

2010 C L D 792

[Lahore]

Before Mian Shahid Iqbal and Nasir Saeed Sheikh, JJ

GHULAM RAZA SAJID---Appellant

Versus

STATE LIFE INSURANCE CORPORATION OF PAKISTAN and another---Respondents

R.FA. No. 16 of 2008, heard on 13th May, 2010.

(a) Insurance Ordinance (XXXIX of 2000)---

---S.121---Limitation Act (IX of 1908), Art.86---Application for enforcement of insurance policy claim---Limitation---Accidental death of policy holder on 10-10-1996---Filing of such application before Insurance Tribunal on 22-7-2006---Plea of applicant was that Insurance Ordinance, 2001 was promulgated on 19-8-2000, but cause of action to raise such claim before Insurance Tribunal arose on 20-6-2006 when the same was constituted for first time, thus, such application was within time---Plea of Insurance Company was that. right to institute suit under Art.86 of Limitation Act, 1908 had become time-barred before constitution of the Insurance Tribunal---Validity---Government had not constituted Insurance Tribunal prior to date 20-6-2006, thus, question of raising such claim before the Tribunal did not arise---Provisions of Art.86 of Limitation Act, 1908 would apply to suits instituted in civil courts under ordinary law, but not to such application before Insurance Tribunal---Insurance Ordinance, 2001 had not specifically restricted entertainment of such claim, which might have become due after its promulgation---Constitution of Insurance Tribunal under Insurance Ordinance, 2001 vide Notification dated 20-6-2006 was an intimation to policy holders to seek enforcement of their claims from said Tribunal---Limitation for moving the Insurance Tribunal for enforcement of such claim would commence from the date when same was constituted for first time on 20-6-2006---Such application was within time in circumstances.

(b) Insurance Ordinance (XXXIX of 2000)---

---S.121---Limitation Act (IX of 1908), Art.86---Qanun-e-Shahadat (10 of 1984), Art.71--Application for enforcement of insurance policy claim---Accidental death of policy holder, ground of---Plea of Insurance Company was that according to its investigation report, deceased was murdered---Production of such report in evidence in statement of company's counsel during trial---Validity---Such policy was operative till death of deceased and was not cancelled by company---Husband of deceased deposed on oath as witness, but company did not put to him any suggestion with respect to facts stated in such report---Person having conducted investigation and prepared such report had not been examined in court, thus, such report would have no legal authenticity---Claim application was accepted in circumstances.

Liaqat Ali Butt for Appellant.

Mian Naseer Ahmed for Respondents.

Date of hearing 13th May, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---This R.F.A is directed against the judgment dated 19-12-2007 pronounced by learned Additional District Judge-I, Lahore exercising powers of Insurance Tribunal constituted under section 121 of the Insurance Ordinance No. XXXIX of 2000.

2. Mst. Misbah Yasmin was a policy holder of respondent No.1 and she died on 10-10-1996. This death was accidental and a claim with respect to the group insurance was raised before the Federal Ombudsman for the recovery of group claim in the year, 1999 which was allowed vide order dated 2-4-2000. Against which order the respondent/Insurance Corporation made a representation to the President under section 32 of the Office of Establishment of Federal Ombudsman 1983. This representation was dismissed by the President as barred by time. In the meantime, Ordinance No.XXXIX of 2000, was enforced by the President of Pakistan on 19-8-2000 whereby a provision was made for the constitution of Special Tribunal under section 121 of the Insurance Ordinance of 2000, for entertaining and disposing of the claims of the policy holders of the respondent/Insurance Corporation. No Tribunal under the provisions of section 121 of the Insurance Ordinance of 2000, was constituted till 20-6-2006 when a notification was issued by Law Justice and Human Rights Division, in exercise of powers under section 121 of the Insurance Ordinance of 2000, and the Federal Government constituted Special Tribunals for entertaining and deciding the claims of the policy holders and the respondent/insurance corporation.

3. The appellant moved an application dated 22-7-2006 before the learned Additional District Judge, Lahore, exercising powers of Insurance Tribunal, Punjab for recovering the policy proceeds under the Policy No.507669516-4 of Rs.1,00,000. It is pertinent to mention that the appellant was the husband of the deceased Mst. Mishab Yasin.

4. This claim application was contested by respondent/ Insurance Corporation and following issues were framed by the learned Insurance Tribunal:--

1. Whether the petition is barred by time? OPR.
2. Whether the petition is liable to rejection in view of preliminary objections Nos.2, 3, 5, 6 and 7? OPR.
3. Whether the petition is hit by principle of res judicata? OPR.

4. Whether the petitioner is entitled to policy proceeds, along with liquidated damages, if so, to what extent? OPP.

5. Relief.

5. The parties produced their respective evidence and the learned Insurance-Tribunal rejected the claim of the appellant vide judgment dated 19-12-2007, hence the instant appeal.

6. It is contended by the learned counsel for the appellant that the learned Tribunal has decided the claim application in an illegal manner. The learned counsel argued that although the statute under which the Insurance Tribunal was constituted was promulgated on 19-8-2000 but no Tribunal was established under the provisions of section 121 of the Insurance Ordinance of 2000, and that the Tribunal having been constituted for the first time through a notification dated 20-6-2006, therefore, the appellant got a right to move for the recovery of the insurance policy claim and the limitation for the purposes of enforcement of said claim arose from the date when the Insurance Tribunal was constituted. It is further contended by the learned counsel for the appellant that the learned Tribunal while recording its finding on the issue No.1 did not advert to this aspect of the matter and incorrectly applied the provisions of Article 86 of the Limitation Act of 1908, upon the facts and circumstances of the present case.

7. The learned counsel then argued that the finding with respect to the question of application of principle of res judicata was also illegally decided by the learned Insurance Tribunal as admittedly the writ petition which was instituted by the petitioner, was not decided on merits which fact has not been controverted by the learned counsel for the respondent and it was argued that only parawise comments were requisitioned in the said writ petition and no final decision was pronounced. The learned counsel has also assailed the finding of the learned Tribunal recorded on issue No.4 whereby the learned Tribunal has rejected the claim of the appellant on the ground that the death of the wife of the appellant was found to be a murder by the respondent and therefore the appellant was declined the relief ' of the recovery of insurance claim by the learned Tribunal.

8. Conversely, the learned counsel for the respondent has contested the appeal by arguing that the limitation for the recovery of the insurance policy claim commenced from the date of death of the wife of the appellant which took place on 10-10-1996 and therefore, the provisions of Article 86 of the Limitation Act of 1908, were rightly applied by the learned Insurance Tribunal. It was however, conceded by the learned counsel for the respondent that the writ petition instituted by the petitioner, which has been made the basis for the recording of finding on issue No.3 by the learned Tribunal against the appellant, was not decided on merits and only parawise comments were requisitioned in the said writ petition by the High Court. While defending the finding recorded by the learned Tribunal on issue No.4, learned counsel for the respondent contends that the respondent/Insurance Corporation conducted an investigation into the cause of the death of the deceased Mst. Misbah Yasmin and the investigation report was produced during the trial as Exh.R3 in the statement of the learned counsel for the respondent and as the death of the deceased Mst. Misbah Yasmin was reported to be a murder in the said report, therefore, the insurance policy claim was rightly declined by the learned Tribunal, to the appellant.

9. We have considered the arguments of the learned counsel for the parties and with their assistance have perused the record.

10. The provisions of Article 86 of the Limitation Act of 1908, are applicable to the suits instituted under the ordinary civil law before the civil courts. The claim sought to be recovered by the appellant before the learned Tribunal was raised through an application before the learned Tribunal which Tribunal was constituted for the first time through the notification dated 20-6-2006 issued by the Government of Pakistan, Law Justice and Human Rights Division, and copy of which notification has been placed on the record of this R.F.A. Admittedly, statute on the basis of which the insurance policy of the respondent/Insurance Corporation were to be enforced was promulgated on 19-8-2000, therefore, we are of the view that cause of action to raise a claim for the enforcement of the insurance policy before the learned Insurance Tribunal arose when the Insurance Tribunal was constituted. Prior to the date of 20-6-2006 as there was no Tribunal constituted by the Federal Government, no question of raising the claim before the Tribunal with respect to the enforcement of an insurance policy arises. The provisions of Article 86 of the Limitation Act of 1908, are applicable to a suit instituted under the ordinary law, therefore, the learned Insurance Tribunal misconstrued the provisions of Article 86 of the Limitation Act of 1908, for non-suiting the appellant under the provisions of Insurance Ordinance of 2000, which envisaged moving of an application before the Tribunal for enforcement of the insurance claim by a policy holder.

11. We are also informed that a claim with respect to the recovery of insurance group policy was raised by the appellant before the Federal Ombudsman in the year, 1999, which claim was granted to the appellant by the Federal Ombudsman vide order dated 2-4-2000 against which a representation was made by respondent/Insurance Corporation before the President of Pakistan, which representation of the respondent/Insurance Corporation was dismissed as barred by time through an order dated 24-10-2000. The contention of the learned counsel for the respondent that as the right of the appellant to institute the suit under the ordinary law has become time barred by applying the provisions of Article 86 of the Limitation Act of 1908, therefore, the application moved before the learned Insurance Tribunal was barred by time, is not entertainable by this Court as the special law was promulgated in the year, 2000, an Ordinance No.XXXIX of 2000, and a Special Tribunal was constituted for entertaining the claims of the insurance policy holders. This special law did not specifically restrict the entertainment of the insurance policy claims which might have become due after the promulgation and enforcement of the Ordinance of 2000, therefore, we cannot subscribe to the arguments addressed by the learned counsel for the respondent that under the Insurance Ordinance of 2000, the claim of the appellant had become barred by time on account of the death of the deceased having taken place on 10-10-1996.

12. In our view, the constitution of the Tribunal under the special law vide notification dated 20-6-2006, gave rise an intimation to the insurance policy holders to seek enforcement of their claims from the learned Insurance Tribunal constituted under the Ordinance of 2000, therefore, in our opinion the limitation for moving the Tribunal for the enforcement of insurance policy claim will commence from the date when the Tribunal was constituted for the first time on 20-6-2006. In this context, the Article 86 of the Limitation Act of 1908, will not cover the cases of those claimants who move the learned Insurance Tribunal for the purposes of their insurance

policies claim through constitution of the Tribunal constituted under the Ordinance of 2000. Thus the finding of the learned Tribunal of holding the claim as moved before the Insurance Tribunal to be barred by time is not sustainable and is set aside.

13. The finding of the learned Tribunal on issue No.4 is also legally defective. The arguments of the learned counsel for the respondent that the Insurance Corporation conducted an investigation into the cause of death of the deceased Mst. Misbah Yasmin which report was produced in the statement of the learned counsel for the respondent during the trial, cannot be given any recognition or importance because without producing the person who conducted the investigation and prepared the investigation report, it cannot be held that report being relied upon by the learned counsel for the respondent is of any legal authenticity. There is no denial of the fact that insurance policy subsisted in respect of Mst. Misbah Yasmin till the time of her death and this insurance policy was not cancelled by the respondent/Insurance Corporation till date and was enforceable. The appellant appeared before the learned Tribunal as P.W. and made a statement on oath and no suggestion was put to the said P.W./appellant even with respect to the facts stated in the investigation report being relied upon by the learned counsel for the respondent in his arguments.

14. In view of all the above circumstances, the instant R.F.A is accepted and the impugned judgment passed by the learned Insurance Tribunal dated 19-12-2007 is set aside and the claim application as moved by the appellant is ordered to be accepted with no orders as to costs.

S.A.K./G/38/L

Appeal accepted.