
LIM PENG LAN v. BERJAYA GENERAL INSURANCE SDN BHD
HIGH COURT, PULAU PINANG
ABDUL HAMID MOHAMED J
RAYUAN SIVIL NO. 12-94-95
11 SEPTEMBER 1996
[1996] 1 LNS 532

Case(s) referred to:

[1. Re Man bin Mihat, Deceased \[1965\] 1 LNS 211; \[1965\] 2 MLJ 1.](#)

[2. Manonmani v. Great Eastern Life Assurance Co. Ltd. \[1991\] 1 CLJ 141; \[1991\] 3 CLJ 270 \(Rep\); \[1991\] 1 MLJ 364.](#)

[3. Re Bahadun bin Haji Hassan, deceased \[1972\] 1 LNS 124; \[1974\] 1 MLJ 14.](#)

Counsel:

PEGUAMBELA DAN PEGUAMCARA

1. En. Danny C. Navarednam (Tetuan Danny C. Navarednam & Co.) bagi pihak Perayu (Ruj: DN/CIV/132/89).

2. En. Tang Khye Kian (Tetuan Tang Khye Kian & Co.) bagi pihak Responden.

JUDGMENT

This is an appeal from the Sessions Court. The Plaintiff/Appellant, In her capacity as the named beneficiary in a personal accident insurance policy taken out by her mother, sued the Defendant, the insurance company which issued the policy for the sum of RM50,000.00, burial costs of RM2,000, interest and costs. According to the Statement of Claim, her mother had died on 25th January 1989 as a result of an accident.

On the date fixed for hearing both counsel agreed to submit on a preliminary Issue on one question only, whether the Plaintiff had the capacity to sue. The learned Sessions Court Judge decided that the Plaintiff/Appellant did not have the capacity to sue and dismissed the claim with costs. The Plaintiff/Appellant appealed to this Court. I dismissed the appeal on 16th August 1996. Hence this appeal.

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The issue requires consideration of [sections 23 of the Civil Law Act 1956](#) and [44 of the](#)

[Insurance Act 1963.](#)

Section 23(1) of the Civil Law Act 1956, inter alia, provides:

"23(1) A policy of assurance effected by any woman on her own life and expressed to be for the benefit of her children shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to her debts.

(2)

(3) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment of the moneys payable under any such policy.

(4) In default of any such appointment of a trustee the policy immediately on its being effected shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid."

Section 44 of the Insurance Act 1969, inter alia, provides:

"(1) When a policy owner, in relation to any life policy or life policies, dies and on his death policy moneys are payable under the policy or policies, the insurer may make payment to a proper claimant such sum of the policy moneys as may be prescribed without the production of any probate or letters of administration and the insurer shall be discharged from all liability in respect of the sum paid.

(2)

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(3) ...

(4) ...

(5) In this section, 'policy owner' includes a part owner of a policy and 'proper claimant' means a person who claims to be entitled to the sum 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; and in deducing any relationship for the purposes of this subsection an illegitimate person shall be treated as the legitimate child of his actual parents."

Learned Counsel for the Plaintiff/Appellant drew my attention to the following cases, namely [Re Man bin Mihat, Deceased \[1965\] 1 LNS 211](#); [1965] 2 MLJ 1¹, [Manonmani v. Great Eastern Life Assurance Co. Ltd. \[1991\] 1 CLJ 141](#); [1991] 3 CLJ 270 (Rep); [1991] 1 MLJ

364² and *Re Bahadun bin Haji Hassan, deceased* [1972] 1 LNS 124; [1974] 1 MLJ 14³.

In *Re Man bin Mihat, Deceased* [1965] 1 LNS 211; [1965] 2 MLJ 1¹, Suffian J (as he then was) held:

"(1) by virtue of section 23 of the Civil Law Ordinance as the policy of assurance was effected by the assured on his own life and expressed to be for the benefit of his wife, the moneys payable under the policy did not form part of the estate of the deceased;"

In *Manonmani v. Great Eastern Life Assurance Co. Ltd.* [1991] 1 CLJ 141; [1991] 3 CLJ 270 (Rep); [1991] 1 MLJ 364² Eusoff Chin J. (as he then was) held that the named beneficiary was entitled to sue the defendant for the moneys payable under the policy without the production of any letters of administration of the estate of the deceased.

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In *Re Bahadun bin Haji Hassan, deceased* [1972] 1 LNS 124; [1974] 1 MLJ 14³ Abdul Hamid J. (as he then was) also held that the sum payable under a life policy did not form part of the estate of the insured.

But, all these authorities concern life policy. Here it is a personal accident policy. The provisions of [section 23 of the Civil Law Act 1956](#) and [section 44 of the Insurance Act 1963](#) are also about life policies. So it is clear to me that the argument of learned counsel for the Plaintiff/Appellant is not sustainable. Those provisions and the authorities cited by him are not applicable in the Instant case. I am therefore of the same view as the learned Sessions Court Judge that the Plaintiff/Appellant was not entitled to bring this action in her capacity purely as a named beneficiary. I therefore dismissed the appeal with costs.

Dato' Abdul Hamid bin Hj. Mohamad

Hakim, Mahkamah Tinggi

Pulau Pinang

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KES-KES YANG DIRUJUK:

1. *Re Man bin Mihat, Deceased* [1965] 1 LNS 211; [1965] 2 MLJ 1.

2. *Manonmani v. Great Eastern Life Assurance Co. Ltd.* [1991] 1 CLJ 141; [1991] 3 CLJ

[270 \(Rep\)](#); [1991] 1 MLJ 364.

3. [Re Bahadun bin Haji Hassan, deceased \[1972\] 1 LNS 124](#); [1974] 1 MLJ 14.

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