

(1957) 11 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 118 of 1955

Chuni Lal Dwarka Nath

APPELLANT

Vs

Hartford Fire Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 14-11-1957

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 18(6)
Evidence Act, 1872 — Section 114, 137, 138, 155, 16

Citation : AIR 1958 P&H 440

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : K.S. Thapar and M.S. Gujral, for the Appellant; R.L. Khullar, I.D. Dua and K.L. Kapur, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—This is a first appeal from the order of the Senior Subordinate Judge, Gurdas-pur, acting as Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951, dismissing the appellant's application u/s 18 of the Act. The appellant is a firm which was carrying on business as commission agents at Sialkot before the partition of the country. It transacted its business through the Punjab and Sind Bank, Limited, and in 1947 the appellant had deposited goods like sugar, gur, shakkar, etc., with the Bank; exceeding rupees three lacs in value as against which the Bank was to supply credit to the extent of 75 per cent of their value.

According to the terms of agreement between the appellant-firm and the Bank all securities, which had been and were to be delivered to the Bank, had to be insured by the appellant as the borrower and in case of failure to do so the Bank was at liberty to effect such insurances at the expense of the borrower. This agreement referred to insurance against fire risk. It was also agreed that all sums received under any such insurances would be applied towards liquidation of the balance due to the Bank for the time being.

In accordance with the terms of the above agreement, Exhibit K-2/1, dated 14th of December, 1944, these goods were got insured against fire by the Bank with the respondent Company under two policies. Policy No. C 15012 was for Rs. 23,000/- covering risk against fire from 25th of May, 1947, to 25th of May, 1948 and it also covered "ALL RIOT RISKS" for 30 days as from 11th of July, 1947, to 10th of August, 1947 (vide Exhibit R-1). The other Policy No. C 15025 was for Rs. 75,000/- against fire from 13th of July, 1947 to 13th of October, 1947, and it also covered "ALL RIOT RISKS" from 13th of July, 1947 to 12th of August, 1947, (vide Exhibit R-2).

It is stated that the goods insured under those two policies were lost during communal riots in August, 1947, and the respondent Company having refused to admit the claim on the ground of limitation, this application was made praying that a decree for Rs. 98,000/- be passed in favour of the claimant against the respondent Insurance Company and the Bank. It was also prayed that the Bank should have insured the goods to the extent of their full value, i.e., for Rs. 3,00,000/-, and the Bank having insured the goods to the extent of Rs. 98,000/- only, was not entitled to get any share out of the amount payable by the Insurance Company under these policies.

2. The Insurance Company denied its liability on several grounds covered by the issues framed in this case. The Bank supported the applicant's claim against the Insurance Company but contended that the insurance sum was payable to the Bank and not to the applicant.

3. A similar application claiming the sum of Rs. 98,000/- was brought by the Bank against the Insurance Company and both these applications were consolidated by the Tribunal and were tried "together and were disposed of by the same order. The following issues were framed by the Tribunal:

1. Whether any claim was made on respondent No. 1 by respondent No. 2 within one year of the alleged loss? And if not, whether the pre-cent application is competent?

2. Whether the insured goods were looted on 11th of August, 1947, in disturbances preceding the partition of the country as alleged?

3. If issue No. 2 be proved, then what damages have resulted as a result of such looting?

4. Which of the applicant or respondent is entitled to such damages?

5. Whether Chuni Lal applicant has locus standi to make this application?

6. Whether it was necessary for the applicant or the respondent Bank to have complied with the terms of conditions Nos. 11 and 13 of the policies?

7. If issue No. 6 be proved, then whether the conditions above mentioned have been satisfied and if not, what is its effect?

8. Whether policy No. 15012 was in force the date of the loss?

9. Relief?

4. The Tribunal held on the first issue that the claim was not made within time, and on the second issue it was held that it had not been proved that the insured goods were looted during the currency of the insurance policies, Exhibits R-1 and R-2. The third issue did not arise on the above finding. On the fourth issue it was held that neither of the two claimants were entitled to the insured amount and in the event the liability of the Insurance Company had been established, the amount was payable to the Bank in preference to Messrs. Chuni Lal Dwarka Nath appellant.

The fifth issue was found in favour of the appellant and the sixth, against the Insurance Company. The seventh issue did not arise and on the eighth, it was held that policy No. C 15012 was not in force on the date of the looting. In view of the above findings, the Tribunal by its order dated 5th of May, 1955, rejected the claim of the appellant and also of the Bank, and dismissed both the applications with costs.

5. Section 18(6) of the Displaced Persons (Debts Adjustment) Act, 1951, requires that an application shall not be entertained unless the claim has been made to the Insurance Company within one year after the date of the loss. Explanation to Sub-section (6) provides that a claim shall be deemed to have been made within the meaning of the sub-section if intimation thereof has been given to the insurance company within one year after the date of the loss notwithstanding that the intimation does not specify the amount of the claim or is not in the form, if any, required by the contract of insurance or in any other specified form.

The intention of this enactment appears to be that the claims of displaced persons who, on account of the setting up of the dominions of India and Pakistan, had to leave the area now forming part of West Pakistan on account of civil disturbances, should not be thrown out on technical objections which might be raised by the insurance companies to avoid their liability.

6. It has been urged on behalf of the appellant that Chuni Lal proprietor of the appellant-firm, had left Sialkot on 6th of August, 1947, for his native village Fatehgarh. There, on account of the outbreak of communal riots the village was surrounded by the Muslims and he hid himself for four days. He managed to enter the refugee camp on 11th of August, 1947, where he met S. Sujan Singh Manager of the Sialkot Branch of the Bank, who told him that his goods had been looted and that telegrams informing the Insurance Company were being sent. Exhibit R-2/3 is a copy of the letter dated 11th of August, 1947, sent by the Manager on behalf of the Bank, to the Secretary, the Hartford Fire Insurance Company Limited, Lahore, confirming his telegram of that date reading as under :

"Goods insured Jiwansingh Balwantsingh The Tehsil Grain Syndicate Destroyed loot

and arson Amritsar Account Survey Punjab & Sind Bank"

7. It was stated in the letter that the goods insured in case of Messrs. Kanya Lal Amar Nath and some other cases are also reported to have been partially destroyed. Complete information shall be supplied when normal conditions are restored and the Bank is in a position to reopen its business and after the postal and telegraphic communications resume working and curfew is lifted. The next letter on the subject was sent by S. Tejinder Singh, Secretary of the Bank, from their Amritsar Office, dated 10th of September, 1947, addressed to the Secretary of the Insurance Company (Vide copy Exhibit R-2/2).

It is a letter of general character referring to the outbreak of communal riots resulting in loot and arson and suspension of all means of communication. It states that there has been loss of property at Sialkot and other places, the details of which could only be known on the resumption of normal conditions. On behalf of the Bank's branches, the Company was being notified that most of the goods and property insured with the Insurance Company for riots, fire, loot and civil commotion risks might have been destroyed from 13th of August, 1947, onwards. Details could only be ascertained when the circumstances permit. The company was requested to arrange inspection and survey of the losses. Second paragraph of this letter reads as under :

"We are informed by our Sialkot manager that a telegram was sent to you on 17th or so regarding various claims and also a letter was sent to you dated 17-8-1947 (copy enclosed for reference) making the necessary claims, regarding cases in which information could be available by that time. The details regarding these and other cases could not be known as there was no safety or security in the towns and lawlessness prevailed like anything. This shall be supplied when normal conditions are restored."

It was also stated that information and details regarding other offices would be supplied when the writer would get into contact with branch officials on the restoration of normal conditions.

8. The Tribunal has attached no value to these documents on the ground that they were couched in vague and ambiguous language and are not covered by the language of Section 18(6) of the Act. To me, these two documents appear to be natural and genuine. In view of the conditions prevailing at the time when these letters were addressed, it was not possible to give any further detailed information and in the circumstances of the case they are tantamount to a claim against the Insurance Company.

There is oral evidence on the record that these goods were stocked in the godown of one Jiwan Sihgh alias Jiwan Shah, who is referred to in the telegram reproduced above and intimation was given to the Company regarding loot and arson and the Company was asked to make a survey. This telegram was sent when the Manager, S. Sujan Singh, was in the refugee camp. Technical argument was raised on behalf of the Insurance Company that the original letter, the copy

of which purports to be Exhibit Rule 2/3 has not been proved either to have been despatched or to have been received by the Insurance Company and no value can be attached to Exhibit R-2/3.

Proof of the original letter is immaterial. The letter dated 10th of September, 1947, which was sent within a few weeks of the date of the loss, enclosed a copy of the original letter dated 17th oi August, 1947. This copy was an independent information to the Insurance Company of the loss and of the claim that was being made. The object of enclosing was by way of abundant caution, in case owing to disturbance of postal communications, the former letters had not been received by the Insurance Company. This copy therefore on its own strength was tantamount to a claim being made.

9. The contention on behalf of the Insurance Company is that no such communication addressed at the Company's Lahore Office by the Bank had been received. R. W. 1, Gian Chand Mahajan, Superintendent of the respondent Company, has deposed that their Lahore Office was closed on account of the disturbances from 9th o? August, 1947, and he had himself come to Tehsil Shnkkar-garh. In view of the above statement it cannot be argued with any conviction on behalf of the Company that no communication was a addressed to its Lahore Branch and none was received by it.

That after the close of their office on account of communal disturbances on 9th of August, 1947, the Company had disabled itself from receiving letters. No argument can be rested on the fact that because no such letter was in fact received, therefore it was never despatched. If under the stress of disturbed conditions the Company was compelled to close its office, it could have notified to the policy-holders, whose addresses were known to it, that they should communicate the losses at some other office in India.

It is not the Company's case that they in vited claims from the policy holders at some other office. The plea of not receiving intimation of loss is, therefore, not tenable. S. Sujan Singh, who was the Manager of Sialkot Branch, has appeared as P. W. 6 and has stated on oath that he sent the communication mentioned above te the Insurance Company. There is no reason to suggest that he is not making a truthful statement. Sohan Singh, who was the Bank's employee at Amritsar Branch, stated that the letter, copv of which is Exhibit R-2/2, was posted to Lahore and he mads an entry in the despatch register maintained by the Bank. He made this statement after looking at the original despatch register produced in Court. This letter, Sohan Singh gave to Hira Singh peon for posting.

10. It is contended by the learned counsel for the Insurance Company that the above evidence docs not prove posting of the letter front Amritsar to his client's Lahore Office. According to Section 16 of the Indian Evidence Act when there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact. Illustration (a) to this section is helpful :

"(a) The question is, whether a particular letter was despatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place are relevant."

Under Section 114 Illustration (f)

"The Court may presume

(f) that the common course of business has been followed in particular cases;

* * *

11. The general course of business of the Bank's office in posting letters has been proved by Sohan Singh. In view of the above provisions, a Court is justified in drawing an inference that the act, which was in the common course of business, had in fact been done. These provisions apply to the course of business followed in public offices as well as in private offices. The effect of sending a letter to the post-office will, in general, be re-garded as presumptively proved, if the letter be shown to have been handed to or left with the person whose duty it was in the ordinary course of business to carry it to the post office : Vide Taylor on Evidence, Twelfth Edition, para 182, page 166; Halshury's Laws of England, " Third Edition, Volume 15, para 515; Phipson on Evidence, Nintk Edition, pages 110 and 111.

12. Exhibit R-I/3 is a copy of letter send by the Lahore Branch of the Bank to the Insurance Company at Calcutta on 4th of April, 1949, mentioning the claim of Chuni Lal Dvvarika Nath among other claims. The statement expressing regret for not having submitted the claim earlier, cannot be depended upon for showing that the Manager of the Sialkot Branch did not send the telegram and the letter as deposed by him.

13. For the foregoing reasons, I am of the view that a claim was made within one year of the alleged loss and therefore the present application u/s 18 of the Act is competent. I disagree with the findings of the Tribunal and decide the first issue in favour of the appellant.

14. The second and the eighth issues may be taken together. The second issue is as to whether the insured goods were looted on 11th of August, 1947, in disturbances preceding the partition of the country as alleged. The eighth issue is as to whether policy No. C-15012 was in force on the date of the loss. Policy No. C-15012 was affective up to 10th of August, 1947, and policy No. C-15025 up to 12th of August, 1947. It is argued that the loss took place on 11th of August, 1647, when the goods were said to have been looted,

According to P.W. 1 Ram Rakha Mal, P.W. 2 Yodh Raj, P.W. 3 Bhim Sain, and P. W. 4 Amin Chand, the stock was looted on 8th and 9th of August, 1917, P. Ws 1, 2 and 4 were eye-witnesses and saw the poods being looted. P. W. 1 stated that the stock of the appellant was in the godown of his brother Jiwan Shah in the

latter's factory contiguous to the witness' factory. P. W. 2 Yodh Raj stated that the stock of the appellant was kept in Jiwan Shah's place and also in the place of Thakar Das Makhan Lal and was looted on 8th and 9th of August, 1947, and he himself saw the looting.

The looting was also seen personally by P. W. 4 Amin Chand. P. W. 3 Bhim Sain stated that the goods of the appellant were stocked in the godown of Jiwan Shah and also in the godown of Thakar Das Makhan Lal, that it was widely rumoured that the stock of Chuni Lal had been looted, and that previous to the looting the market rate of sugar was Rs. 2/8/- per seer and on the looting the sugar began to be sold at -/3/- or -/4/-per seer. He was not an eye-witness to the looting.

The statements of these four witnesses, who stated that the goods were looted on 8th and 9th of August, 1947, have not been challenged in cross-examination and their credit has not been impeached in any manner. It is a well establish-ed rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness.

If no such questions are put, the Courts presume that the witness' account has been accepted. If it is intended to suggest that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explanation. In *Browne v. Dunn* (1893) 6 R 67 Lord Herschell observed :

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit,

I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with the witnesses."

15. The applicant Chuni Lal, who appeared as P. W. 5, was not in a position to state the exact date when looting took place. He stated that he went to his village on 6th August, 1947, and remained in hiding out of fear for his life till he reached the refugee camp on 11th of August, 1947, Such information as he could depose to looting was, therefore, hearsay. My attention has been drawn by Mr. Khullar, learned counsel for the Insurance Company, that according to Chuni Lal's statement before issues, his stock was looted on 11th of August, 1947. This appears to be an erroneous statement.

My attention has also been drawn by Mr. Khullar to a letter of Chuni Lal, Exhibit R-I/I, addressed to the Insurance Company in which he stated that the goods were either looted or destroyed by fire on or about 12th of August, 1947. If he were an eye-witness or had personal knowledge of the looting, he might have been pinned to the above statement as to the date when the looting had taken place, but I cannot prefer his erroneous statement to the testimony of three eye-witnesses, according to whom the goods were looted on 8th and 9th of August, 1947. I, therefore, hold that the looting took place on 8th and 9th of August, 1947, when both the policies were in force.

16. I may here add that the insurance of the goods was against loss resulting from riots and the date of loss may conceivably precede the date of looting. The word "loss" has not a precise hard and fast meaning. It is a generic and a comprehensive term covering different situations. Loss results when a thing is destroyed. But it also is caused when the owner has been made to part with it although the thing remains intact. In this sense, loss means and implies "a deprivation". In business, loss is also said to accrue as a result of shrinkage in value.

It is synonymous with damage resulting either in consequence of destruction, deprivation or even depreciation. When a party is dispossessed of a thing, either when it can never be recovered or when it is withheld from him, he is deemed to suffer loss. In *Sivewright v. Alien* (1906) 2 KB 81 while there existed a state of war between Russia and Japan, a British Ship *Oldhamia* while proceeding through the China Sea was captured by a Russian cruiser and its crew was put on board a Russian ship and after about a fortnight of the date of the capture, was destroyed. Darling, J. observed ;

"In these circumstances the question arises what is meant by the word "loss" in Section 158 (Merchant Shipping Act, 1394). I think it means a loss by the owner of a ship being permanently deprived of it. and in my view it is immaterial to consider whether, after the owner has been permanently deprived of his ship, she still exists or has ceased to exist. In either case the loss to the owner is exactly the same."

17. Disturbances had broken out in Sialkot and the situation had become very grave, according to the unrebutted evidence, on 8th of August, 1947. Courts can take judicial notice of the fact that the person and property of non-Muslims in August, 1947 in West Punjab in general and in certain towns like Sialkot in particular, was in serious jeopardy. Chuni Lal appellant left for Fatehgarh on 6th of August, 1947, and for fear of being murdered he remained in hiding till he reached the refugee camp. It cannot be said, having regard to the conditions then prevailing, that the goods in question were not lost to him while he was in imminent fear of losing his life. In the exceptional circumstances of the disturbed conditions of 1947, loss preceded the looting when Chuni Lal was deprived of his goods.

18. I am, therefore, of the considered view that the insured goods were looted on 8th and 9th of August, 1947, while both the policies Nos. C-15012 and C-15025 were in force.

19. Issue No. 3 : The loss sustained by Chuni Lal was total and amounted to several limes the amount for which the goods were insured.

20. No arguments were addressed on any other issue by the learned counsel for the parties.

21. Issue No. 4 : Issue No. 4, which was a contentious point between the appellant and the Punjab & Sind Bank Limited, no longer requires decision on merits. u/s 18(3) of Act No. 70 of 1951, the amount realized from the insurance company under any decree passed under Sub-section (2) shall first be applied towards satisfaction of the debt due from the displaced person and the balance, if any, shall be refunded to the displaced person.

Both Mr. K.S. Thapar counsel for the appellant and Mr. K.L. Kapur counsel for the Punjab & Sind Bank, Limited, have stated before me today that the parties have settled the dispute and in case the appeal is to be allowed the insurance money may be divided between the Bank and the appellant in the ratio of 75 per cent, and 25 per cent, respectively and decrees passed accordingly in favour of the appellant for Rs. 24,500/- and in favour of the Punjab and Sind Bank, Limited for Rs. 73,500/- against the Hartford Fire Insurance Co., Limited.

22. In the result, I pass a decree in favour of the appellant, Messrs. Chuni Lal Dwarka Nath, for Rs. 24,500/- against the Hartford Fire Insurance Company, and I also pass a decree for Rs. 73,500/- in favour of the Punjab" and Sind Bank, Limited, Dehradun, against the Hartford Fire Insurance Company.

23. For the reasons stated above, this appeal is allowed with costs throughout. The costs of the appellant shall be borne by respondent No. 1.