ENTITLEMENT TO DEATH BENEFITS PAYABLE BY PENSION FUNDS

Q:32- 1. The Pensions Funds Act 1956 ("Act") regulates pension funds in South Africa.

2. The object of the Act is to provide support for the dependants of a deceased member upon his death. The support is provided by means of lump sum payments and/or annuities.

3. A pension fund established in terms of the Act has separate juristic personality and must comply with prescribed requirements including registration, etc.

4. A contribution to a pension fund is deducted at source from the employees salary and paid over to the fund by the employer. The employer also makes defined contributions to the fund.

5. When the employee dies, the fund in accordance with its rules but subject to the Act pays death benefits to the dependants of the deceased, normally the surviving spouse and minor children, who were dependent on the deceased for maintenance in his lifetime.

6. It is crucial to understand that in making payments of the death benefits, the trustees of the fund exercise a discretion conferred upon them in terms of the Act. They are empowered in terms of the Act to make payment of the death benefits amongst the dependants in such proportions as they deem just and equitable in the circumstances of the particular case notwithstanding any nomination made by the deceased. Their decision is in terms of the Act subject to review by an appointed adjudicator and ultimately subject to review by the High Court (Section 37C).

7. The question therefore arises whether the death benefits awarded to the dependants of the deceased employee belong to those dependants, or whether the death benefits form part of the estate of the deceased. The Act specifically provides that those benefits will not form part of the deceased estate, and are not subject to attachment upon insolvency of a person entitled to a benefit.

8. In my humble view, the death benefits belong to the dependants of the deceased to whom they are awarded by the trustees of the pension fund in question. The reasons for this opinion is that:

8.1 The pension fund is a separate legal entity established and regulated by the Act;

8.2 The trustees in awarding the death benefits are exercising a discretion conferred upon them by the Act in accordance with its objects;

8.3 The contributions which were deducted at source did not belong to the deceased employee (in this regard, see the interesting Fatwa on Provident Funds written by your distinguished father Rah.

8.4 At best for the deceased, he had a claim against his employer for the amount representing the contributions deducted from his salary at source but this is not connected with the ultimate payment made by the trustees of the Pension Fund which is sourced in the Act and which regulates those payments designed for the support of the dependents only.

9. I would add that as regards the character of the death benefits, I agree with the said Fatwa of your distinguished father to the effect that they are halaal.

10. Please examine the aforegoing carefully and let me have your considered Fatwa on the question set out in paragraph 7 above urgently as I have a case on hand.
Besides, the issue is a common one and requires clarity. (M. S. Omar, South Africa)

A: In the light of the rules of the Pension Funds Act 1956 mentioned by you it appears that the grants given to the dependents of a deceased person from the Pension Fund are not subject to the rules of inheritance. The amounts deducted at source from the salaries of the employees are to be treated as a subscription to the Fund which no longer remain in the ownership of the deceased person and perhaps he has no right to claim it back during his life time. The principle is that only those properties of a deceased person are subject to inheritance rules which he can claim rightfully during his lifetime. Since he does not have the right to claim any amount from the fund, therefore, it is not to be taken as left-over property. The fund being a legal entity it can decide to pay this grant to whomever it deems fit from the family of the deceased. In the terminology of Islamic Fiqh this grant is a voluntary gift (Tabarru'), therefore, it is not necessary that it is to be distributed among all the legal heirs according to their prescribed shares in the inheritance.

I have given judgment in a Shariah Appeal fixed before the Shariat Appellate Bench of the Supreme Court of Pakistan with regard to the benevolent fund which is very similar to the Pensions Fund you have asked about. (A copy is being sent to you by mail for your perusal and record).

Contemporary fatawaa