

# Supreme Court's JUDGMENT

delivered in Stockholm on 8 July 2022

Case no.

T 6931-21

## **PARTIES**

### **Appellant**

1. GR

2. LR

Counsel for 1 and 2: Attorney HM

### **Respondent**

SÖ

Counsel: Attorney ÅS

## **THE MATTER**

Superior right to an insurance indemnity

## **RULING APPEALED**

Judgment of the Svea Court of Appeal 2021-10-14 in case T 14318-20

## **OPERATIVE PART OF THE JUDGMENT**

The Supreme Court affirms the operative part of the judgment of the Svea Court of Appeal.

GR and LR shall jointly and severally pay SÖ for their costs of litigation in the Supreme Court in the amount of SEK 18,025, of which SEK 14,420 pertains to counsel fees, and interest in accordance with Section 6 of the Interest Act from the date of this judgment.

## **CLAIMS IN THE SUPREME COURT**

GR and LR have requested the Supreme Court to affirm that, vis-a-vis insurance company *Folksam's försäkring* GF 17001 (HR), they have a right superior to that of SÖ to the insurance indemnity of SEK 320,000 deposited with the Stockholm County Administrative Board, together with any accrued interest.

SÖ has opposed modification of the judgment of the court of appeal.

The parties have requested payment of their costs of litigation incurred in the Supreme Court.

## **REASONS FOR THE JUDGMENT**

### **What is at issue in the case**

1. At issue in the case is whether two women shall be considered to have been cohabitants within the meaning of the Cohabitees Act (2003:376).

### **Background**

2. HR and SÖ, then in their twenties, met in 2008 and registered at the same address a few years later. Since 2015, they had been registered on a farm in Dalarna, where they both lived and together, inter alia, kept animals. They had a joint household and joint finances, and essentially the same interests and social life. Some in their circle of family and friends saw the two women as companions or good friends, others understood them to be a couple.

In the deed of gift concerning the farm that HR wrote to SÖ, it was noted that they were cohabitants. Also in her will, according to which all property left by HR should go to SÖ, HR declared that SÖ was her cohabitant. In January of 2018, HR passed away.

3. HR had a group insurance policy with *Folksam* which, at her death, paid out SEK 320,000. According to the terms of the insurance, the beneficiaries are, primarily, a spouse, partner or cohabitant and, secondarily, relatives entitled to inherit. Cohabitants are defined by the terms as two unmarried persons who have a joint household and who live together permanently in a couple relationship in accordance with the Cohabitees Act.

4. A dispute arose between HR's parents - GR and LR - and SÖ regarding who is entitled to the insurance indemnity as a beneficiary. *Folksam* therefore deposited the sum with the County Administrative Board.

#### **Positions of the parties**

5. GR and LR, who brought claim for a declaratory judgment for superior right to the insurance indemnity, have attested that at the time of death HR and SÖ were living together on a permanent basis and had a joint household, but have argued that this was not a couple relationship within the meaning of the Cohabitees Act. In particular, they have pointed out that HR and SÖ did not have a sexual relationship but lived together as friends.

6. SÖ has stated that it is true that there was no sexual relationship but has explained that she and HR had an emotionally deep relationship and saw themselves as a couple and as cohabitants.

7. The parties agree that the term cohabitants in the insurance contract has the same meaning as the definition of cohabitants in the Cohabitees Act (cf. Chapter 14, Section 6 of the Insurance Contracts Act and Govt. bill 2003/ 04:150 p. 548). At issue in the case is thus whether HR and SÖ were living in a couple relationship within the meaning of that Act.

**The assessment of the lower courts**

8. Both the district court and the court of appeal have concluded that HR and SÖ are to be considered to have been cohabitants and that SÖ has a superior right to the insurance indemnity than that of GR and LR.

**The Cohabitees Act**

9. The Cohabitees Act is based on the fact that cohabitation, with a joint household and the establishment of a joint home, effectively intertwines the cohabitants' finances. The need was recognised for practical legislation to provide guidance on the dissolution of the joint home as well as some protection for those who most need the residence.

10. The law therefore contains rules which, upon dissolution of a cohabitant relationship, give the cohabitants a right, similar to the right to marital property, in the division of property in the joint home acquired for joint use. In addition, a cohabitant has the right, under certain conditions, to take over a shared residence possessed by the other cohabitant.

**The definition of cohabitants**

11. Section 1 of the Cohabitees Act contains a definition of cohabitants. Cohabitants are two persons who live together on a permanent basis in a couple relationship and have a joint household.

12. This definition of cohabitants replaced the requirement of a marriage-like relationship that had existed in the 1973 and 1987 laws in this area. The main reason for the amendment was that when it was introduced in 2003, a cohabitation law, which shall also encompass same-sex partners, could not use the term "marriage-like" because marriage could at that time only be contracted between a man and a woman. In addition, the legislator sought to clarify the intention by including in text of the law things that had previously been explained only in the legislative history.

At the same time, it was emphasised that the new definition was not intended to imply any substantive change to the concept of cohabitation (Govt. bill 2002/ 03:80 p. 27).

13. At a general level, therefore, the idea may be said to remain that the relationship shall be marriage-like overall, bearing in mind that same-sex couples can now also marry. The conditions for a cohabitant relationship set out in Section 1 cannot therefore be regarded strictly as entirely independent necessary conditions. As in the past, an overall and free examination may be made, taking into account all the relevant circumstances (cf., e.g., Govt. bill 1973:32 p. 167 and "*Samborna i Forserum*" NJA 1994 p. 256). A circumstance that does not clearly indicate a cohabitation relationship may thus be outweighed by another relevant circumstance that strongly suggests the existence of such a relationship.

14. Significantly, the Cohabitees Act's definition of cohabitants does not apply only to that law. Pursuant to the second paragraph of Section 1, the definition shall also be applied as a starting point when the term cohabitant is used in other legislation. The scope of the definition is therefore wide and it has an impact on several other areas which does not only concern the interrelationship between the cohabitants, such as debt enforcement law, tax law and the various forms of social security benefits.

15. The extent to which account shall be taken of the cohabitants' own opinions regarding whether they are cohabitants within the meaning of the law must therefore depend on the context in which the issue arises. The Cohabitees Act is based on the assumption that the objective, factual circumstances shall be decisive for the existence of a cohabitation relationship (see e.g. Govt. bill 2002/ 03:80 p. 27). However, if the matter essentially concerns only the parties themselves, it seems reasonable that a jointly expressed will on their part that they are cohabitants in practice is given great weight (cf., e.g., "*Samborna och gruppboendet*" NJA 1994 p. 61). Even otherwise, the parties' own opinion may be relevant, mainly as a circumstance supporting the assessment that the relationship is sufficiently permanent or that it is a couple relationship.

**More about couple relationships**

16. By introducing the concept of a couple relationship in the legal text - when the term marriage-like relationship could not be used - the legislator sought to distinguish those situations where, e.g., relatives, friends or colleagues share a dwelling and household from the definition of cohabitation. For this reason, the legislative history states that a couple relationship means that the persons live together in a relationship that normally includes sexual intercourse (see Govt. bill 2002/ 03:80 pp. 28 and 44).

17. This legislative-history statement regarding a sexual relationship cannot be understood as referring to what individual cohabitation relationships must be like. The idea is rather to express that the persons shall be in such an emotional relationship to each other that sexual intercourse is usually included in similar relations (cf. report of the Committee on Legislation LU 1986/87:28 p. 8). A relationship without sexual intercourse can therefore also constitute a couple relationship within the meaning of the law, regardless of the reason for the absence of a sexual relationship.

18. What is decisive is rather that the relationship is characterised by a close personal relationship of the kind that normally exists between married couples (cf. "*Samborna på Götabergsgatan*" NJA 1989 p. 682). By their very nature, it is not possible to closer describe in general terms what emotional ties of this kind entail. Of importance in the assessment is whether there is a special affinity and trust between the persons and a willingness to share life together that is similar to that which usually exists between those who choose to marry each other.

**The assessment in this case**

19. In the case, it is undisputed that, at the time of the death, HR and SÖ were living together on a permanent basis and had a joint household. It appears that they had been living together and had joint finances for a considerable time. Not least the fact that they saw themselves as cohabitants strongly suggests that this joint living was intended to last.

20. The investigation shows that HR and SÖ relied on and supported each other in difficult moments and each perceived the other as their closest relative. SÖ has described in interviews how close their emotional relationship was, that they loved each other, considered themselves cohabitants and planned to live and be together for the future. SÖ's account of a deep and intimate emotional bond is strongly supported by notes taken by HR and text messages she and SÖ sent to each other.

21. Upon summary assessment, the investigation provides sufficient support that HR and SÖ were not only friends but lived in such close personal association as to constitute a couple relationship within the meaning of the Cohabitees Act.

22. The conclusion is therefore that HR and SÖ were cohabitants at the time of HR's death. GR and LR therefore do not have a superior right to the insurance indemnity. The judgment of the court of appeal shall therefore be affirmed.

23. In light of this outcome, GR and LR shall jointly and severally pay SÖ's costs of litigation. The cost claim is reasonable.

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Justices of the Supreme Court Anders Eka, Dag Mattsson (reporting Justice), Eric M. Runesson, Stefan Reimer and Jonas Malmberg participated in the ruling.  
Judge referee: Charlotte Hellner Kirstein