

# IN THE HIGH COURT OF SINDH AT KARACHI

**Present:**

Irfan Saadat Khan &  
Sana Akram Minhas JJ

## **High Court Appeal No.384 of 2022**

Appellant: Ms. Nusrat Fareed  
Through Mr. Syed Aijaz Hussain Shirazi, Advocate

Respondent No.1: Haji Ahmed Mujahid  
Through Mr. S. Abid Hussain Shirazi, Advocate

Respondent No.2: ARY Films & TV Productions (Pvt) Limited  
Through Mr. Hamza Hussain Hidayatullah, Advocate

Respondent No.3: EFU Life Assurance Limited  
Through Mr. Muhammad Ishaq, Advocate

Date of hearing: 25.5.2023

## **J U D G M E N T**

1. **Sana Akram Minhas, J:** This High Court Appeal (“HCA”) assails an order dated 1.11.2022 (“**Impugned Order**”) of a learned Single Judge (Testamentary & Intestate Jurisdiction) of this Court passed in Succession Miscellaneous Application No.57 of 2021 (“**SMA 57**”) under section 372 of the *Succession Act, 1925* (“**Succession Act**”). The Impugned Order directs that in the absence of a clear nomination, the Nazir is to distribute the Group Life Insurance proceeds (“**Group Insurance Proceeds**”) of the deceased viz. (late) Ghulam Mustafa Farooq (“**Deceased GMF**”) between his two surviving legal heirs viz. Appellant (widow) and the Respondent No.1 (father) as per shares prescribed to them in *sharia* (which are stipulated as  $\frac{1}{4}$ <sup>th</sup> for the widow and  $\frac{3}{4}$ <sup>th</sup> for the father).

2. The brief facts of the case are that the Deceased GMF joined the Respondent No.2 (“**Employer**”) on 1.10.2019. The Deceased GMF was eligible for Group Life Insurance as per the Employer’s Group Insurance Policy bearing No.005830 which the Employer had obtained from the Respondent No.3 (“**EFU**”). The Deceased GMF unfortunately met with an accident and passed away on 5.3.2020. Upon his death, a Group Insurance claim amount of Rs.20 million (“**Group Insurance Proceeds**”) was lying with EFU for which the SMA 57 was presented on 4.11.2020 for grant of a Succession Certificate. The SMA 57 was filed by the Deceased GMF’s father (Respondent No.1) as a petitioner and in which the Appellant initially filed her affidavit conveying her no objection as legal heir to the grant of Succession Certificate to the Respondent No.1 (i.e. her father-in-law). Later, she opposed the same and claimed to be the sole nominee/beneficiary entitled to the entire Group Insurance Proceeds to the exclusion of the other legal heir (i.e. Respondent No.1).
3. After institution of SMA 57, though no written objections were filed by the Appellant, nevertheless, the emergence of differences between the Appellant and Respondent No.1 over the division of the Group Insurance Proceeds are reflected from the learned Single Judge’s orders dated 2.3.2022 and 22.3.2022 passed in SMA 57 which record that:

02-03-2022

*Pursuant to order dated 07-04-2021, the employer of the deceased has stated that it can issue the cheques of insurance proceeds to both the legal heirs separately if the succession certificate is furnished. When questioned as to the shares in which said cheques can be issued, it appears that there is some difference of opinion between both legal heirs. In these circumstances, the Nazir may call for the insurance proceeds from the employer of the deceased viz. ARY Films & TV Productions (Pvt) Ltd; whereafter this Court will examine the shares in which the legal heirs inherit.*

22-03-2022

*... .. It appears that the widow of the deceased claims that the entire amount should be distributed to her as she was named as nominee/beneficiary in the policy of the group insurance. That aspect will be examined once the money is credited in the Nazir’s account. The Nazir shall also call a copy of the group insurance policy from the employer of the deceased viz. ARY Films & TV Productions (Pvt) Ltd so as to determine the aforesaid issue.*

4. After the Group Insurance Proceeds of Deceased GMF were credited to the Nazir’s bank account, the learned Single Judge passed the Impugned Order.

*Respective Arguments*

5. Aggrieved by the Impugned Order, the Appellant has instituted this HCA. The learned counsel for the Appellant made two-fold submission before us. One, once a dispute

had arisen between the two legal heirs, the learned Single Judge ought to have converted SMA 57 into a suit for administration in terms of section 295 of the Succession Act for determination of the shares of the two legal heirs after recording of evidence. And two, since the Deceased GMF had exclusively mentioned the name of the Appellant in the “*Employee Data Collection Form*” (“**Data Form**”), this Data Form ought to have been considered as a nomination form and the Appellant as the sole nominee/beneficiary. The Appellant’s Counsel relied upon case law reported in PLD 1991 SC 731 (*Wafaqi Hakumat Pakistan v. Awamunnas*), PLD 2010 Kar 153 (*In the matter of: Late Javed Iqbal Ghaznavi*), 2017 PLC (CS) 625 (*Abdul Ghaffar v. Government of Sindh*) and PLD 2019 Sindh 1 (*Muhammad Javed v. Roshan Jahan*).

6. The learned Counsel for the Respondent No.1 supported the Impugned Order and submitted that since the Group Insurance Proceeds did not form part of the “*Tarka*” i.e. estate of the deceased (“**Deceased GMF’s Estate**”) the same were to be divided as per *sharia*. He further asserted that the Deceased GMF had never filled the nomination form prescribed by insurance laws and, thus, he had not appointed anyone as his nominee. He cited 2006 CLC 1589 (*Naseem Akhtar v. Khuda Bux Pechoho*) and 2022 CLD 309 (*Postal Life Insurance v. Muhammad Ishaque Butt*).
7. The learned Counsel for the Employer (Respondent No.2) submitted that the Group Insurance Proceeds had been received by them from EFU and the same had been deposited by the Employer with the Nazir of this Court vide Statement dated 17.3.2022 (enclosing a cheque dated 15.3.2022 for a sum of Rs.20 million). He further submitted that the Employer would comply with any orders that may be passed in this HCA.
8. Likewise, the learned Counsel for EFU (Respondent No.3) submitted that it had promptly submitted a cheque of the claim (i.e. Group Insurance Proceeds) to the Employer and as far as EFU was concerned it had fulfilled its legal obligation and had no further role to play in the controversy between the legal heirs.

*Points For Determination:*

9. We have heard the arguments of the respective parties and have perused the record of both the HCA and SMA 57 as well as the case law cited by the respective counsels. The points for determination (framed in pursuance of Order XLI Rule 31 of *the Code of Civil Procedure, 1908*) which arise are:
  - i) Whether the proceeds of a Group Insurance form part of an estate of a deceased?
  - ii) Whether a Succession Certificate is required in respect of those assets which do not form part of a deceased’s estate?

*Estate / Tarka Of A Deceased*

10. In order to address the aforesaid points of determinations, the first question that needs to be answered is what constitutes a “Tarka” i.e. estate of a deceased. This has repeatedly come up for consideration in a long line of cases led by Wafaqi Hakumat Pakistan v. Awamunnas (PLD 1991 SC [Shariat Appellate Bench] 731), Pakistan International Airlines Corporation v. Alia Siddiq (2001 MLD 1), In the matter of: Late Javed Iqbal Ghaznavi (PLD 2010 Kar 153), Pervez Iqbal Ghaznavi v. Rehana Ghaznavi (which is an unreported judgment of a Division Bench of this Court dated 9.3.2013 delivered in HCA No.28 of 2010, in which Late Javed Iqbal Ghaznavi (supra) was upheld with certain modifications), Abdul Ghaffar v. Government of Sindh (2017 PLC (CS) 625), Muhammad Javed v. Roshan Jahan (PLD 2019 Sindh 1) and Naz Bibi v. Wahid Bux (also an unreported judgment of a learned Single Judge of this Court announced on 2.8.2021 in Second Appeal No.85 of 2019).
11. The decisions cited above set out the principles in relation to the matter at hand. These may be summarised in the following terms:
- i) The estate of a deceased person comprises of his movable and/or immovable assets, right or benefit which he owned and over which he had complete control and dominion or entitlement to claim the same so as to enter into a transaction of sale, exchange, transfer or gift in respect of them.
  - ii) The legal heirs of a deceased can inherit only from the estate of the deceased. Any property, right or benefit that does not form part of the estate is not inheritable.
  - iii) The yardstick for establishing what constitutes a deceased’s estate is that only such property, right or benefit of a deceased person is inheritable and shall form part of his estate that was in his ownership at the time of death or he had acquired an absolute right in law to claim during his lifetime. Conversely, any property, right or benefit which a deceased could not claim in his lifetime shall not form part of a deceased’s estate.

*Group Life Insurance & Succession Miscellaneous Application*

12. The dispute between the Appellant and the Respondent No.1 in this HCA solely pertains to distribution of Group Insurance Proceeds between them. It is, therefore, necessary to decide whether group insurance of a deceased employee falls within the definition of estate.
13. In Karim Bux v. Province of Sindh (2022 PLC (C.S.) 1182), a Division Bench of this Court has eruditely described the mechanics of group life insurance. It is a category

of life insurance in which a single contract covers an entire group of people and where ordinarily the policy owner is the employer and not the individual employee. The policy is issued in the name of the employer which covers the employees or members of the group. A master policy is signed by the employer with the insurance company and there is no direct connection between the employee and the insurance company. It is the employer who selects and purchases the policy. In case of death of an insured employee, his death claim is paid to the employer for onward payment to the nominee of the insured (if there is a nominee) or to the deceased's legal heirs (in case there is no nominee). It is relatively inexpensive as compared to individual life insurance with the result participation is always high.

14. The principle settled by *Wafaqi Hakoomat* (supra) and explicated in *Late Javed Iqbal* (supra) – upheld with modifications in *Pervez Iqbal Ghaznavi* (supra) – and *Naz Bibi* (supra) is that if an employee during his life time is entitled to claim or get the financial benefits from an employer, then all such benefits would be termed as his estate. However, where the financial benefits offered by the employer only mature or accrue or are given after the employee's death, then those financial benefits will not constitute part of estate of the deceased. Service benefit granted towards Group Insurance was not treated as inheritable benefit since the amount to be received by way of Group Insurance would not be payable to a deceased employee during the course of his employment until his death during the course of service.

#### *Contrary View*

15. Whilst on the subject of Group Insurance, it is necessary to refer to a judgment of the Supreme Court in the case of *Ameeran Khatoon v. Shamim Akhtar* (2005 SCMR 512). This decision is on occasions relied upon to support the contrary view that Benevolent Fund and Group Insurance on the death of a deceased devolve upon the deceased's legal heirs being his estate. A series of subsequent Single Bench decisions in the cases of *Late Javed Iqbal Ghaznavi* (supra), *Liaquat Ali v. Huma Faiz* (PLD 2018 Sindh 251) and *Muhammad Javed* (supra) have explained that the Supreme Court's view in *Ameeran Khatoon* is mistakenly conversely interpreted owing to a typographical error. *Late Javed Iqbal Ghaznavi* expounds:

"9. *In the case reported in 2005 SCMR 512 the Division Bench of the Honourable Supreme Court while recognizing the principle laid down by the five member bench of the Shariat Appellate Bench of the Supreme Court in the case of Federal Government of Pakistan v. Public-at-Large reported in PLD 1991 Supreme Court 731, mistakenly interpreted it conversely which appears to be typographical error as service benefits granted towards Benevolent Fund or Group Insurance were not treated as heritable benefits in terms of the principle laid down in PLD 1991 Supreme Court 731.*"

We take such view to be the correct position in law. As stated above, the *Late Javed Iqbal Ghaznavi* (supra) decision has been upheld in *Pervez Iqbal Ghaznavi* (supra) with certain modifications in respect of the special retirement benefits of the deceased, which according to the learned Division Bench formed part of the estate of the deceased as they pertained to his retirement benefits.

*Present Dispute & Maintainability of SMA 57*

16. Applying the above principles of law on Group Insurance to the case in hand, since the Group Insurance Proceeds of Deceased GMF did not fall within the definition of estate, the same was not available for its distribution among the legal heirs and could not devolve on his legal heirs.
17. Hence, the logical and natural consequence which flows from this is that the SMA 57 was not maintainable in the first place. To grant a Succession Certificate in favour of the Respondent No.1 would mean to hold that the Group Insurance Proceeds formed part of Deceased GMF's Estate which would in turn mean that Group Insurance Proceeds were liable to be distributed amongst all the legal heirs which would be incorrect.

*Dispute in SMA 57 & Contentious Proceedings*

18. We now advert to the submission of the Appellant that since a dispute had arisen between the parties over the division of Group Insurance Proceeds and the matter had become contentious, the learned Single Judge ought to have converted the SMA 57 into a suit for administration pursuant to section 295 of the Succession Act. This argument is flawed. Without going into the question of what constitutes or qualifies as a contentious matter, the object and scope of a suit for administration is to administer the estate of a deceased. Since, for reasons explained above, the Group Insurance Proceeds do not form part of the estate of a deceased, hence for the same reasons a suit for administration also would not lie in respect of it.

*Nominee*

19. The Appellant's Counsel has emphasised on the Data Form filled and signed by the Deceased GMF in his own handwriting. The Counsel argues that since the Deceased GMF had only entered the name of the Appellant in the relevant box titled "*Family Detail*" contained in the Data Form in his own handwriting and signed it, the Data Form ought to have been considered as a nomination form and the Appellant as the sole nominee/beneficiary. The Appellant's Counsel referred to the *Federal Employees Benevolent Fund & Group Insurance Act, 1969* to buttress his argument that the word "*family*" as defined in the Federal Act, inter alia, meant a male employee's wife or wives and wholly dependent parents but since the Respondent No.1 was not

dependent on the Deceased GMF, he, therefore, would not fall within the said definition of family. Since this Act of 1969 does not apply to private persons or privately run organizations, which is the case here, it need not detain us any further.

20. The mere act of nomination does not grant a nominee a right in the assets of a deceased person. The role and responsibility of a valid nominee of a deceased person varies with what constitutes the estate of a deceased. Put simply:
- i) Where the benefits form part of the estate of a deceased, the nomination merely confers upon the nominee (whether he be one of the legal heirs of the deceased or not) a limited right and responsibility to collect or receive such amount and distribute the same amongst the legal heirs of the nominator/deceased entitled under the law of succession applicable to the deceased. Nomination in such a case could not act to deprive or exclude the legal heirs from their right of inheritance. The nomination does not confer or vest any title in favour of the nominee and the latter does not become the owner. The nominee is merely a trustee who collects for the benefit of all persons entitled to inherit from the deceased. In short, it merely obviates the necessity of obtaining letters of administration or succession certificates.
  - ii) On the other hand, if the benefits do not form part of the estate of a deceased, then ordinarily 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 be under no obligation to distribute these benefits amongst the legal heirs of a deceased.

The above summarisation is in accord with the opinions enunciated in *Amtul Habib v. Mussarat Parveen* (PLD 1974 SC 185), *Muhammad Hanif Khan Afridi v. Shakila Begum* (2002 MLD 1506), *Lt. Muhammad Sohail Anjum v. Abdul Rasheed Khan* (2003 MLD 1095) and *Naz Bibi* (supra).

21. The Appellant's claim of being considered as a sole nominee/beneficiary on the basis of the Data Form of the Deceased GMF has to be seen alongside the Employer's reply to the memo of Appeal (presented on 8.4.2023) coupled with a sworn affidavit of the Employer's Senior Insurance Claim Officer, which takes on added significance as it remains unrebutted. With this reply, the Employer has, inter alia, attached a copy of its standard "*Declaration/Affidavit (Of Nomination/Authorization For The Beneficiary/Next Of Kin)*" which, according to the Employer, all employees availing the benefit of Group Life Insurance are asked to fill. The Employer states that when the Deceased GMF was reminded on a few occasions to fill this Declaration/Affidavit, he responded that he would consider the same and revert back but ultimately the Deceased GMF ended up never submitting it and he died in an accident just a few months into his new job. Whether in the presence of a specific Declaration/Affidavit

for nomination, can the Data Form be given a strained construction as a nomination form and/or whether the Data Form accords with public policy have yet to be determined. So also, what are the Employer's internal policy/rules in matters of Group Life Insurance and how does the Employer disburse the proceeds in situations where an employee dies without filling their standard nomination Declaration/Affidavit are questions which are unasked and unanswered, as no material to this effect has been brought on record. All these pertinent questions require adjudication by an appropriate forum so that the agony of the bereaved is not prolonged and matters such as distribution of Group Insurance Proceeds in the absence of a valid nomination are dealt with as per relevant policy/rules framed by an employer and not left to the wishes of an individual. We are refraining from expressing any views on these issues lest we adversely impact the rights of any party before the proper forum which is best equipped to adjudicate them.

*Conclusion*

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.

**JUDGE**

**JUDGE**

Karachi  
Dated: 14<sup>th</sup> June, 2023