Yap Chwee Khim v American Home Assurance Co and Others
[2001] SGCA 22

Case Number : CA 108/2000

Decision Date : 09 April 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Edmond Pereira and Tan Yew Cheng (Edmond Pereira & Partners) for the beneficiary; Lek Siang Pheng and Vivienne Lim (Helen Yeo & Partners) for the insurers

Parties : Yap Chwee Khim — American Home Assurance Co

Evidence – Principles – Functions of judge – Whether judge has power of interrogation and investigation – Limits of power – s 167 Evidence Act (Cap 97, 1997 Ed)

Civil Procedure – Pleadings – Whether judge has power to investigate issues not raised in pleadings – s 167 Evidence Act (Cap 97, 1997 Ed)

(delivering the grounds of judgment of the court):

Introduction

On 2 June 1997, a 60-year-old Singaporean, Mr Lim Mah Chan (`the deceased`) was found dead in a bathtub of water in a hotel in Phnom Penh, Cambodia. He was then insured under eight insurance policies with six different insurance companies, with the proceeds payable to the appellant, Madam Yap Chwee Kim (`Madam Yap`). When Madam Yap attempted to claim the insured sums, only one insurance company paid her the sum insured under the policy. The other five insurance companies, the respondents in this appeal (`the respondents`), refused to make any payment to her under their respective policies. In consequence, Madam Yap brought an action against the respondents claiming under the respective policies. The sums insured under these seven policies amounted to a total sum of $827,000. Her case was that the insured peril under each policy had occurred, and the deceased had died by accidental drowning. She failed in her action at first instance before Tay Yong Kwang JC, and she appealed. We dismissed her appeal and now give our reasons.

The facts

At the time of his death, the deceased was on a five-day package tour to Phnom Penh. His travelling companion was Madam Yap`s ex-husband, Mr Lim Chok Young (`Mr Lim`). Madam Yap and Mr Lim were married in 1979, but in 1994 they divorced. However, they have since reconciled and intend to re-marry. They have a daughter, who is now 14 years old.

At the trial, Madam Yap and Mr Lim initially testified that they were all the family that the deceased had. They said that they had been living with the deceased and taking care of him for over ten years. Madam Yap said that she was the deceased`s goddaughter. Mr Lim said that the deceased was his father`s brother, and thus his uncle by blood. He told the court that he and the deceased were as close as father and son. However, in the course of the trial, it emerged from the evidence adduced by the respondents that the deceased was not related by blood to Mr Lim or Mr Lim`s father after all. This came to light when two real relatives of the deceased, who were alerted by the publicity of the case, came forward to testify on behalf of the respondents. They told the court that Mr Lim`s father was not the deceased`s brother, and Mr Lim was not the deceased`s real nephew. Thereafter, Mr Lim

told the court that he had just discovered that the deceased was his father`s sworn brother.

Mr Lim gave the following account of the history between the deceased and himself. Before he and the deceased became close, he had met the deceased on a few occasions. One of those occasions was his father`s funeral, at which the deceased introduced himself to Mr Lim as an uncle. Subsequently, in the late 1980s, the deceased started visiting Mr Lim and Madam Yap at their flat in Hougang (`the Hougang flat`). Mr Lim learnt that the deceased was staying with friends, but was not happy. He invited the deceased to move in with his family.

Madam Yap`s evidence was that the deceased moved in with them sometime in the late 1980s. She had not objected to this arrangement, for she found the deceased to be a simple, understanding and quiet man. His only vice was smoking. She got on well with the deceased. She always assumed that the deceased was Mr Lim`s uncle. According to her, about seven or eight years ago (around 1992 or 1993), the deceased was advised by a Taoist deity to adopt a godchild and he asked her to become his goddaughter. She agreed, and a simple tea ceremony was held to solemnise the relationship. That was how she became his goddaughter.

According to Madam Yap and Mr Lim, their marriage subsequently deteriorated. In or around May 1994, Madam Yap petitioned for a divorce from Mr Lim on the ground that the marriage had irretrievably broken down. In her petition she alleged that Mr Lim had behaved in such a way that she could not reasonably be expected to live with him. The divorce was not contested and the decree nisi was granted in August 1994, which was subsequently made absolute.

Notwithstanding the divorce, Mr Lim and Madam Yap remained in close contact with each other. In the division of matrimonial property, Madam Yap`s share or interest in the Hougang flat was transferred to Mr Lim in consideration of his paying her all the moneys (together with interests) withdrawn from her account in the Central Provident Fund Board, for the purchase of the flat. She subsequently purchased a flat in Woodlands in her own name (`the Woodlands flat`) and moved there. Apparently, the couple did not live separately for long. They said that they had organised their living arrangements around the needs of their daughter. As for the deceased, he continued to stay with Mr Lim after the latter`s divorce from Madam Yap. Occasionally, he also stayed at Madam Yap`s Woodlands flat. In early 1996, Mr Lim sold the Hougang flat and purchased a flat in Yishun (`the Yishun flat`).

In January 1996, a life policy for $7,000 and a personal accident policy for $20,000 were bought for the deceased from the second respondent. The premium for these policies were paid by Mr Lim. The particulars of the two insurance policies are as follows:

Second respondent	Personal accident	22 January 1996, renewed on 27 December 1996	$39/annum	$20,000
Second respondent	Life	25 January 1996	$121.35/every three months	$7,000

Insurance company Type of policy/relevant coverage Date of issue Premium Assured sum In late 1996, Mr Lim helped the deceased to purchase a flat at Petir Road (`the Petir Road flat`) in the latter`s sole name. The deposit for the flat was paid by Mr Lim. After the purchase, one of the bedrooms of the flat was rented out, and the deceased used the other one. But he would still stay

with either Mr Lim or Madam Yap every now and then.

In November 1996, Mr Lim and Madam Yap converted to Christianity and were baptized at St Andrew`s Cathedral. After attending instruction and counselling classes together at the Cathedral, their relationship improved vastly. Around that time, Mr Lim moved into Madam Yap`s flat in Woodlands and stayed with her and their daughter. They were almost reconciled and lived as husband and wife.

On 22 February 1997, a will was made by the deceased by which he bequeathed all his assets to Madam Yap. Mr Lim brought the deceased to a lawyer`s office to have the will made.

Thereafter, Mr Lim and the deceased started to make frequent trips together. According to Mr Lim, these trips came about after the deceased won several thousand dollars in the lottery. He was jobless at that time and kept asking Mr Lim to go on trips with him. At that time, Mr Lim was a container truck driver for the Ministry of Environment, earning a monthly salary of $1,600. He was able to travel frequently with the deceased as he had accumulated his `time-offs` and had medical and annual leave entitlements. Between February 1997 and May 1997, the two of them made three trips together, namely to Malaysia, Thailand and Indonesia respectively. Madam Yap and her daughter did not go on any of those trips.

On 21 April 1997, Mr Lim and the deceased booked a five-day packaged tour to Phnom Penh covering the period from 30 May 1997 to 3 June 1997. The cost of the trip was $588 per person, with an initial deposit of $200 each. Having booked the trip, Mr Lim said that they began to worry about the unstable social and political situation in Cambodia, as well as the danger of landmines. At one point, they contemplated cancelling the trip. In the end, they decided not to do so as they did not want to lose their deposits. Instead, they went out and bought extensive insurance coverage for the trip.

The insurance policies

The tour was booked on 21 April 1997, and the departure date was 30 May 1997. Between these two dates, the deceased, with Mr Lim`s help, bought six travel and personal accident insurance policies covering himself for, inter alia, death and personal injury resulting from accidental causes. The particulars of these six travel and personal accident policies are as follows:

First Respondent	Travel/death and personal injury from accident	21 April 1997	$79	$200,000
Second Respondent	Travel/death and personal injury from accident or violent causes	27 May 1997	$60	$200,000
Third Respondent	Travel/death and personal injury from accident	27 May 1997	$35	$100,000
Fourth Respondent	Travel/death and personal injury from accident	15 May 1997	$65	$200,000

Fifth Respondent	Travel/death and personal injury from accident	23 May 1997	$36	$100,000
Great Eastern Life Assurance Co Ltd (not a party)	Travel/death and personal injury from accident or violent causes	20 May 1997	$10.82/month	$100,000

Insurance company Type of policy/relevant coverage Date of issue Premium Assured sum The total amount of premiums for these six policies came to $285.82. He was already covered by two other policies, which had been taken out earlier in 1996. In total, he was covered by eight insurance policies and the assured sums under all these policies came to a total of $927,000.

In addition to these policies, he also applied for three other travel policies from another insurance company, namely, American International Assurance Co Ltd (`AIA`), and paid a total of $764.32 as premium or deposit. These three applications were still pending at the time of his death, and were rejected by AIA on 10 June 1997. The particulars of these three policies, if approved and issued by AIA, would be as follows:

AIA (not a party)	Personal accident and health	26 May 1997	$60.15/semi-annually	$5,000
AIA	Personal accident and health	26 May 1997	$60.15/semi-annually	$5,000
AIA (not a party)	Personal accident and health	26 May 1997	$644.02/semi-annually	$300,000

Insurance company Type of policy/relevant coverage Date taken out Premium Assured sum
Mr Lim conceded that the deceased was probably influenced by him to purchase all those policies. He himself was a great believer in the benefits of insurance, after having seen how insurance moneys had aided a colleague`s family after the colleague`s untimely death. For the trip to Cambodia, he bought three travel insurance policies to cover himself, the total assured sum being $400,000. His explanation for buying less travel insurance policies for himself as compared to the deceased, was that he was already covered by four other policies totalling about $409,000.

Trip to Phnom Penh

An account of their tour to Phnom Penh and what happened there was given by Mr Lim, and it was this. On 30 May 1997, Mr Lim and the deceased left for Phnom Penh as part of a tour group of six persons. In Phnom Penh, the deceased shared a room with Mr Lim at the Pailin Hotel. On the first evening, they had dinner and then returned to the hotel at about 9pm. On the second day, they visited temples and museums together with the rest of the tour group. On the third day, the deceased did not join the tour group on its outing. His legs were aching and he did not like the food. He only joined the group for lunch and for dinner at the hotel. Mr Lim was with the rest of the group.

As for the fourth day of the tour, ie 2 June 1997, no activities had been planned for the tour group. The other four members of the group decided to fly to Siem Reap to tour the ancient city ruins of Angkor Wat. The deceased did not want to go. Mr Lim decided to stay back in Phnom Penh to be with the deceased. That morning, they had breakfast at a restaurant in the hotel, and were seen chatting with the rest of the group in the hotel lobby before the others departed for Angkor Wat. A couple in the group asked Mr Lim to develop a roll of film for them at the studio opposite the hotel. He agreed to do so as he himself had some film to develop. He and the deceased then returned to their room together to get his camera. In the room, he used up the remaining film in his camera by taking pictures of the deceased in the room. They then went down together to the lobby, where the deceased waited for him while he went to the studio across the road to hand in the rolls of film for developing. Thereafter, he rejoined the deceased in the hotel lobby and they returned to their room together. It was shortly past nine in the morning. They rested and watched television. At around 10am, two chambermaids entered the room to clean it. This took about 15 to 20 minutes.

At about 11am, Mr Lim took a shower, and thereafter he had some coffee and tidied his luggage. He suggested to the deceased to take a bath before they went down for lunch. He made this suggestion because the deceased enjoyed taking baths in a tub, a luxury which he could not enjoy at home in Singapore, as they did not have a bathtub. The deceased then turned on the tap to fill the bathtub. At about 11.30am, Mr Lim left the room to collect the negatives and the photographs that he had left for developing earlier that morning. Before he left, he instructed the deceased to meet him downstairs in the hotel lobby for lunch at around 12noon. As he was leaving, the deceased was standing beside the bathroom and smoking a cigarette. The bathtub was still being filled. After collecting the negatives and the photographs, Mr Lim returned to the lobby where he inserted his photographs into the albums while he waited for the deceased. By 12.15pm, the deceased still had not turned up, so Mr Lim went up to the room. He unlocked the door and noticed that the bathroom door was shut and the television was switched on. He knocked on the bathroom door, but got no response. He could hear the sound of running water in the bathroom. When he pushed the door open, he saw the deceased, lying naked and face-down in the bathtub, which was filled with water. The tap was still running. He was scared and he immediately shouted for help. The two chambermaids came running into the room and they helped him to lift the body out of the bathtub and onto the floor. After that, many people arrived at the scene to render assistance. The deceased`s body was moved onto the bed. Mr Lim put a tee-shirt and a pair of shorts on the deceased`s body. The authorities then arrived.

Investigation in Phnom Penh

An investigation was conducted by the Cambodian Investigation Committee comprising, among others, police officers, a forensic medical doctor and a representative of the Procurator of Phnom Penh. The members of the committee, among other things, inspected the corpse and interviewed Mr Lim and the two chambermaids of the hotel. The deceased was found to have sustained a small scratch on his right wrist, and two small scratches on his left cheek. After their investigations, they certified that the deceased had died from accidental drowning. They expressed the view that either he slipped on the wet floor of the bathroom and fell into the bathtub or he fell in as a result of a fainting spell. They did not suspect foul play, and therefore a full autopsy was not performed.

The deceased`s body was cremated two days later, on 4 June 1997, in a temple in Phnom Penh. Mr Lim said that he arranged for the cremation in Phnom Penh because it would have cost him US$6,000 to transport the corpse back to Singapore. He discussed the matter with Madam Yap over the telephone, and they decided that it was better to cremate the body in Phnom Penh. Mr Lim did not stay for the cremation. He left for Singapore on 3 June 1997 together with the tour group. That was a day before the cremation took place. He returned a few days later, on 6 June 1997, to collect the

ashes and then returned to Singapore on 8 June 1997. The ashes were laid to rest at the Mandai Crematorium after some rites were performed. Madam Yap was busy working that day and did not accompany Mr Lim to pay her last respects to the deceased.

Claim against insurance companies

Subsequently, when Madam Yap and Mr Lim were clearing out the Petir Road flat, they found the eight insurance policies taken out by the deceased and issued in Madam Yap`s name. They also found a will made by the deceased, dated 22 February 1997, appointing Madam Yap as the executrix and making her the sole beneficiary of his estate. Madam Yap said that she had not been aware of the existence of either the policies or the will. She was very surprised to discover that she was the beneficiary. She said that Mr Lim also expressed surprise at the time they found the policies and the will. Mr Lim told the court that until then he had forgotten all about the insurance policies.

The only insurance company that made the payment under the policy issued by it was Great Eastern Life Assurance Co (`Great Eastern`). Great Eastern paid out the sum of $100,000 to Madam Yap in 1998, and the amount was credited into the joint account of Madam Yap and Mr Lim. The other insurance companies, namely, the five respondents, refused to make any payment. Madam Yap instituted proceedings against them for recovery of the amounts due under the respective policies. Her claim was that the insured peril had occurred, and the deceased had died by accidental drowning after falling into the bathtub, either by slipping on the wet tiles in the bathroom, or due to a fainting spell while stepping into the bathtub. In support, she relied heavily on the findings of the Cambodian Investigation Committee. The respondents resisted the claims and in their defence put forward a positive case: they asserted that the deceased`s death was not accidental but was intentionally caused by Mr Lim, either acting on his own, or in a conspiracy with Madam Yap. The trial judge found in favour of the respondents and dismissed Madam Yap`s claim.

The appeal

Before us, there were two main findings made by the judge which were seriously challenged. The first finding related to the divorce of Madam Yap and Mr Lim. In the course of the trial, the judge on his own initiative carried out an extensive investigation into the living arrangements of Madam Yap and Mr Lim after their divorce and each of them was questioned by the judge on these matters at very great length. On the basis of their evidence, the judge came to the conclusion that their divorce was a sham. He said at [para]230:

> *I now come to the testimony of the Plaintiff and Lim Chok Young. It is clear to me that their divorce in 1994 was nothing more than a sham. They never ceased to live together as husband and wife even if the official records such as their Identity Cards showed them to have different addresses. The only reason the Plaintiff was confused in her testimony about where she was living after her divorce was because her evidence was concocted and utterly false.*

Later the judge said that the reason why parties went through the `charade` of a divorce was the money which they could make from their property. He said at [para]237:

> *The next question to ask must be, why did they go through the charade of a divorce? The answer is simple - money. Under HDB regulations, the Plaintiff, with the daughter in her custody, was eligible to buy a flat. Lim Chok Young,*

single after the divorce, was above 35 years in age and could purchase a three-room flat on his own account. He knew that these regulations were in existence for years and yet pretended to have learned about them only after the divorce. Obviously, one of the rooms in the Yishun flat was rented out to earn income for Lim Chok Young with the other room probably used to house the deceased at some point in time. After two and a half years of possession, Lim Chok Young would be able to sell the Yishun flat, hopefully for the same huge profits that he made from the capital gain on his Hougang flat. I take judicial notice of the fact that prices for all sorts of real property were in an upswing in 1993 and 1994. That was why they decided to "divorce" in 1994. Unfortunately for Lim Chok Young, property prices did not continue their upward swing after 1996 and he was lucky to be able to sell the Yishun flat (after the requisite two and a half years of possession) with some profit.

Mr Edmond Pereira, counsel for Madam Yap, submitted that the judge was in error in pursuing the issue as to the genuineness of the divorce and making a finding that the divorce was a sham. First, such an issue was never raised by the parties in the pleadings and none of the facts surrounding the divorce proceedings and their subsequent living arrangements were in issue and pleaded. Counsel for the respondents did not question either Madam Yap or Mr Lim on the genuineness of their divorce. No suggestion or allegation as to the falsity of the divorce was made by or on behalf of the respondents. In these circumstances, it was wrong for the judge to pursue this issue on his own and make an adverse finding against Madam Yap and Mr Lim, which in turn influenced his evaluation of the evidence of Mr Lim in his dealings with the deceased, and eventually the finding that Mr Lim with or without the complicity of Madam Yap had caused the death of the deceased.

In considering this complaint of Mr Pereira, we should mention that a trial judge has very wide power under s 167 of the Evidence Act (Cap 97, 1997 Ed) to ask questions of any witness who is before him. Section 167 provides as follows:

> *(1) The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question.*
>
> *(2) The judgment must be based upon facts declared by this Act to be relevant and duly proved.*
>
> *(3) This section shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under sections 123 to 133 if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 150 or 151; nor shall he dispense with the primary evidence of any document, except in the cases excepted in this Act.*

However, such wide power must be exercised with caution and within well-recognised limits with

judicial calm and detachment and without usurping or assuming the functions of counsel. Case law has shown that, while a trial judge has the power to ask questions of witnesses at any stage of the hearing, an excessive exercise of such power may, and indeed would, operate unfairly against the witnesses and litigants. A general statement on the role a judge should play in this regard is to be found in the judgment of Denning LJ in the case of **Jones v National Coal Board** [1957] 2 QB 55[1957] 2 All ER 155 at 159:

> *[T]he judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question "How`s that?" His object, above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role ... And Lord Greene M.R. who explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, "he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict": see **Yuill v Yuill** [1945] 1 All ER 183(Unreported) at 189).*

And the learned Lord Justice continued ([1957] 2 QB 55 at 64; [1957] 2 All ER 155 at 159):

> *The judge`s part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well.*

In that case, the English Court of Appeal ordered a new trial on the ground that the judge at first instance had excessively interrupted counsel`s cross-examination and at times, to a substantial extent, had conducted the examination of the witnesses himself. It was held that he had hindered the fair conduct of the trial, and had effectively taken cross-examination of the witnesses out of the hands of counsel.

In the case of **R v Mawson** [1967] VR 205, the Full Court of the Supreme Court in Victoria ordered a new trial on the ground of substantial involvement and interference by the judge in the conduct of the trial, coupled with his failure to warn the jury of their right to disregard the strong comments on the facts of the case.

Reverting to the case at hand, we think that Mr Pereira made a valid point in his submission that the judge ought not to have conducted an investigation on his own as to the circumstances relating to the divorce of Madam Yap and Mr Lim, and to have made the finding that the divorce was a sham. First, the question whether the divorce was a sham was not raised in the pleadings. Nor was it raised in the affidavit evidence adduced by the respondents; nor in the cross-examination by counsel for the respondents. Authorities are in abundance on the point that a court should not decide on issues not raised in the pleadings: **Kiaw Aik Hang Co v Tan Tien Choy** [1964] MLJ 99 ; **Ong Seow Pheng v Lotus Development Corp** [1997] 3 SLR 137 ; **Multi-Pak Singapore (in receivership) v Intraco**

[1992] 2 SLR 793 ; and **The Ohm Mariana ex Peony** [1993] 2 SLR 698 . In our opinion, the judge should not have proceeded on his own to investigate the question and made the finding that the divorce was a sham.

Because the genuineness of the divorce was not an issue raised by any of the parties, no evidence was led by either counsel on that matter. The only evidence before the court as to that matter was the evidence uncovered by the judge by his own questions. There was little examination or cross-examination of the witnesses by either counsel on that matter. The judge`s finding was purely an inferential one, which he drew essentially from the fact that Madam Yap and Mr Lim had never ceased to live together at the time of divorce and thereafter, and that in the division of the matrimonial property, Madam Yap only got back her CPF moneys with interest in consideration of the transfer of her share or interest to Mr Lim. The judge held that the reason why the parties went through the divorce was the money they could make from the sale of the Hougang flat and their separate acquisition of the properties, namely: the flat in Woodlands by Madam Yap and the flat in Yishun by Mr Lim.

We did not find the living arrangements Madam Yap and Mr Lim had at the material time to be highly unusual. The parties have a daughter and at that time she was only about eight years old and was attending a primary school near the Hougang flat. Madam Yap had the custody of the daughter and found it convenient to continue staying there. At that time her flat in Woodlands which she had applied for was not ready. Speaking generally, instances are many where couples, who have divorced, continue to live under the same roof for lack of alternative accommodation, especially when they have children who are attending schools near their home. It is also not uncommon for the parties to be making efforts at reconciliation even though divorce proceedings have started and are progressing. It is true that it is somewhat inexplicable that Madam Yap should be so generous in agreeing to the division of the matrimonial property, but on this point neither Madam Yap nor Mr Lim was asked the reason for such division of the matrimonial flat. It should be borne in mind also that at that time Madam Yap was represented by a lawyer, and one would assume that she had the benefit of legal advice in the division of the matrimonial property.

As for the motive which the judge attributed to the parties for going through the divorce, we found that that was not borne out by the property transactions which the parties carried out. The divorce took place in 1994 and the Hougang flat, which was bought in 1984 direct from HDB, was sold only in early 1996. Mr Lim made some capital gain from the sale, but then that was after a period of over ten years. If the motive for the divorce was the capital gain to be made from the sale, then the parties or Mr Lim would have sold it immediately or very soon after the divorce. In any case, that capital gain could still have been realized without going through the divorce. Before the divorce proceedings started, Madam Yap and Mr Lim had applied for the flat in Woodlands, which is an executive flat. They could have sold the Hougang flat after the Woodlands flat was allocated and made the capital gain. Mr Lim`s name was only removed from the application after the divorce, and Madam Yap became the sole applicant and she eventually got the flat at Woodlands. Apparently, that was part of the agreement in the division of matrimonial property between her and Mr Lim. It is true that after the divorce, Mr Lim bought the flat in Yishun. The judge said that Mr Lim bought the flat to make more money, but the fact remained that after the purchase he rented out only one room and not the entire flat. According to his evidence, he sold the flat in 1998, as at that time he was reconciled with Madam Yap and had moved back to the flat in Woodlands. His evidence on this point was entirely consistent with the facts stated by Madam Yap. Looking at the totality of the evidence given by Madam Yap and Mr Lim, we did not find it sufficient to support a reasonably strong inference that the divorce was a sham.

The other finding of the judge which was challenged by the appellant was that Mr Lim and Madam Yap

had conspired to cause the death of the deceased for money. The judge said at [para]254:

> *Once the entire chain of events and all the surrounding circumstances were considered together, rather than as isolated, unrelated parts, I could only arrive at the irresistible conclusion that Lim Chok Young and his wife, the Plaintiff, driven by their determination to become rich, conspired to cause the death of the deceased intentionally in order to benefit from the insurance monies. Lim Chok Young was the prime mover of the whole scheme. Even if the Plaintiff was not aware of the exact details of the plot to extinguish the life of the deceased, she obviously knew that an "accident" of some sort had been planned for the poor simpleton abroad.*

Here again we did not find that there was sufficient evidence to implicate Madam Yap in a conspiracy with Mr Lim to cause the death of the deceased for money. There was no evidence indicating that Madam Yap knew that the deceased had made a will making her the sole beneficiary of his estate and that he had purchased numerous insurance policies. She had no involvement in the deceased making his will or in the deceased taking out any of the insurance policies. Of course, it could be inferred that, since Madam Yap and Mr Lim had been reconciled and were living together, she must have known of the will made by the deceased and the insurance policies taken out by him. But it would be going too far to infer further that she not only knew, but also must have agreed to whatever plot Mr Lim had planned for the deceased. On the evidence adduced, probably Madam Yap knew that between February and April 1997 Mr Lim and the deceased together made trips to Malaysia, Indonesia, and Thailand, and that, on 30 May 1997, Mr Lim and the deceased went on their trip to Cambodia. However, that knowledge alone was not sufficient to give rise to an inference that she knew or expect that a fatal accident would befall the deceased, while they were in Cambodia.

Looking at the totality of the evidence, we did not find that there was sufficient evidence to support a finding implicating Madam Yap in a conspiracy to cause the death of the deceased.

Madam Yap`s claim

We now turn to the claim of Madam Yap. Before us, her case was that the deceased died on 2 June 1997 from accidental drowning while in Phnom Penh, and on that ground she was entitled to recover under the policies. The burden was on her to prove her claim on a balance of probabilities: **NE Neter & Co v Licenses and General Insurance Co** [1944] 1 All ER 341; **The Freighter `Kieng Kung`** [1965] 2 MLJ 60 (Unreported) and **Regina Fur Co v Bossom** [1958] 2 Lloyd`s Rep 425.

In seeking to establish her claim, Madam Yap relied substantially on the report of the Cambodian Investigation Committee. In considering the report, it must be borne in mind that at the material time, the members of the Committee were totally unaware that the deceased was heavily insured for accidental death and that all the policies were taken out at the request and with the assistance of Mr Lim. They were also not apprised of the background and other material information relating to the deceased and his relationship with Mr Lim, which only unfolded at the trial. Whatever information concerning the deceased that was furnished to the Committee was given by Mr Lim alone. It was therefore not surprising that, apart from interviewing Mr Lim and the two chambermaids who helped Mr Lim to lift the deceased from the bathtub, they did not perform an autopsy, but merely conducted an external examination of the deceased`s body. In the absence of a complete autopsy, it was not possible in this case, purely on the basis of the report, to determine the true cause of death of the deceased. The judge did not accept the report, and we likewise were unable to accept it also.

We now turn to other material evidence before the judge and his evaluation of such evidence and the relevant findings he made. First, the evidence as to the type of person the deceased was. Evidence on this point was given by the deceased`s sister, Ms Lim Kim Poh, and another relative, Mr Sim Chye Huat, who is the brother of the sister-in-law of the deceased. Both of them knew the deceased well. In brief, their evidence was to the effect that the deceased was a person of low mentality, was trusting and gullible, was easily bullied by others, and was not a person who knew how to plan for his future or to save money. He remained single and never had a steady job. On the basis of their evidence, the judge came to the conclusion that the deceased was a simple-minded person with no wife, children and no dependants and had no income. He held that the deceased on his own could never have acquired the flat at Petir Road. Nor would he know what a will was. The judge said at [para]238:

> *... I accept as a fact that the deceased would never have thought of purchasing a flat on his own. He did not have any savings, was unemployed and was not one given to planning for his future. He could never have afforded the luxury of owning a flat. The Petir Road flat was, for all intents and purposes, the property of Lim Chok Young who was astute enough to protect his investment by causing the deceased to make the will in February 1997, leaving all his earthly possessions to the Plaintiff. Again, the deceased was not someone who would have known what a will was, much less thought about it and then decided to go to town to see a lawyer.*

This finding was not challenged before us. We agree with the judge. Both the purchase of the Petir Road flat and the making of the will by the deceased were arranged by Mr Lim. Indeed we would say they were made by the deceased at the behest of Mr Lim.

Secondly, turning to the insurance policies, we find it quite astonishing that a person like the deceased could have taken out eight policies before he departed for his tour to Phnom Penh. Admittedly, the two policies issued by the second respondent were taken out in early 1996. However, with reference to the other six policies, they were taken out by the deceased within a short span of less than two months, namely, between 21 April 1997, on which the tour to Phom Penh was booked, and 30 May 1997, the departure date of the tour. The total premium paid for these six policies came to $285.82. As if these eight policies were not enough, the deceased, in addition, applied for three more policies - personal accident policies - from AIA and paid a total premium or deposit amounting to $764.32; these three applications were still pending at the date of the deceased`s departure for the tour. All in all, there were 11 policies, including the three AIA policies, if approved and issued, and the total of the assured sums came to a huge amount of $1,237,000. By any standard and on any view, this was a colossal sum of insurance for a person such as the deceased, who had no fixed job or was unemployed and probably had no income and had no children or dependant to look after and provide for. On the basis of the evidence adduced, we did not have the slightest doubt that Mr Lim was instrumental in causing the deceased to purchase the eight policies and to apply for the three AIA policies.

Mr Pereira, in the case for the appellant, drew our attention to the fact that Mr Lim himself also took out large insurance cover for his travel to various countries. For example, for his trip to China, which he made in 1994, he bought a travel policy from the second respondent for the sum of $500,000, and for his trip to South Korea in 1996, he bought a policy for at least $200,000. In respect of the trip to Phnom Penh, he had at the time insurance cover for the total sum of $409,000. We were unable to find this as a satisfactory explanation or reason for the large number of insurance policies taken out by the deceased. First, the insurance policies taken out by Mr Lim were nowhere near those taken out by the deceased both in terms of the number of policies and the quantum of the amount insured.

Secondly, unlike the deceased, Mr Lim has Madam Yap and a daughter to support and provide for.

The judge found that all the insurance policies taken out by the deceased were effected at the behest of Mr Lim. The judge said at [para]248:

> *I find that the five travel insurance policies in question in this trial were all applied for by Lim Chok Young, with or without the presence of the deceased. The deceased was obviously an uneducated and happy-go-lucky man whose furthest thoughts about the future were probably his next meal and his next cigarette. He simply had no savings to splash on insurance-shopping or on tours. Insurance was already something so foreign to him, what more $1.2 million worth just before a five-day trip to Cambodia! I have no hesitation in rejecting Lim Chok Young`s assertions that the deceased was converted to his deep abiding faith in insurance and that the deceased fortuitously came into lottery money just before he became unemployed. The truth of the matter was that the deceased was never gainfully employed for any appreciable period of time due to his poor eyesight, low intellect and generally carefree approach to life. Getting the deceased`s thumbprint or his handwritten name on application forms for insurance would have been as easy as getting the deceased to light up a cigarette. As was evident from Lim Chok Young`s own testimony, the insured did not even need to be present at the agencies. All the premiums were paid by Lim Chok Young who needed no reimbursement as the policies were his idea anyway and they were small change compared to what he hoped to reap in the subsequent insurance claims.*

In the above observations, the judge mentioned specifically the five travel policies, but it is implicit in his judgment that the same was true with reference to the other policies as well. We are in full agreement with the finding made by the judge. Here again we did not find that there was any challenge to this finding by the judge.

Thirdly, we considered also the trips the deceased and Mr Lim made together to other countries in South East Asia between February and May 1997. That they made the trips was not disputed. On such trips, the judge made the following damning observation at [para]255:

> *The trips by Lim Chok Young and the deceased to neighbouring countries between February and May 1997 were nothing more than a ploy by Lim Chok Young to create the impression that they were constant, merry travelling companions. The trips were not made in order that a kind and altruistic "nephew" could fulfil his aging uncle`s wish to travel by aeroplane - they were flights in the final journey leading to the eventual designated place of execution. Lim Chok Young also did not want an autopsy to be conducted here for it might reveal the actual cause of death of the deceased.*

For our purpose, we would not go so far as to say that these trips were `nothing more than a ploy` by Mr Lim and were `flights in the final journey leading to the eventual designated place of execution`. All the same, the reasons given by Mr Lim for these trips were, to say the least, not quite convincing, and the reasons for making these trips were suspect.

The totality of all this evidence and the findings made by the judge cast serious doubts on Madam Yap`s claim that the deceased died from accidental drowning. There was a very strong suspicion that the death of the deceased was homicidal, and not accidental, and that Mr Lim was involved in causing it. We were certainly not satisfied that the deceased died from accidental drowning. In our

judgment, Madam Yap had not discharged the burden of proof and her claim failed and was rightly dismissed by the judge.

Having come to this conclusion, it is unnecessary to go further and consider whether, on a balance of probabilities, Mr Lim intentionally caused the death of the deceased. Nor is it necessary to determine the secondary issue relating to a certain condition in some of the policies, which the judge held was a condition precedent to the recovery, with which Madam Yap did not comply and therefore she was disentitled from recovering under the policies.

For the reasons we have given, we dismissed the appeal with costs.

Outcome:

Appeal dismissed.