

L.I.C. Of India vs Anuradha on 26 March, 2004

Author: R.C. Lahoti

Bench: R.C. Lahoti, Ar. Lakshmanan

CASE NO. :

Appeal (civil) 2655 of 1999

PETITIONER:

L.I.C. OF INDIA

RESPONDENT:

ANURADHA

DATE OF JUDGMENT: 26/03/2004

BENCH:

R.C. LAHOTI & DR. AR. LAKSHMANAN

JUDGMENT:

JUDGMENT 2004(3) SCR 629 The Judgment of the Court was delivered by R.C. LAHOTI, J. Leave granted in SLP (C) No.9334 of 2000.

A common question of law centering around Sections 107 and 108 of Indian Evidence Act, 1872 arises for decision in these two appeals.

In Civil Appeal No. 2655 of 1999 Sham Prakash Sharma, the late husband of Mrs. Anuradha, the respondent, had taken a life insurance policy from the appellant-Life Insurance Corporation of India (hereinafter, the LIC or Corporation for short). The policy commenced with effect from 8.2.1986. The premium was payable every six months. For two years, the premium was paid. On 17.7.1988 Sham Prakash Sharma was at Bombay wherefrom he just disappeared, never to be traced out thereafter. The respondent, Anuradha, lodged a first information report with the police. On 11th July, 1988, the LIC had sent a communication addressed to Sham Prakash Sharma and delivered at his residence informing that the insurance policy had lapsed for nonpayment of premium. On 29.6.1996, the respondent approached the LIC for release of benefits under the policy proceeding on an assumption that Sham Prakash was dead as having not been heard of for a period of more than seven years. The LIC turned down the claim of the respondent relying on Rule 14 of the Insurance Manual which reads as under:

"Where a person is reported missing, it is to be advised to the claimant that Life insured will be presumed to be dead after seven years or production of the decree from the court of law and in the meantime policy is to be kept in force by making payment of premium regularly."

The respondent approached the State Commission constituted under the Jammu & Kashmir Consumer Protection Act, 1987 complaining of deficiency in service on the part of the appellant. The LIC defended itself mainly by submitting that as the policy was not kept alive, the claim was not maintainable. The State Commission upheld the respondent's claim forming an opinion that Rule 14 relied on by the appellant was of no relevance in view of the statutory presumption arising under Section 108 of the Evidence Act. The appellant preferred an appeal in the High Court which has been dismissed. During the course of its judgment the High Court has, by referring to Sections 107 and 108 abovesaid, and also taking into consideration a few decided cases (none of this Court), formed an opinion that there was no presumption as to the time of death and inasmuch as the LIC failed to show that Sham Prakash was alive when the claim was preferred the benefits payable under the policy were liable to be released to the respondent.

In the appeal arising out of SLP (C) No. 9334 of 2000, two insurance covers of Rs. 50,000 each were taken on the life of one Dev Raj Sharma (whose heirs the respondents in that appeal are) who was employed under the Punjab Government as Junior Engineer. On a day in the month of November 1988 he did not return to his home from the office. The first information report of his disappearance was lodged with the police. The premiums were regularly paid upto the time of disappearance of Dev Raj Sharma whereafter the premiums were not paid. On 20.9.1997 the respondent filed a civil suit against the LIC claiming release of benefits under the policy on the ground that the insured should be presumed to have died on the date of his disappearance, and therefore, the claim had become payable on the date of disappearance itself though the presumption as to death became available to be raised after the expiry of period of seven years from the date of disappearance and therefore, the question of policies having lapsed for nonpayment of premium after the date of disappearance would not arise as the assured was dead.

Shri G.L. Sanghi, the learned senior counsel for the appellant-Corporation in both the appeals stated at the very outset and under instructions that the appellant-Corporation does not have any objection to the amounts of the insurance policies in both the cases being released to the respondents as ex-gratia payment and therefore the LIC would honour the judgment of the High Court in both the appeals but the LIC was interested in having the question of law decided. Having placed the abovesaid statement of record and also placing on record our appreciation of the good gesture shown by the Life Insurance Corporation of India, we proceed to adjudicate upon the question of law.

Sections 107 and 108 of the Evidence Act read as under:

"107. Burden of proving death of person known to have been alive within thirty years.-When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it."

"108. Burden of proving that person is alive who has not been heard of for seven years.-Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally

have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it."

There is no difference in the English Law and the Indian law on the subject. The English Law as stated in Halsbury's Laws of England (Fourth Edition, Vol. 17, paras 115 and 116) is as under:

"115. Presumptions of life and death. There is generally no presumption of law by which the fact that a person is alive or dead on a given date can be established but the question must be decided on the facts of the particular case.

Certain exceptions to this general rule are provided by statute, and, in addition where there is no acceptable affirmative evidence that a person was alive at some time during a continuous period of seven years or more and it is proved that there are persons who would be likely to have heard of him over that period, that those persons have not heard of him, and that all due inquiries have been made appropriate to the circumstances, there arises a rebuttable presumption of law that he died sometime within that period."

"116. Proof of life or death at a particular time. He who asserts that a person was alive on a given date, or dead on that date, must prove the fact by evidence, since there is no presumption of continuance of life, and, generally, no presumption of death at a particular time. Where there is insufficient evidence in support of the fact alleged, the party bearing the burden of proof will fail.

Where the presumption of death after seven years absence applies, the person will be presumed to have died by the end of that period; where the presumption does not apply, or is displaced by evidence, the issue will be decided on the facts of the particular case. In some old cases, where neither the evidence nor the incidence of the burden of proof was decisive, the court made the best order it could in the circumstances. Where the question to be decided, for purposes affecting the title to property, is which of two persons died first, a statutory rule may apply.

The question of whether a person was alive or dead at a given date will be decided on all the evidence available at the date of the hearing."

We may with advantage quote the statement of law as contained in Manual of The Law of Evidence by Phipson and Elliott (Eleventh Edition, at pp. 83-84). The learned authors after stating the presumption, further state:

"It must be noted that the presumption is only as to the fact of death, not as to the time of death, so that if it has to be established that A was alive or dead on a particular day during the seven-year period, that fact will have to be proved by evidence, aided by any presumption of fact which the jury may see fit to act on. The presumption of death does not oblige the court to presume that death occurred at any

time during the seven years, nor is there any presumption of law that life continued for any part of the seven-year period. Strictly, according to the leading case on the subject *Re Rhene's Trusts* (1870) L.R. 5 Ch. App. 139-the presumption only operates to establish that if at the date of an action in which the death is called in question, seven years or more have elapsed without news. A is dead at that date, i.e. the date of the action. Accordingly, it is impossible to use this presumption to prove that A was dead in, say 1950, even if he has not been heard of since 1943. This inconvenience has caused the strict rule to be departed from in some cases to allow presumption of death at any given date if seven years absence before that is shown."

As to Indian decided cases of authority we are relieved of the need of entering into a research and review thereof on account of availability of two recent decisions of this Court on the point. In *N. Jayalakshmi Ammal and Ors. v. R. Gopala Pathar and Anr.*, [1995] Supp 1 SCC 27, this Court went in-depth into the jurisprudential concept underlying Section 107 and 108 of the Evidence Act and referred to commentaries of settled authority by eminent jurists such as Sri John Woodroffe and Amir All's *Law of Evidence*, M. Monir's *Principles and Digest of the Law of Evidence*, Sarkar on Evidence as also the leading authority of Judicial Committee of the Privy Council in *Lal Chand Marwari v. Mahant Ramrup Gir*, AIR (1926) PC 9, which has stood the test of the times for over three quarters of a century by now. The law laid down in *N. Jayalakshmi Ammal and Ors.* 's case (supra) has been reiterated in *Darshan Singh and Ors. v. Gujjar Singh (D)* by Lrs. and Ors., [2002] 2 SCC 62.

Peter Murphy states in 'A practical approach to Evidence' (Second Edition pp 460-461)-"The presumption is only that the subject died at some time during the period; Ms death on any particular day will not be presumed, and must be proved by evidence if in issue". The learned author having set out in brief the facts of the cases in *Re Phene's Trusts* (1870) 5 Ch App 139 and *Chipchase v. Chipchase* (1939) P 391 and having noticed the law laid down therein proceeds to state-"The period of seven years is, however, strictly insisted upon, and it is often pointed out that, though the rule is to some extent illogical, a period of six years and 364 days is not enough. Nor is there any presumption that the subject died from any particular cause, died childless or died celibate, though these matters may be capable of inference on the evidence, as a question of fact. It should be remembered that it is always open to the court to infer death (or that someone is alive) as a matter of fact, as it is to make any other proper inferences from the evidence. No question of the presumption arises in such a case; it is a matter of circumstantial evidence. What is sometimes called the 'presumption of continuance'-an instance of which is that if a person is shown to be alive at a certain time, his continuing life may be inferred-is no more than an example of such an inference, and will yield to the presumption of death where the latter applies".

Neither Section 108 of Evidence Act nor logic, reason or sense permit a presumption or assumption being drawn or made that the person not heard of for seven years was dead on the date of his disappearance or soon after the date and time on which he was last seen. The only inference permissible to be drawn and based on the presumption is that the man was dead at the time when the question arose subject to a period of seven years absence and being unheard of having elapsed before that time. The presumption stands un-rebutted for failure of the contesting party to prove

that such man was alive either on the date on which the dispute arose or at any time before that so as to break the period of seven years counted backwards from the date on which the question arose for determination. At what point of time the person was dead is not a matter of presumption but of evidence, factual or circumstantial, and the onus of proving that the death had taken place at any given point of time or date since the disappearance or within the period of seven years lies on the person who stakes the claim, the establishment of which will depend on proof of the date or time of death.

A presumption assists a party in discharging the burden of proof by taking advantage or presumption arising in his favour dispensing with the need of adducing evidence which may or may not be available. Phipson and Elliott have observed in 'Manual of the Law of Evidence' (Eleventh Edition at p.77) that although there is almost invariably a logical connection between basic fact and presumed fact, in the case of most presumptions it is by no means intellectually compelling. In our opinion, a presumption of fact or law which has gained recognition in statute or by successive judicial pronouncements spread over the years cannot be stretched beyond the limits permitted by the statute or beyond the contemplation spelled out from the logic, reason and sense prevailing with the Judges, having written opinions valued as precedents, so as to draw such other inferences as are not contemplated.

On the basis of the abovesaid authorities, we unhesitatingly arrive at a conclusion which we sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise.

If an issue may arise as to the date or time of death the same shall have to be determined on evidence-direct or circumstantial and not by assumption or presumption. The burden of proof would lay on the person who makes assertion of death having taken place at a given date or time in order to succeed in his claim. Rarely it may be permissible to proceed on premise that the death had occurred on any given date before which the period of seven years' absence was shown to have elapsed.

We cannot, therefore, countenance the view taken by the High Court in either of the two appeals that on the expiry of seven years by the time the issue came to be raised in Consumer Forum or Civil Court and evidence was adduced that the person was not heard of for a period of seven years by the wife and/or family members of the person then not only the death could be presumed but it could also be assumed that the presumed death had synchronized with the date when he was reported to be missing or that the date and time of death could be correlated to the point of time coinciding with the commencement of calculation of seven years backwards from the date of initiation of legal proceedings. In order to successfully maintain the claim for benefit under the insurance policies it is necessary for the policy to have been kept alive by punctual payment of premiums until the claim was made. The appellant-LIC was justified in turning down the claims by pleading that the policies had lapsed and all that could be paid to the claimants was the paid-up value of the policies.

The appeals are allowed and both the judgments of the High Court under appeal are set aside but subject to the clarification, that, in view of the statement made on behalf of the appellant-LIC, the monetary benefits available to the respondents in the two appeals under the judgments of the High Court shall not be denied by the appellant-LIC.

Before parting we would like to make an observation. Unfortunately some of the regions or States in India are insurgency affected. The life has become uncertain there. People live constantly under fear of death. Uncertainty of life has been accepted as a normal course of living. The Life Insurance Corporation, as a social welfare institution, more so when life Insurance has been nationalized and the service is not available in private sector, should think of devising a policy available in insurgency afflicted regions which would take care of the assured and his family members in such areas. When the assured suddenly disappears or ceases to be traceable, may be the beneficiaries or nominees do not even know that the deceased had an insurance policy. They may not be aware if the insurance premiums have been paid or have remained not paid and what were the due dates and other obligations to be performed by the assured to keep the policy alive. Insurance policies with terms and conditions suited to the requirements of people inhabiting insurgency or militancy affected areas need to be devised and propagated.