred to and was vested in the Life Insurance Corporation of India and, therefore, it

was a case of devolution of interest during the pendency of the suit. Since the appellant failed to implead the said Life Insurance Corporation of

India as a defendant in the suit no decree could be passed against it in respect of the insurance policy in question. We are unable to accede to the

argument of the learned counsel.

8. Section 146, C. P. C. provides that ""save as otherwise provided by the Code any proceeding that can be taken by a person may also be taken

by any person claiming under him"". The Supreme Court in Saila Bala Dassi v. Nirmala Sundari Dassi AIR 1958 SC 394, held that the expression

"claiming under" is wide enough to include cases of devolution and assignment of interest mentioned in Order XXII, Rule 10, C. P. C. The assets

and liabilities of the control business of insurers devolved on the Life Insurance Corporation of India u/s 7 and, therefore, by operation of law they

became the successors-in-interest of the Company in respect to matters relating to insurance business of the Company. We, therefore, overrule the

objection.

9. Turning to the merits of the appeal, we may state that the main contention of the learned counsel for the appellant was that the trial Court was

not justified in holding that the declarations made by Mukhtar Singh Sharma in his application for insurance as to his status and occupation, and

also as to his residential and business address, were false. It cannot be disputed that the declaration made by the assured was that the statements

contained in Part I and Part II of the application Ex. A-10 made by him shall form the basis of the policy. Clause 4 clearly provides that the

application for the policy and statements made therein, together with endorsements, shall constitute the entire contract between the parties. It is

also beyond question that the death of the insured took place before the expiry of two years from the date on which the policy was effected, and,

therefore, the provisions of Section 45 of the Insurance Act are not brought into play. In other words, it was open to the Company to call in

question the statements and declarations made by the insured in the proposal form Ex. A-10,

10. It will be seen that in Part 1 of the application for insurance (Ex. A-10) the residential address of the insured was given as Gujrati Well, Meerut

City, and his occupation was described as landlord and mill-owner, Weaving and Spinning Mills. The appellant Brahma Dutta stated that there was

a factory near Sainik Bhawan in which Mukhtar Singh manufactured khaddar. In cross-examination he stated that there was no fixed quota for

cotton thread from the Supply Office for the factory of Mukhtar Singh and that cotton thread used to be purchased by the factory from Ex-

Service-men Society. He pleaded ignorance about the contract between Mukhtar Singh and the Ex-Servicemen Society in respect of the quota

although he asserted that he was co-owner with Mukhtar Singh in the factory. He admitted that account books and registers relating to the

business of the factory used to be maintained but he pleaded his inability to produce them on the ground that they were with the Meerut Police.

Even if it was so, no attempt was made by him to get them summoned from police custody. He asserted that after the death of Mukhtar Singh he

sold the shop and the factory to one Kailashpati for Rs. 8,000 or Rs. 10,000. According to him it was an oral sale and there was no writing about

it. He admitted that he had deposited the first quarterly premium of the policy but denied that he made the second deposit. There is, however,

unimpeachable evidence on the record to show that it was Brahma Dutta appellant who made the deposit of the second instalment also. Indeed, it

was admitted by him that the application Ex. A-2 for issue of a draft or mail transfer of Rs. 692-14-0 towards the premium was signed by him. He

tried to explain that the money was provided by Mukhtar Singh himself and that he had gone to the bank with the money and deposited it there. He

sought to make out that the signature on the back of Ex. A-2 was made by him in September 1951 as the Bank Manager insisted that he should

do so in order to save the Manager from harm. The explanation given for the signature of the appellant on the back of Ex. A-2 appears to be

palpably false. There could be no question of the Bank Manager obtaining his signature when the premium had already been received by the

Company, As a matter of fact the bank would not have prepared a transfer draft without a formal application by the appellant. After examining the

application Ex. A-2 we are satisfied that the statement of Brahma Dutta that he was got to sign this application is untrue. He admitted in cross-

examination that Mukhtar Singh deceased was an occupancy tenant of 1 bigha 3 biswas of pakka land in village Alipur, Mughalpura, District

Meerut, which was the subject-matter of a lease (Ex. A-1), dated 28th March 1951. He further admitted that Mukhtar Singh was not the owner of

any land other than the leased land.

11. From the statement of Brahma Dutta appellant it becomes crystal clear that Mukhtar Singh was not a zamindar but was a tenant of a petty

holding of 1 bigha and 3 biswas. It is also clear from his statement that no spinning or weaving mill was owned by Mukhtar Singh. The so-called

khaddar factory, which according to the witness was jointly owned by him and Mukhtar Singh, is shown to have been the exclusive property of

Brahma Dutta appellant, The letter Ex. A-4, dated 3-2-1934 of the District Supply Officer, Meerut, to the counsel of the Company is most

revealing, it says;

After enquiry it has been revealed that no Spinning and Weaving Mill under the proprietorship of Mukhtar Singh, deceased, existed in this town for

the last ten years. Only a handloom factory under the style of "Batya Handloom Factory" was started at C. Patt Bazar, Meerut by Sri Brahma

Dutta, nephew of Sri Mukhtar Singh Sharma in 1949 and that, too, has now passed to one Sri K.C. Mithal, in 1950 or so.

12. This letter was proved by Sri V.D. Tyagi, Cloth Inspector, Supply Office, Meerut. He stated that the list relating to handloom factories in

Meerut City and Meerut Cantonment was kept in the office of the Supply Officer and that the handloom factory of Brahma Dutta appellant had

remained up to 1950. Thus it would appear that on the date on which the application for insurance was made by Mukhtar Singh deceased neither

he nor Brahma Dutta had any kind of factory, much less a Spinning and Weaving Mill as alleged. On the other hand, the evidence called by the

defendant goes to show that Mukhtar Singh deceased was a village teacher drawing a meagre salary of Rs. 20 p.m. Chandra Kishore D. W. 7

was Head Master in the Junior High School, Alipur, where Mukhtar Singh was teacher. He produced the register or payment or salaries kept in

the school. The register showed that from July 1944 to September 1946 Mukhtar Singh had been working in this school as a teacher and had

signed the register in lieu of having received his monthly salary.

13. Another feature which goes to discredit the appellant's case is the circumstance that on his own showing Mukhtar Singh had two sons and a

wife. Brahma Dutta stated that Mukhtar Singh was not pleased with his sons and, therefore, made him the sole beneficiary under the insurance

policy. He did not state that the relationship of Mukhtar Singh with his wife was strained or that he had made provision for his wife. There is,

therefore, no ostensible reason why Mukhtar Singh should have shown special favour to the appellant Brahma Dutta by making him the sole

beneficiary under the insurance policy in question. The evidence in the case leads to the conclusion that Mukhtar Singh did not reside in Meerut

and further that he did not own any spinning or weaving mill in that city. We endorse the finding of the Court below that the declaration given in the

proposal form Ex. A-10 in respect of the residential address, status and occupation of Mukhtar Singh deceased was untrue.

14. The next point to be considered is whether the policy in question was effected by Mukhtar Singh Sharma or by the appellant for his own

benefit and whether the plaintiff had an insurable interest in the life of the deceased. We have said above that two quarterly instalments towards the

insurance policy were paid by the appellant himself and not by Mukhtar Singh deceased. It is also evident that even when the interim insurance

policy was issued the appellant was described as beneficiary on the death of the insured. In Clause 16 of the policy that was issued on the 31st

May 1951 the appellant was shown as the nominee of the assured under the policy. Thus the plaintiff was both nominee and beneficiary with the

result that the heirs of the deceased could not lay any claim to it on the ground of being legal heirs of the deceased.

15. The circumstances in which the policy came to be issued and the manner in which the instalments were paid in respect of that policy, together

with the fact that Mukhtar Singh had no status or means to get himself insured for such a large amount, go to establish that the policy in question

was effected by the appellant in the name of Mukhtar Singh for his own use and benefit. There is not a word in the evidence adduced on behalf of

the plaintiff that Mukhtar Singh was under any obligation to effect the insurance policy in order to benefit the appellant. On the contrary, the

plaintiff's own evidence would show that he had neither the means nor the capacity to effect any such policy. It further goes to show that Mukhtar

Singh was a poor village teacher in occupation of 1 bigha and 3 biswas of tenancy land, A person of his status could not afford to take such a large

insurance policy. We have, therefore, no hesitation in upholding the finding of the trial Judge that there was no satisfactory explanation from the

side of the plaintiff as to why Mukhtar Singh came to assign the policy In favour of the appellant, while leaving his wife and children unprovided for.

16. In *The Great Eastern Life Assurance Co. Ltd. Vs. Bai Hira*, it has been held that the falsity of the statement involving forfeiture of the policy

will vitiate the policy if the statements and declarations made in the application for the policy are made a part of the contract. (See also *Dawsons*

Ltd. v. Bonnin 2 AC 413, and *Halsbury's Laws of England*, Vol. 17, p. 551).

17. On behalf of the respondent it was urged that inasmuch as the appellant had no insurable interest in the life of Mukhtar Singh deceased the

contract of insurance was in the nature of a wagering contract within the meaning of Section 30 of the Contract Act and, therefore, void. Reference

was made to *Alamani v. Positive Govt. Security Life Assurance Co. Ltd.* ILR (1899) Bom 191, where it was held that Section 30 of the Contract

Act was applicable to insurance policies.

18. In *All India General Insurance Co. Ltd. and Another Vs. S.P. Maheswari*, the learned Judges were of the opinion that the declarations in the

application for policy amount to warranty and if it is found that the averments contained in the application are false the contract would be vitiated

and become unenforceable in law.

19. It was said on behalf of the appellant that Section 30 did not in terms apply to an insurance contract and that the reasoning adopted by the

Bombay High Court in ILR (1899) Bom 191, was based on English Common Law and, therefore, was inapplicable to India. We are not

impressed with this argument. The learned Judges of the Bombay High Court were at pains to show that apart from the doctrine of English

Common Law, Section 30 was attracted to a case where the contract was based on fraud. 20. After giving our anxious thought to the facts and

circumstances of the case it seems to us that the conclusion arrived at by the Court below is legally sound.

21. We find no force in this appeal and it is accordingly dismissed with costs.