

APPELLATE CIVIL.

Before Addison and Abdul Rashid JJ.

1938
Feb. 24.

NORTHERN INDIA INSURANCE
COMPANY, LIMITED } Appellant
(DEFENDANT)

versus

KANHAYA LAL (PLAINTIFF) Respondent.

Regular First Appeal No. 282 of 1937.

Indian Contract Act (IX of 1872), S. 24 — Life Assurance Policy — Suicide by assured beyond the period which if committed within the period was to render the contract void — Assured able to pay premia at the time of contract as well as at the time of his death — Contract whether valid and enforceable by descendants of assured.

M., the father of plaintiff, took out a policy of life insurance from the defendant Insurance Company on 1st June 1932. One of the terms of the policy was that if M. died by his own hand before the expiry of one year from the date of policy, the policy would be void and all premia would be forfeited. On 22nd November 1932 M. assigned the policy in favour of plaintiff and on 9th August 1933 committed suicide on discovering the infidelity of his wife. In an action brought by the plaintiff for the recovery of money due on the policy the Company contended, *inter alia*, that the act of the deceased was wagering and speculative and the contract was therefore void and, further, the plaintiff could not be allowed to benefit as the result of the crime committed by his father. It was found that the deceased had taken out policies from various insurance companies at different times and that he was in a position to pay premia on the policy in dispute at the time of his taking up the policy, and was also able to pay the premia on the different policies at the time of his death.

Held, that in the circumstances, the plaintiff's claim must succeed as the committing of suicide is not a crime in India and the principles of English Common Law under which the committing of suicide is a felony are not applicable in this country, the Criminal Law of India being the creation of statute.

Beresford v. Royal Insurance Company, Ltd. (1), distinguished.

First appeal from the decree of Sardar Bhagat Singh, Additional Subordinate Judge, 1st Class, Lahore, dated 9th July 1937, ordering that the defendant do pay to the plaintiff Rs.4,905-11-0.

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D. R. SAWHNEY, for Appellant,

MOHAMMAD AMIN and HARNAM SINGH, for Respondent.

The judgment of the Court was delivered by—

ABDUL RASHID J.—The material facts of the case, for the purposes of this appeal, may be shortly stated.

Mool Chand, the father of Kanhaya Lal plaintiff, took out a policy of life insurance from the Northern India Insurance Company on the 1st of June, 1932. The terms of the policy were that Rs.5,000 were payable on the death of Mool Chand if the death occurred before the 1st of June 1937. A further sum of Rs.5,000 was payable if the death occurred before the 47th birthday of the assured. In the event of the person, whose life was assured, dying by his own hand, before the policy had been in existence for one year, the policy was to be void and all premiums were to be forfeited. On the 22nd November, 1932, Mool Chand assigned the policy in favour of his son Kanhaya Lal. On the 9th August, 1933, the assured committed suicide in a hotel at Lahore. Kanhaya Lal, being the assignee of the policy taken out by his father, demanded Rs.5,000 from the Insurance Company. On their failure to pay the amount, he instituted the present suit for recovery of Rs.5,357 on the basis of the policy. The defendant company pleaded, *inter alia*, that Mool Chand had committed suicide

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with the deliberate object of securing payment from the defendant and other Insurance Companies with which he had insured his life during the years 1931 and 1932 for a sum of Rs.25,000, that the act of the deceased was a speculative and wagering one, and that the contract with the defendant was, therefore, void. The trial Court held that Mool Chand had sufficient means to pay the premia due on the different policies taken out by him, that he committed suicide on discovering his wife Mussammat Jassa Bai committing adultery with Bhai Piara Lal, timber merchant, and that as Mool Chand killed himself after the lapse of one year from the date of the issue of the policy the plaintiff was entitled to maintain the action. On these findings a decree for Rs.4,905-11-0 was granted to the plaintiff against the defendant. Against this decision the Northern India Insurance Company has preferred an appeal to this Court, while cross-objections relating to the disallowance of the costs and interest by the trial Court have been preferred by Kanhaya Lal plaintiff.

It appears that Mool Chand, deceased, had insured himself with the Bombay Life Assurance Company for Rs.4,000 in the year 1923. He had taken out a policy for Rs.16,000 in the year 1931 from the Jupiter General Insurance Company. In 1932, as mentioned already, he had insured himself with the defendant company for a sum of Rs.5,000. The annual premium payable on the policy in dispute was only Rs.125-10-0. The trial Court, after going into the entire evidence, came to the conclusion that up to the time of his death Mool Chand was in a position to pay the premia on the different policies taken out by him. On the 22nd January, 1932, Mool Chand separated the plaintiff from himself as the plaintiff's step-mother Mussammat

Jassa Bai did not get on with the plaintiff and his wife. From the allotment of shares at the time of partition it appears that property worth Rs.3,400 fell to the share of Mool Chand and his second son Chuni Lal, and property worth Rs.1,300 was given to the plaintiff. This fact clearly shows that the plaintiff's father was in a position to pay the premium on the policy in dispute at the time when he took out the policy.

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The three letters found on the person of the deceased at the time of his death (Exhibits P. 1 to P. 3) addressed to the Superintendent of Police, the District Magistrate, Lahore, and the plaintiff Kanhaya Lal, respectively, show that the plaintiff's father became disgusted with life on the 8th of August, 1933, when he found his wife Mussammat Jassa Bai in a compromising position with Bhai Piara Lal, timber merchant at Multan. He returned to Lahore immediately without attending the marriage ceremony of the son of Ram Chand, station master. The shock of the unfaithfulness of his wife was too great for him that he decided to end his life by poisoning himself by taking potassium cyanide.

The principal argument addressed by the learned counsel for the appellant was that the plaintiff was not entitled to any relief as the descendants of Mool Chand could not be allowed to benefit as a result of the crime committed by their father. Reliance was placed by the learned counsel on the case of *Beresford v. Royal Insurance Company, Ltd.* (1). In that case the assured person committed suicide and it was held that as suicide was a felony under the English Law, the descendants of the assured were not entitled to recover

(1) (1937) 2 All. E. R. 243.

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the sum assured. In our opinion the authority referred to above is inapplicable to the present case. In their judgment the learned Judges were careful in pointing out that under the English Common Law the committing of suicide was a felony, and that it was clear that the assured had deliberately killed himself in order to enable his estate to collect the insurance money. Had the assured not killed himself the policies would have automatically expired in two or three minutes as the assured had no means of raising the premiums. The learned Judges examined a number of American cases also and observed as follows:—

“Whatever the position may be in the United States, where each state, by legislative or judicial action of its own, can, it seems, determine the legality of a policy which, expressly or by implication, provides for payment of the policy monies in whole or in part in the case of suicide, sane or insane, we cannot, we think, *consistently with the law of England* as we understand it, hold that the respondent can successfully maintain her claim.”

It was further observed that,—

“It may be that both ecclesiastical and civil penalties have been mitigated or abolished, but the criminal law still remains. Only the legislature in this country can change the law in this matter, if it should so will. While the law remains unchanged, the court must, we think, apply the general principle that will not allow a criminal or his representative to reap, by the judgment of the court, the fruits of his crime.”

In India the committing of suicide is not a crime. Attempted suicide is punishable under section 309 of the Indian Penal Code while abetment of suicide is punishable under section 306. The committing of

suicide in itself is not and cannot be regarded as a crime in India. In this respect the English Common Law is inapplicable to India as the Criminal Law of India is the creation of Statute. The Judges in the English case took care to point out that there may seem a hardship in holding that the appellant company is in law not compellable to pay the amount due on the policy but that it was impossible to hold otherwise, consistently with the Common Law as prevailing in England.

The contract between the parties was embodied in the policy of insurance. According to condition No. 8 the policy was to become void if the person assured caused his own death before the policy had been in existence for one year. In the present case the assured killed himself after the period of about 18 months. In these circumstances there is no reason why the contract entered into by the Insurance Company should not be enforced in favour of the plaintiff.

For the reasons given above we dismiss this appeal with costs. We also dismiss the cross-objections preferred on behalf of the plaintiff. Parties will bear their own costs so far as the cross-objections are concerned.

Appeal dismissed.

A. N. K.

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