
(1962) 09 MP CK 0014

In the Madhya Pradesh High Court

Case No : First Appeal No. 10 of 1959

Damodardas Nagori Motilal

APPELLANT

Vs

The Rubby General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 12-09-1962

Acts Referred:

Citation : AIR 1965 MP 32 : (1964) ILR (MP) 739 : (1965) 10 MPLJ 801 : (1965) MPLJ 801

Hon'ble Judges : T.P. Naik, J;A.H. Khan, J

Bench : Division Bench

Advocate : P.L. Dubey, for the Appellant; Mungre and B.L. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

The suit of the plaintiff-appellant was for the recovery of Rs. 16,000/- from the defendant insurance Company (hereinafter referred to as "the Company"), which, he alleged, became due to him on the comprehensive policy of his motor vehicle insurance when it suffered an accident at Morena on or about 8-11-1947. In the alternative, he claimed that the dispute may be referred to arbitration, in terms of the policy of insurance, through the intervention of the Court as the respondent Company had declined to have it so referred.

The case of the plaintiff was that he was the owner of his Studebaker Commander Land Cruiser Sedanbody car, bearing registered No. G. S. 2190 L, which was insured for Rs. 16,000/- with the defendant Company under a comprehensive policy of insurance (policy No. 6039, dated 23-9-1947) for the period 1-10-1947 to 30-9-1948. On 8-11-1947, he had gone to Morena along with Shri M.L. Gupta, Advocate. The motor-car was being driven by a licensed driver, Matapurkar. There, at about 5 p.m., a young boy v/as unfortunately knocked down by the motorcar on the main road in front of the District Court. The injured boy was removed to the house of the nearest medical practitioner immediately after the accident; but, in spite of all possible medical aid that was

given to him, he did not survive for long. Getting the news of the death of the boy, a crowd of about 100 to 200 persons, which included the relations of the boy and their sympathisers, gathered round the motor-car and, without waiting to enquire whether the driver was at fault, began to throw stones at it. The plaintiff was removed from the scene of occurrence under police protection, and subsequently the motor-car was found so extensively burnt and damaged as to be beyond repairs.

According to the plaintiff, the motor-car was damaged and burnt by the relatives and sympathisers of the deceased boy on account of private revenge and that he was entitled to compensation from the Company under his policy of insurance. It was further alleged that, under the terms of the policy, the question of the defendant's responsibility ought to have been referred to arbitration but the defendant unreasonably did not agree to it. It was, therefore, prayed that a decree for Rs. 16,000/-, the value of the motor-car, be passed against the defendant Company; or, in the alternative, the matter in dispute be referred to arbitration as per Clause 7 of the policy of insurance through the intervention of the Court.

The defendant, in its written statement, *inter alia*, contended that as the accident, loss, damage or liability in question, directly or indirectly, proximately or remotely, was occasioned by, or arose out of, or in connection with, a "riot" or a "civil commotion", the risk of the company was expressly excepted under the terms of the policy of insurance; that under Clause 7 of the policy of insurance, as the dispute was not referred to arbitration Within twelve calendar months from the date of the defendant's disclaimer of its liability, the claim of the plaintiff was deemed to have been abandoned and he was not en-titled to claim any damages under his policy of insurance.

The trial Court dismissed the suit of the plaintiff, *inter alia*, holding

(a) that the plaintiff's motor-car was burnt down as a result of a "riot" and "civil commotion", and as such, according to the terms of the policy of insurance, the defendant Company was not liable; and

(b) that Clause 7 of the policy of insurance did not debar or disentitle the plaintiff from filing the suit.

The most important issue in this case is, whether the liability of the defendant Company for damages is excepted in cases where loss or damage is the result of, or occasioned by a "riot" or a "civil commotion". For, if it is so excepted, the defendant Company would not be liable and the other questions raised would not necessarily arise for consideration.

The clause in the policy of insurance containing the term excepting the defendant Company from liability in case of a "riot" or a "civil commotion" is in these terms:

"The Company shall not be liable in respect of any accident, loss, damage, and/or liability, directly or indirectly, proximately or remotely, occasioned by,

contributed to by, or traceable to, or arising out of, or in connection with, flood, typhoon, hurricane, volcanic eruption, earthquake or other convulsions of nature, war, invasion, the act of foreign enemies hostilities or warlike operations (whether before or after declaration of war), civil war, strike, riot, civil commotion, mutiny, rebellion, military or usurped power, or by any direct or indirect consequence of any of the said occurrences, and except u/s 11-1(a) of this Policy whilst the insured or any person driving with the general knowledge and consent of the insured is under the influence of intoxicating liquor or drugs, and in the event of any claim hereunder the Insured shall prove that the accident, loss, damage and/or liability arose independently of and was in no way connected with, or occasioned by, or contributed to by, or traceable to, any of the said occurrence or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim."

Neither "riot" nor "civil commotion" has been defined in the policy of insurance. But, it is a settled rule of judicial construction that where terms of legal art are used in a policy of insurance, they must be given their technical meaning. Therefore, "riot", when it occurs in 3 policy of insurance, is to be interpreted with the special meaning attached to it by the "criminal law". *London and Lancashire Fire Insurance Co. v. Bolands Ltd.* 1924 AC 836 at p. 847. The exception of "riot" in a policy of insurance must be understood in its strict legal sense and not in its popular signification: *Field v. Receiver of Metropolitan Police* (1907) 2 KB 853. The principle is that where words are used in an instrument which have a well-recognized legal connotation, it will be presumed that they have been used in that sense, unless a contrary intention clearly appears from the context or other relevant evidence. The word "riot" is a word which has a legal meaning, and in our opinion that is its primary meaning; and before we can be persuaded to give it any other meaning, we must be fully satisfied that from the instrument itself or from the circumstances of the case, the parties intended to give it any other meaning. The word "riot" in the policy of insurance in this case shafi, therefore, have to be given its legal meaning, which it has in the Indian Penal Code.

"Civil commotion", on the other hand, has no such strict legal meaning, but yet it has come to have a fixed meaning by recognized judicial interpretations. This phrase was first introduced as an exception in the London Assurance Fire-policies in 1720. Lord Mansfield in *Langdaie v. Mason* (1780) 2 Marshall 2nd Edn. 791 at p. 794 defined it as "an insurrection of the people for general purpose, though it may not amount to a rebellion". Although a civil commotion may, technically speaking, also constitute a riot as per Lord Birkenhead in *Motor Union Insurance Co. Ltd. v. Baggan* (1923) 130 LT 588 at p. 591 the phrase is used to indicate a stage between a riot and a civil war: (see *Republic of Bolivia v. Indemnity Mutual Marines Insurance Co. Ltd* (1909) 1 KB 785 at p. 800).

Under Section 146 of the Indian Penal Code:

"Whenever force" or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of

such assembly is guilty of the offence of rioting." The essential ingredients of the offence, therefore, are

(a) There must be an assembly of five or more persons.

(b) It must have for its common object one of the five unlawful objects specified in Section 141 of the Indian Penal Code, so that it becomes an "unlawful assembly".

(c) Force or violence must be used by such an unlawful assembly or by any member of it, in prosecution of the common object of such an assembly.

It cannot be disputed that in the instant case there was an assembly of five or more persons. According to Islam Beg (P.W. 2), there were in the beginning, immediately after the accident, about 20-25 persons near the motor-car. There was a larger crowd near the dispensary where the boy victim of the accident was being attended to. Later, at the time when the motor-car was burnt, the crowd near it had swelled to about 400 persons. According to Santoshilal (P.W. 3), another eye-witness, who is a costermonger plying a wheelbarrow (thela) in front of a school, at first, the crowd was 200-250 strong and, about half an hour later, it had increased to about 200-400. Baboolal (D.W. 2) also estimated the strength of the crowd to be about 200, after the news of the death of the boy had spread, which had later swelled to about 300-400. The plaintiff Damodar Dass (P.W. 1) himself admits that there was a crowd surrounding the motor-car immediately after the accident, which had pushed him about when he was being escorted to the police-station at the instance of the Collector. We thus have no hesitation in holding that there was an assembly of five or more persons at and near the motor-car immediately after the accident.

The next question is whether that assembly had for its common object one of the five unlawful objects specified in Section 141 of the Indian Penal Code. Now an assembly is said to have a common object when the members composing it are aware of it and concur in it and the explanation appended to the section says that "an assembly, which was not unlawful when it assembled may subsequently become an unlawful assembly". It is not always that there is evidence of prior concert or deliberation between members composing an assembly to give a clear indication what their object was. Often, it has to be inferred from the surrounding circumstances coupled with the overt acts of its members. It is true that, in order to infer the common object of an unlawful assembly, it is not a legitimate method of enquiry to take all the actual offences committed by it in the course of the riot and then to infer that all these were originally the common object of the assembly. But, actions are sometimes more eloquent than words; and when we have evidence that some of the members of an assembly of persons had indulged in certain unlawful acts, together with evidence that some others by their word and presence had encouraged them to do so, we can safely infer that all those who continued to be present in the assembly were not only aware of its unlawful object but also actually concurred in it.

In the instant case, it may be that at its inception the crowd, that had gathered round the motor-car, was an assembly of idle and curious people who had no unlawful common object. But, sometime afterwards, when some of the members of the assembly started pelting stones at the motor-car, manhandling the driver and breaking the glass-panes of the motor-car, while some others actively encouraged them to do so by their shouts of encouragement and presence, it could safely be inferred that the assembly had for its common object the committing of a "mischief" within the meaning of the third clause of Section 141 of the Indian Penal Code. According to Islam Beg (P.W. 2) about 50-60 persons out of the crowd were pelting stones at the motor-car, while, according to Santoshilal (P.W. 3), only 4-6 persons were doing so but the latter statement does appear to be a deliberate understatement and not very reliable. Baboolal (D.W. 2), a petition-writer, stated that on hearing of the death of the boy victim, people started pelting stones at the motor-car and broke its glass panes. A Pujari of a temple nearby referred to by the witness as a "Baba" called the vehicle a murderer and broke its glass-panes by striking them with his stick. Some of the members of the assembly even manhandled the driver of the motor-car. This stone-throwing by the members of the crowd continued for about one and a half hour. According to him (the witness), some of the members of the assembly were also shouting: beat them, burn them ^ekjks budks] tyknks budks*. He further stated that all the persons were misbehaving themselves and were committing various acts of hooliganism according to their inclinations. In our opinion, all these circumstances are only consistent with the inference that the members of the assembly had for their common object the committing of the offence of "mischief" and were guilty of being members of an unlawful assembly.

It cannot also be disputed that force or violence was being used by some of the members of the unlawful assembly when they pelted stones at the motorcar and broke its glass-panes by striking them with stones and sticks.

The evidence is not very clear as to who, when and how set fire to the motor-car. Islam Beg (P.W. 2) says that a boy opened the cap of the petrol tank and having thrown into it burning pieces of wood ?rry? ran away, and that the crowd around at the time had said that he had done a bad thing in having set fire to the motor-car: ?vxk yxk fn;k [kjkcd;k?. They (the members of the crowd) even wanted to beat him (the miscreant), but he ran away. Similarly, Santoshilal (P.W. 3) says that a boy, aged about 18-20 years had suddenly come to the spot bringing burning pieces of wood ?rrys?, which he had dropped into the petrol tank, and then ran away. He further says that the boy had come after the crowd of 200-500, which had collected near the motor-car, had gone away. He added that he (the witness) had then shouted that the boy be caught and that he (the boy) had done a very bad thing; but the miscreant could not be caught as he ran away into the bylanes.

On the strength of these witnesses (P.Ws. 2 and 3), it was argued that the act of setting fire to the motor-car was the individual act of the boy who was not in the

crowd and had come to the spot all of a sudden with burning pieces of wood and disappeared from there as suddenly without being caught, and that his act was not approved by any member of the assembly then present near the motor-car. The aforesaid evidence did not find favour with the learned Additional District Judge, and after giving the matter our most anxious consideration we are also of opinion that it is not reliable. Islam Beg (P.W. 2) is a tailor, who has his shop a little distance away from the spot of the accident. He says that he had been drawn to the spot because of compassion for the dead boy. He admits having seen the pelting of stones by about 50-60 persons from out of the crowd, but says that none was shouting: "break the car ?rksM nsoA? He however, admits that when he came there, he saw that the windscreen of the motor-car had beer, shattered. Similarly, Santoshilal (P.W. 3) is a costermonger, who plies a wheel barrow selling lemon-drops and pea-nuts to school children.

He also says that he was an eye-witness who saw the Incident while plying his trade. A bare reading of his evidence in cross-examination shows that he had been trying to minimise the incident by pretending ignorance of everything except that stones were being thrown: (See paragraphs 4 and 5 of his deposition). He is, however, very detailed regarding the incident wherein the boy set fire to the motor-car. It appears that either he did not see the incident or saw it imperfectly, and in either case he could not be relied on. It is not explained why the neighbours, a number of whom must have witnessed the incident, were not examined, who could have given a more cogent and reliable version of the incident.

As against this, the defendant has examined Baboolal (D.W. 2), a petition-writer and Devkinandan (D.W. 3), a stamp-vendor, who speak of the riotous behaviour of the crowd and give a more detailed version of the Incident. According to Baboolal (D.W. 2), the setting of fire to the motor-car was in continuation of the violent conduct of the unlawful assembly, which had been indulging in stone throwing for over one and a half hour. He further says that some of the members of the unlawful assembly were shouting: ^ekjks budks] tyknks budks* (beat them burn them). Similarly, according to Devkinandan (D.W.3), It was the crowd which was trying to set fire to the motorcar, and it was only a part of the story of violence by the crowd which had formed itself into an unlawful assembly for committing various acts of mischief. He states that people were shouting: " set fire to the car ?xkMh dks vkx yxko? "set fire to it, it is a murderous car" ?vkx yxk nso gR;kjh xkMh gS?, and his evidence suggests that in the midst of the violent behaviour of the crowd the motor-car was set on fire. He admitted that he had not seen whether the motor-car was set on fire by throwing burning pieces of wood in its petrol tank or otherwise as he was not near enough to witness these details. From this it was argued that he could not be relied upon, and his evidence suggesting that the setting of fire to the motor-car was by a member of the unlawful assembly ought not to be believed, in our opinion, the fact that the witness (D.W. 3) was not quite certain on the point did not detract from his testimony and make him unreliable.

We agree with the trial Court that as between the evidence of the plaintiff's two witnesses (P.Ws. 2 and 3) and the evidence of the defendant's two witnesses (D.Ws. 2 and 3), that witnesses of the defendant appear to be more reliable and this evidence establishes that the motor-car was burnt down in the rioting which had followed the accident in question.

It is, however, argued that the loss was in consequence of the accident and that the mere fact that after the occurrence of the accident some miscreants, more than five in number, caused the loss by fire did not make any difference.

18 We have, therefore, to determine whether the loss was caused by "riot" or by the accident. In insurance law, where more than one cause operate to occasion the loss, the rule of proximity is resorted to to determine what the proximate cause of the loss was. By proximate cause is not meant the latest, but the direct, dominant, operative and efficient one: (see *Becker Gray and Co. v. London Assurance Corporation*, 1918 AC 101, *Leyland Shipping Co. v. Norwich Union Fire Insurance Society Ltd.* 1918 AC 350 at pp. 363 and 369, 370, and *Samuel (P.) and Co. v. Dumas*, 1924 AC 431 at p. 447. If this cause is within the risk covered, the insurer is liable; but if it is not so covered but falls within the excepted clauses, the insurer is not liable and the loss falls on the insured.

In determining the direct, dominant, operative and efficient cause, we must distinguish between an accident facilitating the loss and an accident causing the loss. In the instant case, the accident of striking against the unfortunate boy did cause some loss to the vehicle insured, but fire was not certainly caused by it. Thereafter, the death of the boy caused some people to take the law into their own hands to cause a riot, in the course of which the vehicle was set fire to, and all that can reason-ably be said is that the accident furnished the occasion for causing the loss and not that it caused the loss. Thus, where goods are put under a restraint of princes that facilitates their ultimate seizure, it is the seizure and not the restraint that is the proximate cause of the loss": (see *Fooks v. Smith* 1924 2 KB 508). Similarly, "where an air-raid facilitates the stealing of goods from a building, stealing and not the air-raid is the proximate cause of their loss: (see *Winicfsky v. Army and Navy General Assurance Co.* 1919 35 TLR 283); and "where a fire encourages a mob to plunder, and a plate glass is broken thereby, it is the lawlessness of the mob and not the fire which is the proximate cause: (see *Marsden v. City and Cuntly Insurance* (1865) 1 CP 232.

Another principle usually employed to determine the proximate cause is that where human intervention, occurring after the peril insured against, causes the loss, that intervention (unless its object was to mitigate the loss) and the insured peril is the proximate cause: (see *Preston and Colinvau* on the Law of Insurance, Second Edition p, 77). In the instant case, there can be no dispute that the loss was because of *nevis actus interveniens*, and we have further found that the human intervention could also be designated a "riot" as defined in the Indian Penal Code. Under the circumstances, we are of opinion that the loss in question was caused by the riot and as that risk was expressly excepted by

the policy of insurance, the defendant Company was not liable.

It was then contended that the insurance policy came to be issued after the accident and the loss had occurred, and consequently the clause excepting the risk for riots, not being in the contemplation of the parties nor mentioned in the cover note then governing the rights of the parties, did not operate to disentitle the plaintiff from claiming the damages in question.

In our opinion, the contention is misconceived. Originally, the motor-car was purchased by one Shri Mandelia who had also, on or about 1-10-1947, applied for its comprehensive insurance. We learn from the evidence of Murdia (D. W. 1) that a cover note was issued to Shri Mandelia, viz., Note No. 20214, before the issuance of insurance policy embodying the contract of insurance. We do not have the full cover note in the paper-book, nor was Shri Mandelia examined to prove its terms. However, Ex. D-1 is the proposal made by the plaintiff for the insurance of the motor-car purchased by him from Shri Mandelia. In this, the plaintiff has categorically stated that he was willing to accept the policy subject to the terms and conditions prescribed by the Company. This document further contained the stipulation that, amongst other exclusions from the risks covered by the policy, the liability arising from "riot" was also excluded: (page 85 of the paper-book). It was this proposal which the Company had accepted, and it could not, therefore, be said that some other contract governed the rights of the parties. It is also significant that in the plaint the claim is under the policy of insurance, No. 6039 (Ex. D-6), and it was never his (the plaintiff's) case that a cover note, which did not except risks from "riot" governed the rights of the parties. This contention was also not specifically raised in the grounds of appeal and, in our opinion, it merits no serious consideration.

In the view we take, the question whether the suit was barred because the claim should be deemed to have been abandoned as the dispute was not referred to arbitration within twelve calendar months from the date of the defendant's disclaimer of its liability does not arise for consideration and is not decided.

In the result we are of opinion that the suit of the plaintiff-appellant was rightly dismissed by the trial Court.

The appeal fails and is dismissed with costs.