

(1977) 02 GUJ CK 0007
In the Gujarat High Court
Case No : First Appeal No. 946 of 1976

Atmaram Mohanlal Panchal		APPELLANT
	Vs	
Gunvantiben alias Geetaben and Others		RESPONDENT

Date of Decision : 22-02-1977

Acts Referred:

Insurance Act, 1938 — Section 39, 39(4), 39(5), 39(6)

Citation : (1978) 48 CompCas 250 : (1977) GLR 668

Hon'ble Judges : M.P. Thakkar, J;D.P. Desai, J

Bench : Division Bench

Advocate : U.P. Jadeja, for the Appellant; A.N. Divecha, A.P. Mehta and R.P. Mehta, for the Respondent

Judgement

M.P. Thakkar, J.—A question of considerable importance for holders of life insurance policies has arisen in this first appeal arising out of a suit instituted by the widow and minor son of a policy-holder claiming a declaration that they were entitled to the sum assured under the insurance policy upon the death of the policy-holder in their capacity as his heirs and not the person named in the policy as a nominee u/s 39 of the Insurance Act of 1938. The dispute was raised by the father of the policy-holder who was the nominee named in the policy on the premise that he had a title to the said amount in his own right by virtue of his capacity as a nominee named by the policy-holder. The trial court having negated the contention of the defendant-nominee and having decreed the suit instituted by the plaintiffs, the nominee (original defendant No. 1) has preferred the present first appeal and has challenged the legality and validity of the judgment and decree passed by the learned judge presiding over the City Civil Court, 3rd court at Ahmedabad, in Civil Suit No. 1137 of 1972.

2. The facts are not in dispute. One Surendra Atmaram Panchal took a life insurance policy on his life on October 20, 1970. The policy was issued by the Life Insurance Corporation of India (original defendant No. 3-respondent No. 4 herein). The said Surendra was a major at the time when the insurance policy

was taken out. He was unmarried at that point of time. In the insurance policy, exhibit 30, it was stipulated that the sum assured was payable to "the proposer or his assigns or nominees u/s 39 of the Insurance Act or proving executors or administrators or other legal representatives who should take out representation to his estate or limited to the moneys payable under this policy from any court of any State or Territory of the Union of India". Some two months after he had taken the aforesaid policy, Surendra married Gunvantiben (plaintiff No. 1-respondent No. 1). He had a male child by her who has been impleaded as plaintiff No. 2 - respondent No. 2. About 1 1/2 years after his marriage, Surendra died on September 29, 1971, intestate without making a will. Upon his death the question arose as to who was entitled to the sum assured. The widow and the minor son of the deceased claimed that they along with defendant No. 2-respondent No. 3, Bai Joshi, mother of Surendra, were entitled to the sum payable under the insurance policy on the death of Surendra in their capacity as his legal heirs. It was contended by them that the fact that the father of the deceased, Surendra (appellant-original defendant No. 1) was named as a nominee u/s 39 of the Insurance Act was of no consequence inasmuch as the only right which it conferred on the nominee was to collect the moneys for being paid to the rightful claimants. The father of the deceased policy-holder assumed the posture that he was entitled in his own right to the said sum in his capacity as a nominee and resisted the claim of the widow and the son of the deceased (his daughter-in-law and his grandson). Thereupon, the widow and the son of the deceased were constrained to institute the suit giving rise to the present appeal.

3. The learned judge has upheld the contention of the plaintiffs that a person who is named as a nominee in a life insurance policy u/s 39 has a mere right to collect the money from the insurer and no more. The view has been taken by him that the persons entitled to claim the amount are the heirs of the deceased, Surendra, inasmuch as it is an admitted position that Surendra died intestate.

4. Section 39 of the Insurance Act of 1938, which concerns the question of nomination by a policy-holder, deserves to be quoted in so far as material for a proper appreciation of the point at issue :

"39. (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 policy-holder 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

(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 lifetime 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 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."

5. The scheme of section 39 is to the following effect : During the lifetime of a policy-holder he has a right to assign the policy or transfer the policy in accordance with section 38 notwithstanding the fact that a person has been named as a nominee under sub-section (1) of section 39. Upon such assignment or transfer, the nomination would stand automatically cancelled. If the policy matures during the lifetime of the person whose life is insured, the said person would be entitled to the amount assured under the policy. It is only when the person whose life is assured dies before the maturity of the policy and the claim for the sum assured arises on the death of the policy-holder that the nominee can collect the moneys due under the insurance contract. The expression used by the legislature in this connection is that the amount secured by the policy shall be "payable" to such survivor (or survivors) of the nominee. It is also provided that if the nominee dies during the lifetime of the policy-holder, the amount under the policy shall be payable to the person whose life is insured if the policy matures during his lifetime or to his legal representatives in case he dies before the date of maturity.

6. From the scheme of section 39 it is abundantly clear that with regard to the contract of insurance and the benefits thereunder, the policy-holder retains the interest therein during his lifetime and no interest is created in favour of the nominee. Surely it does no amount to a gift. If it was a gift, title would pass unto the nominee and the policy-holder would have no right either to transfer or assign the policy which he has under sub-section (4) of section 39 of the Insurance Act. So also if any interest was created in favour of the nominee, the policy-holder would not be entitled to the sum assured upon the maturity of the claim during his lifetime. Similarly, if any interest in the amount was created in favour of the nominee, the death of the nominee would make no difference and his legal heirs would be entitled to claim the amount. But far from the nominee or his heirs being entitled to claim the amount, it is provided by sub-section (5) of section 39 that the policy-holder would be entitled to claim the amount and in case of his death before maturity, his legal heirs would be entitled to do so.

There is, therefore, no room for doubt that no right, title or interest was created in favour of the nominee who is not a party to the contract of insurance but who has been named in the insurance policy for the limited purpose of the collecting the moneys. That the only right conferred on him is to collect the moneys in clear from the fact that sub-section (6) of section 39 employs the expression "the amount secured by the policy shall be payable to such survivor or survivors". The next question that arises is what would happen if the policy-holder dies before the maturity of the claim. We have already discussed the aspect relating to the right acquired during the lifetime of the policy-holder and have recorded a firm conclusion to the effect that the nominee acquires no right, title or interest in the said amount. What then happens on the death of the policy-holder; does the nominee become entitled to the amount in his own right on the death of the policy-holder ? It cannot be contended and it had not been contended that the contract of insurance operates as a will or a testamentary disposition. If it does not operate so, it is difficult to comprehend what legal right can be created in favour of a person who has been named in the policy of insurance as a person entitled to collect the amount. Since beneficial right s under the contract of insurance remained with the policy-holder during his lifetime and he could have transferred or assigned the policy or raised a loan on the policy, the benefits accruing under the policy of insurance indubitably formed a part of his estate. If it formed a part of his estate during his lifetime, how does it cease to be a part of his estate as soon as he dies and become the property of the nominee ? It, therefore, appears to be impossible to argue that the nominee gets a title to the amount in question in his own right. The view which commends to us found favour with the High Court of Madras in *D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd.* [1957] 27 Comp Cas 47 (Mad) . Learned counsel for the appellant, however, placed reliance on a Division Bench judgment of the Allahabad High Court in the matter of *Kesari Devi Vs. Dharma Devi*, . It is no doubt true that the learned judges of the Allahabad High Court have dissented from the view taken by the Madras High Court have dissented form the view taken by the Madras High Court and have taken a country view which supports the appellant. With respect to the learned judges of the Allahabad High Court we are unable to concur with the reasoning which found favour with the Division Bench of the said High Court. In paragraph 4 of the judgment, the Division Bench has observed as under - See [1963] 33 CompCas 93, 97 :

"There is nothing in section 39 to suggest that he receives the money merely as a trustee or agent of the assured"s legal representatives; section 39 does not lay don that he is under any liability to account for the money received to any person. The obvious meaning of the language used in sub-section (1) and (6) is that the insurance company must pay the money to him and he is left free to deal with it in any manner he likes."

7. With respect, there is no warrant for the conclusion that the nominee is left free to deal with it in any manner he likes. It does not follow from any provision

of law or from first principles. It is mere ipse dixit of the learned judges. It does not take into account the reasoning unfolded in the discussion hereinbefore. So also we do not subscribe to the view taken by the Division Bench in the following passage extracted from paragraph 4 - See [1963] 33 CompCas 93, 97 :

"When the money becomes payable on the death of the assured and on account of the death, we do not understand how it can be said to form part of his estate."

8. The Division Bench has assumed that the amount does not form part of the estate of the policy-holder. If the benefit arising under the contract of insurance formed a part of the estate of the policy-holder during his lifetime for the reasons discussed earlier, namely, that he could have transferred it, assigned it or raised a loan on it, how does it cease to be a part of his estate on his death and become a part of an estate of the nominee ? By virtue of operation of which principle of law and by what process of ratiocination ? The Allahabad High Court has also placed reliance on paragraph 1157 of 46, Corpus Juris Secundum, for buttressing the conclusion reached by them. Now the passage in question reads as under :

"1157. Policy payable to third person. - The proceeds of a policy naming a third person as beneficiary generally belong to him as an individual and do not constitute part or an asset of the insured's estate."

The proceeds of a life insurance policy in which a third person is named as beneficiary belong exclusively to such beneficiary as an individual; they are not the property of the heirs or next of kin of insured, are not subject to administration or the laws of descent governing the distribution of insured's personal property and generally do not constitute any part or an asset of his estate. If the proceeds are collected by the administrator he holds them in trust for the beneficiary."

9. On a bare perusal of the aforesaid passage it leaps to the eye that the aforesaid proposition of law has been stated in the context of a life insurance policy in which a third person is named as a "beneficiary". We are not concerned with a life insurance policy wherein some one else has been named as a "beneficiary". We are concerned with a policy where a person has been named as a "nominee" u/s 39 of the Insurance Act. We do not know what were the terms and conditions of the policy in which the person concerned was named as a beneficiary under the American law. It would be extremely hazardous to clutch at stray statements made in the context of a different insurance policy and in the background of a different insurance law about which we have no sufficient knowledge or information. In any view of the matter, a proposition of law stated in the context of a foreign law and in the light of a different insurance policy wherein the person was named as beneficiary (and not nominee) cannot buttress the view which found favour with the Allahabad High Court. So also a reference was made in paragraph 4 of the judgment to *In re A Policy No. 6402 of the Scottish Equitable Life Assurance Society* [1902] 1 Ch 282 (Ch D). In that case, however, it has been clearly laid down that though the person named as a

nominee in the insurance policy would be entitled to receive the money at law and to give a receipt for it "in equity the money belong to the legal personal representative of Mr. Sanderson, who took out the policy". This decision, therefore, fortifies the view that we are taking. We may also refer to a full Bench decision of the Kerala High Court in Sarojini Amma v. Neelakanta Pillai [1961] 31 Comp Cas 86 (Ker) [FB], wherein D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd. [1957] 27 Comp Cas 47 (Mad) has been relied upon and the view which has commended itself to us has been accepted. The Full Bench has stated the proposition of law in paragraph (7) as under - See [1961] 31 Comp Cas 88 (Ker) :

"A nomination by itself, as we understand it, confers no right on the nominee during the lifetime of the assured and only gives a bare right to collect the policy money on his death."

10. A similar view has been taken by the Calcutta High Court in Life Insurance Corporation of India Vs. United Bank of India Ltd. and Another, . The view reflected in Kesari Devi Vs. Dharma Devi, has in terms been disapproved by the Calcutta High Court and it has been held that a nominee gets a mere right to collect the moneys. The following passage from paragraph 12 of the judgment unfolds the reasoning which prevailed with the Calcutta High Court - See Life Insurance Corporation of India Vs. United Bank of India Ltd. and Another, :

"Sub-section (1) of section 39 provides that the holder of a policy of life insurance on his own life may nominate the person to whom the money secured by the policy shall be paid in the event of his death. It is not without significance that the sub-section speaks of the transaction of payment and not of any right, title or interest in the money which is payable. In saying that the money shall be paid to the nominee, the sub-section underlines the obligation of the insurer to pay to the nominee and not the right of the nominee to receive payment, through the obligation and the right are the obverse and reverse of the same transaction. It scrupulously avoids the use of any word implying proprietary right, title or interest such as "vest", "transfer" or "assigns". Sub-section (2) of section 39 provides that nomination may at any time before the policy matures for payment be cancelled by an endorsement or a will. The sub-section, there, clearly indicates that the nominee does not acquire any title to the money by virtue of the nomination because, if he did, he could not have been divested of his right, title or interest by any unilateral act on the part of the holder of the policy who nominated him. Sub-section (4) of section 39 provides that a transfer or assignment of a policy shall automatically cancel a nomination. It goes without saying that if the nominee had acquired any title by nomination the policy-holder could not have assigned the policy without his concurrence, far less could the nomination have stood cancelled automatically by reason of assignment or transfer. Sub-section (5) provides that where the policy matures for payment during the lifetime 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 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. Here again, there is a clear indication that the nominee does not acquire any title to the money, because if he did, his heirs and not the heirs of the deceased policy-holder should have been entitled to the money when the policy matures."

11. We may also observe that a Full Bench of the Allahabad High Court in *Raja Ram Vs. Mata Prasad and Another*, has in terms taken the view that the benefit secured by the policy forms part of the estate of the deceased policy-holder and that the nominee acquires no interest in the estate in the lifetime of the policy-holder as is evident from the following passage from paragraph 15 of the judgment [1943] 43 Comp Cas 53 all:

"The result of our survey of the material provision is :

1. The policy-holder continues to hold interest in the policy till the moment of his death.
2. The nominee u/s 39 acquires no interest in the policy in the lifetime of the policy-holder.
3. The benefit secured by the policy forms part of the estate of the deceased policy-holder.

As it is part of his estate, his creditors can realise their loans from the money paid to the nominee. He will be the legal representative of the deceased policy-holder."

12. It is no doubt true that the earlier decision in *Kesari Devi Vs. Dharma Devi*, has not in terms been overruled inasmuch as the question which arose in *Kesari Devi Vs. Dharma Devi*, did not directly arise in the Full Bench case. The corollary of the holding of the Full Bench in *Raja Ram Vs. Mata Prasad and Another*, , all the same would be that the benefit of the contract would continue to be the estate of the policy-holder during his lifetime and it would also form a part of his estate on his death. There is another decision to which we may advert in that behalf. The decision we have in mind is the one rendered in *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, . That was a case arising under the Estate Duty Act. And the Division Bench of the Madras High Court was concerned with the question from the standpoint of the Estate Duty Act and the provision contained therein. The following passage from that judgment would further fortify the view which has appealed to us (page 326) :

"It is also inapplicable, as we consider, for another reason. Keeping up a policy should be for the benefit of a donee, whether nominee or assignee. That means there should have been a gift of the money due under the policies to a person so as to constitute him as donee. Unless a person is a transferee of the benefit of the policies, he cannot be properly described as a donee. Such a transfer can obviously be by means of an assignment. But the word "nominee" taken by itself or even in the context of the principles that govern the law of insurance admits

of no doubt as to its significance. A nomination does not involve a transfer of the right under a policy unlike an assignment. This distinction was recognised by a Division Bench of this court in *D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd.* [1957] 27 Comp Cas 47 (Mad), in relation to sections 38 and 39 of the Insurance Act. Section 38(5) clearly states the effect of an assignment as that the assignee is the only person entitled to benefit under the policy and such a person shall also be subject to all liabilities and equities to which the assignor was subject at the date of assignment. But "nomination", as seen from sub-section (1) of section 39, merely means that the person nominated is the one to whom moneys secured by the policy shall be paid in the event of the death of the assured. Unlike an assignment which is irrevocable, a nomination may, at any time, before the policy matures for payment, be cancelled or changed. In the event of the policy maturing during the lifetime of the assured, the nomination will have no effect and the policy money will, in that event, be payable to the assured. It follows that while an assignee is not merely entitled to receive but has a right to the policy money itself, a nominee is no more than a person who is competent to receive the money if the assured did not survive maturity of a policy and has no right to the money. But nominee in section 14 of the Estate Duty Act does not appear, as it seems to us, to convey the ordinary or the statutory sense we referred to. In the context of the words "for the benefit of a donee, whether nominee or assignee", it is clear that the "nominee" must be such as he may also be a donee. That means the nomination for the purpose of section 14 must be such as will constitute the nominee, a donee entitled to the benefit of the policy money."

13. We, therefore, regret our inability to concur with the view taken by the Division Bench of the Allahabad High Court in *Kesari Devi Vs. Dharma Devi*, . In our opinion, the view taken by the Madras High Court in *D. Mohanavelu Mudaliar v. Indian Insurance and Banking Corporation Ltd.* [1957] 27 Comp Cas 47 (Mad), represents the true legal position. In the result, there is no escape from the conclusion that the rightful claimants to the sum assured under the policy of insurance are the legal heirs of the deceased policy-holder and not the person named as the nominee in the insurance policy. The view taken by the learned trial judge, therefore, reflects the true position of law. The finding recorded by the learned judge must, therefore, be confirmed.

14. We may observe that there is no doubt as regards the legal position that in view of the policy of insurance and the legal effect of section 39 of the Insurance Act only the person named in the policy as a nominee has a right to receive and collect the moneys. He merely collects it on behalf of the original claimants. If there is a will, the legatees under the will would get it. If the policy-holder has died intestate, his legal heirs would get it. In the present case, in view of the dispute between the legal heirs on the one hand and the nominee on the other, the amount collected by the nominee from the Life Insurance Corporation has been deposited in the court. Therefore, the question of receiving the moneys no more survives and the only question is with regard to the adjudication of the

rights on the basis of the central issue which has been decided in the trial court and in this court, namely, as regards the legal right of a nominee vis-a-vis that of the heirs. We may also say that the position regarding the rights flowing from the naming of a person as a nominee vis-a-vis the legal heirs of a policy-holder in case he dies before the maturity of the policy as recognised in the aforesaid several decisions of the various High Courts deserves to be brought to the notice of the policy-holders by the Life Insurance Corporation so that they know what exactly they are doing and the legal consequences of naming a nominee.

15. No other point has been urged on behalf of the appellant.

16. The appeal, therefore, fails and is dismissed. The appellant will pay the costs of respondent No. 1 and respondent No. 2 in the set as also the costs of respondent No. 4.

17. Before parting we may say that plaintiff No. 2 - respondent No. 2 is a minor son of deceased Surendra. The amount which would fall to his share would be one-half of the decretal amount of Rs. 13,803 with interest, etc. This amount will have to be deposited in a nationalized bank in fixed deposit or will have to be invested in approved securities till the minor, original plaintiff No. 2 - respondent No. 2, attains majority. Of course it may be clarified that interest on the amount so invested can be withdrawn by the guardian of respondent No. 2 (respondent No. 1, mother) for the maintenance of the minor from time to time.

18. Learned counsel for the appellant applies for a certificate of fitness to appeal to the Supreme Court of India. In our opinion, this case does not involve any substantial question of public importance which needs to be decided but the Supreme court of India in view of the fact that we are taking the view which is consistent with the view taken by the three High Courts of India, namely, Calcutta, Madras and Kerala High Courts.