

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SHAHID WAHEED

CIVIL APPEAL NO.929 OF 2017 & C.M.A.NO.1708 OF 2019

(On appeal against the judgment dated 22.05.2017 passed by the Lahore High Court, Lahore in Insurance Appeal No.1288 of 2015)

State Life Insurance Corporation & another ... Appellants/Applicants

VERSUS

Mst. Razia Ameer & another ... Respondent(s)

For the Appellant(s) : Mr. Mushtaq Ahmad Mohal, ASC
(via video link from Lahore)

For Respondent No.1 : Mr. Liaqat Ali Butt, ASC
(via video link from Lahore)

For Respondent No.2 : Mr. Sanaullah Zahid, Addl. A.G.
Shahid Fiaz, DEO (S.E), Narowal

Date of Hearing : 06.03.2023

JUDGMENT

Shahid Waheed, J. This direct appeal is of the insurer and challenges the cogency of the judgment dated 22nd of May 2017, of the first Appellate Court, which is at variance with the judgment dated 18th of June 2015, of the Insurance Tribunal, Punjab, and we are, therefore, called upon to examine both and determine which one of them properly answers the question whether the legal heirs of the assured person were entitled to claim liquidated damages under Section 118 of the Insurance Ordinance, 2000?¹

¹ Madan Gopal v. Maran Bepari [PLD 1969 SC 617]

2. The facts on the basis of which the above two judgments were made are straightforward and they may briefly be stated. In the wake of the Group Insurance contract between the Provincial Welfare Board, Punjab, constituted under the West Pakistan Government Employees Welfare Fund Ordinance, 1969, and the Sate Life Insurance Corporation of Pakistan (the insurer), the husband of respondent No.1, namely, Ameer Ali, being the Senior School Teacher (S.S.T) in the Education Department, Government of the Punjab, was assured, on payment of premium amount which was deducted from his monthly salary until his retirement. He took early retirement on 2nd of December 2007, at the age of 58 years on medical grounds and later died on 7th of October 2008. Afterwards, his wife (respondent No.1 herein) on 10th of October 2008 (Mark P & Q), through the concerned office of the Education Department, lodged her claim for obtaining the sum assured from the insurer. Her claim was repudiated by the insurer vide its letter dated 2nd of March 2009 (Mark Y), on the ground that the policy was revised with effect from 1st of July 2007, and the revised contract did not cover early retirees. This repudiation gave fillip to respondent No.1 to file an application under Section 122 of the Insurance Ordinance, 2000, before the Insurance Tribunal, Punjab, for recovery of group insurance claim of Rs.600,000/- alongwith liquidated damages. The insurer resisted the claim of respondent No.1. The divergent stances of the parties led the Insurance Tribunal, Punjab, to frame the following issues: -

- (i) *Whether the application is not maintainable? (OPR)*
- (ii) *Whether the application is without any ground? (OPR)*
- (iii) *Whether the applicant has no cause of action to initiate the present proceedings? (OPR)*
- (iv) *Whether the petitioners are entitled to decree as prayed for? (OPP)*
- (v) *Relief.*

3. During the course of the trial, the new policy dated 12th of July 2012 (Mark A) was enforced and made applicable to

early retirees retiring from 1st of July 2007, and as such the insurer paid the sum assured, that is, Rs.600,000/- to the legal heirs of the deceased through four cheques dated 16th of August 2013. This fact is also reflected in the letter dated 21st of August 2013 (Ex.R.2). Given the circumstances, the only question left to be determined by the Insurance Tribunal, Punjab, was whether the respondent No.1/applicant was entitled to the liquidated damages as prayed for. The issue No.4, set out above, was amended accordingly and the parties were asked to adduce evidence on it in support of their respective claims.

4. To prove her claim for liquidated damages, respondent No.1 produced her son, namely, Muhammad Zaheer Ameer (PW.1). He was also her attorney. He reiterated those facts in his statement which were mentioned by respondent No.1 in her application and closed the evidence by tendering some documentary evidence that include the claim application and medical record of the assured person etc. On the other hand, the insurer produced Syed Ghulam Abbas, Assistant Manager (RW.1). This witness stated in his statement that since the assured person had taken early retirement on 2nd of December 2007, at the age of 58 years on medical grounds, he was not entitled to get the sum assured under the revised contract dated 17th of March 2009 (Ex.R.1/1-3), which was made applicable from 1st of July 2007. However, he admitted that based on the contract dated 12th of July 2012 (Mark A), which was made applicable retrospectively, so as to bring within its fold the early retirees retiring from 1st of July 2007, the sum assured was paid to the legal heirs of the deceased.

5. On consideration of the evidence brought on record, the Insurance Tribunal, Punjab, declined to grant liquidated damages mainly on two grounds. The first was that the revised contract entered into between the insurer and the Provincial Welfare Board, Punjab (Ex.RW.1/1-3), did not contain a clause for liquidated damages. It appears that the Insurance Tribunal, Punjab, while returning this finding did not take into account Section 118 of the Insurance Ordinance, 2000, which provides

that payment of liquidated damages on late settlement of claims shall be an implied term of every contract of insurance. This omission was noted by the first Appellate Court and thus, held that on completion of all formalities, if the claim is not satisfied/cleared within ninety days without any fault of the claimant when it becomes due, then, under the implied term of every contract of insurance the liquidated damages must be granted. We are of the view that the findings of the first Appellate Court does not suffer from any legal infirmity and are accordingly sustained.

6. The other reason which dissuaded the Insurance Tribunal to grant the application filed by respondent No.1 under Section 122 of the Insurance Ordinance, 2000 was that since the assured person was not a party to the group insurance contract, his legal heirs had no standing to claim liquidated damages. This understanding was, by all means, inconsistent with the scheme of group insurance and the provision of law applicable thereto, and thus, the first Appellate Court rightly repelled it with the observation that group insurance is designed to provide monetary benefits to the family of the assured person; particularly, if the assured person has not defaulted in payment of premium amount. To boot the above, it may be observed here that inasmuch as the insurer reviewing its earlier repudiation had entertained the claim of respondent No.1 lodged through application dated 10th of October 2008 (Mark. P & Q) and paid the sum assured to the family of the deceased on 16th of August 2013, it cannot be heard saying that the family of the deceased assured person was not entitled to receive liquidated damages under Section 118 of the Insurance Ordinance, 2000.

7. To ring down the curtain on the moot, three more points are important to be mentioned here. Firstly, RW.1 clearly stated in his statement that the claim of respondent No.1 was repudiated through letter dated 2nd of March 2009 (Mark Y), on the basis of Group Insurance Contract (Ex.R-1/1-3). It is now well settled that the policy/contract becomes effective from the date it

is signed by the executants.² Here the said contract/policy was signed on 17th of March 2009. It means that when the letter (Mark Y) repudiating the claim was issued, the contract/policy did not come into play. Such repudiation was not lawful, as it reflects insurer's malfeasance, misfeasance and nonfeasance, and for it, the legal heirs of the deceased assured person cannot be left in the lurch. Secondly, the evidence brought on record does not suggest that respondent No.1 did not comply with the requirements for claiming payment. And finally, the insurer has failed to prove that its failure to pay the claim within the stipulated time was due to circumstances beyond its control. The upshot is that claim of the respondent No.1 for payment of liquidated damages was well founded, and thus, was entitled to receive it.

8. After a comparative examination of the merits of the above-referred two judgments, we are poised to conclude that the reasoning advanced by the first Appellate Court is unexceptionable and therefore, calls for no interference. This appeal is without merit and accordingly dismissed.

C.M.A.No.1708 of 2019

For the order recorded in the main case, this application has become redundant and disposed of accordingly.

Judge

Judge

Judge

B-III
Islamabad, the
06.03.2023
"Approved for reporting".
Sarfraz Ahmad & Agha Furqan, L/C

² Bhaiyat vs. L. Chong Kha and others [AIR 1934 Rangoon 342]