

1942

Present : Moseley S.P.J. and Soertsz J

PAGAVATHI AMMA v. THE CEYLON LAWYERS'  
BENEVOLENT ASSOCIATION

301—D. C. Colombo, 12,534.

*Ceylon Lawyers' Benevolent Association—Contribution payable on death of member—Not claimable on suicide Benevolent Association Rule 21.*

The contribution payable to the nominee of a member of the Ceylon Lawyers' Benevolent Association cannot be claimed in the event of the suicide of a member.

**A** PPEAL from a judgment of the District Judge of Colombo.

N. Nadarajah, K.C. (with him H. W. Tambiah and Renganathan),  
for plaintiff, appellant.

H. V. Peñera, K.C. (with him N. K. Choksy), for defendants,  
respondents.

*Cur. adv. vult.*

November 25, 1942. SOERTSZ J.—

P. Balasubramaniam, a proctor of this Court, was a member of an Association called and known as The Ceylon Lawyers' Benevolent Association. This Association of some five hundred members was formed, as stated in the plaint, for promoting thrift, and giving relief to members in times of sickness and distress, aiding them when they were in pecuniary difficulties, and making provision for their widows and orphans. There were rules governing this Association.

Rule 21 provided *inter alia* that—

“on the death of a member the amount available at his credit less any sum in which he is indebted to the Association shall be paid to his nominee or nominees upon application. In addition to this payment, if the deceased had had been a member for twelve months or more immediately preceding his death, the committee shall pay to the nominee a contributory call calculated as follows” . . . . .

P. Balasubramaniam died by his own hand on July 26, 1938. The evidence shows, and it is not seriously disputed, that he was sane at the time of his suicide. The amount that would have been payable at the time of his death, if it was due to be paid, is said to be Rs. 4,334.50. It is to recover this amount that the plaintiff, who is his mother and nominee, instituted this action.

The defendants, who are the Honorary Secretary, and the Honorary Treasurer of this Association, were appointed to represent it, for the purpose of this case, in terms of section 16 of the Civil Procedure Code. They filed answer denying liability to pay the amount claimed inasmuch as Balasubramaniam had died by his hand. They, however, expressed their willingness to pay the sum of Rs. 24.50 which was the amount to the credit of his account with the Association. We are not concerned with that in this appeal.

The two questions submitted to us are :—

(1) Is the amount claimed by the plaintiff due on the contract between him and the Association?

(2) If it is, is the plaintiff's claim defeated by considerations of public policy?

As observed by Lord Atkin in his speech in the case of *Beresford v. Royal Insurance Co.*<sup>1</sup>, these questions are apt to be confused, but must be considered apart.

In that case, it was a clear term of the contract that the amount due on the Policy of Insurance would be paid on death, even if the assured had caused his own death, provided it was so caused after a lapse of one year from the date of the Policy. The question that created difficulties and that was fully considered in that case was the second question, namely, whether although that was a term of the contract, the contract was enforceable.

But, here, we are dealing with a different kind of case for there is no term in this contract concerned with the contingency of suicide. The

<sup>1</sup> (1938) A. C. 586, p. 594.

agreement is that a certain sum would be payable on death. In such a case Their Lordships who made speeches in the case of *Beresford v. Royal Insurance Co.* (*supra*) declared that there was no difficulty at all because, in the words of Lord Atkin :

“on ordinary principles of insurance law an assured cannot by his own deliberate act cause the event upon which the insurance money is payable. The insurers have not agreed to pay on that happening. The fire-assured cannot recover if he burns down his house nor the marine-assured if he scuttles his ship, nor the life-assured if he deliberately ends his own life”.

Or, as Lord Macmillan put it ;

“if the policies had contained no reference at all to suicide, I should have been of opinion that they did not cover the contingency of the assured committing suicide while sane, or in other words that the event of the assured's death did not mean or include the event of his self-caused death while sane”.

Counsel for the appellant sought to escape from this conclusion by contending that this Association was a purely Benevolent Association and not a “business concern”, to use his words, like any Insurance Company and that for that reason different principles applied. He further submitted that the Association had, on previous occasions, paid the full amount due in cases of suicide. I do not think that either of these facts makes any material difference. The principle enunciated in the House of Lords holds good whether we are dealing with an agreement with an Insurance Company, or an agreement among members of a Benevolent, Provident, or Family Benefit Association or just an agreement among a group of persons banded together for the purpose of providing for payments to be made by the survivors to persons named or indicated by those dying. In each of these cases the event contemplated is that of natural death. In regard to the point taken that payments such as that claimed here were made on previous occasions, I understood it to mean that that fact might have induced some of the members of the Association to join it, in the view that payment would be made to the widows, orphans or nominees in the event of death however brought about, and that, therefore, it should be taken into account. But I fail to see how it could bear on the matter by way of creating a right or giving rise to an obligation.

On this answer to the first question there is no occasion to consider the second question in order to ascertain whether, in regard to it, we are governed by Roman-Dutch law, and, if we are, whether the resulting position is different under that law.

In my opinion, the appeal fails and it must be dismissed.

MOSELEY S.P.J.—I agree.

*Appeal dismissed.*