
(1933) 09 AHC CK 0011
In the Allahabad High Court

Hari Kishan Das

APPELLANT

Vs

Guardian Assurance Company, Ltd.

RESPONDENT

Date of Decision : 01-09-1933

Acts Referred:

Citation : AIR 1933 All 900 : 147 Ind. Cas. 301

Hon'ble Judges : Rachhpal Singh, J

Bench : Division Bench

Judgement

Rachhpal Singh, J.—This is a defendant's second appeal. Lala Hari Kishan Das, defendant-appellant, who is the proprietor of a firm carrying on business at Saharanpur made a proposal to the plaintiff, through one Mr. Jaura, asking for the insurance of his Steam Roller Flower Mills at Saharanpur for a sum of Rs. 7,71,000. Mr. Jaura carries on business as a broker. On the receipt of the defendant's application by the plaintiff (the Guardian Assurance Company) a risk note No. 3496 was issued and the defendant was immediately informed that the risk had been covered. Subsequently correspondence went on between the parties but eventually on 13th June 1927 the defendant declined to pay the premium and the plaintiff company wrote to him that as the premium had not been paid the contract was cancelled. The plaintiff's case was that the company had covered a risk for a period running from. 25th February 1927, to 13th June 1927, and therefore the defendant was liable for payment of the proportionate premium which was calculated to be Rs. 3,181-5-0 and the company instituted a suit for the recovery of the same. The claim was resisted by the defendant on various grounds. Both the Courts below decreed the suit. The lower appellate Court has given the following findings: (1) That the defendant asked Mr. Jaura, the broker, to have his Steam Roller Flour Mills at Saharanpur insured for a sum of Rs. 7,71,000; (2) that he asked that risk should immediately be covered; and (3) that the plaintiff company covered the risk from, 25th February up to 13th June 1927.

2. These are all findings of fact which are conclusive in a second appeal. The

question which has been raised in this appeal by the learned Counsel appearing for the defendant-appellant was that there was no valid contract because no premium had been paid. We find ourselves unable to accept this contention. It is raised on the assumption that in every case a contract for insurance will not be binding unless the premium or a part thereof is paid. No such assumption can be made. There are cases in which it is open to the insurance company to waive their right to demand immediate payment of the premium and more especially in cases where a proposal is made in respect of a fire insurance policy. It is not always necessary that such a formal agreement should be entered into to constitute a valid contract of fire insurance. Where the insurance company on the receipt of a proposal for insurance issues a risk note covering the risk that fact by itself constitutes a contract of insurance for a certain time. In the case before us the plaintiff company as soon as they were given intimation of the proposal of the defendant informed him that risk was covered and the defendant accepted this fully knowing, as would appear from his proposal, that he wanted a policy with risk covered that in case of any loss the company would be liable to him before he paid any premium. It appears to us that somehow or other the defendant found himself unable to pay the premium and on various excuses he went on gaining time. We find from the record that he made a proposal to Mr. Jaura the commission agent requesting him that he should himself pay the premium for him. As the learned Munsif has remarked, the defence put in this case was a thoroughly dishonest one. The defendant got the company to cover the risk and now he wants to escape liability without the payment of anything.

3. In our opinion, the defendant appellant cannot do this by pleading that there was no valid contract because of the non-payment of premium by him. In a contract for fire insurance, the risk commences at the time as soon as a binding contract of insurance is concluded and it is always open to the parties to the contract to come to an agreement as regards the time from which the risk will commence. The reason for this is as explained by Matthew, J., in *Thomson v. Adams* (1889) 23 QBD 361:

that it is very important that there should be prompt insurance in respect of goods against fire risk. Considering how great is the risk to an individual, and how small a premium he has to pay, the great object is to get himself insured against damages by fire, and if the law were otherwise, then no man would be able to effect a prompt insurance against damages by fire.

4. It was held in the above mentioned case that where a slip was issued covering the risk there was a complete and binding contract of insurance though no premium had been paid. It has been held in cases of this kind that the risk may commence before a policy is issued, even upon an oral contract to insure. (See *Halsbury's Laws of England*, Vol. 17, p. 517, Edn. 1). In *re the Norwich Equitable Fire Insurance Society* (1887) 57 L T 541, the following observations as regards the nature of fire insurance contract were made by Kay, J:

There is no statutory or formal document necessary to make a contract of

insurance. If a contract is created by any binding means that is the policy to all intents and purposes. We are apt to think of the familiar instrument which is in the form one generally knows and to associate that mere form with the idea of policy. But putting the formal instrument aside, and admitting as every one must, that a contract of insurance for all legal purposes constitutes a policy, what is wanted more than a contract of this kind.

5. In the case before us, the defendant-appellant made a proposal through Mr. Jaura to the plaintiff-respondent for an insurance policy and asked that risk should be covered immediately. As soon as the proposal was communicated the company agreed to the proposal. In our opinion, on the receipt of the intimation by the plaintiff company by the defendant that the risk was covered, there was a valid contract between the parties and could be enforced notwithstanding the fact that no policy in the usual form had been issued and no premium had been paid. After all it was the plaintiff firm who could say that they would not cover the risk till the premium was paid but if they waived their right by accepting the risk, it is difficult to understand how the defendant could be allowed to contend that there was no valid contract.

6. For the reasons given above we are of opinion that the learned Subordinate Judge is correct and we dismiss the appeal with costs.