Michigan Law Review

Volume 44 | Issue 6

1946

RESTITUTION-RECOVERY OF INSURANCE PAYMENTS MADE UNDER A MISTAKE OF FACT AS TO THE DEATH OF THE INSURED

Edwin F. Uhl
University of Michigan Law School

RESTITUTION—RECOVERY OF INSURANCE PAYMENTS MADE UNDER A MISTAKE OF FACT AS TO THE DEATH OF THE INSURED—Respondent insurance company, upon receipt of claims filed by the appellant beneficiary and a copy of the original Certificate of Presumptive Death issued by the Maritime War Emergency Board, certifying that the insured was presumed to have died on or about November 28, 1942, paid to the beneficiary the face amount of a life insurance policy plus a refund of a premium payment received after the date of presumptive death. Subsequently it was discovered that the insured was a prisoner of war in Japan and, having received from the Maritime War Emergency Board a correction of the original certificate, the insurer requested the beneficiary to refund the money and reinstate the policy. Upon beneficiary's refusal to do so, the insurer brought an equity action to recover the funds. *Held*, that the payments, having been made under a mutual mistake of fact, may be recovered. *Pilot Life Insurance Co. v. Cudd*, (S.C. 1945) 36 S.E. (2d) 860.

It is a well recognized general rule that payments made under a mistake of fact may be recovered unless the payee has so changed his position that it would be unjust to require a refund.[1] This principle is subject to the limitation that where there is some doubt as to the existence of the fact from which the obligation arises, payment is in the nature of a compromise of a dubious liability, and although it should develop that the doubt was well founded, there can be no recovery as the payor assumed the risk of this contingency and the law lends all possible support to private settlement of disputed claims.[2] The operation of this limitation was urged by the appellant in the principal case. The court, however, found that both parties had exhausted their sources of inquiry and, upon proof of presumptive death from the United States Government, had accepted the death of the insured as a fact, that this was a mistake of fact and it followed that the insurer might recover.[3] There is considerable conflict in the cases involving recovery when the presumed deceased is in fact alive. The usual case involves the disappearance of the insured and seven years absence during which no information has been received concerning him.[4] Determination of the fact of death resulting from failure to rebut the presumption is conclusive as to the rights of the parties and there can be no subsequent recovery.[5] Where the insurer in

[1] Kelly v. Solari, 9 Mees. & Wels. 54, 152 Eng. Rep. 24 (1841); United States v. Barlow, 132 U.S. 271, 10 S. Ct. 77 (1889); McDonald v. Northern Benefit Assn., 113 Mont. 595, 131 P. (2d) 479 (1942); Bains v. Ensor, (D.C. Mun. Ct. App.) 39 A. (2d) 62 (1944). See cases cited in notes 40 AM. JUR., Payment, § 187; 87 A.L.R. 649 et seq. (1933).

[2] See WOODWARD, THE LAW OF QUASI-CONTRACT, §§ 16, 17 (1913) and RESTITUTION RESTATEMENT, § 6 (1935).

[3] Turner Falls Lumber Co. v. Burns, 71 Vt. 354, 45 A. 896 (1899); but see McArthur v. Luce, 43 Mich. 435, 5 N.W. 451 (1880) holding directly contrary. The rule where doubts have been resolved by inquiry so at the time of payment there is in fact a mistaken assumption, and a criticism of McArthur v. Luce are found in WOODWARD, THE LAW OF QUASI-CONTRACT 22 et seq. (1913).

[4] Page v. Modern Woodman of Am., 162 Wis. 259, 156 N.W. 137 (1916); Williams v. Nat. Life & Acc. Ins. Co., 222 Mo. App. 355, 1 S.W. (2d) 1034 (1927). The problems of the presumption of death, both as to the fact and time thereof are considered in 2 APPLEMAN, INSURANCE LAW AND PRACTICE, chs. 41-44 (1941).

[5] New York Life Ins. Co. v. Chittenden, 134 Iowa 613, 112 N. W. 96 (1907); Steele v. Metropolitan Life Ins. Co., 196 N.C. 408, 145 S.E. 787 (1928).

order to avoid litigation has paid the full value of the policy, payment is held to be voluntary in the nature of a compromise settlement and falling under the limitation to the general rule.[6] Where, as in the principal case, the courts have found that both parties proceeded on a false hypothesis, either from the beginning or after doubt has been resolved by inquiry, recovery is allowed.[7] In these cases insurer is faced with the difficult problem of attempting to protect itself when confronted with a claim arising from a presumption of death. Unsuccessful litigation will clearly injure the reputation of the company, yet payments based on this consideration are not recoverable.[8] If it requires an indemnity bond against the contingency of the insured's reappearance, such an agreement has a valid consideration and is binding.[9] However, refusal of the beneficiary to post bond and payment thereafter constitute a compromise settlement.[10] Further, as jury determination of the fact of death is binding it has been held error to grant judgment conditioned upon the posting of a bond.[11] Conditions of the insurance policy, attempting to limit the operation of the presumptive period are generally held invalid as arbitrary limitations, and against public policy, as are conditions limiting payment until expiration of the life expectancy of the insured.[12] However, on the latter problem there has been some dissent.[13] It would seem that there is a very narrow line between cases permitting recovery under the mistake of fact doctrine and those denying it on the ground that the transaction involved a compromise. When the claim is supported merely by a presumption of death, there must always be some doubt on the insurer's part as to the existence of the

[6] New York Life Ins. Co. v. Chittenden, 134 Iowa 613, 112 N.W. 96 (1907); Sears v. Grand Lodge, A.O.U.W., 163 N.Y. 374, 57 N.E. 618 (1900), a case involving an express compromise where, by the terms of the agreement, a partial payment was not to be returned in any event and the remainder was to be held by a trustee for a stipulated period during which the company sought to rebut the presumption of death. Upon proof that the insured was still living, the company sought to resist the partial payment. As there was clearly no mistake of fact, the court held the company liable.

[7] Masonic Life Assn. v. Crandall, 9 App. Div. 400, 41 N.Y.S. 497 (1896); Scott v. Coulson, [1903] 2 Ch. 249; Riegel v. Am. Life Ins. Co., 153 Pa. 134, 25 A. 1070 (1893), 140 Pa. 193, 21 A. 392 (1891), in which the plaintiff under the assumption that the insured was still alive accepted a paid up policy of $2,500 in lieu of continuing burdensome premium payments on a $6,000 policy. Upon discovery that the iusured was dead at the time of the transaction and the company thus liable at that time for the full payment, rescission of this agreement was permitted and the original policy reinstated. In Grand Trunk Western R.R. Co. v. Lahiff, 218 Wis. 457, 261 N.W. 11 (1935), payments had been made in settlement of a pending suit to the dependents of the company's employees who had lost their lives in a ship disaster. Payment had been made to the defendant upon showing that a man employed by the company was registered on its books under the same name which her estranged husband occasionally assumed. It subsequently developed that this employee was in fact not her husband. The court upon a finding that there had been no dispute as to the identity of the deceased employee allowed a rescission of the compromise agreement.

[8] Nat. Life Ins. Co. v. Jones, 1 Thomp. & C. (N.Y.) 466 (1873).

[9] Ancient Order of United Workman v. Mooney, 230 Pa. 16, 79 A. 233 (1911).

[10] New York Life Ins. Co. v. Chittenden, 134 Iowa 613, 112 N.W. 96 (1907).

[11] Steele v. Metropolitan Life Ins. Co., 196 N.C. 408, 145 S.E. 787 (1928).

[12] For a discussion of these problems see 2 APPLEMAN, INSURANCE LAW AND PRACTICE, § 746 (1941).

[13] Steen v. Modern Woodman of Am., 296 Ill. 104, 129 N.E. 546 (1920).

liability and possibly the mistake of fact theory is seldom logically applicable, although the result may be completely equitable. The courts, by the application of these doctrines, are in effect ruling that under certain circumstances, as in the instant case, reliance upon the formal proofs submitted is justified, whereas in others it is not and, in failing to resist the claim, the company acts at its peril. In view of the foregoing considerations as to the difficulty of the insurer's position and its virtual inability to contest the liability, it is submitted that, except in the case of an agreement, expressly described as a compromise, the application of the compromise doctrine works hardship on the insurer, and that where no liability in fact existed, the division line between the mistake and compromise doctrines might well be extended so as to afford the insurer either specific or money restitution.[14]

Edwin F. Uhl

[14] Specific restitution would embrace application of the constructive trust doctrine as opposed to the legal remedy of a money judgment which in certain circumstances may be inadequate. This would permit the insurer to trace and recover any assets in which the proceeds of the insurance had been invested. This point was not raised on appeal in the instant case so the court gave no opinion on the question. There is, however, authority for impressing a trust when payments have been made under a mistake of fact. In Re Berry, 77 C.C.A. (2d) 434, 147 F. 208 (1906); Knight Newspapers v. Commissioner of Internal Revenue, (C.C.A. 6th, 1944) 143 F. (2d) 1007; Ferguson v. Deuble, (Ohio App. 1938) 27 Ohio L. Abs. 533.