Vaswani Roshni Anilkumar v Vaswani Lalchand Challaram and Another
[2006] SGCA 6

Case Number : CA 85/2005

Decision Date : 15 February 2006

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Woo Bih Li J; Yong Pung How CJ

Counsel Name(s) : Ramesh Appoo (Just Law LLC) for the appellant; Sunil Singh Panoo (Dhillon and Partners) for the respondents

Parties : Vaswani Roshni Anilkumar — Vaswani Lalchand Challaram; Lalitabai w/o Lalchand Vaswani

Insurance – General principles – Claims – Deceased taking out insurance policies prior to marriage and naming parents as beneficiaries – Contest between parents as nominated beneficiaries under policies and deceased's wife as beneficiary of deceased's estate over moneys from insurance policies – Whether parents proper claimants to insurance moneys – Whether administrator of deceased's estate entitled to sue for and receive payment of policy moneys as forming part of deceased's estate – Whether deceased's parents or wife should be paid insurance moneys

15 February 2006

Woo Bih Li J (delivering the judgment of the court):

Background

1 The appellant is the wife of the deceased, Anilkumar Vaswani. The first respondent is the father and the second respondent is the mother of the deceased whom they had adopted. The dispute between the appellant and the respondents is in relation to three insurance policies purchased by the deceased from Great Eastern Life Assurance Co Ltd:

(a) Policy No 16807998 commencing 28 September 1994 ("the First Policy");

(b) Policy No 19245754 commencing 26 April 1996 ("the Second Policy"); and

(c) Policy No 19951375 commencing 31 December 1996 ("the Third Policy").

2 The policies were purchased before the deceased's marriage. He had named the father as beneficiary under the First Policy and both parents as beneficiaries under the Second and Third Policies. Although the terms of each of the policies allowed the deceased to revoke the appointment of beneficiaries and appoint other beneficiaries, the deceased did not revoke the said appointments upon or after his marriage up till the time of his demise on 25 February 2003 at the age of 30. The deceased was estranged from his wife before his death.

3 According to a letter dated 27 March 2003 from the insurer to the parents, the net amounts payable under the policies were:

(a)	First Policy	-	35,067.09
(b)	Second Policy	-	69,482.62
(c)	Third Policy	-	112,323.28

The total was $216,872.99. The insurer is prepared to make payment under the policies but has refrained from doing so because of the competing claims of the parents and the wife to the policy moneys. The parents' position is that as the named beneficiaries, they are entitled to the policy moneys. The wife's position is that the estate of the deceased is entitled and as the deceased died intestate, she, as the wife, is entitled to half of the policy moneys. It is undisputed that if the estate were entitled to the policy moneys, then the parents would be entitled to the other half in their capacity as beneficiaries of the estate and not in their capacity as named beneficiaries under the policies.

4 The parents commenced Originating Summons No 387 of 2004 naming the wife and the insurer as the first and second defendants respectively. The primary relief sought by the parents was a declaration that the wife's contest over the policy moneys was null and void and an order that the insurer make payment of the policy moneys to the parents forthwith. Eventually, the parents dropped the insurer from the action on the understanding that the insurer would pay over the policy moneys to the party declared by the court to be entitled to the same.

5 The district judge relied on *In re Schebsman* [1944] Ch 83 ("*Schebsman*") and concluded that the parents were entitled to the policy moneys. She also found that the father had fully paid the lump sum premium for the Second Policy and concluded that there would have been a resulting trust of the Second Policy in his favour. Although the insurer was no longer a party to the action, the district judge also ordered the insurer to make payment under the policies.

6 The wife appealed to the High Court. Choo Han Teck J decided that the three policies were not part of the deceased's estate and that the insurer would have obtained a valid discharge should it make payment to the parents (see [2005] 3 SLR 625). In the light of this, he was of the view that the privity doctrine was of peripheral relevance. However he was inclined to find a narrow exception to the privity rule relying on the judgment of Mason CJ and Wilson J in *Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) 62 ALJ 508 ("*Trident*"). Choo J also said that the administrator of the estate would have been entitled to demand payment of the policy moneys and then distribute the policy moneys to the persons entitled to them. As the insurer was no longer a party to the action, Choo J declined to make an order against the insurer and he dismissed the wife's appeal in so far as her appeal was against the declaration of the District Court that the parents were entitled to receive the policy moneys. Being dissatisfied with Choo J's decision, the wife has appealed to the Court of Appeal.

The court's reasons and conclusion

7 Various legislation do not address the question as to which of the competing claimants are entitled to the policy moneys. For example, s 73(1) of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) creates a statutory trust if the insurance policy is expressed to be for the benefit of the insured's wife or children. However, here, the named beneficiaries were the insured's parents.

8 Section 61(1) of the Insurance Act (Cap 142, 2002 Rev Ed) states:

> In any case where the policy owner of any life policy or accident and health policy of an insurer dies, and the policy moneys are payable thereunder on his death, the insurer may make payment to any proper claimant a prescribed amount of the policy moneys of all such policies issued by the insurer on the deceased's life without the production of any probate or letters of administration; and the insurer shall be discharged from all liability in respect of the amount paid.

A "proper claimant" is defined by s 61(6)(*b*) of the Insurance Act to mean "a person who claims to be entitled to the sums in question as executor of the deceased, or who claims to be entitled to that sum (whether for his own benefit or not) and is the widower, widow, parent, child, brother, sister, nephew or niece of the deceased".

9 As stated by Eusoff Chin J in *Manonmani v Great Eastern Life Assurance Co Ltd* [1991] 1 MLJ 364, in the context of s 44(1) of the Malaysian Insurance Act 1963, which is in substance the same as s 61(1) of our Insurance Act, the purpose of such a provision is to facilitate and expedite payment by an insurer to a "proper claimant" without the need for the claimant to first obtain letters of administration. Chin J was also of the view that the provision applied where the deceased policy owner had not named any beneficiary in the policy to receive the policy moneys upon his death, in which case it would go to his estate, or where he had specifically stated in the policy that the policy moneys should go to his estate. A similar view is expressed in Poh Chu Chai, *Law of Life, Motor and Workmen's Compensation Insurance* (Butterworths, 5th Ed, 1999) at p 120 which states:

> When a beneficiary is named under a life insurance policy, the insurer has the express authority of the insured to make payment under the policy to the beneficiary upon the happening of the insured event. If no beneficiary is named in the policy, the insurer is entitled to pay the proceeds of the policy to a proper claimant.

The footnote at the end of this passage refers to the then s 63 of the Insurance Act (Cap 142, 1994 Rev Ed) which is the current s 61.

10 The Contracts (Rights of Third Parties) Act (Cap 53B, 2002 Rev Ed) does not come into play as it is effective only from 1 January 2002.

11 In so far as Choo J was of the view that the administrator of the deceased's estate would have been entitled to demand payment and then distribute the policy moneys to the person entitled to the same, Choo J seems to have assumed that because the administrator would have been entitled to demand payment, he would also have been entitled to receive payment. This contradicts his finding that the policy moneys are not part of the insured's estate. We are of the view that at times there is confusion when the concept of entitlement is applied in the context of a contract.

12 When it is said that a person is not "entitled" to the benefit of a contract, one often means that because that person is not a party to the contract, he cannot enforce it. This is based on the doctrine of privity of contract under which only a party to a contract may enforce the contract. On the other hand, it is often also assumed that because a person is a party to the contract he is not only entitled to enforce it but also to receive the benefit thereunder. That conclusion is not always correct. For example, if A enters into a contract with B for B to supply C with certain building materials, A is entitled to demand that B supplies C but A is not entitled to demand that B supplies A himself. The latter would be a variation of the contract which A cannot achieve without B's agreement, unless the existing contractual terms already allow A to vary unilaterally. The fact that B may be willing to accede to A's demand does not change the original terms of the contract. The fact that A has *locus standi* to sue on the contract also does not change the terms of the contract.

13 This point is based on basic contractual principles and was recognised in the judgment of Mason CJ and Wilson J in *Trident* who said at 513 that:

> The orthodox view is that ordinarily the promisee is entitled to nominal damages only because non-performance by the promisor, though resulting in a loss of the third party benefit, causes no

damage to the promise …

14 Consequently, if B were to supply the materials to C in accordance with the terms of the contract, B is not in breach of contract and A should not even be entitled to nominal damages. The point that B would not be in breach of contract is recognised in textbooks on insurance law. For example, Poh Chu Chai in *Law of Life, Motor and Workmen's Compensation Insurance* ([9] *supra*) states at p 118:

> A person who is named as a beneficiary under a life insurance policy is not a party to the contract of insurance. A beneficiary claims his interest in the policy through the insured. An insurer is, however, entitled to make payment under the policy to the beneficiary named in the policy and in doing so he gets a discharge. By naming a beneficiary under the policy, the insured may be taken to have expressly authorised the insurer to make payment under the policy to the person named as the beneficiary. It is, however, doubtful whether a beneficiary is entitled to bring an action against an insurer if the insurer refuses to make payment to the beneficiary as there is no privity of contract between the beneficiary and the insurer.

Similar points are made in *Insurance Law* (Butterworths Asia, 2001) (Low Kee Yang ed) from the Butterworths Law for Business Series at p 205.

15 In the case before us, the deceased could have changed the beneficiaries under the policies before his demise but he did not. Notwithstanding this state of affairs, Mr Ramesh Appoo, counsel for the wife, submitted that the estate is entitled to receive the policy moneys, relying on English cases like:

(a) *Cleaver v Mutual Reserve Fund Life Association* [1892] 1 QB 147 ("*Cleaver*");

(b) *In re Burgess's Policy* (1916) 85 LJ Ch 273 ("*Burgess*");

(c) *In re Engelbach's Estate* [1924] 2 Ch 348 ("*Engelbach*");

(d) *Re Clay's Policy of Assurance* [1937] 2 All ER 548 ("*Clay*"); and

(e) *In re Sinclair's Life Policy* [1938] Ch 799 ("*Sinclair*").

16 We note that *Burgess* and *Engelbach* followed *Cleaver*. *Clay* and *Sinclair* in turn followed *Engelbach*. Therefore *Cleaver* is the origin of the position taken in these English cases. In *Cleaver*, the insured, James Maybrick, had effected an insurance on his life with the policy moneys payable to his wife. After his death, his wife assigned the policy to Mr Cleaver who was also appointed administrator of her property and effects under the Act to Abolish Forfeitures for Treasure and Felony (c 23). Mr Cleaver claimed the policy moneys as assignee and also in his capacity as such an administrator. The executors of the insured's estate also claimed the policy moneys. The insurer took the position that it held the policy moneys on trust for Mrs Maybrick and not the insured's estate and as she had murdered the insured, it was contrary to public policy to pay this money to Mr Cleaver.

17 Lord Esher MR stated at 151 that:

> Apart from the statute, the right to sue on such a contract would clearly pass to the legal representatives of the husband [the insured].

18 He then said at 152 that:

> Consequently, so far, and if no question of public policy came in, there would be no defence to an action against the defendants by the executors of James Maybrick. Apart from the statute, what would be the effect of making the money payable to the wife? It seems to me that as between the executors and the defendants it would have no effect. She is no party to the contract; …. I think that, apart from the statute, no interest would have passed to the wife by reason merely of her being named in the policy; and, if the husband wished any such interest to pass to her, he must have left the money to her by will or settled it upon her during his life, otherwise it would have passed to his executors or administrators.

19 After referring to the issue of murder and public policy, Lord Esher MR continued to say at 153:

> It seems to me that this question of public policy does not arise as between the executors and the defendants. The question arises at a later stage. When the money is in the hands of the executors, the question arises how, under the circumstances, they must deal with it.

20 It seems to us that when Lord Esher MR said that there was no defence to an action by the executors of the insured and that no interest would have passed to the wife, he had in mind the right to sue. That is why he emphasised that Mrs Maybrick was no party to the contract. It also seems to us that Lord Esher MR had assumed that because the executors of the insured's estate had the *locus standi* to sue, they were necessarily entitled to receive the policy moneys. This may have been the reason why Choo J had apparently assumed that, if there was an administrator of the deceased's estate, the administrator would have been entitled to receive payment. As we have elaborated, it is not sufficient to say that a person is entitled to demand payment. That only addresses the privity of contract point. The next question is, "Payment to whom?" This is answered by considering the terms of the contract and not the parties to the contract. Of course, an administrator could seek specific performance of the contract but that still would not mean that the administrator would have been entitled to receive payment. If the administrator were to receive payment as the agent of a person entitled, that would be a different point.

21 On the facts before us, we are of the view that, strictly speaking, neither the parents nor the wife are entitled to the policy moneys. The parents are not entitled as they are not privy to the contract. The estate is not entitled because the terms of each contract require payment to the father or to both parents. As the estate is not entitled, then consequently, the wife, as a beneficiary of the estate, is also not entitled. On the other hand, the insurer is entitled to make payment to the father or the parents since that is in accordance with the terms of each contract. In doing so, the insurer discharges its obligation under each contract. Mr Sunil Singh, counsel for the parents, assumed that because the insurer is entitled to make payment to the parents, the parents are necessarily entitled to receive payment. As we have elaborated, this is not so in the present case.

22 Mr Appoo, however, also relied on the recital of each policy to argue that each policy required payment to the estate. Each recital said,

> [T]he Company will pay to the Assured, his Personal Representatives or Assigns or persons otherwise entitled thereto the sum assured …

In our view, the recital only means that if no beneficiary is named in the policy, then payment is to be made to the estate, just like the situation under s 61(1) of the Insurance Act. The recital does not say explicitly who the person "otherwise entitled thereto" is. In our view, this must refer to the named beneficiary. Otherwise the very purpose of naming a beneficiary in the policy is defeated.

23 As for Mr Appoo's submission that the court does not complete an incomplete gift, we note that this is not a situation of compelling the grantor to complete the gift. There is a contract and the promisor, who is the insurer, is willing to make payment. The situation is not so much one of completing an incomplete gift but of determining who the insurer should make payment to.

24 There is one more point. The entitlement of the insurer to make payment to the parents is subject to the argument about a resulting trust. If there is a resulting trust of the Second Policy in favour of the father, then the insurer has to pay the policy moneys thereunder to the father and not to both parents. It seems to us that the district judge had erred in concluding that the parents were entitled to the policy moneys under all three policies and yet also concluding that there was a resulting trust of the Second Policy in favour of the father alone.

25 The father and representatives of the insurer had alleged that the father had paid the lump sum premium for the Second Policy. True, there was no documentary proof of the same but we are satisfied, on a balance of probabilities, that he did make that payment. However, the named beneficiaries for the Second Policy are both parents. We are of the view that this was more of a case of the father making a gift to the deceased of the lump sum which was used to pay the premium and the deceased making a gift of the policy moneys to the parents. That would rule out a resulting trust in favour of the father. Mr Sunil Singh did not argue that there was an express trust in favour of both parents which, in any event, we would not have been inclined to find since the deceased still had the right, while alive, to change the beneficiaries under the Second Policy. In the circumstances, we agree with Choo J that there was no resulting trust of the Second Policy.

26 As for *Schebsman* ([5] *supra*), the view expressed there, that a contracting party cannot compel the other to make payment to him contrary to the terms of the contract, was made on the basis that neither party could unilaterally vary the beneficiary under the contract, unlike the case before us. Nevertheless, for the reasons we have stated, we agree that an administrator of the estate of the deceased could not have compelled the insurer to make payment to him.

27 As the insurer is not denying liability to make payment, it is not necessary for us to find an exception to the doctrine of privity of contract or to rest our views on unjust enrichment to compel the insurer to pay. In the circumstances, as the parents are not, strictly speaking, entitled to receive payment for lack of privity, we set aside the decision of Choo J stating that they are so entitled. There are, however, some procedural complications. The insurer is no longer a party to the action. Although we would have normally refrained from making a declaration about the insurer's right to pay the policy moneys or the discharge of the insurer's obligation to pay such moneys, we will do so in the exceptional circumstances before us since it appears that the insurer wants such a declaration in any event. Accordingly we declare that the insurer is discharged from its liability under the respective policies if the insurer pays the policy moneys under the First Policy to the father and under the Second and Third Policies to both the parents.

28 Furthermore, the estate of the deceased should have also been made a party to the action. Although there is a contest as to the person to whom the grant of letters of administration should be given, the solicitors for the contesting parties should have considered whether a neutral party could have been appointed to extract the grant for the limited purpose of representing the estate in the action and leaving substantive arguments to be made by the wife's counsel. Alternatively, the solicitors for the parents should have considered whether they could have proceeded under O 15 r 6A of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) to make the estate a party in the absence of a grant of letters of administration, and then seek an order under O 15 r 6A(4) for a neutral person to represent the estate, with substantive arguments to be made by the wife's counsel. Be that as it may, we hope that no further action is necessary before the insurer makes the respective payments

to the father and to both parents.

29 As the effect of our decision is against the wife, we dismiss her appeal with costs. The security for costs of the appeal is to be released to the solicitors for the parents to account of the costs of the appeal. As we gather that the costs of the hearing before Choo J have not been determined, he is to decide on the costs of that hearing.