
(1973) 09 MAD CK 0032

In the Madras High Court

Case No : Tax Case No. 310 of 1967 (Reference No. 104 of 1965)

M. Ct. Muthiah and Another

APPELLANT

Vs

Controller of Estate Duty

RESPONDENT

Date of Decision : 20-09-1973

Acts Referred:

Estate Duty Act, 1953 — Section 15, 2(15), 3(1), 34(3), 36

Citation : (1974) 44 CompCas 254 : (1973) ILR (Mad) 242 : (1974) 94 ITR 323

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : C. Ramakrishnan, for T.V. Balakrishnan and C. Ramakrishnan, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—This is a reference u/s 64(1) of the Estate Duty Act, 1953 (hereinafter called "the Act "). This reference arises out of the estate, duty assessment of the estate of late M.Ct.M. Chidambaram Chettiar (hereinafter referred to as " the deceased "), who died in an air crash on March 13, 1954. He was survived by his wife and two sons by name M Ct. Muthiah and M.Ct. Pethachi. In the account of the estate which was filed by the two sons of the deceased it was claimed that the deceased was a member of a joint Hindu family consisting of himself and his two sons and that accordingly the deceased had an interest to the extent of one-third in the properties which ceased on his death. Apart from the-one third share in the family properties which was declared in the accounts there were included amongst other assets in the free estate, moneys received on various policies of insurance on the life of the deceased totalling Rs. 2,36,779. In computing the principal value of the estate the Deputy Controller of Estate Duty, who was the assessing officer, included a sum of Rs. 2,00,000 received from the United India Fire and General Insurance Company Ltd. on a personal accident insurance policy taken out by the deceased on his life on February 21, 1954, treating it as property passing on the death of the deceased.

2. It was contended by the accountable persons that the said sum of Rs.

2,00,000 accrued only on the death of the deceased, that this was not the property of the deceased during his lifetime or at the time of his death and that, therefore, it did not pass or deem to pass on his death under any of the provisions of the Act. The amount was payable only to the legal representatives which the legal representatives could claim as their own property and not as the property passing from the deceased. The amount became payable to the legal representatives under one of the terms of the policy itself and not on any disposition by the deceased as the policy itself is unassignable. Even if it is assumed that the property subsisted in the policy, there was no passing on the death as there was no change in the title or possession of the property taking place on his death. It was further contended that even if the said sum was dutiable it should have been charged as a separate estate in itself and not aggregated with the other items of property passing on the death of the deceased.

3. The assessing authority held that the deceased was competent to dispose of the moneys payable under a will, that he could nominate a person to receive the money in spite of the clause in the policy restraining assignments and in fact he had nominated M.Ct. Muthiah as the person entitled to receive the money, that the deceased was competent to make a will and direct the manner of distribution of the moneys in any way he pleased and that, therefore, the amount was dutiable. He also held that the amount was aggregatable with the rest of the estate. For this view he relied on the decision in *Attorney-General v. Quixley*, (1) [1929] All E.R. (Rep.) 696 (C.A.).

4. The other dispute related to the deceased's share in the joint family property. According to the accountable persons the share of the deceased was only to the extent of one-third in the joint family property. But the assessing authority took the deceased's share in the said properties at one-half. The facts relating to this dispute are as follows : On June 7, 1931, the deceased had given in adoption his then only son, M.Ct. Muthiah, and this son was taken in adoption by the widow of his deceased uncle, Chidambaram Pethachi. After Muthiah was given in adoption another son, Pethachi, was born to the deceased. The case of the accountable persons was that a "muri" had been executed on the date of adoption and, as a result of the terms thereof, the son given in adoption also continued to have a share in the property of the family of his natural father and that during the lifetime of the deceased he had recognised the equal rights of his two sons and allotted for them shares in M.Ct.M. Corporation Private Ltd. and other institutions equally. In the wealth-tax assessment for 1957-58, onwards the family was shown to include M.Ct. Muthiah also. The muri was executed on gudjan leaf. The assessing authority held that the muri was not genuine and that even assuming that it had been executed, under the Hindu law the adopted son lost his rights in the natural family on adoption and that, therefore, the deceased had a half share in the family properties. It was further observed by the assessing authority that in the Income Tax return filed in respect of the income of the family of which the deceased was the karta, the family was shown as consisting of himself and his

son, Pethachi, and Muthiah was not included as a member of the family.

5. On appeal, the Central Board of Direct Taxes came to the conclusion that the deceased was competent to dispose of the moneys received under the policy since he had a right to nominate with regard thereto and that he was also competent to make a will and direct the manner of the distribution of these moneys in any way he liked till the moment of his death. The Board accordingly held that the provisions of Section 6 of the Estate Duty Act were clearly attracted.

6. In the appeal, the revenue also contended that the case would be covered u/s 15 of the Act but the Board considered that since in its view the provisions of Section 6 were attracted it was not necessary to examine the application of Section 15 of the Act. It also concurred with the view of the assessing authority that the amount is aggregatable with the rest of the estate of the deceased. On the other question the Board held that the muri was a genuine document but in its view the primary condition of a valid adoption must be an agreement between the natural father and the adoptive father and since the muri was not executed by the adoptive father no rights could accrue under that document. It further pointed out that the wealth-tax assessment for the year 1957-58 onwards merely gave effect to the agreement, dated August 19, 1956, between M.Ct. Muthiah and his brother, Pethachi, which was subsequent to the death of their father, and, therefore, no reliance could be placed on that agreement. In that view the Board held that the deceased had a one-half share of the estate and not one-third as contended by the accountable persons. At the instance of the accountable persons the following questions have been referred u/s 64(1) of the Estate Duty Act, 1953 :

"(i) Whether the deceased was competent to dispose of the moneys payable under the accident policy and whether the sum of Rs. 2,00,000 is includible in the principal value of the estate ?

(ii) If the sum of Rs. 2 lakhs was liable to be assessed to duty, whether the said amount could be aggregated with the other properties or should be assessed as an estate by itself ?

(iii) Whether" the share of the deceased, Chidambaram Chettiar, in the property of the joint family at the time of his death, was one-half or one-third of the property ? "

7. In this reference, the learned counsel for the accountable persons contended that an accident policy is not property and the deceased never had any interest in it. The premium paid is never returned to the insured. The sum of Rs. 2 lakhs payable under the policy is paid only on the death of the deceased and this was not his property during his lifetime or at the time of his death. In the case of death the amount was payable only to the legal representatives which they could claim as their own property and not as the property passing or deemed to pass from the deceased. The amount is payable to the legal representatives under one of the terms of the policy itself and not under any disposition by the deceased.

The estate of the deceased does not get anything under the policy. Death during the period covered by the policy is uncertain. It may never happen at all and in which case the policy becomes worthless. The insured has no right to assign, mortgage or otherwise deal with the policy. Clause 5 of the policy makes the policy unassignable and, therefore, even under the terms of the policy the deceased had no power of disposition. Power to nominate should not be equated to the competency to dispose of and the deceased never had any right to execute a will with regard to the amount payable under the policy. Therefore, it was not property which the deceased was competent to dispose of.

8. On the other hand, the learned counsel for the revenue contended that accident policy is " property ", that the right under the policy to claim and be paid the policy money on death is an interest in property, that this right is vested in the insured during his lifetime, that the deceased has a right to assign or otherwise dispose of the rights under the policy unless it was prohibited by the terms of the policy itself, that in any case a right to will away the benefits under the policy could not be disputed and this amounts to a power of disposal of the moneys under the policy and that, therefore, the fatal accident policy is property which the deceased was competent to dispose of and it was assessable to estate duty u/s 6 of the Estate Duty Act, 1953.

9. u/s 5 of the Act, estate duty is leviable upon the principal value of the property which passes on death of a person. Section 6 provides that property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death. The word " property " itself is defined in Section 2(15) as including any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another, by any method. Revenue does not rely on the Explanations to this definition and, therefore, it is not necessary to set out the same. It is seen from the definition of " property " that it is an inclusive definition and, therefore, it is not exhaustive.

10. As was held in *The Commissioner of Income Tax, Bombay City, Bombay Vs. Nandlal Gandhalal*, property is not something necessarily connected with physical possession and capable of being treated by manual delivery, but if one goes to analyse its meaning, it is manifest that a great many things, choses-in-action, are in the ordinary sense of the word property and capable of being treated not indeed by physical handling but by the documents of title and investments recognised by law as transferring the title, the incorporeal right to sue, that is, what is strictly comprehended in such phrases, documents which are capable of being enforced and treated as subjects of property. Though the word " property" would thus comprehend within it a wide range of interests, as observed by this court in *Alladi Kuppuswami Vs. Controller of Estate Duty*, :

" It would be proper and necessary, in our opinion., to understand the words " property ", " interest" and " benefit" in the context and in the light of the

provisions of the Act. It follows that though property, or an interest in property, may well be included in the definition of the term " property ", still it may or may not be so for purposes of a particular section in the Act. For instance, it is only property that passes in the sense of passing hands by way of inheritance, or other form of devolution, which seems to attract Section 5. Likewise, for purposes of Section 6, it must be property which the deceased at the time of his death was competent to dispose of."

11. The first question, therefore, for consideration is whether a personal accident policy is property and whether the deceased was competent to dispose of the moneys payable on death under a personal accident policy within the meaning of Section 6 of the Estate Duty Act, 1953.

12. The terms of the policy which are relevant to the present issue are to the following effect. It states that by a proposal and a declaration the deceased applied to the United India Fire and General Insurance Company for an insurance as therein contained and had paid the premium as consideration for such insurance. The insurance is designated as personal accident insurance, Under the terms of the policy, the company has agreed upon proof of title to its satisfaction, to pay to the legal representatives of the insured or to the insured himself, as the case may be, such sum as according to the table of benefits contained in the schedule thereof.

13. The schedule gives the table of benefits as follows :

Rs.

Section A on death or permanent total disablement 2,00,000

Section B on permanent partial disablement 1,00,000

Section C on temporary total disablement for each week of its

continuance not exceeding 52 Section D on temporary partial 1,200

disablement for each week of its continuance not exceeding 52 300

14. The policy was issued subject to certain conditions, one of which is that the policy is unassignable. There are a number of other conditions attached to the policy. In these additional conditions the following are some which are relevant. Condition 3 sets out the cases when the policy will be considered void. Condition 12 provides that the company may, at any time, terminate the policy by giving seven days" notice in writing to that effect. If the policy is so terminated the company shall return to the insured a part of the last premium paid proportionate to the unexpired residue of the period in respect of which the same was paid. Under condition 13, if the policy becomes void under any of these conditions, all premiums paid thereon shall be forfeited to the company.

15. The learned counsel for the accountable persons relied on the provisions of the policy in support of his contention that the sum of Rs. 2 lakhs was only

payable on death and that the amount is payable only to the legal representative and it did not form part of his estate. The following cases were cited at the Bar : Attorney-General v. Quixley, [1929] All E.R. (Rep.) 696 (C.A.), The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi, , Minister of National Revenue v. S. W. Worsley Estate, [1936] Canada Tax Cases 804, D'Avigdor Goldsmid v. Inland Revenue Commissioners, [1953] A.C. 347; 3 E.D.C. 453 (H.L.) and G. Papp Estate v. Minister of National Revenue, [1964] Canada Tax Cases 128.

16. In Attorney-General v. Quixley the facts were these. One Margaret Louis Quixley died intestate. The deceased was at the time of her death in the service of a girls school as a secondary teacher and had been in such service for a period of upwards of five years. u/s 5(1) of the School Teachers' (Superannuation) Act, 1925, the deceased and her executors or administrators were given in return for compulsory contribution, a right to receive gratuity. The question for consideration was whether the death gratuity of ₹429 17s, 1 ld. paid in pursuance of the provisions of Section 5(1) was liable to estate duty. Section 2(1) (a) of the Finance Act, 1894 was held not applicable on the ground that the word " passes " in that section contemplates that there must be at the death the property in existence which on the death continues and passes on to the successor and that in respect of the death gratuity it was difficult to say that the right had become and was in the hands of the deceased teacher, a sum or property which actually passed on. Section 2(1)(d) of the Finance Act 1894, was also held not applicable on the ground that the " other interest purchased or provided by the deceased " in that section means something which the deceased purchased or provided voluntarily and since the contribution by a teacher under the School Teachers' (Superannuation) Act, 1922-1925, was compulsory it cannot be said that she had purchased or provided any interest. The Revenue then relied on Section 2(1)(a) of the Act which provided that the property passing on the death of the deceased shall be deemed to include property which the deceased was at the time of his death competent to dispose. Rowlatt J. held that in view of the special definition of the words "deemed to be competent to dispose of the property " and " general power " u/s 22(2)(a), the case was within Section 2(1)(j.). In the Court of Appeal, it was contended on behalf of the defendant, accountable person, that at the time of the death the deceased was not possessed of anything which falls within the word " property " ; she had only an interest in what may be described as the possibility of the receipt of the death gratuity; an interest which might fail if certain conditions had not been fulfilled, i.e., if she had not died in the contributory service. Further, it was an interest in a sum which was, thereafter to be ascertained and which could not be definitely determined as of a particular value. Overruling this contention the learned Lord Hanworth M.R. observed :

" It appears to me that that argument confuses the clear words of the sections. Counsel is compelled to admit that she had an interest and, I think, an interest, which she also admits, she could dispose of by will, but I will deal with that in a

moment. She had an interest in a sum to be received by her personal representatives, of which the value was not known and which would have to be determined according to rules to which, so to speak, the deceased lady was no party. But, first of all, if the interest that she had falls within the term " property ", we can leave outside, for the moment, the other matters brought into consideration in the argument. It appears to me that from and after the operation of the Act of 1925, whereby it was laid down that the board shall make a grant to the legal personal representatives of a teacher, that interest was not only an interest in an uncertain amount, but was a right which was within the term " property ".

The fact that it was not determined in what sum her right would be quantified does not appear to me to offer any guide to the solution of the question, because the charge is on the principal value of all property ascertained as provided in the statute ; it is not the principal value taken at its face value in figures, but it is ascertained as provided in the statute. The statute will provide the mode of ascertainment of the value, but the primary question is: Is this right under the section a piece of property ? In my view it is, and being such, it prima facie comes within the enlarging words in the Finance Act, 1894, Section 2(1)(a). Be it observed that what we have to do is not to take the ordinary meaning of words, but we have to interpret " shall be deemed ". Therefore, what might not at once appear to be rightly called " property passing on the death", is still to be property passing on the death, and as such includes property of which the deceased was at the time of her death competent to dispose. It was, in my judgment, property,"

17. With reference to the argument that the deceased was not competent to dispose at the time of her death, the Master of the Rolls held :

" Counsel for the defendant was compelled to admit that the deceased could dispose of a sum ultimately to be received, or could dispose of this interest by her will, although he said she could not raise any money on it in the sense that there could not be an assignment of it while she was alive, but it would appear to me that to suggest that the deceased had no power to dispose of this sum by will would be to take away half the merit of the gratuity on her decease. If and when it is received it must be subject to her will, and her absolute right is of benefit and of comfort to her, because she is, by means of that knowledge and that competence to dispose of it, able to make some provision for those who are the objects of her disposing power. It appears to me, therefore, that in view of the right which this lady had, she had power to dispose of the sum by will, and thus, when one looks at Section 1, the charging section of that Act of 1894 and Section 2 which I have referred to as a section which sweeps into the charge u/s 1 property which is to be deemed for the purpose of Section 1 to be property passing on the death, and when one looks at the wide interpretation u/s 22(2) (a), it is clear that this ?429 17s. 1 ld. falls within the charge imposed by Section 1 of the Act of 1894. The difficulty that the amount was determined at a date after the deceased's death, when the award was made, does not appear to me

to make any difference at all."

18. Lord Justice Lawrence expressed the view in the following terms :

" Counsel for the defendant admitted, rightly, that the decreed was competent to dispose of this property by will as she might think fit. It seems to me that that admission carries the contention of the Crown the whole length. It is true that he has strenuously contended that this gratuity received from the Board of Education was not property at all. The difficulty I have in following the argument is that if it was not property at all she could not, by any possibility, have disposed of it by her will. The real truth of the matter is that it was property, the value or quantum of which could not be ascertained until after the Board of Education had decided the amount of the gratuity. Section 5(1) of the Act of 1925 imposes an obligation on the Board of Education to make a death gratuity on conditions which, in this case, were fulfilled. The learned judge was, in my opinion, right in saying that there existed a right in the deceased to have paid to her legal personal representatives after her death a sum of money, and I think the learned judge was further right in holding that that sum of money, when so paid was property and, being property, it was property of which the deceased was entitled to dispose as she thought fit by her will."

19. In the words of Lord Justice Sankey :

"The deceased had an absolute right to be paid ? under the Teachers" (Superannuation) Act, 1925, a right which she was given in return for compulsory contributions. The fact that the quantum remains to be ascertained does not make the right any the less property within the artificial meaning of " property passing on the death " laid down in the Finance Act."

20. The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi, is a case in which the liability to estate duty of the compensation amount paid by the Indian Airlines Corporation to the legal representatives of a flying crew, who died in an air crash while on duty, u/s 6 of the Estate Duty Act, was considered. Under Rule 159 of the Indian Airlines Corporation (Flying Crew) Services Rules, a member of the flying crew was entitled to compensation at specified rates in the event of his death or an injury caused by an accident during or as a result of air journey. The compensation payable under this rule was in addition to the compensation which the Corporation had agreed to pay under an agreement described as the pilot agreement. In accordance with the agreement between the deceased and his employer a sum of Rs. 68,300 was received by the widow of the deceased as compensation. The Tribunal held that in this case as the compensation came into being only by reason of the death of the deceased it could not be said that the deceased had any interest in it during his lifetime. The Tribunal, therefore, held that the property in question was not one over which the deceased had any power of disposition. On a reference the Delhi High Court held that though the deceased was not required to make any contribution for the purpose of earning the compensation as was required to be

made by a teacher under the Teachers' (Superannuation) Act, yet the compensation was payable as a reward for the service which the deceased was required to render and was a part of the remuneration payable under the service rules and the pilot agreement and its object was to make some sort of provision for the legal representatives of the deceased employee. The deceased, therefore, had an interest in it and had also the right to appoint the person to whom it should be paid on his death.

21. Minister of National Revenue v. S. W. Worsley Estate, [1966] Canada Tax Cases 804 is one arising under the Estate Tax Act, 1958, of Canada. The relevant provisions of Section 3 of the Act read as follows :

" 3. (1) There shall be included in computing the aggregate net value of the property passing on the death of a person the value of all property, wherever situated, passing on the death of such person, including, without restricting the generality of the foregoing,--

(a) all property of which the deceased was, immediately prior to his death, competent to dispose :

(k) any superannuation, pension or death benefit payable or granted,--

(i) out of or under any fund or plan established for the payment of superannuation, pension or death benefits to recipients.....

on or after the death of the deceased in respect of such death.

(2) For the purposes of this section,--

(a) a person shall be deemed to have been competent to dispose of any property if he had such an estate or interest therein or such general power as would, if he were sui juris, have enabled him to dispose of that property ;.....

(4)(b) For the purposes of paragraph (k) of Sub-section (1) any amount payable in respect of the death of a person under a policy of insurance (other than a policy of insurance owned as described in paragraph (m) of Sub-section (1)) under which any life insurance was effected on the life of that person in respect of, in the course of or by virtue of his office or employment or former office or employment as an employee of any other person, except any part of that amount that was payable under the policy to that other person, shall be deemed to be a death benefit payable in respect of the death of that person out of or under a fund or plan established for the payment of death benefits to recipients."

22. The question for consideration in that case was whether the sum of \$100,000 paid to the administratrix of the estate of one Sidney William Worsley (the deceased) under a group accident insurance policy, provided by the deceased's employer, should be included in computing the aggregate net value of the property passing on the death of the deceased. The group accident insurance policy was a contract between the employer and an insurance company. Neither the deceased nor any of his fellow employees who happened to be named in the

policy was a party to the contract. The employer was under no legal obligation to provide such insurance. The policy was, according to its terms, to be in force for a particular period. As per the policy, in the event of bodily injury caused to any one of the employees named therein " by an accident occurring while this policy was in force " varying amounts determined in a manner set out in the policy were agreed to be paid by the insurance company. The policy provided that in the event of loss of life of an employee, the indemnity was to be payable to the estate of that person and that all other indemnities were to be payable to the employee himself. The provision in the policy that in the event of loss of life of an insured person the indemnity was payable to his estate was subject to Sub-sections (1) and (3) of Section 244 of the Insurance Act, which read as follows :

" 244. (1) Where insurance money is payable upon death by accident, the insured, or, in the case of group accident insurance, the person insured, may designate in writing a beneficiary to receive the insurance money or part thereof and may alter or revoke in writing any prior designation

(3) A beneficiary designated under Sub-section (1) may upon the death of the person insured enforce for his own benefit the payment of insurance money payable to him and payment to the beneficiary discharges the insurer, but the insurer may set up any defence that it could have set up against the insured, or the person insured in the case of group accident insurance, or the personal representative of either of them."

23. The deceased died intestate as a result of an air-craft crash and the sum of \$100,000, therefore, became payable to his estate under the policy. Revenue included this amount in computing the aggregate net value. Before the Tax Appeal Board the assessment was sought to be supported by the revenue on the ground that the group accident policy in question in so far as it provided for a death benefit was " a policy of insurance under which life insurance was effected on the life of that person by virtue of his employment" and that, therefore, the amount payable thereunder was due by Sub-section (4)(b) for the purpose of Sub-section (1)(k) of Section 3 to be a death benefit payable in respect of the death of that person out of or under a fund or plan established for the payment of death benefits to recipients. The Tax Appeal Board held that a contract for death benefit in an accident insurance policy is not " life insurance" and, therefore, no estate duty arose. The appellate court accepted this view and further observed :

" I merely add to what he has said that, in my view, in the absence of any contrary indication, it is proper to assume that when Parliament uses words by which it refers to a class of insurance coverage in a taxing statute, it is using the words in the same sense as it uses those words in legislation enacted by Parliament for the purpose of regulating insurance companies ; and that, in my view, it seems clear that, in the Foreign Insurance Companies Act, R.S.C. 1952, c. 125 (see, for example, Section 37) and the Canadian and British Insurance Companies Act, R.S.C. 1952, c. 31 (see, for example, Section 81), there is a

contrast between "life insurance " and " insurance against death as a result of accident" even where the latter is included in a policy of "life insurance". In the appeal, the revenue put forward the alternative claim that the assessment could be maintained under paragraph (m) of Sub-section (1) of Section 3 of the Estate Tax Act. The argument on behalf of the revenue was that by virtue of Section 244 of the Ontario Insurance Act set out above, the deceased did have the right, immediately prior to his death, to designate a beneficiary and, if he had done so, the effect would have been that the \$100,000 indemnity that became payable after his accidental death would have been payable to the named beneficiary instead of to his estate. This, according to counsel for the appellant, was a power or authority to appoint or dispose of the contingent right to receive \$ 100,000 on the accidental death of the deceased during the policy period. This contingent right to receive the \$ 100,000 death benefit is the deceased's interest in the policy of insurance and is the property which the deceased was immediately prior to his death competent to dispose. This argument was accepted by the learned judge who held that the contingent right to have \$ 100,000 paid to his estate in the event of his accidental death was a property right of which the deceased was immediately prior to his death competent to dispose."

24. In *D'Avigdor Goldsmid v. Inland Revenue Commissioners*, [1953] A.C. 347 ;3 E.D.C. 453 the deceased, who had a life assurance policy on his marriage, brought it into his marriage settlement. By that settlement the policy, with all bonus additions, was assigned by the deceased to trustees upon trust to receive the policy moneys at maturity and hold the same upon the trusts therein declared and the deceased covenanted with the trustees to pay the premiums upon the said policy, which he did, as long as he had any interest in it. By subsequent dispositions, his eldest son became absolutely entitled to the policy as from November 10, 1934. He died in 1940. The son received a sum of ? 48,765 being the original ? 30,000 and bonuses under the policy. The question for consideration was whether the estate duty should be paid on the sum of money which was received in discharge of the life policy taken out by the deceased. The trial judge held that no estate duty arose either u/s 2(1)(c) or u/s 2(1)(d) of the Finance Act, 1894. The Court of Appeal confirmed the decision of the trial judge that no estate duty arose u/s 2(1)(c) but on the alternative claim of duty u/s 2(1)(d), it reversed the decision of the single judge and held that estate duty was payable u/s 2(1)(d). On a further appeal the House of Lords considered only the alternative claim u/s 2(1)(d) and it was held that a life policy is a piece of property which confers upon the owner of it the right, if certain conditions continue to be satisfied, to claim and be paid the policy moneys on the death of the person whose life is assured.

25. The learned counsel for the revenue also relied on the observations of the Exchequer Court of Canada in *G. Papp Estate v. Minister of National Revenue*, [1964] CTC 128 which read as follows :

" It was urged on behalf of the estate that the assignment of the insurance policy

had no value. Under its terms it had no surrender value and no loan value and Mr. C. D. Wilson gave evidence that at the time of the assignment it had no market value. But this does not dispose of the matter, for immediately after the assignment of the policy of insurance Meuritter Papp had a chose-in-action. It is true that she could not sell it or borrow on it or get any surrender value for it, but it did have value, for if Gordon Papp had died she would immediately have had the right to receive payment of the amount of the policy."

26. As seen from the facts, Quixley's case, [1929] All E.R. 696 The Controller of Estate Duty, Delhi Vs. Late A.T. Sahani through L.A. Sahani, New Delhi, and Worsley Estate's case, [1966] Canada Tax Cases 801 related to fatal accident policies and D'Avigdor's case, [1953] A.C. 347; 3 K.D.C, 453 and Papp Estate's case, [1964] CTC 128 related to life insurance policies. It may be seen from the passages extracted above that in Quixley's case the Court of Appeal held that the sum of money when paid was property, though the availability itself was subject to the fulfilment of certain conditions. It appears that the right to the death gratuity could not be assigned under the terms of the statute and any such assignment thereof was void. But the Court of Appeal was of the view that the deceased was, by virtue of the provisions of the scheme of death gratuity and in particular Section 5(1) of the School Teachers' (Superannuation) Act, 1925, competent to dispose of this amount by will. For coming to this conclusion the court also took into account the wide interpretation given in Section 22(2)(a) of the Finance Act for the words " competent to dispose ".

27. In fact, the competency to dispose of by will was admitted by the counsel for the accountable persons in that case. It is because of this power the Court of Appeal held that the case is covered by Section 2(1)(a) of the Finance Act.

28. In Sahani's case also, as seen from the report at pages 521 and 523, although no specific rule providing for a right to dispose of the compensation had been pointed out, the fact that the deceased did nominate his wife as the person to whom compensation should be paid and the Corporation accepted that nomination, goes to show that his authority to do so was recognised. Therefore, this is also a case similar to Quixley's case, in which it was found that such a right was both admitted and found implied in the statutory provisions controlling those compensations. In Worsley Estate's case there was a special power conferred on the insured u/s 244 of the Insurance Act to designate in writing a beneficiary to receive the insurance money or part thereof and to alter or revoke in writing any prior designation and a beneficiary so designated, upon the death of the person insured, could enforce for his own benefit the payment of insurance money payable to him. Thus, in all these three cases it was held that the money payable under the fatal accident policy is liable to estate duty as property over which the deceased was, at the time of his death, competent to dispose of and, therefore, shall be deemed to pass on his death only on the basis of the statutory right of disposal conferred on the insured.

29. D'Avigdor's case related to life insurance policies and the question there

related to the point whether life policy is property, what is the nature of such property and whether Section 2(1)(d) of the Finance Act, 1894, was applicable to the facts of that case. Section 2(1)(a) was held not applicable by the single judge and the Court of Appeal, not on the ground that life policy, though property, could not be assigned or disposed of by the insured but on the ground that in that case on the facts the deceased had already settled the entire policy on his eldest son long prior to his death and that, therefore, he was not " at the time of his death competent to dispose of."

30. Thus, in the case of a personal accident policy, the property is the ultimate money that is paid and that shall be deemed to pass on death of the deceased because of his competency to dispose of the same by will.

31. But the learned counsel for the accountable persons contended that in the case of a fatal accident policy the right to claim and be paid the policy money is dependent on an uncertain contingent event and, therefore, the interest created is only, if at all, an uncertain contingent interest which is something like a chance of an heir-apparent succeeding to an estate, a chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of like nature which cannot be transferred u/s 6 of the Transfer of Property Act. He also contended that a death benefit under an accident policy could not be disposed of by a will in view of restriction No. 1 of Schedule III to the Indian Succession Act, 1935. The effect of that restriction was that the testator would not be competent to bequeath property which he could not have alienated inter vivos. That means, if the property is of the type falling u/s 6(a) of the Transfer of Property Act, it could not be dealt with by will also. In this connection, the learned counsel also relied on Clause 5 of the policy as prohibiting the assignment of the policy, which, according to the learned counsel, would include a disposition by will. His further submission was that the effect of nomination under an accident policy is that the person nominated is the one to whom the money secured by the policy shall be paid in the event of death of the assured and the power to nominate does not mean that the insured has a power to dispose by will of the moneys payable under the policy. In this connection, he also pointed out the distinction between the amounts payable under the Fatal Accidents Act, 1846, and the Law Reforms Act, 1934. He relied on the decision in AIR 1930 17 (Privy Council) to illustrate the difference between a contingent interest dependent on a certain event and a contingent interest dependent on an uncertain event. In that case, the settlor settled the property on trust under which he created a vested interest in all the children to the income of the property and a contingent interest in them in respect of the corpus until the death of his wife and the youngest child reaching the age of twenty. Both the death of his wife and the youngest child reaching the age of twenty are certain events which made the interest transferable. The Privy Council observed that :

" The contingent interest, which the children took, is a well-ascertained form of property--it certainly has been transferred in this country for generations--in

respect of which it is quite possible to raise money and to dispose of it in any way that the beneficiary chooses. "

32. We are unable to agree with this submission of the learned counsel.

33. The policy taken out by the deceased is in the nature of a provision for the legal representatives. If he had not disposed it of otherwise, it would be payable to the legal representatives. Under the terms of the policy, in the case of death of the insured, the death benefit is payable to the legal representatives. The deceased thus had a right to have the amount paid to his legal representatives after his death. This right is not like a chance of an heir-apparent succeeding to an estate or the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of like nature coming within the prohibition of Section 6 of the Transfer of Property Act. We are not concerned as to the nature of the right of the legal representatives under an accident policy. The right of the deceased is a right flowing under the terms of the policy itself and not an uncertain contingent right dependent on an uncertain event. Therefore, the prohibition u/s 6 of the Transfer of Property Act and the restriction in Schedule III to the Indian Succession Act are not applicable. u/s 3(1)(a) of the Estate Duty Act, a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property. " General power " is defined in its wider terms as including a power to appoint or dispose of property, whether exercisable by instrument inter vivos or by will or both. The words " power to appoint property " is defined in Section 2(13) as meaning power to determine the disposition of property of which the person invested with the power is not the owner. There could be no doubt that the amount payable on death is property. The deceased had the right to have this amount paid to the legal representatives. The right of the deceased under the policy is, therefore, over the property. It is not disputed that the deceased had authority to nominate a person as a beneficiary under the policy. But what was contended by the learned counsel for the accountable persons was that the power to nominate or cancel such nomination and nominate another person is not a power of disposal over the moneys payable under the policy. Nomination only enables the nominee to receive the policy money and give effective discharge but does not vest any title to the money in that person. In this connection the learned counsel relied on the decision of this court in *Seethalakshmi Ammal Vs. Controller of Estate Duty, Madras*, . It was held therein :

" 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 rights under a policy unlike an assignment. This distinction was recognised by a Division Bench of this court in *Mohanavelu Mudaliar v. Indian Insurance & Banking Corporation Ltd.*, [1957] 27 Comp. Cas. 47 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 life-time 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. "

34. But that was a case of a life insurance policy to which Sections 38 and 39 of the Insurance Act are applicable. It may be seen that the definition of the words " life insurance business " does not cover a policy covering death by accident. Section 38 also specifically mentions that a transfer or assignment of a policy of life insurance may be made only by an endorsement upon the policy or by a separate instrument. Section 39 refers to " nomination " by the holder of a policy of life insurance. It is because of the distinction between a transfer of assignment and nomination made in Sections 38 and 39, that a nomination in the case of a life insurance policy was held to merely mean 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. These two sections are not applicable to an accident policy covering the death by accident. " Nomination " in the case of a personal accident policy, in our opinion, amounts to a disposition by will as the property itself is to come into existence on death of the insured. Therefore, nomination could be cancelled or changed during the life-time of the insured. In this respect, nomination also differs from an assignment of a life insurance policy which is irrevocable under the provisions of Section 38 of the Insurance Act.

35. We may also give another reason for this difference between a life and an accident policy. In the case of a life insurance policy, as has been held by the House of Lords in D'Avigdor's case, [1953] A.C. 347 ; 3 E.D.C. 453 (H.L.) and explained by the learned and noble Lord Morton in Westminster Bank Ltd. v. Inland Revenue Commissioners, [1958] A.C. 210 ; [1959] 36 ITR (E.D.) 3 ; 3 E.D.C. 848 (H.L.) both the policy as such and the money payable thereon is property which could be settled during the life-time of the insured. That is because of the peculiar nature of the life insurance policy. It is in the nature of a contingent interest dependent on a certain event which the Privy Council described in AIR 1930 17 (Privy Council) as a well ascertained form of property. In the case of an accident policy, we are of the view that the policy itself is not property but the holder of the policy has a right to have the amount paid to his legal representative or nominee. That right is with respect to the disposition of the money payable under the policy and not a right in the money itself. But this

right of disposition brings the property which is to come into existence on death within the coverage of estate duty as property deemed to pass on death because of the peculiar definitions in the Act itself.

36. The other decisions relied on by the learned counsel, namely, *Swami Amar Das v. Dadu Dayalu Mahasabha*, [1953] 23 Comp. Cas. 7, *Ramballav Dhandhaniah v. Gangadhar Nathmall*, [1956] 26 Comp. Cas. (Ins.), *Krishna Lal Sadhu and Another Vs. Mt. Promila Bala Dasi*, and *Shankar Vishwanath Vagh v. Umabai*, ILR [1913] Bom. 471, also relate to life insurance policies.

37. Clause 5 of the personal accident insurance policy, which was relied on by the learned counsel for the accountable persons, reads as follows ;

" This policy is unassignable and the company shall not be affected by notice of any trust or purported assignment of or of any charge or lien imposed or purported to be imposed upon or any dealing with the policy and the receipt of the insured or the executors of or administrators of the insured for any moneys payable hereunder shall in all cases be an effectual discharge to the company."

38. We are unable to agree with the learned counsel for the accountable persons that this clause in any way prohibits the disposition of the beneficial interest by will. This clause does not fetter the authority of the insured to execute a will and direct his executors or administrators in the matter or disposal of the moneys payable under the policy. It only means, vis-a-vis, the company, that such disposition by will or otherwise could not prejudicially affect the rights of the company. In fact, the latter portion of the clause recognises the creation of a trust or assignment or creation of a charge or lien over the policy. It says that the company shall not be affected by notice of any such trust or assignment and the receipt of the executors or administrators of the insured for any moneys payable shall be an effective discharge to the company. In this connection, we may also refer to a passage in *Halsbury's Laws of England*, volume IV, 3rd Edition, page 520:

" 1076. Condition against assignment.--The mere insertion in a contract, as, for example, in a policy of life insurance, of an express condition that it shall not be assignable in any case whatever will not necessarily prevent the assignment of the beneficial interest in the contract, but parties to a contract can by express stipulation render the benefit of the contract incapable of being assigned. "

39. We are unable to read Clause 5 as a stipulation rendering the benefit of the contract incapable of being assigned. In *MacGillivray on Insurance Law*, 5th edition, volume II, paragraph 1186, we also find the following passage :

" Where a life policy was expressed to be "not assignable in any case whatever", and provided that the company should not be bound by notice of any trust, equitable charge, or lien, it was held that an assignee could not take the benefit of the Policies of Assurance Act, 1867, and sue the company, and that the company might obtain a complete discharge by payment to the representatives

of the assured notwithstanding any adverse claims ; but that the provision did not operate so as to prevent an assignment or charge from being enforceable in equity against the assured"s representatives. "

40. Both these passages related to life insurance policies. But, as statement of law relating to interpretation of clauses in a policy, these passages are applicable for the interpretation of an accident policy as well. Policies of insurance are to be construed like other written instruments. There are no peculiar rules of construction applicable to the clauses and conditions in a policy which are not equally applicable to the terms of other contracts. The conditions are to be construed fairly between the parties, and the court will endeavour to ascertain their meaning by adopting the ordinary rules of construction. The true construction of a document means no more than what the court puts on it as the true meaning, and the true meaning is the meaning which the party to whom the document was handed or who is relying on it would put on it as an ordinarily intelligent person construing the words in the proper way in the light of the relevant circumstances. If there is any ambiguity in the language used in a policy it is to be construed more strongly against the party who prepared it, that is in the majority of cases against the company, vide MacGillivray on Insurance Law, 5th edition, volume I, paragraphs 702-703.

41. Construing Clause 5 in the light of the law as stated above, we are unable to hold that the disposition by will of the benefits arising under the policy was prohibited.

42. The learned counsel then relied on the decisions in Feay v. Barnwell, [1938] 1 All E.R. 31 and Davies v. Powell Duffryn Associated Collieries Ltd., [1942] 1 All E.R. 657 ; [1942] A.C. 601 where the difference between benefits arising under the Law Reforms Act, 1934, and the Fatal Accidents Act, 1846, was noted. It was pointed out in these decisions that the rights of action under the two enactments are quite distinct and independent. Under the Law Reforms Act the right of action is for the benefit of the deceased"s estate ; under the Fatal Accidents Act the right of action is for the benefit of the deceased"s dependants though in both cases the cause of action is the negligence of the third party which has caused the deceased"s death. This distinction is also kept up in India as pointed out by the Supreme Court in Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others, in a case arising under the Fatal Accidents Act of 1855.

43. We are unable to agree with the learned counsel for the accountable persons that the case of an accident policy is in the nature of a claim by a dependant under the Fatal Accidents Act of England or Section 1 of the Indian Fatal Accidents Act, 1855. These decisions were concerned with the interpretation of a statutory provision and the rights considered there are statutory rights and not rights under a policy.

44. The learned counsel for the revenue invited us to consider the applicability of sections 5 and 15 of the Estate Duty Act in respect of the sum of Rs. 2,00,000

received by the accountable persons under the personal accident insurance policy. The learned counsel for the accountable persons objected to the consideration of this question on the ground that neither the Board nor the assessing authority had considered this question. He also contended that the questions referred to this court do not also warrant a consideration of the same. It is seen from the order that the assessing authority did not specifically refer to any section but held that the deceased was competent to dispose of the moneys payable under the policy and that, therefore, the sum of Rs. 2,00,000 was property of which the deceased was competent to dispose of on his death. This finding has reference only to Section 6 of the Act. Before the Board the revenue relied on Section 15 as well. After holding that the provisions of Section 6 of the Estate Duty Act are clearly attracted, the Board observed that " in this view of the matter, it is not necessary to consider the application of Section 15 of the Act ". It is seen from the stated case that the first question of law referred to us was the one required by the accountable persons themselves.

45. The learned counsel for the revenue submitted that the latter portion of that question would cover within it a consideration of the applicability of sections 5 and 15 of the Act. We are inclined to agree with the learned counsel for the revenue that the latter portion of the first question would cover the consideration of the applicability of Section 15 in view of the fact that that point was raised before the Board, The first question is definitely in two parts and the latter portion is not qualified by the earlier portion. This is evident from the employment of the word "whether" after the conjunction " and ". If the applicability of Section 6 alone is covered by the first question in our view the word " whether " after the conjunction " and " need not have been included. It may be true that the latter portion of the first question was intended to cover the issue as to what is the amount that is includible in the principal value of the estate. But the sweeping nature of the latter portion includes also the consideration of the applicability of Section 15. Though Section 5 of the Act was not specifically argued before the authorities below, the learned counsel for the revenue made his submissions on that question on the basis that the latter portion will cover that question as well. If the question is whether the sum of Rs. 2 lakhs is includible in the principal value of the estate and that question was before the Board the applicability of Section 5 would arise especially when the law is argued on the basis of the facts found and no consideration of special facts is necessary in the reference. We accordingly proceed to consider the question of applicability of sections 5 and 15 of the Act,

46. It may be mentioned that at one stage it was considered in England that Sections 1 and 2 of the Finance Act, 1894, were mutually exclusive but in *Public Trustee v. Inland Revenue Commissioners*, [1960] A.C. 398; [1961] 43 I.T.R, 19 the House of Lords authoritatively held that the provisions are to be read as having concurrent application and not as mutually exclusive. Section 1 of the Finance Act corresponds to Section 5 and Section 2(1)(a) and (d) of the Finance Act correspond to sections 6 and 15 of the Estate Duty Act, 1953. Section 5

imposes estate duty on the principal value of the property passing on death and sections 6 to 17 deal with properties that shall be deemed to pass on death. Section 3(3) states that for avoidance of doubts it is declared that reference in the Act to property passing on the death of a person shall be construed as including references to property deemed to pass on the death of such person. It is, therefore, clear that the property passing on death may be covered under more sections than one. But we are unable to agree with the learned counsel for the revenue that the instant case will also be covered by the provisions of Section 5.

47. In *Controller of Estate Duty, Gujarat Vs. Hussainbhai Mohamedbhai Badri*, , the Supreme Court had occasion to consider the meaning of the word " passes " in Section 5 of the Estate Duty Act, 1953. It was held therein that the expression " property passing on death " is not a technical expression ; the word " passes " means " changes hands " and in order to determine whether a particular property passed on the death of a deceased what is to be seen is whether that deceased had any beneficial interest in that property or whether that interest passed to someone on his death. In *Alladi Kuppuswami Vs. Controller of Estate Duty*, , this court also had considered that question and held that the word " passes " in Section 5 implies movement of the estate from one dying to another and means changing hands. This point was also considered by the Court of Appeal in *Quixley's case*, [1929] All E.R. 696 , the facts of which have already been noticed. Dealing with the applicability of the provision corresponding to Section 5 with reference to death gratuity paid under the *School Teachers' (Superannuation) Act, 1925*, Lord Hanworth M.R. observed :

" For the purpose of fulfilling the word " passes " , it has, I think, been decided in cases--and it would seem decided in accordance with common-sense--that there must be at the death the property in existence which, on the death, continues and passes on to the successor. In this case, there was a right, but it is difficult to say that the right had become and was, in the hands of the deceased teacher, a sum or property which actually passed on. "

48. We are of the view that in the case of an accident policy, with reference to the death benefit payable thereunder, the deceased had no estate vested in himself but he had only a right of disposal of the benefits arising under the policy. There is no devolution of the interest in such a case from the deceased to another person. From the inception of the original contract the money is payable only to the nominee or the legal representative and as such Section 5 of the Estate Duty Act is not applicable.

49. With reference to a life policy, in *D'Avigdor's case*, [1953] A.C. 347 ; 3 E.D.C. 453, the House of Lords held that the life insurance policy is a piece of property and that the right to claim and be paid the policy money on death of the person whose life is assured is the beneficial interest that comes within the expression " other interest purchased or provided by the deceased ". In the words of Viscount Simon :

" A life policy is a piece of property which confers upon the owner of it the right, if certain conditions continue to be satisfied, to claim and be paid the policy moneys on the death of the person whose life is assured. These rights, therefore, belonged to the appellant from 1934 and were the beneficial interest in the policy which belonged to him from that moment. When the death occurred, he held these rights, and the quality of these rights was not changed by the death, which was merely the occasion when the rights were realised. There was, therefore, no new or additional beneficial interest in the policy which arose on the death of the appellant's father."

50. Lord Morton expressed his view in the following terms :

" The only " other interest" purchased or provided by the deceased (Sir Osmond) was the policy. That was what he owned in October, 1907, that was what he settled on October 22, 1907, and that was what was appointed to the appellant on November 10, 1934. The question to be decided is whether a beneficial interest in the policy accrued or arose on Sir Osmond's death. To that question there can, in my view, be only one answer. The whole beneficial interest in the policy passed to the appellant absolutely in 1934. No interests in expectancy were created, and the beneficial interest of the appellant in the policy immediately after his father's death was exactly the same as his beneficial interest in the policy immediately before his father's death. True it is that the property in which the appellant had a beneficial interest became more valuable by reason of the death, but he had at all material times the same beneficial interest in that property. The Attorney-General, if I understood him correctly, described this as a " metaphysical conception", but to my mind it is a plain statement of fact; and if it is a correct statement of fact it is manifest that condition (iii) is not satisfied in this case.

I think that confusion has arisen in certain earlier cases because the court has regarded the moneys ultimately paid under the policy, instead of the policy itself, as the " other interest purchased or provided ".

51. Lord Reid observed :

" And to say that the policy was provided is merely a short way of saying that what was provided was the contractual right against the insurance company which the assured obtained when he entered into a contract with the company or took out the policy. That contractual right was assigned to the appellant, and it was by virtue of that contractual right alone that the appellant ultimately obtained payment of the ? 48,765 "

52. The learned Law Lord further observed :

"It was then argued that, if what was provided was the policy, a new beneficial interest in respect of it arose at the death because then for the first time there arose a right to sue for the sum due under the policy ; before the death the appellant only had a contingent future right, but after the death he had a new

and different right--a right to get the money. This argument is not based on any peculiarity of a contract of insurance, and if it is right it seems to me necessarily to lead to the conclusion that, whenever a creditor is owed money payable at a future date, his right after the date of payment has come in a new right different from the right which he had before that date. That seems to me to be a novel doctrine and to neglect the fact that the rights of contracting parties flow from the contract: a new right would require a new contract. From the beginning the creditor's right was to be paid on a certain day, and the coming of that day does not create a new right, it merely enables him to enforce his old right. And I do not see why it should make any difference if the date of payment is determined not by the calendar but by the occurrence of an event such as death, whose date cannot be predicted. Nor do I see why it should make any difference that the creditor has had to perform his part of the contract between the date when it was made and the date of payment. "

53. Lord Asquith held :

"It turns on the meaning, in Section 2(1)(d) of the Finance Act, 1894, of two terms : " other interest" and " beneficial interest". "Other interest" in this context seems to me to cover, and on the facts of this case specifically to denote, the benefit of the policy : viz., the contractual rights conferred by it, whether on its original holder or its assignee. These rights included the right to exact payment of the insurance moneys in an agreed and specified event

The " beneficial interest" referred to in the concluding lines of the material subparagraph was a beneficial interest in the " other interest " referred to in its opening lines. It is a clumsy collection of terms no doubt, but it must mean a beneficial interest in a contractual right to exact ?x if and when Sir Osmond should die. This beneficial interest has never altered in quality from the time of the assignment till the day of Sir Osmond's death, or until the day after it. The death has not generated a new beneficial interest. What it has done is to enhance the value of the " other interest" in which the beneficial interest subsisted. The " other interest" (consisting of the contractual rights under the policy) bore in its womb the " promise and potency" of this enhancement from the start. To say that the " beneficial interest" therein sprang into life " on the death " seems to me wholly false. If I buy an apple tree and it subsequently bears fruit, I am beneficially interested in the fruit from the start. "

54. The learned counsel for the accountable persons contended that the principle of this decision is not applicable to an accident policy and relied on the following passage in Halsbury's Laws of England, 3rd edition, volume 22, pages 292-293 :

" 583. Relation to life insurance.--The object of personal accident insurance is to make provision for payment of a sum of money in the event of the insured sustaining accidental injury. It resembles life insurance, and differs from other types of insurance in that it is not a contract of indemnity ; it is merely a contract to pay a sum of money on the happening of a specified event, namely, the

sustaining by the assured of personal injury by such accidental means as may be defined in the policy. The event may involve the death of the insured, but the insurance is not for that reason a contract of life insurance. In the case of life insurance, the assured is bound to die some day, the uncertainty being as to the date when the death will take place. In the case of personal accident insurance on the other hand, no accident may ever happen ; and, even if it does, there is no certainty that it will result in death or disablement to the assured. "

55. It is true, there are lot of differences between an accident policy and a life insurance policy. We have already seen that the personal accident policy by itself is not property but it is the policy money that is paid under the policy that is property. But, for the application of Section 15, what is to be considered is the beneficial interest that is purchased or provided by the deceased and whether the beneficial interest accrues or arises on death. We are of the view that the beneficial interest in the case of a personal accident policy purchased or provided by the deceased is the policy money itself. It may be seen from the passages extracted above from D'Avigdor's case, [1953] A.C. 347 ; 3 E.D.C. 453 , that the House of Lords held therein that the interest in the contract of life insurance represented by the policy is a beneficial interest in the policy. But later, in Westminster Bank Ltd. v. Inland Revenue Commissioners, [1958] A.C. 210; [1959] 36 I.T.R.3; 3 E.D.C. 848 the learned law Lords clarified this decision and stated that the beneficial interest of the third parties so provided by the deceased in the case of a life insurance policy is not only the policy but also the policy moneys so that when an insured settled the policy on some other, the settlement covers both the policy and the policy moneys. But this statement of the law, as already stated, is not fully applicable to a case of personal accident policy and in the case of a personal accident policy, as we have already seen, the policy money is the property. The other interest which the deceased purchased or provided in the instant case is, therefore, the policy money payable on the death of the insured and the beneficial interest which accrued or arose on death of the deceased is the policy money. The amount is, therefore, liable to estate duty u/s 15 of the Estate Duty Act as well.

56. The learned counsel for the accountable persons relying on a passage in Lethbridge v. Attorney-General, [1907] A.C. 19; 1 E.D.C. 484 wherein it was stated that the general purpose of Section 2(1)(d) of the Finance Act, 1894, is to prevent a man escaping estate duty by subtracting from his means, during life, moneys or moneys worth which when he dies, are to reappear in the form of a beneficial interest accruing or arising on his death, submitted that in the instant case the sum of Rs. 250 paid as premium could not be stated to be an investment or a depletion or diminution of the estate but it is in the nature of an expense and that, therefore, Section 15 of the Act is not applicable. It might be that the general purpose of the section was the one stated by the Privy Council. But we are unable to agree with the learned counsel that the amount of Rs. 250 paid by the deceased towards the premium is in the nature of an expense. To the extent of Rs 250 the estate had been depleted and a beneficial interest has been

purchased. The deceased had not received a full equivalent in return for what he had paid. Having regard to the nature of the policy, the intention from the beginning was to make a provision and, therefore, Section 15 of the Act is attracted. It was then faintly suggested by the learned counsel for the accountable persons that the words " other interest " should be construed ejusdem generis with the words "any annuity" and in order to attract the provisions of Section 15 the other interest purchased or provided by the deceased should be in the nature of an annuity. There is no warrant for this interpretation.

57. For the applicability of the ejusden generis rule there must be a genus or class or category followed by general words. Normally, though not universally, the mention of a single species does not constitute a genus. Of course, in considering the applicability of this rule one must have regard for the sense or object of the enactment. We are not satisfied that in the context in which the words " other interest" is used in Section 15 of the Act, the application of the ejusdem generis doctrine is called for.

58. An incidental question also arises, that is, regarding the value of the interest that shall be deemed to pass on the death. u/s 36 of the Act the principal value of the property shall be estimated to be the price which, in the opinion of the Controller, it would fetch, if sold in open market at the time of the deceased's death. The question for consideration is whether the words " at the time of death" mean "immediately after death " or " a moment before death ". If it is to be understood as " a moment before the death ", then also the moneys would not have become payable and the property deemed to pass on death cannot be valued at Rs. 2,00,000.

59. In Commissioners of Inland Revenue v. Graham decided on December 8 1970, the words " at the time of death of the deceased " in Section 7(5) of the U. K. Finance Act, 1894, which corresponds to Section 36 of the Indian Estate Duty Act, 1953, came up for general interpretation before the House of Lords. The question for consideration was whether the words " at the time of the death " mean the exact moment of death or they mean " the moment after death ". It was held by the House of Lords that the words referred to the " moment after death ". In that case, one Graham was the owner of a farm in Scotland, which was leased to a partnership consisting of himself and three other persons. Graham died on February 23, 1963. On the question of valuation of the estate passing on death of the said Graham the Crown contended that his personal representatives could have sold the farm with vacant possession. This contention was based on the ground that sections 25 and 26 of the Agricultural Holdings (Scotland) Act, 1949, which conferred a right on every tenant governed by its provisions to remain in possession with security of tenure, was not applicable after the death of Graham. It may be mentioned that a partnership under the Scottish law was a legal entity. The House of Lords held that on the death of Graham there was a dissolution of the firm and the surviving partners were

merely in occupation of the farm for the purpose of winding up the partnership affairs, and, therefore, the farm ceased to be subject to the Act of 1949. The question, therefore, arose as to whether the estate will have to be valued as at the moment of his death and treating it as subject to the provisions of the Act or the moment after his death which meant the estate if freed of the obligation and the personal representatives could obtain vacant possession. It was agreed between the parties that of the farm could be sold with vacant possession its value was ₹44,500. But if it were to be valued otherwise than on this basis its value was ₹30,000. The House of Lords held that it will have to be valued on the basis that the farm could be sold with vacant possession on the interpretation that the valuation to be made "at the time of death" meant "valuation the moment after death". This decision is not fully reported. But a brief note is found in Vol. 86, Taxation, dated March 6, 1971, at page 375 and [1970] 2 I.T.J. 13. The ratio of this judgment finds support in the following observations of Chief Baron Palles in *In re Augusta Magan*, [1922] 2 I.R. 208 :

" The two events--death and the passing of property--took place, in point of time, at the moment; but in nature one preceded the other. The passing of the property was the effect of the death ; the death was the event upon which it passed, and in nature the event must precede the effect which is to ensue upon it. This is so, not only metaphysically, but it is, a recognised principle of our law ".

60. Section 36 of the Estate Duty Act, 1953, as already stated, requires the value to be made as at the time of the deceased's death. In the case of a personal accident policy the full amount becomes payable the moment after death. The value of the estate in this case is, therefore, Rs. 2,00,000.

61. We reach the following conclusions as a result of the foregoing discussions : Property passing on death is deemed to include property of which the deceased at the time of his death was competent to dispose of. A person is deemed competent to dispose of property when he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of it. General power includes every power or authority enabling the holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both. A personal accident policy is not a contract of indemnity. The amount payable on death of the insured is fixed in the policy itself. It is in the contemplation of the parties even at the time of the contract that in the case of death the amount would be payable either to the nominee or the legal representatives and not to the insured. It is thus in the nature of a provision made by the deceased to such persons. The deceased has no interest in the money as such because that comes into existence the moment after his death and is payable to the nominee or legal representatives. But he has a right in the payment on his death to his legal representatives. In other words, he has interest over the payment of money and not in the money itself. He has a right to take away this right of the legal representatives to receive the money and vest it in some other person by will. He could nominate a person to whom the amount

shall be paid. Nomination in such a case is in the nature of a disposition by will and as such till he breathes his last he can cancel such nomination and nominate another. The nominee, unlike an assignee of life policies, gets a title to the money on death, for the property itself comes into existence by reason of the death and is payable to the nominee by virtue of the power of disposition by will which the deceased has over the sum. The money paid on death is property admits of no doubt. This property came into existence at the time of death. Though the property was not in existence before his death, since it came in at the time of his death, the deceased was competent to dispose of the same by will. It is this power of disposal that attracted the provisions of Section 6. Therefore, it shall be deemed to pass u/s 6 of the Estate Duty Act, 1953. The beneficial interest in the policy which accrues or arises on death is the sum of Rs. 2,00,000 and this beneficial interest having been purchased by the deceased, the provisions of Section 15 of the Act are also attracted. The principal value of the estate that is deemed to pass u/s 6 and accrues or arises u/s 15 is the sum of Rs. 2,00,000.

62. The next question for consideration is whether the sum of Rs. 2,00,000 is or is not aggregatable with the other estate of the deceased which was liable to estate duty. It was the contention of the accountable persons that it is not aggregatable with the other estates and it is an estate by itself falling u/s 34(3) of the Estate Duty Act. That section is in the nature of an exception to Section 34(1) and provides that any property passing, in which the deceased never had an interest, shall not be aggregated with any property but shall be an estate by itself and the estate duty shall be levied at the rate or rates applicable in respect of the principal value thereof. The learned counsel for the revenue relied on Quixley's case, [1929] All E.R. Rep. 696 (C.A.), Attorney General v. Pearson, [1924] 2 K.B. 375 ; 2 E.D.C. 237 and Tennant v. Lord Advocate, [1939] A.C. 207 ; 2 E.D.C. 683 in support of his contention that the sum of Rs. 2,00,000 is aggregatable with the other estate. In Quixley's case, the facts of which have already been noticed, Rowlatt J. held that the death gratuity paid under the School Teachers' (Superannuation) Act, 1925, was aggregatable and not exempt from aggregation u/s 4 of the Finance Act, 1894, which corresponds to Section 34(1) of our Estate Duty Act, 1953. The passage relied on in this judgment is :

" Now comes the question whether it is aggregatable, and that depends on Section 4 of the Act of 1894, i.e., whether it is property in which the deceased had an interest. I am bound to say that I think the deceased quite clearly had an interest. This is a case where money is payable by a government department, but for the purpose of testing whether she had an interest in it let us suppose that a right precisely of this kind was a right which a private body was bound to implement and was bound to hold security for to enable them to implement, and they said in the lifetime of the deceased that they repudiated their obligation and were bound to dissipate the security. There is not the least question, in my judgment, that a person standing in this position could maintain an action for a declaration and injunction to secure the maintenance of his posthumous right.

Therefore, it cannot be said that the deceased had not an interest during her lifetime. I do not think that Section 4 relates merely to an interest in possession or enjoyment, but includes an interest in the widest possible sense that could be used. "

63. It is seen from this passage that much reliance was placed on the fact that the deceased was bound to make her contribution and equally she had a right to have paid to her personal representatives the death gratuity amount. The right, according to the learned judge, was such that the deceased could have maintained an action for declaration and injunction to secure the maintenance of his posthumous right. It appears to us that it was by reason of the special provisions in the School Teachers' (Superannuation) Act, the learned judge was inclined to take the view that the amount was aggregatable. Though there was an appeal against this judgment, it does not appear that this point was argued in the appeal. It had not been dealt with in the judgments of the Court of Appeal.

64. Pearson's case, [1924] 2 K.B. 375 ; 2 E.D.C. 237 and Tennant's case, [1939] A.C. 207 ; 2 E.D.C. 683 related to life insurance policies and, therefore, the ratio of those judgments could not be applied to the case of an accident policy. In order to attract the provisions of Section 34(3) of the Act, the property passing must be one in which the deceased never had an interest during his lifetime. If he had an interest at some time or other during his lifetime, though not on his death, the property becomes aggregatable.

65. The learned counsel for the accountable persons relied on a passage in Dymond's Death Duties, volume 1, 14th edition, at page 559, wherein it is stated that annuities and other interest provided by the deceased and arising on his death are not aggregatable. The learned counsel for the revenue pointed out that this passage related to small estates and not to the general principle of non-aggregation. It is true that that passage occurs while considering the legal position of small estate. But what is stated there is that, to ascertain whether the limit of ? 2,000 fixed for small estate was exceeded, property in which the deceased never had an interest had also to be taken into account, although such property remained non-aggregatable for determining its own liability to duty. One of the items falling to be included for finding out the limit of small estate was annuities and other interest provided by the deceased and arising on his death though that is an estate by itself and non-aggregatable. We are, therefore, unable to agree with the learned counsel for the revenue. In fact, we find almost every one of the text book writers treating the cases falling u/s 15 of the Act as non-aggregatable. Thus, in Beattie's Elements of Estate Duty, 6th edition, at page 132, it is stated :

" Annuities or other interest purchased or provided by the deceased are in general exempt from aggregation if the charge of duty arises u/s 2(1)(d) of the Finance Act, 1894."

66. To the similar effect we find a passage at page 153 of the Estate Duty Act by

D. H. Nanavathi, 2nd edition, and in Green's Death Duties, 7th edition, pages 364-65.

67. We have already held that the deceased never had any interest during his lifetime in the money paid on death under the personal accident policy, though he was competent to dispose of the same by will. It follows, therefore, that the sum of Rs. 2,00,000 paid under the policy is not aggregatable with the other estate of the deceased and is to be treated as an estate by itself u/s 34(3) of the Estate Duty Act, 1953.

68. The third question relates to the share of the deceased in the joint family properties. It was the case of the learned counsel for the accountable persons that the share of the deceased in the joint family properties was only one-third and not one-half as has been held by the assessing authority and the Board. According to the learned counsel, under the *muri* executed at the time of adoption, M.Ct. Muthiah, even after the adoption to the family of his paternal grand-uncle, continued to retain his share as a member of the natural family, that is, the family of the deceased, to which he belonged.

69. This type of adoption is recognised by the custom of the Nattukottai Chettiar community and that it is akin to *Dvyamushyayana* form of adoption. The adoption took place on June 7, 1931, and a deed of adoption called *muri* was executed on that day. This *muri* was executed on *cadjan* leaf. The original was produced before the assessing authority and the Board. It was also produced before us. The English translation of this deed is found along with the stated case and forms part of the record. But we are afraid that the true implication of the wording in Tamil has not been fully brought out in this translation. After reciting that M.Ct. Muthiah is given in adoption to his paternal grand-uncle, the *muri* went on to state that all the properties and hereditaments belonging to the father of Muthiah and his paternal grand-uncle, the adoptive father, were to be taken by Muthiah and the other sons to be born to the deceased in the capacity of sons and each taking a son's share. This clause in the *muri* was relied on by the learned counsel for the accountable persons in support of his contention that the adopted son, Muthiah, continued to be a member in his natural father's family with all rights of succession as a son. Though the genuineness of this document was doubted by the assessing authority, as already stated, the Board held that it is a genuine document. As far as the legal effect is concerned, the assessing authority held that under the Hindu law an adoptive son loses all his rights in the natural family on adoption and a document evidencing a right in the natural father's family could not be relied on for any purpose. The Board held that a primary condition for the validity of such an adoption must be an agreement between the natural father and the adoptive father and since the *muri* produced in this case was executed by the natural father and the widowed adoptive mother the agreement could not be given effect to. The learned counsel for the accountable persons contended that secular motives are predominant in adoptions effected among Nattukottai Chettiars, that the form of adoption chosen

by the parties in this case as evidenced by the *muri* is to the effect that even after the adoption the adopted son retains all his rights in the natural family as a son of the natural father and that the other sons of the natural father take an equal share along with the adopted son in the properties of both the adoptive and the natural fathers. In this connection he also relied on an agreement dated May 19, 1956, executed between M.Ct. Muthiah and M.Ct. Pethachi, the two sons of the deceased, under which they were to share the properties of the deceased and the adoptive father of Muthiah in accordance with the terms of the *muri*. Wealth-tax returns from 1957-58 onwards were filed by these two accountable persons and the wealth-tax assessments were made on that basis.

70. Mayne in his *Treatise on Hindu Law and Usage*, 11th edition, treats *Dvyamushyayana* adoption as an exception to the rule that adoption severs a son from his natural family. One of the meanings given to this term is that of a son who has been adopted with an express or implied understanding that he is to be the son of both the natural and adoptive fathers. With regard to this form we find the following passage at page 266 :

" The only form of *Dvyamushyayana* adoption that is not absolute is the *nitya* or absolute *Dvyamushyayana* in which a son is taken in adoption under an agreement that he should be the son of both the natural and adoptive fathers. It appears to be obsolete in Madras on the East Coast. But in the West Coast among the Nambudiri Brahmans, it is the ordinary form. In Bombay and the United Provinces its existence is fully recognised, but with the qualification that the onus of proving that an adoption was of this type lies upon those who assert it. It has been recognised by the Judicial Committee in two cases from Bengal."

71. In Mulla's *Principles of Hindu Law*, 13th edition, this form is dealt with in Section 486 (page 503). It is stated therein that where a person gives his son to another under an agreement that he should be considered to be the son of both the natural and adoptive fathers, the son so given in adoption is called "*Dvyamushyayana*". A *Dvyamushyayana* inherits both in his natural and adoptive families.

72. The learned counsel for the revenue submitted that this form of adoption was obsolete in Madras as noted in the passage of Mayne quoted above and relied on the decision in *Narsi Reddi v. Rami Reddi*, [1964] 1 A.W.R. 261 in support of his argument that " obsolete" means not valid in law. The passage from Mayne quoted above does not support this contention of the learned counsel, for the revenue. It only states that it appears to be obsolete in Madras and the East Coast but it is fully recognised in Bombay, United Provinces and Bengal and also in the West Coast of Madras. Further, we are unable to see how this contention of the learned counsel for the revenue could support the assessment of one-half of the joint family properties as passing on the death of the deceased. If the adoption was invalid Muthiah continues to be a member of the natural family and as such only one-third share in the joint family properties would have passed on the death of the deceased. The learned counsel for the revenue was, therefore,

forced to contend that the adoption was valid but no effect could be given to the terms of the muri. Adoption, according to him, stands by itself. We are afraid we cannot accept this argument of the learned counsel. We cannot consider the adoption de hors the agreement. The terms of the muri form part of the adoption itself. That the adopted son should retain his rights in the natural family is an integral part of the agreement and the whole thing constitutes the form of adoption. The agreement could not be considered to be a post-adoption agreement nor is it possible to consider the adoption de hors the agreement. We may also point out that the form chosen by the parties in this case is a little different from Dvyamushyayana form of adoption in the sense that not only the adopted son retains his right to inherit in the natural family but the other sons of the natural father also share equally with the adopted son in the properties of the adoptive family. It appears to us that this adoption was primarily actuated by secular motives and intended to direct the devolution of the properties of the adoptive father. Such motives operative in the form of adoption prevalent in the Nattukottai Chettiar community are also noticed in the decision in S.S. Sv. Kasiviswanathan Chettiar Vs. S.S.S. Sv. Somasundaram Chettiar and Others, . In that case after the death of the adoptive parents the adoptive father's father made the adoption. It was pleaded that there was a custom in the community which permitted adoption being made to a person after the death of the adoptive parents. With reference to this strange form of adoption this court observed :

" Strange as this may sound, it has to be remembered that secular motives are predominant in adoptions effected among Nattukottai Chettiars who more often than not possess considerable property and desire to direct its devolution along approved channels while at the same time ensuring the performance of religious rites to which as Hindus they also attach value."

73. We are also unable to accept the view of the Board that the primary condition for validity of this form of adoption must be an agreement between the natural father and the adoptive father. This question was considered by the Bombay High Court in Basappa Dandappa Patil Vs. Gurlingawa Shivashankreppa Patil, , where it was held that the power of giving and taking a son in adoption in Dvyamushyayana form could be exercised by the widows and the agreement or stipulation can be entered into not only by the fathers but also by their widows.

74. The learned counsel for the revenue then submitted that, subsequent to the adoption, Income Tax returns were filed from the assessment year 1935-36 by Muthiah in respect of his income from properties of the adoptive family. Separate returns were filed by the deceased in respect of the joint family properties as a Hindu undivided family. Some of the later returns were signed by the deceased as the karta showing himself and his son, Pethachi, as the members of the joint family excluding Muthiah. As against this, the learned counsel for the accountable persons pointed out that subsequent to the death of the deceased, Muthiah and his brother, Pethachi, divided the entire properties of the natural family and the adoptive family into two equal halves as provided in the muri and

wealth-tax returns were submitted for 1957-58 by Muthiah and Pethachi on this basis which was accepted by the department. These considerations may be relevant for the purpose of finding out the genuineness of the muri, as was considered by the assessing authority. But we are wholly unable to see how these facts could vary the terms of the adoption agreement itself. It was not the case of the revenue that subsequent to the adoption there was a further agreement by which the adopted son relinquished all his rights in the natural family nor was it the case of the accountable persons that there was a reunion of the adopted son in the natural family. Therefore, we have to consider only the effect of the adoption agreement and not these conflicting subsequent conducts. Though the assessing authority considered these subsequent conducts as throwing a doubt on the genuineness of the deed itself, the Board took a different view and held that the document was genuine. The genuineness of the document is not before us and, therefore, we are unable to agree with the learned counsel for the revenue that the deceased had one-half share in the joint family properties. We hold that the deceased had only one-third share in the joint family properties at the time of his death.

75. For the foregoing reasons, we answer the three questions referred to us as follows :

(1) On the first question we hold that the deceased was competent to dispose of the moneys payable under the accident policy and the sura of Rs. 2 lakhs is includible in the principle value of the estate.

(2) On the second question, we hold that the sum of Rs. 2 lakhs was not liable to be aggregated with other properties and it should be assessed as an estate by itself.

(3) On the third question we hold that the share of the deceased in the joint family properties at the time of his death was one-third and not one-half. We answer the reference accordingly.

76. Since the first question has been answered in favour of the revenue and the other two questions in favour of the accountable persons, we direct the parties to bear their respective costs.