THE LONDON LIFE INSURANCE COMPANY (*Defendant*) ..... APPELLANT;

1963

*Feb.19, 20

Mar. 7

AND

MARY CATHERINE CHASE (*Plaintiff*) ..RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Insurance, Life—Death of insured result of gunshot wound—Claim by beneficiary—Defence of suicide raised—Proof of suicide not established —Whether proper standard of proof adopted.

The plaintiff's husband, on whose life an insurance policy had been issued by the defendant company, died as the result of a gunshot wound while the said policy was in force. The deceased was found lying prone with a bullet wound in his right temple and a rifle was lying on or beside the body. An action having been brought on the policy, the company invoked a provision thereof which read: "In case the life insured shall die by his own hand whether sane or insane within two years from the date on which this policy is issued, the liability of the company hereunder shall be limited to an amount equal to the premiums paid on this policy without interest." The trial judge held that the defendant had not satisfied the onus resting upon it to show that the deceased had committed suicide. However unlikely an accident might be as an explanation of the death, it was not beyond all possibility, and it was not more unlikely than that a normal, cheerful, happy young man had deliberately taken his life. The Court of Appeal, by a majority, affirmed the judgment at trial; the defendant then appealed to this Court.

Held: The appeal should be dismissed.

The Courts below did not adopt any standard of proof other than that of weighing the probabilities and improbabilities of the plaintiff's case against those of the case for the defendant, and having due regard to the seriousness of the allegation of suicide and the complete absence of motive they concluded that the preponderance of evidence weighed in the plaintiff's favour. This was no departure from the

*PRESENT: Cartwright, Abbott, Martland, Ritchie and Hall JJ.

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rule with respect to the burden resting upon those who set out to prove the commission of a criminal or quasi-criminal offence in civil cases as it has been accepted in this Court. *Clark v. The King* (1921), 61 S.C.R. 608; *Smith v. Smith and Smedman,* [1952] 2 S.C.R. 312; *New York Life Insurance Co. v. Schlitt,* [1945] S.C.R. 289; *Industrial Acceptance Corporation v. Couture,* [1954] S.C.R. 34; *Hanes v. Wawanesa Mutual Insurance Co.* [1963] S.C.R. 154, referred to.

Tritschler J.A., one of the dissenting Justices of Appeal, discounted entirely the complete absence of motive. It has been clearly recognized that motive taken alone is of very little probative value in counterbalancing the presumption against suicide, but it did not follow from this that complete absence of evidence of motive when taken in conjunction with the unnatural quality of the act of self-destruction can never be a decisive factor in support of the theory that death was accidental. *New York Life Insurance Co. v. Schlitt, supra; Dominion Trust Co. v. New York Life Insurance* Co. [1919] A.C. 254, referred to.

There was no error in the standard of proof adopted in this case, and as there was evidence to support the finding of accidental death the appeal was accordingly dismissed.

APPEAL from a judgment of the Court of Appeal for Manitoba, dismissing an appeal from a judgment of Bastin J. Appeal dismissed.

J. J. Robinette, Q.C., and *J. Flynn,* for the defendant, appellant.

D. E. Bowman and *J. S. Walker,* for the plaintiff, respondent.

The judgment of the Court was delivered by

RITCHIE J.:—This is an appeal from a judgment of the Court of Appeal of Manitoba affirming the judgment of Bastin J. which ordered that the respondent recover against the London Life Insurance Company the proceeds of an insurance policy issued by that company on the life of her husband Robert L. Chase with effect from the 15th of April 1959.

Robert L. Chase died as the result of a gunshot wound on May 1, 1959, and the appellant, while admitting that the policy in question was then in force, invokes the following provision thereof:

> In case the life insured shall die by his own hand whether sane or insane within two years from the date on which this policy is issued, the liability of the company hereunder shall be limited to an amount equal to the premiums paid on this policy without interest.

The learned trial judge has summarized the evidence concerning the character and background of the late Robert Chase and the circumstances of his death in the following paragraph of his reasons:

> The late Robert Leroy Chase and the plaintiff were 23 years of age at the date of his death. They had been married for four years and were living with their children, aged respectively 2½ years and 5 months, in a house they were purchasing in the Town of Transcona. Mr. Chase had been employed by the Canadian National Railways for 7 years as a clerk and was receiving a monthly wage of $365.00. On the evening of May 1st, 1959, he had gone to a "stag" party, for a friend who was getting married, at the Canadian Legion Hall. He returned at about 20 minutes to midnight, kissed his wife who was dozing on the chesterfield, and went to the bathroom at the rear of the house. He then went into a room, across the hall from the bathroom, which was used for storage purposes. On hearing a sound his wife went to this room and found him lying on the floor. She summoned her family, consisting of her father, mother and brother, from their home 2½ blocks away and her father summoned the police. Within a few minutes Sergeant Teres, who is now Chief Constable of the Transcona Police, arrived with two constables and found the deceased lying prone with a bullet wound in his right temple.

All the judges in the Courts below concluded that the fatal wound indicated that the muzzle of the rifle was in close contact with the skin at the moment when the bullet and propelling gases left the barrel and entered the skull of the deceased, and Dr. Fontaine, a highly qualified expert called on behalf of the appellant, testified that the nature of the wound, the position of the body, and the character of the rifle all pointed to suicide as the only logical explanation of the death.

The learned trial judge noted that Dr. Fontaine's reconstruction of the shooting was based entirely on the evidence of other witnesses and that while it appeared to account for all the known facts and to justify the opinion that the death was suicidal, it nevertheless did not exclude the possibility of accident.

In the course of his reasons for judgment, Mr. Justice Bastin stated his view of the issue before him in the following terms:

> The issue before me is whether the circumstances of the death of Robert Leroy Chase are not only consistent with suicide but inconsistent with any other reasonable explanation. The issue might be put in another way by asking the question: Has the fact of suicide been proved to my reasonable satisfaction, in spite of the inherent unlikelihood of this conclusion as shown by the evidence as to character and situa-

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tion of the deceased? However the issue is expressed, I conclude that the degree of improbability of suicide in the circumstances must be overborne by the cogency of the proof.

After a careful review of the evidence, the learned trial judge concluded by saying:

I have come to the conclusion that however unlikely accident may be as an explanation of the death it is not beyond all possibility and it is not more unlikely than that this normal, cheerful, happy young man deliberately took his life. The defendants have therefore not satisfied the onus resting upon them.

In the Court of Appeal, the opinion of the majority was delivered by Schultz J. who, having cited the well-known decision of Mignault J. in *London Life Insurance Co. v. Trustee of the Property of Lang Shirt Co. Ltd.*[1] went on to say:

By virtue of that case the burden resting on the defendants in the instant case was that they must prove affirmatively not only that the evidence is consistent with this allegation of suicide but further that it is inconsistent with any rational explanation.

These and other excerpts from the judgments in the Courts below were cited by the appellant's counsel as evidence of the fact that the trial judge and the majority of the judges in the Court of Appeal had misdirected themselves as to the standard of proof applicable to the circumstances, and it was pointed out that some of the language used was capable of being construed as meaning that in assessing the evidence these judges were guided by the rule applicable to criminal cases or that they applied an even higher standard of proof but when the judgments are read as a whole I do not think that they bear out this construction.

It is apparent from the judgment of Schultz J.A. that he discounted the evidence of Dr. Fontaine, which was the cornerstone of the appellant's case, and that he was strongly influenced by the complete lack of proof of any kind of motive for suicide. In my view, the true basis of his decision is to be found in the following paragraph:

These considerations lead me to conclude that having regard to the physical facts relevant to the death of Robert Chase, the story advanced by the plaintiff though open to question on some points is a possible and rational one. But when in addition to such considerations, regard is had to the fact that there was a complete absence of any motive for death on the part of the insured, and every reason and desire to live, I am persuaded that the theory of the plaintiff, bearing in mind the

[1] [1929] S.C.R. 117, 1 D.L.R. 328.

totality of all the circumstances, is a more consistent and rational one than the hypothesis advanced by the defendants which wholly ignores the evidence of lack of motive.

After considering the decisions of Bastin J. and Schultz J.A. in their entirety, I cannot say that they adopted any standard other than that of weighing the probabilities and improbabilities of the plaintiff's case against those of the case for the defendant and that having due regard to the seriousness of the allegation of suicide and the complete absence of motive they concluded that the preponderance of evidence weighed in the plaintiff's favour. I do not regard this as any departure from the rule with respect to the burden resting upon those who set out to prove the commission of a criminal or quasi-criminal offence in civil cases as it has been accepted in this Court. (See *Clark v. The King*[1]; *Smith v. Smith and Smedman*[2]; *New York Life Insurance Company v. Schlitt*[3]; *Industrial Acceptance Corporation v. Couture*[4]; and *Hanes v. Wawanesa Mutual Insurance Company*[5].)

It is interesting to note that the same rule was applied by the Court of Appeal of Manitoba in the case of *Derrington v. Dominion Insurance Corporation*[6], a decision which was rendered very shortly after the present case was decided in that Court and to which Schultz J.A. was a party.

It would not be proper to ignore the thorough and analytical dissenting judgments of Tritschler J.A. and Guy J.A., the former of which was particularly relied on by the appellant. An examination of the opinion of Tritschler J.A. discloses that the learned judge discounted entirely the complete absence of motive and he said in the last paragraph of his reasons:

> The absence of evidence of motive can never be decisive. The proof of suicide is to be sought in the circumstances of the death. These circumstances force me to the conclusion that the death was self-inflicted with intent.

In the present case, it appears to me that there was not only "absence of evidence of motive" but "evidence of absence of motive" and it was interesting to note that

[1] (1921), 61 S.C.R. 608 at 616-17, 59 D.L.R. 121.
[2] [1952] 2 S.C.R. 312 at 331, 3 D.L.R. 449.
[3] [1945] S.C.R. 289, 2 D.L.R. 209.
[4] [1954] S.C.R. 34.
[5] [1963] S.C.R. 154.
[6] (1962), 39 W.W.R. 257, 35 D.L.R. (2d) 220

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counsel were unable to point to any decided case in which suicide was raised as a defence and where, as here, there was no evidence to support either motive or insanity as a contributing cause.

The weight to be attached to evidence of motive in a suicide case was discussed by Taschereau J. in *New York Life Insurance Co. v. Schlitt, supra,* where he said, at p. 301:

> Motives are indeed very unreliable and they cannot be classified as an accurate determining cause of human deeds which they too often influence in different ways. Taken alone, and not coupled with other extraneous evidence, they have very little probative value, and surely those that are alleged in the case at bar do not rebut the presumption against suicide.

It has thus been clearly recognized that motive taken alone is of very little probative value in counter-balancing the presumption against suicide but it does not, in my opinion, follow from this that complete absence of evidence of motive when taken in conjunction with the unnatural quality of the act of self-destruction can never be a decisive factor in support of the theory that death was accidental.

The case of *Dominion Trust Co. v. New York Life Insurance Co.*[1] was one in which suicide was raised as a defence by the life insurance company and Lord Dunedin had occasion to observe that:

> The evidence to be examined in such a case falls at once into two distinct divisions. There is the evidence which bears on the motive for such an act, and there is the evidence of the facts as to the method of death, which include *all* actions of the deceased antecedant to, and possibly leading up to, the castastrophe.

In my opinion, the majority of the judges in the Courts below concluded that although the method of Chase's death made it improbable that he shot himself accidentally, the story of his life made it even more improbable that he committed suicide.

I do not find that there was any error in the standard of proof adopted in this case, and as I am of opinion that there was evidence to support the finding of accidental death I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitors for the defendant, appellant: Fillmore, Riley & Company, Winnipeg.

Solicitors for the plaintiff, respondent: Walsh, Micay & Company, Winnipeg.

[1] [1919] A.C. 254.