
(1960) 05 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 5/P of 1955 treated as F.A.O. No. 6 of 1957

Firm Tirath Ram and Sons

APPELLANT

Vs

Free India General Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 12-05-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Displaced Persons (Debts Adjustment) Act, 1951 — Section 17, 18, 18(2)

Citation : AIR 1961 P&H 79

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; R.N. Sanghi and D.C. Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This is an appeal by displaced persons against the order of the Tribunal dated the 30th October, 1954 dismissing their application.

2. The facts giving rise to this application may be shortly stated. The appellants, who belonged to West Pakistan and were carrying on the business of cotton-ginning, had obtained a loan from the Central Bank of India Limited on the pledge of goods. Those goods were insured with the Free India General Insurance Company Limited, Head Office, Kanpur, in the sum of Rs. 27,000/-. These goods were looted and the present application was filed for recovery of the insurance amount from the Insurance Company. It may be mentioned that so far as the liability to the Bank is concerned, it has been wiped out u/s 17 of the Displaced Persons (Debts Adjustment) Act, 1951.

3. This application was tried by the Sangrur Tribunal. As many as 9 issues were framed. All issues, except the ninth, were decided in favour of the applicants. On the ninth issue, the judgment of the Tribunal proceeds thus :

"The learned counsel for the applicants has submitted that the goods in dispute

were insured for Rs. 27,000/- and these have been lost. So they are entitled to Rs. 27,000/- as claim from the Insurance Company. The learned counsel for the respondent No. 1 has submitted that Mulkh Raj has in his statement admitted that these goods which were insured for Rs. 27,000/- were mortgaged with the respondent No. 2 for nearly the Same amount. When these goods were mortgaged by the applicants for Rs. 27,000/- with respondent No. 2 this would mean that the applicants had realized this amount while mortgaging the goods. According to the applicants this special enactment has given them this relief that respondent No. 2 cannot realise that mortgage charge, and this debt is wiped off. When this debt is not realizable from the applicants, this would mean that they have not suffered any loss.

Unless a person suffers from loss, he cannot make a claim against the Insurance Company, He has given an instance that if goods worth Rs. 80,000/- are insured with four insurance companies, for Rs. 20,000/- in each company, and by fire loss is caused to the extent of Rs. 20,000/- in that case, all the four companies would not be liable to pay Rs. 20,000/- each but they will pay rateably and the total amount to be paid to the owner of the goods would be Rs. 20,000/-. This would mean that each company would pay Rs. 5,000/- only. He has submitted that this instance shows that the owner of the goods is to be compensated to the extent to which he may have suffered loss. In the present case the applicants have not suffered any loss so they are not entitled to any claim.

I asked the learned counsel for the applicants to produce any authority if they can claim the amount of insurance from the company, even if they may have been compensated for the loss from some other source, but he has not been able to produce any such authority. I, therefore, hold that the applicants in this case are not entitled to any relief. Issue No. 9 is decided against the applicants."

Against this decision of the Tribunal the present appeal has been filed in this Court. Originally this appeal was filed on ad valorem court-fee as there was a doubt as to the nature of the appeal, it being treated as an appeal against a decree. It was held later on by this Court that such appeals are appeals against orders and not against decrees and the fixed court-fee of Rs. 5.25 nP. is payable.

4. The contentions of the learned counsel for the appellants are that so far as the Insurance Company is concerned its liability is to be determined in terms of Section 18 of the Displaced Persons (Debts Adjustment) Act and that liability the company cannot avoid by reason of the fact that u/s 17 of the Act the debtor is no longer liable for the debt to secure which the insured goods were pledged. The other contention raised is that the court-fee paid on appeal, which is far in excess of what is due, should be refunded.

5. So far the first contention is concerned, I have not been able to appreciate the judgment of the Tribunal. So far the liability of the Insurance Company is concerned, Section 18 of the Displaced Persons (Debts Adjustment) Act is specific and if the case of the appellants falls within Section 18 of the Act, the

Insurance Company cannot avoid the claim which has to be determined according to Sub-section (2) of Section 18 of the Act. Once that claim is determined, the liability to pay the same falls on the Insurance Company.

The mere fact that something else has happened under the Act will not absolve the Insurance Company from its liability u/s 18 of the Act. Even on first principles I fail to see how the Insurance Company can avoid its liability on a matter which is extraneous to the contract. It certainly can avoid its liability if it can prove a breach of contract of insurance, or in terms of the contract of insurance but not otherwise. It is not sought to be argued on the basis of any term in the contract that the liability can or could have been avoided.

The argument on which the Tribunal has proceeded and which is being relied upon by the learned counsel for the Insurance Company is that as the appellants are not liable for the debt which was secured on the pledge of those goods, therefore, there is no loss so far they are concerned. This argument is wholly fallacious. The goods were lost. The Insurance Company undertook to bear that loss under the contract of insurance and that loss the company is bound to pay. The only question that now remains for decision is how to determine that loss and as I have already said Section 18(2) of the Displaced Persons (Debts Adjustment) Act lays down the procedure for the determination of that loss. "Section 18(2) is in these terms :

"Where a loss has been incurred in respect of any property in the circumstances specified in Sub-section (1), the Tribunal shall, in every proceeding where it is necessary to do so, determine respectively the amount of the loss, the amount for which the property was insured on the date of such loss, and the amount, if any, paid by the insurance company, and shall make a report thereof to such board or other authority as may be prescribed, and the prescribed board or other authority shall, after taking into account such matters as may be prescribed as being relevant thereto, and subject to any rules made in this behalf, in turn propose to the Tribunal the amount for which the claim against the insurance company shall be decreed, and the Tribunal shall pass a decree accordingly."

This determination has not taken place in the instant case. Therefore, the case has got to go back to the Tribunal for determination of the loss and for passing a decree against the Insurance Company as provided in Section 18(2) of the Act.

6. So far the refund of court-fee is concerned, the matter seems to be concluded by a decision of this Court in *Sohan Singh Vs. The Oriental Bank of Commerce*, In terms of that decision, I direct that the excess court-fee paid be refunded to the appellants.

7. Mr. Dalip Chand has not contested the findings of the Tribunal with regard to the other issues. Those findings are upheld.

8. The only matter that remains to be decided is the petition of the Central Bank of India Limited to be impleaded as a co-appellant. Under the Displaced Persons

(Debts Adjustment) Act, the Central Bank has no locus standi to make an application, it being not a displaced person. In this view of the matter, I reject that application.

9. I, accordingly, allow this appeal, set aside the judgment of the Tribunal and remit the case to him for decision of the matter in accordance with Section 18(2) of the Displaced Persons (Debts Adjustment) Act. In the circumstances of the case there will be no order as to costs.

10. The parties are directed to appear before the Tribunal on the 22nd June, 1960.