

THE FINANCIAL SERVICES TRIBUNAL

Case Number: PFA52/2024

In the matter between:

PHYLLISHA REDDY

Applicant

and

MEGYLE NAIDOO

First Respondent

KRISHNAVERNI NAIDOO

Second Respondent

POONGANAM NAIDOO

Third Respondent

ENSIMNI ADMINISTRATION SERVICES (PTY) LTD

Fourth Respondent

IMRAAN TEXTILE MILLS (PTY) LTD

Fifth Respondent

TEXTILE INDUSTRY PROVIDENT FUND

Sixth Respondent

THE PENSION FUNDS ADJUDICATOR

Seventh Respondent

Summary:

Application in terms of section 230 of the Financial Sector Regulation Act, 2017 for reconsideration of decision of Pension Fund Adjudicator – allocation of death benefit to dependants in terms of section 37C of the Pension Funds Act 24 of 1956 – exercise of discretion by Board of Provident Fund

DECISION

Panel members: L.T.C Harms
S. MAHABEER SC

Date of decision: 25 November 2024

INTRODUCTION

1. This application is brought in terms of section 230 of the Financial Services Regulation Act of 2017 against the decision of the Pension Funds Adjudicator to dismiss a complaint pertaining to a decision by the Board of the Textile Industry Provident Fund, the sixth respondent. The core issue relates to the exercise of the Board's discretion to allocate the death benefits of a deceased member to his dependants.
2. The parties have waived their right to a formal hearing and this is the decision of the Tribunal.

BACKGROUND

3. During his lifetime, Govinda Naidoo was a member of Textile Industry Provident Fund. Mr Naidoo passed away on 4 July 2022. By virtue of his membership, a death benefit in the amount of R312,198.65 became available for distribution in terms of section 37C of the Pension Fund Act 24 of 1956 (*'the Act'*).
4. The applicant was the deceased's late wife's niece. The deceased resided at the applicant's home and was sickly prior to his death. The applicant claimed 100% of the provident fund benefit available for distribution. She contended that the deceased had nominated her as the sole beneficiary,

that she was financially dependent on him and that he had resided with her for about twenty years prior to his passing. The deceased's son, daughter and mother were subsequently also identified by the Fund as dependants.

5. Pursuant to the claim and the location of other dependants, the Board of the Fund initially allocated the death benefit in the following proportions:

The applicant	60%
Megyle Naidoo (son/first respondent)	10%
Krishnaveni Naidoo (daughter/second respondent)	20%
Poonganam Naidoo (mother/third respondent)	10%

6. The applicant was dissatisfied with this proposed distribution. She contended that the deceased's wishes were being disregarded. The applicant further argued that the deceased's children and mother were not his dependants whereas the applicant had lived with the deceased for several years, she had cared for the deceased, the applicant was unemployed and was financially dependent on the deceased, and she had received financial assistance from her husband and father to pay the deceased's medical bills when his health declined.
7. Her complaint to the Board of the Fund led it to reconsider the matter. It further investigated the dependants' financial circumstances and the other dependant's responses to the claim. The Board considered whether the applicant had attempted to mislead it by submitting incomplete claim documents and in not disclosing that she received financial assistance from her husband and father but made no finding in this regard.

8. The Board then revised the allocation as follows:

The applicant	30%
Megyle Naidoo	10%
Krishnaveni Naidoo	40%
Poonganam Naidoo	20%

9. The applicant was aggrieved by the revised allocation. She maintained that 100% of the death benefit ought to be allocated to her to honour the deceased's wishes and for substantially the same reasons as had informed her complaint against the initial allocation. She lodged a complaint with the Pension Fund Adjudicator (the seventh respondent).

THE DETERMINATION OF THE PENSION FUNDS ADJUDICATOR

10. The Pension Fund Adjudicator dismissed the complaint. The reasons given are as follows:-

10.1 the Board has an obligation, when dealing with the payment of death benefits, to conduct a thorough investigation to determine the beneficiaries, to thereafter decide on an equitable distribution, and that in so doing all the relevant information must be considered and irrelevant facts must be ignored;

10.2 its duty is to determine whether the Board has acted rationally and arrived at a proper and lawful decision. Its duty is not to decide what is the most fair or most generous distribution;

10.3 it had examined the factors which the Board had considered against its duties and obligations, and was satisfied that the Board had allocated the death benefit between the dependants properly; and

10.4 there was no reason to interfere with the Board's decision.

11. This application to challenge the Adjudiator's dismissal was filed on 27 August 2024.

ANALYSIS

12. The point of commencement in our analysis is Section 37C of the Act, which provides:-

"37C. Disposition of Pension Benefits Upon Death of Member

(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of the registered fund, which must be dealt with in terms of such rules) payable by such fund upon the death of a member, shall ... not form part of the assets in the estate of such member, but shall be dealt with in the following manner:

(a) if the fund within 12 months of the death of the member becomes aware of or traces a dependant or dependants of the member, the

benefit shall be paid to such member or, as may be deemed equitable by the fund, to one of such dependants or in proportions to some or all of such dependants;

(b) ...

(bA) *if a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within 12 months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the Board may deem equitable; Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that, in respect of a designation made on or after the said date, this paragraph shall not prohibit the fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more than such dependant or nominee, in proportions to any or all of those dependants and nominees.” (Our emphasis).*

13. The Supreme Court of Appeal in *Fundsatwork Umbrella Pension Fund v Guarnieri and Others* 2019 (5) SA 68 stated at paragraph [8] that:-

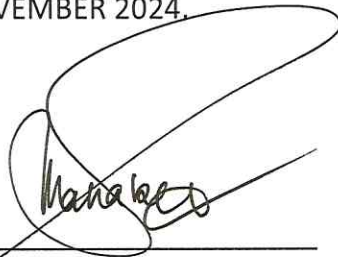
“The effect of section 37C(1)(a) as read with the definition of ‘dependant’, is to require a fund, within a period of 12 months from the death of the member, to identify the dependants of the deceased who may potentially qualify for an equitable distribution from the deceased’s death benefit in terms of section 37C. Having once identified the potential class of dependent, the Board of the fund is vested with a large discretion to determine, in the light of the assesment of their respective needs, in what proportion the death benefit will be distributed among the class of dependants.” (Our emphasis).

14. The applicant does not challenge the Board’s compliance with its obligations. Her complaint is that the Board incorrectly exercised its discretion to determine an equitable distribution and therefore the Adjudicator erred in dismissing her complaint.
15. We have highlighted that the scope of the discretion vesting in the Board is broad. It is our view that the exercise of that discretion and the subsequent reasoning and decision by the Adjudicator are unassailable.
16. In the circumstances, the application for reconsideration cannot succeed.

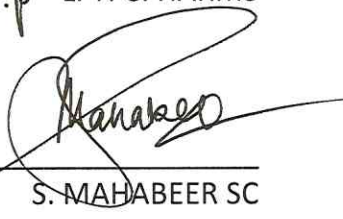
ORDER:

The application is dismissed.

SIGNED ON BEHALF OF THE TRIBUNAL PANEL ON 25 NOVEMBER 2024.



p.p L. T. C. HARMS



S. MAHABEER SC
on behalf of the Tribunal