

(1936) 12 BOM CK 0012

In the Bombay High Court

Case No : I.C. No. 26 of 1934

In Re: Peninsular Life Assurance Company Ltd.

Date of Decision : 08-12-1936

Acts Referred:

Life Assurance Companies Act, 1912 — Section 4, 6

Citation : AIR 1936 Bom 24 : (1937) 39 BOMLR 1163 : 173 Ind. Cas. 727 : 160 Ind. Cas. 638

Hon'ble Judges : Kania, J

Bench : Single Bench

Judgement

Kania, J.—This chamber summons was adjourned into Court to determine the question whether claimant No. 51 is entitled to rank as a preferential creditor.

2. The company in liquidation did only life assurance business. A policy of assurance on the life of Pirmahomed Fatemahomed was issued before the company went into liquidation and the assured also died before that date. The claimant is the representative of the deceased. The contention of the claimant is that by reason of Sections 4 and 6 of the Indian Life Assurance Companies Act (VI of 1912) he is entitled to rank as a preferential creditor. That contention is opposed by the other creditors of the company.

3. No decision, English or Indian, directly dealing with the right of the policy holders to claim priority as against the creditors of the life assurance business has been cited before me. In *British Union and National Insurance Company Limited, In re* [1914] 1 Ch. 724; on appeal [1914] 2 Ch. 77 the dispute was between the holders of fire and accident policies on the one hand and the general creditors on the other, to receive in priority the balance of the life assurance fund left after the life policy-holders were paid off. On going through the decision carefully it is clear that the creditors were not creditors of the life assurance business only, but were general creditors, i.e., creditors whose claims could not be definitely ascertained as arising in respect of the life assurance business of the company. The company was doing different kinds of insurance business and the particular fund allocated for the life assurance business was first used in

paying off the Assurance claims of all the life policy-holders. The dispute was only in respect of the Company, balance left after satisfying those claims in full. Under the circumstances that decision does not help me in deciding the point in this summons. In *Renishaw Iron Company Limited, In re* [1917] 1 Ch. 199 it was held that the life assurance fund was an asset of the company and it was improper to contend that the costs of liquidation could not be paid out of that fund because that was a security for life policy-holders. In other words Nevill J. held that the right which existed in the policy-holders was not equivalent to that of the debenture-holders or mortgagees and therefore the costs of liquidation could be payable out of the life assurance fund. *South East Lancashire Insurance Co., In re* [1935] 1 Ch. 225 is not helpful because on facts it was expressly stated that the corresponding section of the English Act was not applicable. In giving judgment *Henworth M.R.* and *Romer L.J.* did not discuss the meaning to be attached to the words used in the corresponding section of the English Act. *Maugham L.J.*, while admitting that the section in question did not apply, observed that the words of that section did not give a security to the life policy-holders. In *Hearts of Oak Assurance Co., In re* [1936] 1 Ch. 558 the question of the rights of the policy-holders and creditors of that particular class of business, as against the other creditors of the company, came to be considered. *Bennett J.*, in considering the construction of the corresponding section of the English Act, accepted the observations of *Maugham L.J.* in the abovementioned case. According to him the true meaning of the corresponding section of the English Act was only to create water-tight compartments as between the different insurance businesses of the company, and it did not imply to create a charge in favour of policy-holders of the class in respect of which the deposit was made.

4. Section 4 of the Indian Life Assurance Companies Act (VI of 1912) runs as follows :-

4. (I) Every life assurance company shall, if established before the commencement of this Act, within one year from such commencement, or, if established after such commencement, before it commences to carry on the business of life assurance, deposit and keep deposited with the Comptroller of Currency, for and on behalf of the Governor-General in Council, Government securities, as defined by the Indian Securities Act, 1886, of the face value of twenty-five thousand rupees or of a face value equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, whichever is greater; and, until the company keeps deposited securities of the face value of two hundred thousand rupees, shall annually deposit and keep deposited in like manner like securities of a face value-

(a) equal to one-third of the income derived from life assurance business as shown in the revenue account for the last financial year, until the face value of the securities deposited exceeds one hundred thousand rupees;

(b) and thereafter equal in amount to one-third of the increase to the life assurance fund as shown in the revenue account for the last financial year :

Provided that a company may at any time deposit securities of a face value of two hundred thousand rupees or make up its deposit of securities to that value.

(2) The interest accruing due on the securities deposited under Sub-section (1) shall be paid to the company.

(3) The deposit may be made by the subscribers of the memorandum of association of a company or any of them, in the name of a proposed company and, upon the incorporation of the company, shall be deemed to have been made by, and to be part of the assets of, the company, and the Registrar of Joint Stock Companies shall not Company, issue a certificate of incorporation of the company under the Indian Companies Act Limited 1882, until" the deposit has been made.

(4) The deposit shall be deemed to form part of the life assurance fund of the company.

The object of this section was to create a fund for the safety of life assurance companies and policy-holders. According to Sub-section (3) the fund, however, continued to be the assets of the company, although by the next sub-section it was stated to form part of "Life Assurance Fund." Section 5 of the Act deals with keeping accounts and documents by a company doing life and also other kinds of insurance business. Then comes Section 6 which runs as under :-

6. The life assurance fund shall be as absolutely the security of the life policy-holders as though it belonged to a company carrying on no other business than life assurance business, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance, and shall not be applied directly or indirectly, for any purposes other than those of life assurance.

The marginal note shows that the section dealt with appropriation of life assurance fund. The terms of the section show that the legislature was dealing with the case of a company doing life assurance business and also other businesses. In the first part of the section it is affirmatively stated that the life assurance fund shall be applied only for the life assurance business while in the second part it is negatively stated that the fund shall not be liable for the contracts of other businesses. Giving the words their natural meaning, it is therefore clear that Section 6 itself did not purport to give any right to the policy-holders of an assurance company doing only life assurance business. Realising that to be the situation it was urged on behalf of claimant No. 51 that the right was so clearly recognised that in the first part of Section 6 it was assumed to exist and the section was framed on that basis. In my opinion that contention does not help the claimant. The right to rank as a preferential claimant must be found on some Act of the legislature or recognised law of the land. Apart from the Indian Life Assurance Companies Act, there is no Act or law in India which deals with the rights of policy-holders in the assets of the company or right to rank as preferential creditors or claim the life assurance fund as a security. This must be so because the creation of the life assurance fund is itself a result of the

Act. It is, therefore, within the four corners of the Act that the Court has to find whether a right was given to the policy-holders to rank as preferential creditors. Barring Section 6 there is no other section which refers to the policy-holders and their right in respect of the life assurance fund. Therefore, if on a proper construction of Section 6 the right claimed is not found therein, it must follow that no such right is given under the Act. For that reason the contention must fail. If the legislature had intended to give any such right to the policy-holders, the proper place for the same would have been at the end of Section 4, because Section 6 deals with the rights of the policy-holders in a concern which is doing life assurance business and also other businesses. That section would hardly be a proper place to define the rights of the policy-holders in a life assurance business as against the creditors of that business. In the absence, therefore, of any Act giving the policy-holders any such right I am unable to allow the claim put forward on behalf of claimant No. 51. He will rank only as an ordinary creditor.

5. This company has a very unfortunate history. It started being managed by very irresponsible persons and the business failed in about a couple of years. The only assets recovered by the liquidator were the fund deposited with Government. As a result of a great fight on the winding up petition (of which costs were ordered to be paid out of the assets) I am informed that over half of that fund had gone to pay the costs. The result is that the policy-holders and creditors of this company are left with less than Rs. 15,000 out of which to receive what they can as their distributive share. In response to the notice published under an order of the Court, inviting creditors to come and oppose, if they chose, the present application, two sets of creditors have appeared. Having regard to the facts of this case, I think the Court is justified in showing great reluctance to award costs out of the assets, as the result of such an order would be to reduce the small dividend likely to be paid to the creditors who have suffered by the business of the company. On these grounds I make no order as to the costs of claimant No. 51, in respect of the hearing of this application. The liquidator's costs to come out of the assets in his hands. In respect of the difference between his party and party and attorney and client costs, the learned Judge in chambers when making the final order for costs of liquidation will pass the necessary orders. I make no order in that connection. To each of the two sets of creditors who have come to oppose, Rs. 150 should be paid for their costs out of the assets of the company.