

(1959) 11 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 161 of 1958

Ghaki Mal Hukum Chand

APPELLANT

Vs

Great American Insurance Co. Ltd.

RESPONDENT

Date of Decision : 24-11-1959

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 18, 18(1), 2, 36

Citation : AIR 1960 P&H 523

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Judgement

(1) This judgment will dispose of two appeals, one preferred by Ghaki Mal Hukam Chand (hereinafter called the plaintiff), FAO. 161 of 1958, and the other by the Great American Insurance Company Limited, New Delhi (hereinafter called the defendant) FAO. 182 of 1958.

(2) The plaintiff firm carried on the business of mill owners at Kasur in the District of Lahore before the partition of 1947. Under of policy of insurance with the defendant Company, the stock of cotton goods was insured by the plaintiff against risk by fire for a sum of rupees one lakh on 1st of June, 1947. The policy was to terminate on 1st of December, 1947. In consideration of an additional premium it was also stipulated between the parties that the policy "shall extend to include loss or damage by fire to the property insured directly caused by persons taking part in riots or civil commotion"s, also loss or damage by fire to the property insured directly caused by the action of any lawfully constituted authority....".

This additional risk, however, did not cover any loss caused by fire on account of war, invasion, act of foreign enemy, civil war, mutiny, insurrection etc. Under clause 11 of the policy, the insured was to give notice to the defendant of any loss or damage caused by fire within 15 days after such loss or damage. Under clause 19, on which reliance has been placed by the defendant.

"in no case whatever shall the Company be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration."

(3) The premises of the plaintiff in Kasur were looted and set on fire on 17th or 18th of August, 1947. A representative of the plaintiff firm who stayed in Kasur till the 18th of August 1947 claims to have sent an intimation of this loss to the branch office of the defendant Company at Lahore and subsequently a registered letter was also sent at the New Delhi address of the defendant Company on 20th of November, 1947, followed by another such letter of 7th of September, 1948.

There is acknowledgment from the defendant Company of the letters claimed to have been sent by the plaintiff regarding the loss. No steps were taken by the plaintiff to enforce their claim against the Insurance Company till the present application for recovery of rupees one lac was filed on 1st of August 1952 under the Displaced Persons (Debts Adjustment) Act, 1951, which came into force with effect from 8th November 1951. It is common ground that the plaintiff would have no cause of action at all but for the provisions of Section 18 of the Displaced Persons (Debts Adjustment) Act, 1951. The relevant provisions of Section 18 of the Act are as under:

"18(1). Where any property in West Pakistan belonging to a displaced person was insured with any insurance Company before the 15th day of August, 1947, against any risk arising out of fire or theft or riot and civil commotion and there has been a loss in respect of such property arising out of any such risk at a time when the contract of insurance was in force, such Company shall not be entitled to refuse payment of the sum due under any claim in relation thereto on the ground that.

(a) * * *

(b) the claim was not made to the Company within the agreed time, or

(c) * * *

(d) * * * and any contract to the contrary, to the extent to which it is in contravention of the provisions of this sub-section, shall be deemed to have had no effect.

* * * * (6) No application under this section shall be entertained in any case where no claim has been made to the insurance company within one year after the date of the loss.

Explanation: A claim shall be deemed to have been made within the meaning of this 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."

(3a) At this stage, I may also advert to the provision of Section 36 of the Debts

Adjustment Act:

36. Extension of period of limitation.

Notwithstanding any thing contained in the Indian Limitation Act, 1908, or in any special or local law or in any agreement,--

(a) * * * * (b) any suit or other legal proceeding for the enforcement of a claim against an insurance company..... may be instituted at any time within one year from the commencement of this Act."

(4) The claim was resisted by the defendant Company on a verity of grounds but it is only necessary to mention those which are relevant for a discussion of these two appeals. It was pleaded that sections 18 and 36 of the Debts Adjustment Act are ultra vires of the Constitution and at any rate cannot operate retrospectively. According to the defendant the claim was not preferred by the plaintiff within the time prescribed by the policy and could not be entertained more than one year after the loss was said to have occasioned by fire. The liability of the defendant was denied on the ground that "it was not a Company within the meaning of section 2(1) of the Debts Adjustment Act." The loss in respect of the insured property was not admitted by the defendant.

(5) The Senior Subordinate Judge, acting as a Tribunal under the Debts Adjustment Act, has held that the claim is entertainable under the Debts Adjustment Act, but found that the plaintiff was entitled only to a sum of Rs. 10,500/- which sum in his opinion represents the loss actually suffered under the policy. The sum determined by the Tribunal was reported to the Board which accepted the same as required under sub-section (2) of section 18 of the Debts Adjustment Act, and a decree has been passed accordingly.

(6) Both the plaintiff and the defendant feeling aggrieved have filed appeals against this order. I will deal first with the plaintiff's appeal.

(7) Two questions arise for decision so far as the plaintiff's appeal is concerned. It is first to be examined whether there was any loss at all which was the subject matter of risk covered by the policy and secondly, to settle the quantum of loss if there was any. Oral evidence has been adduced by the plaintiff to show that arson and rioting took place in Kasur particularly in the premises of the factory in which the insured goods were stored. The evidence is meager but the Court would be entitled to take judicial notice of the explosive ferment of mounting hatred on both sides of the Radcliffe line, more especially in the month of August 1947. There are, however, two basic difficulties with which the plaintiff has to contend with. Under the policy it is only loss by fire which is covered. All the witnesses who have testified for the plaintiff in this case have stated that there was also widespread looting in the premises. In fact it is stated by Amrit Lal, A. W. 5, that he saw about four to five hundred people setting fire to the factory and looting it. Amrit Lal was an employee of the plaintiff and remained in Kasur till the 18th of August 1947. Isher Dass, A. W. 4, stated that he was the factory

burning and being looted on 17th of August 1947 when the disturbances had started in Kasur. In his cross-examination he categorically stated that the factory was being looted on 17th of August 1947 in the evening.

To the same effect is the statement of Bhur Chand, A. W. 3, who deposed that the factory was looted in the evening of 17th of August 1947 and was set on fire the same day. Bhagat Ram, A. W. 2, stated that the factory was being looted and set on fire on 17th of August, 1947, and he witnessed the cotton seeds being removed by the rioters in bags. Shri Kanshi Ram, A. W. 6, who was President of the Arya Samaj and the President of the Congress Committee and Bar Association of Kasur at the time of the partition, stated that he saw one of the godowns of the factory on fire on 18th of August, 1947. From this evidence, it is impossible to ascertain whether the loss of cotton seeds was due to damage by fire or damage by looting.

The Radcliffe Award having been announced earlier it is probable that the rioters set a portion of the factory on fire to frighten away the inmates who still remained to protect it. Neither the witnesses have so stated nor is it possible to accept the position that the rioters would set fire to valuable stock of cotton seeds which could be taken possession of by them by looting which in those troublous days was uncontrolled.

(8) As a matter of principle, it seems clear that the loss occasioned by theft cannot be attributed to a fire which only provides the opportunity for intervention as an entirely independent cause for damage. As stated in Macgillivray on Insurance Law, in paragraph 1580.

"Where an independent cause operates to produce the damage the fact that the peril insured against has given occasion for the operation of the independent cause does not constitute the damage a damage by the peril insured against."

This is the first difficulty in the way of the plaintiff. The plaintiff in a contract of fire insurance which essentially is a contract of indemnity has to prove the loss actually suffered by him as a result of fire. I am prepared to accede that the evidence points to the conclusion that some of the insured goods were burnt by fire as a result of arson by rioters, a risk which was specially covered in consideration of payment of an additional premium. It has, however, to be borne in mind that it cannot be mixed up with the loss which has been occasioned as a result of an independent cause like looting.

(9) This brings me to the second difficulty in the way of plaintiff, namely, the assessment of the loss caused by fire. The reasons given by the Tribunal in assessing the loss at Rs. 10,500/- appear to me to be wholly tenuous. The Tribunal has accepted the evidence of A. W. 6, Mr. Kanshi Ram, who stated that he saw one of the godowns being put on fire. The insured goods were stocked in four godowns. The tribunal has estimated that there were about 1500 maunds of cotton seeds,. There being 1,000 bags in the godown, and taking the price of the seed at Rs. 7/- per maund, for which there is no evidence, he has assessed the

damage at Rs. 10,500/-.

As the plaintiff's never pursued their claim with the Company with persistence, they must be taken to have abandoned any idea of bringing a suit till the fortuitous remedy came to their aid by the passage of the Displaced Persons (Debts Adjustment) Act, Apart from a general evidence of rioting and arson there is no data for arriving at a figure of exact loss suffered by the plaintiff. The task of assessment of loss is left by the Legislature in its wisdom to the Tribunal and the figure recommended by it has to pass through the scrutiny of the Insurance Board and it should not in my opinion be further subjected to a meticulous examination by the Court in appeal. In this view of the matter, I think that some loss having been established, it is not legitimate in appeal to determine the manner in which the assessment has been made. There is no scope for an increase in the award of damages as the proof adduced by the plaintiff is wholly inadequate. The full amount of the risk covered could only be recovered from the defendant if the plaintiff had proved the entire loss of the insured goods by fire. Only a portion of the godown has been proved to have been destroyed by arson and from that too hundreds of people are said to have removed the bags of cotton seeds stored therein.

(10) I would accordingly hold that the assessment of damage made by the Tribunal and confirmed by the Insurance Board should be accepted as correct and there is no scope for interference on this ground.

(11) I now take up the appeal of the defendant. Mr. Bedi has argued in the first instance that the defendant is not a Company within the meaning of Companies Act, 1913, which was in force at the time when the loss took place. In my opinion, this question cannot be agitated in view of the decision of the Punjab High Court in Great American Insurance Co. Ltd. v. Attar Singh 1954 56 Pun LR 246, where it was held by Kapur J. that a foreign Company is a Company within the meaning of the Displaced Persons (Debts Adjustment) Act. Mr. Bedi does not accept the ruling of this decision which, however, is binding on me. Nor do I see any force in the contention that sections 18 and 36 of the Debts Adjustment Act are ultra vires of the Constitution being retrospective in operation.

There is no bar to the passing of an Act within the competence of a Legislature with retrospective effect. There is on the other hand always a presumption of constitutionality in favour of statutes from which there is no compelling reason to depart in the instant case. Nor is there any support for the proposition that clauses 11 and 19 of the Contract of Insurance could not have been overridden by statute. In face it is specifically mentioned in the relevant provisions cited in the earlier portion of this judgment that a claim would be entertainable against an Insurance Company notwithstanding any other agreement to the contrary.

There is neither principle nor authority in support of the contention that sections 18 and 36 of the Debts Adjustment Act should not be given effect to in construing the terms of the agreement of insurance entered into between the

parties. Mr. Bedi has argued that it was the bounden duty of the plaintiff to have proved the loss attributable to the peril covered by the policy strictly and the evidence being conflicting the entire claim should have been dismissed. For the reasons which I have given, I do not find it possible to accede to this contention.

(12) Finally, Mr. Bedi has pressed strenuously that the plaintiff having failed to establish that he sent any claim to the defendant within "one year after the date of the loss", the application u/s 18 of the Debts Adjustment Act should not have been entertained. According to the evidence of Amrit Lal, a letter was sent to the defendant Company on 18th of August, 1947. Reference is made to this letter in the two subsequent registered communications sent by the plaintiff to the defendant. The representative of the defendant Company has categorically denied the receipt of these letters. No reason has been ascribed why the plaintiff did not send acknowledgment due forms with the registered letters. There is, however, sufficient evidence to prove the dispatch of these letters which have not been shown to have been lost in transit.

The failure of the plaintiff's to have made any vigorous attempt to pursue their claim cannot lead to a conclusion that the letters were never received by the defendant Company. It is possible that the plaintiff was not in a position financially to prosecute the suit on payment of the full Court-fee as was enquired before the passing of the Debts Adjustment Act. In my view the balance of probability lies in favour of the receipt by the defendant of the registered letters dispatched by the plaintiff in the ordinary course on 20th of November 1947 and 7th of September 1948. It must therefore be held that intimation was sent by the plaintiff within one year of the occurrence of the loss and damage as required by sub-section (6) of section 18 read with the Explanation of the Debts Adjustment Act.

(13) In the result, I would dismiss both the appeals of the plaintiff and the defendant, leaving the parties to bear their own costs of these appeals.

(14) Appeals dismissed.