

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. EFTYCHIA SOFOCLEOUS AND YIANNAKIS SOFOCLEOUS, AS ADMINISTRATORS OF THE ESTATE OF LATE SAVVAS SOFOCLEOUS,
2. EFTYCHIA SOFOCLEOUS, PERSONALLY AND/OR AS NATURAL GUARDIAN OF HER MINOR CHILDREN, ANDREAS, CHRISTAKIS, MYRIATHI AND SOFOCLIS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE DIRECTOR OF SOCIAL INSURANCE OF THE MINISTRY OF LABOUR AND SOCIAL INSURANCE,

Respondent.

(Case No. 198/69).

Social Insurance—Death benefit and damages—Social Insurance Fund—Obligation of the beneficiaries to pay to the Social Insurance Fund part of the damages received in case of death of the insured person—Sections 26 and 45(1) of the Social Insurance Law, 1964 (Law 2/64) as amended by Law 28/68—The case of Christou and Another v. Pallikaras (1970) 1 C.L.R. 152, followed.

Social Insurance Law, 1964 (Law 2/64) section 45(1)—It has a retrospective effect.

Administrative act or decision—Executory act—Social Insurance—Issuing of the required certificate under section 45(1) of the aforesaid Law 2/64 as amended by Law 28/68—Issuing of such certificate by the Chief Social Insurance Officer is not a decision or act within the provisions of Article 146 of the Constitution—It is not of an executory nature, because the said officer was acting under the order of the trial Court in a civil action.

Cases referred to:

Christou and Another v. Pallikaras (1970) 1 C.L.R. 152, followed.

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The facts sufficiently appear in the judgment of the Court dismissing this recourse.

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Recourse.

Recourse against the decision of the Respondent to the effect that the Applicants must pay the sum of £832 to the fund established under the Social Insurance Law, 1964 (as amended) and against the decision to issue a certificate under the provisions of section 45 of the said Law as amended by Law 28 of 1968.

J. Mavronicolas, for the Applicant.

S. Nicolaidis, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:

HADJIANASTASSIOU, J.: In these proceedings, under Article 146, of the Constitution the Applicants seek the following relief:-

- A. A declaration of the Court that the act and/or the decision of the Respondent, that the Applicant must pay the sum of £832 to the fund of the Social Insurance Law is *null* and *void* and of no effect whatsoever;
- B. A declaration that the issuing of a certificate in accordance with the provisions of section 45 of Law 2/64, as amended by Law 28/68, is *null* and *void* and of no effect whatsoever.

The first Applicant, is the administrator of the estate of the deceased Savvas Sofocleous, who died on January 26, 1965 as a result of a car accident. The deceased was 33 years of age, married with four children, and was working as a butcher earning an amount of £30.-£40 per month. He was an insured person, within the provisions of the Social Insurance Law, 1964 (Law 2/64) and was entitled to disability benefit known as "injury benefit" under section 30 of the law. After his death, his widow and his four children became entitled to death benefit, under the provisions of section 34 of the law; and in fact they have received the sum of £1248.000 mils as from January 26, 1965.

In 1965, the administrators, having elected under section 45(a) of the law, brought an action against both Mr. Petrakis Groutides and the Attorney-General of the Republic, claiming damages for the death of the deceased Savvas Sofocleous, because of the negligent driving of defendant 1. On March 13, 1969, the action was settled between the parties for the agreed sum of damages of £1,500 plus an amount of £100 for costs. The apportionment of blame for the accident was also agreed to be 50% to the deceased and 50% to defendant 1.

The trial Court having approved the settlement and, after making the necessary apportionment to the wife and her four children, had this to say in *exhibit 2*:-

“The defendant No. 1 is hereby directed not to pay to the plaintiffs until further order any amount in excess of £800 unless and until a certificate from the First Insurance Officer is produced showing the amount, if any, payable to the Fund..... If a certificate is produced to the effect that an amount is payable to the Fund, then defendants No. 1 shall pay it in accordance with the law directly to the Fund and the amounts of apportionment will be reduced *pro rata*. Any amount paid now or payable later on shall be paid to plaintiffs' counsel who shall again *pro rata* pay it to the mother and deposit the children's respective shares in the savings account of a bank or a co-operative society.”

On July 1, 1969, the Applicants feeling aggrieved, filed the present recourse, which is based on the following legal points:

- “(α) 'Ενήργησαν καθ' υπέρβασιν εξουσίας.
- (β) 'Ενήργησαν άνευ νομικῆς εξουσιοδοτήσεως ἤτοι ἐνήργησαν δυνάμει προνοιῶν ἀναφερομένων εἰς παροχὰς λόγῳ σωματικῆς βλάβης ἐνῶ ἡ ἐπίδικος περίπτωσης ἀναφέρεται εἰς βοήθημα θανάτου.
- (γ) Δὲν ἐφήρμοσαν τὸ ἄρθρον 45(1) τοῦ Νόμου 28/68.
- (δ) 'Ενήργησαν ἐν πλάνῃ περὶ τὸν ὡς ἔνω Νόμον.

In accordance with the provisions of section 45(b) of the law, if the employed person has received a benefit under this law, the fund shall be entitled to be indemnified as regards the amount of the benefit by the person liable to pay damages and any question as to the right to an amount of any such

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indemnity shall, in default of agreement, be determined by the Court.

On April 29, 1969, the Chief Insurance Officer, acting no doubt in accordance with the order of the trial Court, issued the required certificate (*exhibit* 1) showing that an amount of £1248.000 mils has been paid to the wife and children of the deceased. In accordance with the calculations made in *exhibit* 1 the amount of £832.- should be deducted from the amount of the sum of £1500.- awarded as damages to the administrators, and to be paid over to the Social Insurance Fund in accordance with the law.

It is this amount that the Applicants are now claiming in this recourse, which apparently has been paid to the Social Insurance Fund by Mr. Petrakis Groutides, the defendant 1 in Action No. 910/65.

On October 25, 1969, the Respondents filed their opposition to the effect that the decision of the Chief Insurance Officer was taken in accordance with section 45 of the Social Insurance Law, 1964, as it has been amended by section 4 of Law 28/68.

The case had been fixed for hearing on November 27, 1969, and counsel for the Applicants requested an adjournment in order to consider the position whether or not to add a new point of law. Counsel for the Respondent did not oppose the application and the case was adjourned to March 5, 1970, for further hearing. On this date of hearing the Applicant herself requested the Court to be given a last chance to be able to pursue certain negotiations which had been going on between herself and the appropriate authority, in order to try and find a more advantageous solution to her case and her children. Counsel for the Respondent did not object to the adjournment, adding that he appreciated the reasons put forward by the Applicant and claimed no costs for the adjournment.

Finally, on June 8, 1970, counsel for the Applicants made this statement:—

“ This case has been fixed today for mention in order to explain to our client who is present that in the light of the judgment delivered by the Supreme Court in Civil Appeal No. 4847, dated 13th May, 1970, we have no case and we therefore intend, subject to the approval of

our client, to seek leave to withdraw the case so that we will not be penalized with more costs."

The Court then explained the position to Applicant No. 1, and she replied:-

"I would like to be given time to consider the new position, because in the past my lawyers assured me that we had a good case."

The case again was fixed for hearing on July 3, 1970, so that the Applicant would be able to contact a new lawyer, but unfortunately, the Applicants did not appear and were not represented.

In effect, the main legal grounds of the Applicants put forward in this application are (a) that the provisions of section 45(1) of the Social Insurance Law, 1964, as amended by Law 28/68 do not apply to cases of fatal accidents; and that the phrase "personal injury" used in section 26(1) of the law is not wide enough to include death resulting from such injuries; (b) that the Respondent has not complied with the provisions of section 45(1) of Law 28/68.

Counsel for the Respondent on the contrary, has mainly contended, that the decision of the Chief Insurance Officer was taken in accordance with the provisions of the law. He relies on *Christou and Another v. Pallikaras* (1970) 1 C.L.R. 152.

As the legal points raised in this recourse are covered by a recent and clear authority in *Christou's* case (*supra*) I propose quoting from the first judgment of the Court of Appeal at p. 157:

"Having considered the wording of s. 45(1) of the Social Insurance Law, 1964, as amended by Law 28/68, when read in conjunction with s.26, I am of the view that it covers also cases of death in addition to cases of personal injury; and the deductions have to be made by the trial Court and paid to the Social Insurance Fund."

In the light of this judgment I would dismiss the first legal point raised in this recourse.

Now with regard to the second point of law I would again read from the same judgment at p. 158:-

"Finally, counsel for the Appellants have contended that s.45 of the Social Insurance Law (as amended) has no

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retrospective effect, notwithstanding the provisions of s.7 of Law 28/68.

In view of the clear and unambiguous language of the amended section 45, which is expressly applicable to pending cases or applications for the grants of benefits or for the grant of compensation, then certainly it applies to this case, although it had not been instituted on the date of its enactment”.

Mr. Justice Josephides delivering a separate judgment in the same case, had this to say at p. 160, on the same point:—

“ The provision with regard to the effect of the repeal of a law is to be found in section 10, subsection (2), of the Interpretation Law, Cap. 1, which provides that where a law repeals any other enactment, then, ‘unless the contrary intention appears’, the repeal shall not affect any right, privilege etc., acquired or accrued under any enactment so repealed, or affect any legal proceedings or remedy in respect of any such right or privilege, and any such legal proceedings or remedy may be instituted or enforced as if the repealing law had not been passed.

The question which arises is whether ‘the contrary intention appears’. To my mind the contrary intention clearly appears because the amended section 45 is expressly made to apply to pending cases and, a *fortiori*, it applies to actions which had not been instituted on the date of its publication in the Gazette.”

For the reasons I have endeavoured to explain I would dismiss this recourse. However, I would like to make this observation—although this point has not been argued before me—that the Applicants in any event were not entitled to succeed even for the reason that they have failed to appeal against the order of the trial Court in Case No. 910/65. Moreover, it is clear in my view, that the issuing of the required certificate under the law by the Chief Social Insurance Officer is not a decision or act within the provisions of Article 146 of the Constitution and it is not of an executory nature, because the said officer was acting under the order of the trial Court in the aforesaid action. In view of the nature of this case I am not proposing to make an order for costs against the Applicants.

*Application dismissed.
No order as to costs.*