

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constt: Petition No.D-393/2024

Mst Saira Zarin Versus Mohammed Aslam and others

1. For Orders on office Objection at flag "A"
2. For Orders on MA No 1562 / 2025 (Order 22 – R – 4 CPC)
3. For hearing of M.A No 1406/2024
4. For hearing on main case.

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Mst. Saira Zareen Arain
Through Mr. Rafique Ahmed K. Abro, Advocate.

Respondent No.1 & 2: Mohammed Aslam and Naseem Akhtar
Through Mr. Ghulam Mustafa Magsi Advocate.

Respondents No.4 & 5: State Life Insurance Corporation
Through Mr. Niaz Ali M. Ansari, Advocate.

Respondents No.6: In charge NADRA Succession Cell
Through Mr. Safdar Kamal, Advocate.
Mr. Oshaque Ali Sangi Assistant Attorney General.

Date of hearing: 15-05-2025
Date of Decision: 15-05-2025

ORDER

Nisar Ahmed Bhanbhro J. Through instant petition, the petitioner seeks indulgence of this Court to examine legality, validity, propriety and correctness of order dated 23-04-2024 (impugned order) passed by the court of Learned 1st Additional District Judge Larkana (Appellate Court) in Succession Appeal No.59 of 2023 Re - Mst. Saira Zareen V/s Muhammad Aslam and others, whereby the succession appeal filed by the petitioner for grant of succession certificate to receive Group Insurance and other benefits of Life Estate of her deceased husband Late Muhammad Waqar Ali Arain was declined to the extent of payment of Group Insurance and Gratuity, which were directed to be paid to the nominee Mohammad Moazam Ali (Respondent No 8).

2. Succinctly stated the facts giving cause to file this constitution petition are that the petitioner is widow of late Muhammad Waqar Ali Arain who was employed in State Life Insurance Corporation of Pakistan as Assistant Manager in Human Resources Development Department. Mohammad Waqar Ali Arain died due to natural death on 25th May 2022, deceased was survived by petitioner as widow, baby Wania daughter aged about 10 years, Muhammad Aslam father, Naseem Akhtar mother as his legal heirs. Petitioner filed an application for grant of succession certificate to withdraw the moveable Life Estate of her deceased husband before incharge of the Succession Facilitation Center NADRA (Respondent No 6). The application of the Petitioner was declined by NADRA being a contentious matter involving factual controversy between the legal heirs. The petitioner filed succession appeal against the order passed by the Respondent No 6 before the court of learned District Judge Larkana which was assigned to the learned Appellate Court for disposal in accordance with law.

3. On admission of succession appeal, publication inviting objections from public at large was issued and published in daily Awami Awaz vide its issue 06-10-2023. The reports were

called from the concerned departments and Banks. Pursuant thereto, the State Life Insurance Corporation of Pakistan in its report dated 30-11-2023 filed before the Appellate Court that an amount of Rs.42,55264/- was payable to the nominee of deceased on account of Group Insurance, it was further pointed out that deceased had nominated his brother Muhammad Moazam Ali for receiving the Group Insurance benefits. The Learned Appellate Court after completing inquiry, decided that the amount of Group Insurance and Gratuity would be payable to the nominee, whereas the provident fund shall be payable to the petitioner. The Petitioner filed instant petition to challenge the orders passed by the Appellate Court as by operation of Sindh Succession Act 2021 the orders passed in succession appeal were final in nature.

4. On notices by the Court, the State Life Insurance Corporation in its reply asserted that on death of Mr Mohammad Waqar Ali, his widow Mst Saira Zareen was appointed as Office Assistant under deceased quota. Moreover Mst Zaira Parveen widow of the deceased and Mohammed Moazam Ali nominee of the deceased submitted applications for the settlement of death claim of deceased Waqar Ali. The death claim included Provident Fund, Group Insurance, Gratuity and other associated benefits. The applications were forwarded to Human Resources and Administration Division, PGS Division State Life Karachi for approval. The PGS division required the grant of succession certificate to avail the death claim. Saira Zareen and Moazam Ali filed application before NADRA which was declined. They filed succession appeal before the District Court Larkana, wherein the Learned Appellate Court authorized Mst Saira Zareen to withdraw amount of provident fund and Mohammed Moazam Ali to withdraw Gratuity and Group Insurance. That the State Life Insurance Corporation is not competent to release the amount of group insurance, provident fund, gratuity in favor of any person unless the succession certificate is issued by the competent court of law.

5. Learned Counsel for the Respondents No 1, 2 8 and 9 through oral statement adopted the objections filed before the Appellate Court as reply to this Petition. In the objection filed before Learned Appellate Court, the Respondents have asserted that Mohammad Moazam Ali being nominee of the deceased is entitled to receive the death claim.

6. Mr Rafuq Ahmed Abro Learned Counsel for the petitioner submits that the Learned Appellate Court has erred in law while granting the amount of sum assured against the group insurance and gratuity in favor of the respondent No.8, who is a nominee of the deceased. Counsel contended that in presence of father, mother, daughter and widow the respondent No.8 being nominee was not competent to receive the death claim as he was not the legal heir of the deceased and he being nominee is only entitled to receive the amount and disburse the same among his legal heirs. He prayed to set aside the impugned order and allow of the succession appeal filed by the Petitioner.

7. Mr Ghulam Mustafa Magsi Learned Counsel for the respondents No.2, 8 and 9 contended that under the insurance law the nominee is entitled to receive the proceeds of group insurance and gratuity. There is no illegality or irregularity in the impugned order. The petition is misconceived and the same is liable to be dismissed.

8. Learned DAG and AAG, Learned Counsel for NADRA, Learned Counsel for State Life contended that the Government interest is not involved in the matter. However, the official respondents shall comply with the directions ought to be passed by this court.

9. Heard arguments and perused the material available on record.

10. The core issue involved in the present lis pertains to a dispute between the parties to withdraw the death claim of the deceased Waqar Ali which included an amount of Group Insurance, Gratuity, Benevolent Fund. The Gratuity and Benevolent Fund are the part of service benefits which on account of death of an employee should go in favor of the family of the deceased which included widow, daughter, father and mother in the present case and in case the deceased employee was survived by a divorced sister, widowed sister or unmarried sister they may also be entitled to receive such share in the circumstance when deceased did not leave him behind his parents, widow and children as legal heirs. In the case of Petitioner he left him behind widow, minor daughter and both his parents. They legal heirs of the deceased viz. Respondent No 1 Mohammed Aslam father of the deceased, Respondent No 2 mother of the deceased, Petitioner, minor shall receive the amount of Gratuity and Benevolent Fund. The impugned order dated 23.04.2024 to the extent of grant of Gratuity in favor of nominee Mohammed Moazam Ali stands set aside, the amount of Gratuity shall be withdrawn by the Petitioner to the extent of her share, whereas the share of Minor Baby Wania shall be deposited with the accountant of Appellate Court which shall be invested into some profitable scheme and Baby Wania could withdraw the amount and accruals on attaining the age of majority, Respondents No 1 and 2 shall be entitled to receive their due share from the amount per respective share. Respondent No 8 Mohammad Moazam Ali being brother and major male family member is not entitled to receive any share from Gratuity and Benevolent Fund.

11. So far as the issue of Group Insurance is concerned, as the same does not constitute the Life Estate of the deceased Mohammad Waqar Ali therefore the grant of succession certificate for withdrawal of Group Insurance amount was not the requirement of law. Under the law of inheritance the group insurance does not constitute the Life Estate of the employee and is not a inheritable as moveable property as the right the benefit of Group Insurance accrues to the family on account of the death of the employee while in service or after retirement but before attaining the age of 70 years and during the life time an employee (in the present case husband of Petitioner) was not entitled to claim such benefit, therefore, the amount of group insurance would not be a inheritable claim. For the purposes of grant of group insurance, succession certificate is not required to be obtained. This issue has been dealt in detail in the erstwhile judgment of the Learned Division Bench of this Court in the case of Nusrat Fareed Versus Haji Ahmed Mujahid and others reported in PLD 2024 Sindh 89, wherein the Learned Division Bench of this Court was pleased to hold as under:

“22. A Succession Certificate was not required and, thus, the Succession Miscellaneous Application was not maintainable in respect of the proceeds of Group Insurance, given that they do not constitute the estate of a deceased under the law. For the foregoing reasons and rationale, the Impugned Order dated 1.11.2022 is not sustainable and is set aside. The parties may pursue their remedy, as may be advised, in accordance with law. The instant HCA stands disposed of in the terms herein along with all pending application(s). Each party shall bear its own costs.”

12. Keeping in view the ratio laid down by this Court in Nusrat Fareed case (supra) and while respectfully concurring with the findings rendered in the judgment, we feel no hesitation to hold that the succession filed by the Petitioner before Appellate Court for grant of succession certificate to the extent of withdrawal of Group Insurance being not maintainable is hereby dismissed.

13. Adverting to the issue that who is competent to withdraw the amount of Group Insurance and who shall be entitled to take benefits from this amount. Deceased was an

employee of state-owned corporation under the control of Federal Government. The sum assured against the life of deceased was governed by the provisions of Federal Employees (Benevolent Fund and Group Insurance) Act 1969 (FEBFGI Act), wherein insurance fund has been created for welfare and benefit of the families of employees called as Federal Employees Insurance Fund, the premium under the said fund is contributed from the monthly salary of the employees. Section 18 of the FEBFGI Act 1969 provides that every employee shall be liable to pay to the insurance fund, such sum of money as may be prescribed as premia for the insurance of his life and such amount shall be deducted as far as possible at source from his pay and credited or remitted to the insurance fund. This provision of law further provides that default in payment of premia shall not affect the right of the family to receive the sum assured in the event of the death of the employee. Section 19 of the FEBFGI Act enunciates the principles for payment and distribution of the amount of Group Insurance in the following manner:

19. Payment of the sum assured.---(1) On the death of an employee, the sum assured shall be paid to such member or members of his family as he might have nominated in accordance with the rules in full or in the shares specified by him at the time of making the nomination.

(2) Where no valid nomination made by the employee subsists at the time of his death, the sum assured shall be paid to such member or members of his family subject to such conditions imposed with a view to ensuring that the sum is justly and equitably, utilized for the maintenance and benefit of all the members of the family as may be prescribed or may consistently with the rules, be determined by the Board or any officer authorized by the Board in that behalf.

14. This provision of law viz. section 19 (1) of the FEBFGI Act 1969, envisages that the sum assured shall be paid to such member or members of the family as he might have nominated in accordance with the rules. Impliedly the nomination for receiving the amount of Group Insurance must be made from the family. The family has been defined in sub-section 5 of section 2 as follows:

(5) **“family”** means –

(a) in the case of a male employee, the wife or wives, and in the case of a female employee the husband of the employee;

(b) the natural sons upto the age of twenty-one years, provided they are not handicapped or mentally retarded; and

(c) parents, minor brothers, unmarried, divorced or widowed daughters and sisters of the employee wholly dependent upon him.

15. The family as defined in the FEBFGI Act 1969 excludes from the definition of family (i) brothers who are major having crossed age of 18 years and (ii) the married daughters. Section 19 of the FEBFGI Act 1969 obligates that the nomination should of such member or members of family. Thus an employee while making nomination shall ensure that the nominee is the member of family defined under the FEBFGI Act 1969. Even otherwise the nomination does not entitle a person to claim right of inheritance or any benefit which cannot be granted to the nominee under the law. The role and responsibility of a nominee of the deceased person varies with what constitutes the estate of a deceased. Where the benefits form part of the estate of a deceased, the nomination merely confers upon the nominee a limited right and responsibility upon him to collect or receive such amount and distribute the same amongst the legal heirs of the nominator/deceased whether or not descends from the family of deceased being legal heir or otherwise. Nomination in such a case could not constitute and amount to

deprive or exclude the legal heirs from their right of inheritance. The nomination by the deceased employee by no operation of law does confer or vest any right of inheritance in favour of the nominee, he acts as a trustee who collects for the benefit of all persons entitled to inherit from the Life Estate of deceased for onward transmission to the person entitled to share such benefits under the law. In short, it merely obviates the necessity of obtaining letters of administration or succession certificates.

16. In ordinary cases where the benefits do not form part of the estate of a deceased, it must go to the duly appointed nominee as otherwise it would defeat the purpose and intent of the nomination. The nominee in such a case would not be under an obligation to distribute these benefits amongst the legal heirs of deceased. Since the case in hand pertains to the Group Insurance Claim of the deceased employee, and deceased was insured against his life under the provisions of FEBFGI Act 1969, the benefits of Group Insurance are payable to the family defined under the act and no other person. Even the Act required that the nomination of a person should be from the family and the amounts payable under the Group Insurance Claim shall be payable to the family of the deceased under equitable distribution method, Since the deceased has nominated Muhammad Moazam Ali as a person to receive the amount of group insurance and gratuity but his nomination is not covered under sub-section 1 of section 19 of the Act, therefore cannot sustain under the law. It would be deemed that there was no legal nomination to collect the amount of Group Insurance, under such a situation the State Life Insurance Authorities would resort to the provisions of sub-section 2 of section 19 of the FEBFGI Act 1969 for distribution of the amount of the group insurance in the family members in equitable manner.

17. As far as the question of the distribution of the group insurance amount is concerned by the operation of section 19 of the FEBFGI Act 1969 referred supra only the family of the deceased employee is entitled to receive the group insurance amount and in the present case the family of the deceased employee consisted upon the petitioner, his father, his mother and the other persons defined under sub-section 5 of section 2 of the Act. Since the state life insurance corporation has rendered its inability to distribute the group insurance amount in absence of the verdict of the Court of law. Therefore a case for indulgence by this Court under its writ jurisdiction is made out, Consequently the Respondents No.4 and 5 are directed to distribute the group insurance amount of deceased employee amongst the family of deceased Muhammad Waqar Ali. Needless to say that the petitioner being widow of the deceased employee stands at the top in the definition of the family followed by minor daughter and then parents who are entitled to receive the Group insurance benefits. The Sate Life Insurance shall investigate the family of deceased and in case there are any minor brothers, unmarried, divorced, widowed daughters and sisters of the deceased employee who were wholly dependent upon him the provisions of section19(2) of the FEBFGI Act 1969. The Respondent No 8 being major brother is not entitled to receive any amount from service benefits and group insurance claims of deceased Mohammad Waqar Ali. With the above observations this petition stands allowed and disposed of along with pending applications if any.

JUDGE

JUDGE

Asghar/P.A