

Homi Nadirsha Daji Vs Mani Noshir Secretary

Court: Bombay High Court

Date of Decision: Nov. 16, 1981

Acts Referred: Insurance Act, 1938 " Section 38, 39, 39(1), 39(2), 39(3)
Married Womens Property Act, 1874 " Section 6

Citation: (1983) MhLj 439

Hon'ble Judges: B.J. Rele, J

Bench: Single Bench

Advocate: Kotval, for the Appellant; Khambata, for the Respondent

Judgement

B.J. Rele, J.

This Originating Summons is for the determination of the two questions:

(1) Whether on a true and correct interpretation of Section 39 of the Insurance Act (Act 4 of 1938) the Defendant is by reason of the nomination

made by the deceased Cawas N. Daji in respect of two policies issued by the Life Insurance Corporation of India one bearing No. 16783577 and

another bearing No. 17735396 absolutely entitled to the moneys received from the Life Insurance Corporation of India? and

(2) If the answer to the question above is in the negative, whether the Defendant is bound to pay the said amount to the Plaintiff herein as

administrator of the estate of the said Cawas Nadirsha Daji for being disbursed in accordance with the provisions of the Indian Succession Act as

applicable to the Parsees?

2. The facts are not in dispute. The said Cawas Nadirsha Daji died at Bombay on 23rd February, 1979 leaving him surviving his three brothers

and two sisters. The said Cawas Nadirsha Daji died intestate and each of the three brothers have 1/4th share and each of the two sisters have

1/8th share in the estate of deceased Cawas N. Daji. The Plaintiff is one of the brothers of deceased Cawas N. Daji and he applied for and

obtained Letters of Administration of the property and credits of the deceased Cawas N. Daji on 30th March, 1981.

3. The said deceased Cawas N. Daji had during his life time taken out the said two insurance policies and he nominated the Defendant as the

nominee of the said policies as required by Section 39 of the Insurance Act. On the death of Cawas N. Daji, the amount of the two policies

aggregating to Rs. 56,891.20 were paid to the nominee, the Defendant herein. It may be stated that the Defendant is the niece of the wife of

deceased Cawas N. Daji.

4. The Plaintiff set out the above facts in his advocates' letter dated 21st July, 1980 to the Defendant and called upon the Defendant to pay the

amount of Rs. 56,891.20 p. to the Plaintiff's advocate for being disbursed among the heirs of the deceased Cawas N. Daji as on intestacy, in

accordance with the provisions of the Indian Succession Act as applicable to Parsees. The Defendant failed to give any reply to the said notice,

nor did Defendant hand over the amount to the Plaintiff's advocates as demanded. The Plaintiff, has, therefore, filed this suit and has taken out the

Originating Summons for determination of the question aforesaid.

5. Mr. Kotval, the learned Counsel appearing on behalf of the Plaintiff has relied upon the decision of K.K. Desai, J. in Safoobai wd/o Abdeali

and Ors. v. Safiabai Suit No. 78 of 1958; decided on 13.12.1960 and he has submitted that a nominee has a right to receive the money but the

nominee has no right to retain the money for herself. The nomination is merely for the purpose of avoiding disputes as to the person or the party to

whom the Insurance Corporation should make the payment upon the death of the insured. The nominee is not in the position of legatee and hence

the nominee-Defendant is bound to hand over the money which was collected under the two policies to the Plaintiff as the holder of the Letters of

Administration as being the person entitled to administer the estate of the deceased Cawas N. Daji.

6. Mr. Khambata the learned Counsel appearing on behalf of the Defendant, on the other hand, has contended that it was the Defendant who

looked after the deceased Cawas N. Daji after his wife's death and after his sister failed to look after the deceased Cawas N. Daji and that it was

out of sheer love and affection for the Defendant that the deceased Cawas N. Daji nominated her as the person entitled to receive the amount

under the said two policies. He has further submitted that on a true and proper construction of Sub-section (6) of Section 39 of the Insurance Act,

the nominee has the same right as that of the legatee. In support of this contention Mr. Khambata has relied upon the decision of the Delhi High

Court in the case of S. Fauja Singh v. Kuldeep Singh and Ors AIR 1976 Del 276 . He has further submitted that the Delhi High Court in holding

that the nominee is the real person entitled to the, amount under the policies on the death of the insurer, has relied upon the decision of the

Allahabad High Court in the case of Kesari Devi Vs. Dharma Devi, and upon the decision of the Calcutta High Court in the case of Life Insurance

Corporation of India Vs. United Bank of India Ltd. and Another, and therefore, Mr. Khambata has further submitted that what the Court will look

into in considering the question of nomination u/s 39 of the Insurance Act, is to see the real intention of the insurer in nominating a person as the

nominee and on the facts and circumstances of the present case, the intention of the deceased Cawas N. Daji when he made the nomination in

favour of the Defendant, was to make the Defendant the full owner of the amounts covered by the policies on the maturity on the death of

deceased Cawas N. Daji and that, therefore, the Defendant is entitled to retain the amount for her own use as the full owner thereof.

7. Mr. Kotval has rejoined and he has submitted that the Delhi High Court in basing the decision in Kesari Devi Vs. Dharma Devi, has overlooked

the Full Bench decision of the Allahabad High Court in the case of Raja Ram Vs. Mata Prasad and Another,

8. Section 39 of the Insurance Act, the relevant portion whereof reads as under:

Section 39. Nomination by Policy holder.(1) The holder of a policy of life insurance (on his own life) may, when effecting the policy or at any time

before the policy matures for payment, nominate the person or persons to whom the money secured, by the policy shall be paid in the event of his

death:

(Provided that where any nominee is a minor, it shall be lawful for the policyholder to appoint in the prescribed manner any person to receive the

money secured by the policy in the event of his death during the minority of the nominee).

(2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the

policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the

policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, (but unless notice

in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made

bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer).

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof

and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination:

(Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan

granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a

nomination but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy).

(5) Where the policy matures for payment during the (life time of the person whose life is insured) or where the nominee or, if there are more

nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-

holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the (person whose life is insured), the amount

secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 (3

of 1874) applied (or has at any time applied):

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), in

favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the

policy, as being made under this section, the said Section 6 shall be deemed not to apply or not to have applied to the policy.

This section came up for consideration before K.K. Desai, J., in the case of Safoobai wd/o. Abdeali and Ors. v. Safiabai d/o. Lookmanji and Ors.

Suit No. 78 of 1958; decided on 13.12.1960. It was held by K.K. Desai, J., while considering the provisions of Sub-sections 1 to 6 of Section 39

of the Insurance Act:

Having regard to the above nebulous character of the benefit to accrue to a nominee it appears to me that the provisions of Section 39 were

enacted only to avoid disputes as to the person or the party to whom an Insurance Corporation should make payment upon the death of the

insured. In other words, disputes as to who is the heir entitled to proceeds of policy or who is the executor or administrator or legatee entitled to

payment are all avoided and payment is directed to be made to the nominee. This also avoids the necessity of obtaining of legal representation to

the estate of the deceased as payment is by law directed to be made to the nominee mentioned in the policy. It appears to me that the provisions in

Section 39 do not contain a scheme whereby nominee is in the position of a legatee entitled to receive the moneys belonging to the insured and due

under the policy.

Similar view has been taken by the Gujarat High Court in the case of Atmaram Mohanlal Panchal v. Gunvantiben alias Geetaben and Ors. 1977

A.C.J. 449 (Guj.), where it was held:

The effect of Section 39 of the Insurance Act, 1938, is that only the person named in the policy as the nominee has the right to receive and collect

the monies. But he merely collects it on behalf of the rightful claimants to the sum assured under the policy of insurance. If there is will, the legatees

under the will would get it. If the policy-holder dies intestate, his legal heirs would get it.

Similar view has been taken by the Kerala High Court in the case of Sarojini Amma and Anr. v. Neelkanta Pillai and Ors. (1977) A.C.J. 449

(Guj.).

It is not necessary for me to add to these authorities. I entirely agree, with respect, to the observations of K.K. Desai J., in the decision referred to

above.

In the result, I answer the questions as follows:

Question (1) : No.

Question (2) : Yes.

In the circumstances of the case, there will be no order as to costs.