.....RESPONDENTS

(BY SHRI SURESH AGRAWAL, ADVOCATE WITH SHRI M.P.SINGH, ADVOCATE (CAVEAT))

…………………………………………………………………………………….

Reserved on :- 04.08.2022

Passed on :-

…………………………………………………………………………………….

This revision coming on for final hearing at motion stage this day, the court passed the following:

O R D E R

This revision has been preferred by petitioner/respondent no.8 against the order dated 02.12.2020 passed by 3rd ADJ, Bhopal in M.C.A.No.48/2019 whereby order passed by 5th Civil Judge Class-I, Bhopal in M.J.C. Succession Case No.74/17 on 27.04.2019 was affirmed.

2. Facts of the case are that the petitioner is the father of late Shri Chetan Singh Chouhan who died on 17.05.2017. He was employed on the post of Manager in Kotak Mahendra Old Mutual Life Insurance Ltd., Bhopal. He had purchased life insurance policy and nominated his

father's name. As per the amended provisions of year 2015 in Insurance (Amended) Act, 2015, the concept of Beneficial Nominee was introduced under Section 39(7). It was alleged that as per the amendment, the parents, spouse and children have been put under the heading of "Beneficial Nominee". The policy taken by deceased son of petitioner is governed by the aforesaid provisions.

3. It is further alleged by the petitioner that alongwith his deceased son, he had jointly applied for house loan valued about Rs. 9,50,000/-. The bank passed it in their favour for Rs.8,50,000/-. The petitioner continued to repay all the installments. Deceased did not pay any EMI nor made any investment in the loan repaid so far. After his death, his wife filed false complaints at various forums to victimize him and his family so that they may give up their clams in respect of house jointly purchased by the petitioner and his son. After the death of his son, his wife respondent no.1 sent a letter to Kotak Life Insurance Company to release of amount of death benefit under the policy No. ED000120NTR000419 which was declined on the grounds that the petitioner is the sole nominee. Then respondent no.1 has filed an application under Section 372 of Indian Succession Act, 1925 to issue a

succession certificate in her favour which was partly allowed by the trial Court then the petitioner preferred miscellaneous civil appeal No.48/2019.

4. The learned appellate Court also dismissed the said appeal by affirming the order passed by learned trial Court holding that the respondent no.1 is a widow of deceased. She is entitled to get all the benefits under Section 8 of Hindu Succession Act because she is his legal heir. Only on the basis of nomination, petitioner and respondent no.9 cannot claim any benefit as nominee.

5. The petitioner has alleged that he was sole nominee in the insurance policy of his son which amounts to will of the deceased. As per section 39 of Insurance Act, 1938, he can exclusively claim over the death benefits of his son. Section 39 of Insurance Act, is statutory and overriding declaration of right and entitlement of claim after the death of insured. Hence, impugned orders are liable to be set aside.

6. Learned counsel for the applicant placed reliance in the case of **Smt. Shweta Singh Huria & Ors Vs. Smt. Santosh Huria & Anr.** decided by the High Court of Delhi on 18 May, 2021.

7. Insurance (Amended) Act, 2015 came into effect from 26.12.2014. Since the policies in question matured after the 2015 Amendment came into force, thus, it is necessary to reproduce para 16 of the case of Smt. Shweta Singh Huria & Ors (supra), which reads as under:

> By virtue of sub-Section (7), where the holder of insurance policy, in his lifetime nominates his parents or spouse or children or any of them, the nominee(s) shall be beneficially entitled to the amount payable by the insurer, unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.

8. Learned counsel for the appellant submitted that provision of amended section 39 are applicable in this case. Thus, beneficial nominee has to be entitled for the benefits under the insurance policies to the exclusion of any other legal heir, who is not a nominee. But according to this Court nomination is only for the benefit of the insurer so that he gets a valid discharge of its liability under the policy

and is not embroiled in the litigation interse the legal heirs of the insured.

9. In the case of Smt. Shweta Singh Huria & Ors (supra) the relationship between the parties was; appellant no.1 is the daughter-in-law of the respondents herein and the widow of late Shri Vineet Huria, appellant no.2 and 3 are minor son and daughter of appellant no.1 and grand children of respondent no.1. Appellant no.1 had received Rs.2,48,53,000/- as well as the amounts under two policies from ICICI Bank wherein the deceased husband was the policy holder. Respondent no.1 can claim 1/4th share of the amount under the said policy as a class-I heir of the deceased on the ground that mere nomination of applicant no.1 could not defeat her right under the law of succession then the Supreme Court discussed the opinion of other Courts and also discussed the Law Commission's view and held in para 31 as under:

> As is evident from a reading of the recommendations of the Law Commission, a distinction was carved out between 'beneficiary nominee' and 'collector nominee' and Section 39 of

> the Insurance Act, 1938 was amended accordingly, adding sub-section (7). Beneficiary nominee means a nominee who was entitled to receive the entire proceeds under an insurance policy and a collector nominee means a nominee other than a beneficiary nominee. Keeping this distinction in mind, sub-section (7) of Section 39 was carefully and cautiously drafted and the works used by the legislature are 'beneficial interest'.

In the end, that appeal filed by the appellants was allowed and case was disposed of with a direction that the trial Court shall decide the issue uninfluenced by any observations made by the Supreme Court.

10. In the present case, both the learned Courts below passed the orders in favour of respondents. Learned counsel for the respondents placed reliance in the case of **Shipra Sengupta Vs. Mridul Sengupta & Ors reported in 2009 (10) SCC 680** in which it was directed that amount be distributed according to the Hindu Succession Act, 1956. In a case of **Chaini Devi Vs. General Public S.B. Civil Misc. Appeal**

No. 2302/2018 decided on 11.03.2019 by Rajasthan High Court it was held that amount can be claimed by heirs of the deceased in accordance with law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee and in para 20 of the judgment it was held that respondents are entitled to receive the amounts in question which were payable to the deceased by virtue of succession certificate granted by Civil Court under Section 372 of Indian Succession Act.

11. In the judgment of **Sarbati Devi Vs. Usha Devi** reported in **(1984) 1 SCC 424** it was also considered. In the said decision, the Supreme Court held that nomination would not confer any beneficial interest on the nominee and it is a mere authorization to receive the insurance amount, which can be claimed by the legal heirs of the assured in accordance with law of succession, governing the parties. The judgment has been followed successively by various High Courts in a long line of cases, holding that mere nomination effected under Section 39 shall not deprive the legal heirs to the amount under the Insurance Policies. Relevant paras of Sarbati Devi (supra) are as under:-

5.***The summary of the relevant provisions of Section 39 given above establishes clearly that the policy holder continues to hold interest in the policy during his lifetime and the nominee acquires no sort of interest in the policy during the lifetime and the nominee acquires no sort of interest I the policy during the lifetime of the policy-holder. It that is so, on the death of the policy-holder the amount payable under the policy becomes part of his estate which is governed by the law of succession applicable to him. Such succession may be testamentary or intestate. There is no warrant for the position that Section 39 of the Act operates as a third kind of succession which is styled as a 'statutory testament' in para 16 of the decision of the Delhi High Court in Uma Sehgal case (AIR 1982 Del 36 : ILR (1981) 2 Del 315)***

*** It is difficult to hold that Section 39 of the Act was intended to act as a third

> mode of succession provided by the statute. The provision in sub-section (6) of Section 39 which says that the amount shall be payable to the nominees. We have to bear in mind here the special care which law and judicial precedents take in the matter of execution and proof of wills which have the effect of diverting the estate from the ordinary course of intestate succession***

12. The preposition of law laid down by the Supreme Court in Sarbati Devi (supra) cannot be disputed and is a binding dictum. The Supreme Court held that nomination would not confer any beneficial interest on the nominee under and insurance policy and a nominee is only an authorized hand to receive the insurance amount, which is subject to be disbursement amongst the legal heirs under the law of succession, governing the parties.

13. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a life insurance policy. Parliament

has not chosen to make any amendment to the Act. In such situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. Thus, a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with law of succession governing them.

14. In light of above preposition and circumstances of the case, this Court finds that there is no illegality or perversity in the concurrent finding given by the Courts below in favour of the respondents. Hence, no interference is required in the aforesaid orders.

15. Hence, revision is hereby ***dismissed***.

(SMT. ANJULI PALO)
JUDGE

anu