NATIONAL BENEVOLENT SOCIETY *v.* HARRIS.

Opinion delivered October 15, 1928.

1. INSURANCE—CONSTRUCTION OF POLICIES.—Policies of insurance should be interpreted by the rules governing other written contracts where the meaning of the language used is clear and explicit; but where there is doubt as to the meaning of the language used, they should be construed strictly against the insurer and favorably to the insured.
2. INSURANCE—INCREASE OF ASSESSMENT.—Where a beneficiary certificate provided that a member on reaching 45 years of age was liable for payment of a double assessment, failing which his policy was automatically reduced to a certain maximum sum, *held*, in case of death of insured after passing such age without having paid the double assessments, the beneficiary is entitled only to such maximum alternative amount, although insured was never notified to pay the increased assessments.

Appeal from Mississippi Circuit Court, Osceola District; *G. E. Keck*, Judge; modified and affirmed.

STATEMENT BY THE COURT.

This appeal is prosecuted from a judgment against it by the appellant society in the circuit court where it was

tried on appeal from the court of common pleas of Mississippi County, resulting also in a judgment in favor of the beneficiary in the certificate of membership or policy.

The certificate provides that the beneficiary shall be paid, upon the death of the member occurring within its terms, "within one year, twenty-five dollars; * * * after seven years, three hundred dollars; after eight years, three hundred and fifty dollars; * * * provided, however, that, when a member shall have passed the age of forty-five years and this certificate has been in force for four years, then in that event the said member shall be assessed double the amount of previous assessments for the purpose of keeping in force his death benefit, or the said member may change his certificate for a secondary certificate, which shall pay the same sickness and accident benefits and which shall be the same form, wording and terms, except that the maximum death benefit shall be one hundred dollars."

Appellee was named beneficiary in the certificate of membership issued to her husband, John Harris, on April 12, 1918. The assessments of $1 per month were paid to August 31, 1926, the date of the death of the insured. Harris was 38 years old at the time of his becoming a member of the society, and the answer denied any liability at all, alleging that the insured died from a chronic disease not covered by the policy; that he had not paid the increased assessments, as provided in the policy, after becoming 45 years of age, and that it was not liable in any event for more than the maximum death benefit of $100, deceased having continued paying assessments at the old rate. The answer alleged further that the member had been duly notified of the increased liability or assessment because of having reached the age of 45 years, etc.

The evidence was in conflict as to the cause or disease from which the insured died and as to whether notice had been given by the company of the increased assessment or liability for dues after the insured reached the age of 45 years.

Appellant requested a peremptory instruction directing the jury to find for the plaintiff in the sum of $100, less any sum shown to be due appellant by the deceased in his lifetime. This request was denied. It also requested instruction No. 5 that, under the terms of the policy, the member was liable to the payment of the double assessment of $2 per month upon his arriving at the age of 45 years, failing to pay which "his policy will be automatically reduced to the sum of $100 to be paid to the beneficiary under the policy; * * * that his policy then became for $100 and no more, unless double his assessment is paid, the sum of $2 per month."

The court amended this instruction, telling the jury that, before the $2 assessment would become effective and the member liable to its payment, "it would be necessary for the defendant to have given him notice of such assessment, and that, if the defendant failed to give him notice of such assessment, the policy would continue in the full amount until such notice was given."

The testimony showed that a credit of $15.94 should be allowed the society upon the amount of the recovery, and from the judgment against it for $350 and interest, less the said credit, this appeal is prosecuted.

S. R. Simpson, for appellant.

A. Welby Young, for appellee.

KIRBY, J., (after stating the facts). Appellant insists that the court erred in not giving its peremptory instruction directing the jury to find for the appellee in the minimum sum of $100, less the small credit to which appellant was entitled, and this contention must be sustained.

"Policies of insurance should be interpreted by the rules governing other written contracts where the meaning of the language used is clear and explicit; but, where there is doubt as to the meaning of the language used, they should be construed strictly against the insurer, and favorably to the insured." *Home Mut. Ben. Assn.* v. *Mayfield*, 142 Ark. 240, 218 S. W. 371. The language of the clause of the policy relating to the payment of assess-

ments limiting the maximum liability is clear and explicit, providing that, when a member shall have passed the age of 45 years and the certificate has been in force for four years, the said member shall be assessed double the amount of previous assessments for the purpose of keeping in force his death benefit, and may change his certificate for a secondary certificate of the same form, wording and terms, "except that the maximum death benefit shall be $100."

The undisputed testimony shows that the deceased member had kept his policy in force for four years, had passed the age of 45 years, and had not paid double the amount of the previous or $1 assessments, and had only paid the same amount of assessments, $1 per month, after reaching the age of 45 years, as he had been paying before arrival at that age. Under the terms of the policy, if the insured had reached the age of 45 years the payment of $1 per month assessment, the amount that the member had been paying before arrival at such age, could only entitle his beneficiary to the maximum death benefit prescribed in the policy as though a secondary certificate had been issued.

The beneficiary testified that she had attended to the correspondence of her husband, and that he had never received any notice from the company of the increased assessments, notwithstanding it was shown one had been duly mailed to his address, with directions for its return to the company upon failure of delivery; and it was shown also that she and her husband knew of the provision in the policy for the double assessment after the age of 45 years had been reached by the insured. She testified that she had asked the local agent about the increase of the assessments, and been informed by him that the company would notify them when the increase was made, but that they had received no such notice.

The provision in the policy or certificate relating to the double assessment after insured had passed the age of 45 years, required for keeping in force the death benefit or allowing the change to a secondary certificate, with

a maximum death benefit of $100, at the same rate or assessment, is self-executing, and the insured could not continue the policy in force for the full amount, after passing the age of 45 years, without payment of double the amount of the former assessment, which, the undisputed testimony shows, was not done; and, since he was entitled, under the terms of the policy, to a secondary certificate with a maximum death benefit of $100 upon continuing to pay the old rate or assessment, the society, having received the assessments, was liable to the payment of that amount to his beneficiary as though such secondary certificate had been regularly issued. *Sovereign Camp W. O. W.* v. *Arthur,* 144 Ark. 114, 222 S. W. 729; *K. & L. of Security* v. *Lewellen,* 150 Ark. 60, 233 S. W. 797.

The court should have instructed a verdict for appellee for the maximum amount of $100 only, with interest, less the credit of $15.94 shown to be due the society, reducing the amount of the recovery accordingly.

The judgment will be modified, and, as modified, affirmed. It is so ordered.