8. Labor Law

X v. Sumitomo Light Metal Industries, Ltd.
Supreme Court 3rd P.B., April 11, 2006
Case No. (jyu) 1358, 1359 of 2002
915 RODO HANREI 51

Summary:

That a company receives full insurance money and pays part of it to a survivor based on consent made by/between them is not always to be described as being against public policy.

Reference:

Article 674 paragraph 1 of Commercial Law
Article 90 of Civil Law

Fact:

X1, X2 and X3 (plaintiff, koso appellant/koso respondent and jokoku appellant in case No. (jyu) 1358 of 2002,/jokoku respondent in case No. (jyu) 1359 of 2002) were spouses of employees who were employed by Y (defendant, koso respondent/koso appellant and jokoku respondent in case No. (jyu) 1358/jokoku appellant in case No. (jyu) 1359 of 2002). The employees died in 1994.

Y had fixed term group insurance agreements with each of nine life insurance companies. Under these group insurances, as a part of a benefit program for employees, insurance agreements were made by/between Y and each of the insurance companies, and the insured were employees and Y were supposed to receive insurance payments. Due to the deaths of the employees, Y received the insurance payments from each of the life insurance companies, which numbers were about JPY6 0 million per survivor. Based on a policy, numbers that X1, X2 and X3 got were about JPY10 million each, the breakdown of which were retirement payments including a lump sum for the survivors and a funeral subsidy.

X1, X2 and X3 claimed against Y that all or some of the insurance payments that Y received from insurance companies should be paid to X1, X2 and X3.

In the Nagoya District Court accepted partially X1, X2 andX3's insistence. That is;

1. When the purpose of the group insurance is for the benefit of employees and all or a part of insurance payment are to be allocated as a part of the payment which is paid out to a survivor according to a company policy, in regards of payment to a survivor, all of the insurance payments should be paid out, as a rule, if the number of the payments is socially appropriate, or at least a half of the insurance payment should paid out if the number of the payments is huge. Such payments are not said to be against public policy.
2. In order to allocate the insurance payment to any losses which are related with the death of an employee and borne by employer, individual consent on the allocation shall be required.
3. An employee as a party to the insurance agreement would obtain the right to claim the insurance payment from an insurance company as another party to the insurance agreement based on the individual consent made by an insured employee or his/her survivor.
4. In regards of consent on conclusion of agreement and how to use the payment, agreement is effective when the agreement is in favor of a benefit for the advantage of an insured employee by using the payment as a resource, the consent with labor unions or representatives of employees that represent more than half of employees is effective.
5. Any changes are invalid since it is against public policy that an employer as a party of an insurance contract changes the usage of the insurance payment, due to the ignorance of the insured employee, to be used for a purpose different from benefit to the survivor.
6. When the purpose of the fixed term group insurance agreement is for the benefit of employees and the number of the insurance payments received is beyond the number designated in the company policy, consent can be assumed because the purpose the insurance agreement is for is the security of the survivor. Based on the assumption, the premium of the insurance that has been paid is to be deducted from the insurance payment, the amount to be paid to the survivor is calculated and the number

that has been paid out to the survivor in accordance with the company policy is to be deducted from the insurance payment and the payment to the survivor will be made based on the rest of the insurance payment.

In this case, the premium of the insurance is deducted from JPY60 million and it is decided that a half of the amount is to be paid. Lump sum payment and funeral subsidy that has been paid out is deducted from the half of the amount and as a result, JPY20 million is ordered to be paid.

Nagoya High Court gave a partial amendment to the justification that was made by Nagoya District Court. They commented that the employer can allocate the insurance payment to the cost that is borne by an employer with a cap of a half of the insurance payment. And the High Court supported the decision made by the District Court.

Comment:

The original decision was partially quashed, the decision made by the district court was partially discharged and partially dismissed on the merits.

1. While law requires the consent made by/between parties (Art. 674 (1) of Commercial Law) in a case of life insurance, law, in case of life insurance, does not adopt the restriction that is adopted in the case of accident insurance, that requires the existence of a value to be insured which is measurable by money and that the insurance payment shall not exceed the value to be insured.

It is obvious that the practice of Y for the group insurance is not aligned with the purpose of the benefit, but the fact that each insurance agreement is instantly against Public Policy is not found just because the insurance payment given to survivors is a part of the insurance payment. The reason of this is because all practices have been made based on the consent of the insured employees. The judgment of the original is lacking such a proposition.

2. The fact that Y allocated the insurance payment to the benefit that is regulated in the company policy and it is confirmed that each insurance company does not support the reason to say there is a promise to give survivors an extra payment beyond the payment regulated in the company policy. Other events that would support to assume that an agreement on the payment do not exist; rather, the court should say that both explicit

and implicit consent do not exist to agree to give a full or a part of the insurance payment to survivors beyond the number requested in the company policy, and so the decision made by the original court is against the rule of experience.

3. Justice Ueda's concurring opinion

Since most of the employees of Y, except some employees who have experience of executive roles in the labor union that is not in the party, are not aware of the existence of insurance agreements and the employees are insured by the agreements, "It is clear that there is no situation under which the existence of implicit consent could be assumed. Therefore, each insurance agreement should be judged as being invalid because there is no consent of the insured employees."

4. Justice Fujita's concurring opinion

In regards of the allocation of the insurance payment, "endeavors to form a theoretical structure can be seen and the intention of it is understandable." However, apart from the intent of the party, the interpretation to assume the confirmed agreement of the insurance policy is not justifiable. On the other hand, "this is different from the decision to acknowledge that Y would justifiably keep insurance payments that Y received from the fund management of the fixed term group insurances." Since whether Y can receive the insurance payment or not "is under a great doubt."

Editorial Note:

This court case is the dispute in regards of fixed term group insurance agreement (so called "A-Group Type Insurance") that used to exist. The issues regarding this type of insurance have been overcome because insurance companies and employeers who have insurance agreements have revised their agreements. In future, a new similar issue is unlikely to arise. The decision made through this case would have the significance below.

First of all, this case could be the leading case to decisions on similar cases which have not been settled. In the past, some decisions made by the lower courts were to order insurance agreements invalid (for example, X vs. Bunka Shutter, Hamamatsu branch of Shizuoka District Court, March 24, 1997, 713 Rodo Hanrei 39). But most of the court cases have

given a practical solution that aimed to coordinate employers and employees based on total considerations by recognition of implicit consent that both parties had agreed for survivors to obtain a certain portion of the insurance payment. However, based on the decision made by this court case, insurance agreements without consent would be invalid even if such insurance agreements are group insurance (for example, X vs. Toei Shikaku, April 26, 1996, Hirosaki branch of Aomori District Court, 703 Rodo Hanrei 65, X vs. Akita Unyu, May 31, 1999, 764 Rodo Hanrei 20).

Secondly, this court case gives a challenge to how employers get consent. When life insurance agreement insures another person, Commercial Law requires consent since such agreement without consent could cause unethical incidents. In group insurance agreement after revision (Total Beneficial Fixed Term Group Insurance), consent must be obtained and notice of agreement must be informed thoroughly. By this court decision, fictional consent on completion of an agreement is not sufficient and consent in accordance with an explicit and clear procedure would be required. On the other hand, as for the allocation of insurance payments that employers receive, to what extent a firmed agreement is requested will be a challenge in the future.

9. International Law and Organizations

X et al.v. Japan
Tokyo District Court, May 25, 2006
Case No. (*wa*) 13581 of 2001, 13244 of 2003 and 2598 of 2005
1931 HANREI JIHO 70

Summary:

Claims for withdrawal of notification of Korean nationals who were conscripted during the Second World War and were notified to the Yasukuni Shrine as war dead by the Government of Japan and for compensation from the Government are denied.