**(2014) 05 DEL CK 0034**

**In the Delhi High Court**

**Case No :** RFA (OS) 87/2013

M/s. Weston Tubes (Pvt.) Ltd. APPELLANT

Vs

National Insurance Company Ltd. and Others RESPONDENT

**Date of Decision :** 28-05-2014

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 6 Rule 14
General Clauses Act, 1897 — Section 10, 3(35), 3(66), 9
Insurance Act, 1938 — Section 64UM

**Citation :** (2014) 143 DRJ 510

**Hon'ble Judges :** Pradeep Nandrajog, J;Jayant Nath, J

**Bench :** Division Bench

**Advocate :** Samrat Nigam, Advocate for the Appellant; Bhaskar Tiwari and Mr. L.K. Tyagi, Advocate for the Respondent

**Final Decision :** Disposed Off

## Judgement

Pradeep Nandrajog, J.—M/s. Weston Tubes Pvt. Ltd. (hereinafter referred to as ''Weston'') is engaged in the business of manufacturing PVC flexible pipes. The National Insurance Company Ltd. (hereinafter referred to as ''National'') is engaged in the business of insurance. Vide Ex. P-1, through its Divisional Office No. X at Hanuman Road New Delhi National undertook to indemnify Weston the loss arising out of, amongst other calamities fire, limited to Rs. 15,00,000/- (Rupees Fifteen Lacs only) for one DG Set and machinery, tools and accessories at its factory in Gali No. 10, Samaipur, Badli for the period commencing from May 06, 1995 to May 05, 1996. Vide Ex. P-2, National undertook to indemnify Weston the loss arising out of, amongst other calamities fire, limited to Rs. 5,00,000/- (Rupees Five Lacs only) for stock of finished and unfinished goods including raw material used to manufacture PVC pipes at its factory in Gali No. 10, Samaipur, Badli for the period commencing from October 08, 1995 to October 07, 1996.

2. Weston imported a corrugator machine manufactured by a company Olmas in Italy along with moulds and dies and claims that on May 01, 1996, it delivered a

letter mark ''B'' at the Division X office of National at Hanuman Road, New Delhi which was stately received by Sh. M.M. Dutt the Senior Divisional Manager, at 5:00 PM on May 01, 1996 requesting that the cover of the policy of insurance Ex. P-1 be enhanced by further sum of Rs. 20,00,000/- (Rupees Twenty Lacs only); and along with the letter enclosed premium in sum of Rs. 929/- (Rupees Nine Hundred and Twenty Nine only) vide cheque No. 731758 dated May 01, 1996 drawn on Canara Bank, Connaught Circus Branch, New Delhi. It is the case of Weston that being informed that the file concerning the policy of insurance had been transferred to Division No. V at Hemkunt Tower, Rajender Place, Weston was assured that the necessary cover note would be issued on the next day.

3. A fire broke out at the factory of Weston in the intervening night of May 01, 1996 and May 02, 1996. In the pleadings of the parties there is no reference to the time when the fire broke out but from the cross examination of PW-1, it would be apparent that the suggestion given by National was that the fire took place in the night between 12:00 mid-night to 12:30 midnight.

4. With respect to the proposal, mark ''B'' of Weston, requesting for the cover to be enhanced by Rs. 20,00,000/- (Rupees Twenty Lacs only) for the plant and machinery under mark ''B'', National issued endorsement, Ex. P-3, and since everything turns thereon, we note its contents. Ex. P-3 reads as under:-

National Insurance Company Limited

(Regd. Office: 3, Middleton Street, Calcutta-700071)

Division No. V, 7th Floor, Hemkunt House, Rajendra Place, New Delhi-110008

Endorsement

Endorsement No. 350500/E/31/96/96..................... Dated 6/5/96 attaching to and forming part of Policy No. 350500/351000/1100568/95 covering 6/5/95 to 5/5/96 in the name of M/s. Canara Bank, H-54, Connaught Place, N. Delhi M/s. Western Tubes (P) Ltd. 2468 Prayag House, Gali Nalwa Pahar Ganj, New Delhi-1.

It is hereby understood and agreed w.e.f. 2/5/96 to 5/5/96 that :-

1. The insured''s estimate value of vehicle is increased/reduced to Rs. .............

2. Registration No. of Vehicle is corrected/changed/substituted to read as "..............................." are not as stated in the schedule.

3. The insured is entitled to ........... % No Claim Discount/Malus as from inception.

4. The .................................... Is interested under the above policy, subject to Endt. No. ........... printed in the policy.

5. The above said policy stands cancelled, on pro-rate/short period basis.

6. The insured''s address is changed to read as under and not as already stated

 

therein:

7. The above said policy is transferred to ................................ ..................with effect from .....................

8. The Sum Insured under the above said policy is enhanced by Rs. 20,00,000/- as per your letter dtd. 1/5/96 recd. by us on 2/5/96.

9. The names mentioned herein are added/deleted from the policy.

10. Hence total sum insured of the Policy Rs. 35,00,000/-

In consequence of the above additional/Premium of Rs. 678/- is hereby charged to the insured vide our Rt. 0120378/678/6/5/96

Subject otherwise to the terms, conditions, limitations and exceptions of this policy.

Sd/-

Sr. Divisional Manager

5. A perusal of Ex. P-3 would evidence that the Senior Divisional Manager of Division V of National accepted having on May 02, 1996, received in his Division, Weston''s proposal mark ''B'', dated May 01, 1996, with a request for insurance cover for plant and machinery to be enhanced by Rs. 20,00,000/- (Rupees Twenty Lacs only) and that the insurance cover stood enhanced from Rs. 15,00,000/- (Rupees Fifteen Lacs only) to Rs. 35,00,000/- (Rupees Thirty Five Lacs only) with effect from May 02, 1996 till when the period of insurance as per Ex. P-1, i.e. May 05, 1996 was operative.

6. Information regarding the fire was given by Weston to National vide Ex. P-5 on May 02, 1996. Surveyor appointed by National gave an investigation report Ex. D-1. The surveyor looked into the records of Weston including documents concerning import of corrugator machine from Italy and made a reference to an LC opened by Weston in favour of the supplier on May 10, 1995. The surveyor noted that the equipment was shipped by air from Milan, Italy to New Delhi vide KLM Airlines Flight No. KL-871 dated February 07, 1996 under Master Airway Bill No. 07449425110 dated February 07, 1996 and that as per the bill of entry the custom duty as also additional custom duty was paid vide TR-6 challan No. 96011959 on February 26, 1996. From the invoices and the documents pertaining to customs it was noted that the value of the machine in Indian rupees was Rs. 18,43,906.00 (Rupees Eighteen Lacs Forth Three Thousand Nine Hundred and Six only) on which basic custom duty @ 25% came to Rs. 4,60,976.62 and additional custom duty @ 10% of the value + basic custom duty came to Rs. 2,30,488.31 (Rupees Two Lacs Thirty Thousand Four Hundred Eighty Eight and Paisa Thirty One only) and thus the total value of the machinery would be:

7. The surveyor further noted that as per balance sheet of Weston ending March

 

31, 1996, the details of the fixed assets the value thereof was Rs. 23,39,696.70 (Rupees Twenty Three Lacs Thirty Nine Thousand Six Hundred Ninety Six and Paisa Seventy only). The surveyor noted that from the books of accounts and the bank record of Weston and in particular the cheque book issued by Canara Bank, cheque No. 731754 was issued in the name of M/s. Prajapat Chemical on May 26, 1996, cheque No. 731755 was issued in the name of M/s. Finolex Industries Ltd. on May 01, 1996, cheque No. 731756 was issued in the name of M/s. Finolex Industries Ltd. on May 04, 1996. Cheque No. 731757 was drawn on self on June 30, 1996, cheque No. 731760 was drawn in the name of ESI on May 18, 1996 and cheque No. 731761 was drawn to the provident fund account on May 18, 1996. Noting that the claim of Weston was of having paid the additional premium on May 01, 1996 vide cheque No. 731758, it was opined that it was highly suspicious that cheques No. 731756 and 731757, being prior in sequence number in the cheque book were issued on May 04, 1996 and June 30, 1996 respectively and the cheque in question, having a later sequence number, was issued on a date prior i.e. on May 01, 1996. It was highlighted that the fire took place on the intervening night on May 01, 1996 and May 02, 1996. In other words the report Ex. D-1 is to the effect that Weston played a fraud, the cheque No. 731758 was anti-dated and was not delivered to the Senior Divisional Manager of Division X as claimed at 05:00 PM on May 01, 1996.

8. Another surveyor which was called upon to assess the loss submitted the report Ex. D-2 as per which the loss assessed was as under:-

9. National accordingly paid to Weston, as per Ex. D-2, only Rs. 16,37,999/- (Rupees Sixteen Lacs Thirty Seven Thousand Nine Hundred and Ninety Nine only). It did not give effect to the enhanced sum insured value as per Ex. P-3 in sum of Rs. 35,00,000/- (Rupees Thirty Five Lacs only).

10. Weston filed the suit claiming loss of machinery in sum of Rs. 43,07,615.00 (Rupees Forty Three Lacs Seven Thousand Six Hundred and Fifteen only), loss towards stock in sum of Rs. 6,56,490/- (Rupees Six Lacs Fifty Six Thousand Four Hundred and Ninety only) i.e. total loss @ Rs. 49,64,105/- (Rupees Forty Nine Lacs Sixty Four Thousand One Hundred and Five only) having received Rs. 16,10,807/- (Rupees Sixteen Lacs Ten Thousand Eight Hundred and Seven only), it claimed Rs. 22,29,193/- (a sum which we do not understand because 49,64,105-16,10,807 = 33,53,298). It claimed loss of interest till suit was filed @ 18% per annum from May 02, 1996 till June 30, 2002 in sum of Rs. 34,31,502/- (Rupees Thirty Four Lacs Thirty One Thousand Five Hundred and Two only). Total suit amount thus comes to Rs. 56,09,539/- (Rupees Fifty Six Lacs Nine Thousand Five Hundred and Thirty Nine only).

11. In preliminary objection No. 1 and 2 of the written statement filed by National and in reply to paragraph 4 of the plaint, in which paragraph Weston had pleaded having installed additional machinery at its factory in April 1996 and having paid additional premium of Rs. 929/- (Rupees Nine Hundred and Twenty Nine only) vide cheque No. 731758 dated May 01, 1996 with further plea that

 

Sh. M.M. Dutt the Senior Divisional Manager had received the cheque on May 01, 1996, National pleaded as under:-

Preliminary objections

1. That the present suit is misconceived and is not maintainable inasmuch as the claim has been settled on 20.8.99 for an amount of Rs. 16,10,807/- in full and final settlement of the claim preferred by the plaintiff in respect of the fire loss dated 1/2.5.96. The plaintiff having accepted the amount without any protest is now stopped under law from raising any further claim. It is submitted that as per the settled policy, the Insurance Company can make the payment only after the amount is accepted by the insured in full and final payment. In this case also the plaintiff agreed to accept the amount in full and final settlement of the claim and accordingly the payment was released and accepted by the plaintiff on 20.8.99. Thus the suit is not maintainable and is liable to be dismissed with costs.

2. That the claim of the plaintiff even otherwise is not maintainable for the enhanced value of the machinery on the ground that they have paid the premium for enhanced sum insured/allegedly on 1.5.1996. It is submitted that the contract of insurance and for that matter any contract is complete only after the proposal is accepted. Even assuming for the sake of arguments, though not admitted, the plaintiff paid the premium for the enhanced sum insured on 1.5.1996, the proposal was accepted by the defendant Insurance Company only on 2.5.2002 and accordingly the endorsement was issued for the enhanced sum insured with effect from 2.5.1996 to 5.5.1996. In view of the fact that the sum insured was increased vide endorsement only with effect from 2.5.1996, the question of considering the claim on enhanced sum insured as it stood prior to the endorsement, the loss being prior to the issuance of the endorsement, and strictly as per assessment made by the surveyors appointed by the Company as per Section 64UM of the Insurance Act, 1938. The plaintiff, therefore, is not entitled to any further amount except the one received by them and the suit is therefore liable to be dismissed with cost.

Reply on Merits:-

1-3.......

4. That the contents of para 4 of the plaint as stated are wrong and denied. It is denied that the machinery which was imported and received at the factory of the plaintiff on 28.2.96, was installed in April, 1996. As per the information of the defendant the machinery was immediately installed in early March. Be as that may, even if the contention of the plaintiff is taken to be correct for the sake of arguments, still the question remained unanswered as to why it was not insured earlier and what was the necessity to insure it for just four days as the policy was expiring on 5.5.96. It is denied that the plaintiff paid the premium and was accepted by the defendants to enhance the sum insured by Rs. 20,00,000/- on 1.5.1996. Mere delivery of the letter enclosing the cheque for enhancement of the sum insured would not mean that the sum insured is enhanced by the

 

defendant. Until and unless the proposal is accepted and endorsement to that effect is issued, it cannot be said that the Company had accepted the proposal for the enhanced sum insured as the defendant Company cannot be at risk prior to accepting the risk and issuing the endorsement. In this case the Divisional Office 10 have sent the cheque to Divisional Office 5 and the said proposal was accepted by the Divisional Office 5 on 2.5.1996 and endorsement to that effect was also issued for the period 2.5.1996 to 5.5.1996. Further more the letter nowhere states that the enhanced sum insured is sought from 1.5.1996. It may be submitted that had the intention of the plaintiff was to take the cover of the enhanced amount from 1.5.96, he would have insisted for the necessary endorsement on the same very day and the defendant Company would have issued the endorsement on the same very day. The plaintiff had even not taken proper receipt of the premium amount except the letter was only delivered. It may further be submitted that the letter of 1.5.1996 was only received and that too at 5 P.M. on 1.5.96 and therefore could only be sent to Divisional Office 5 on the next day. The receiving of the letter would not amount to acceptance of the proposal.

(Emphasis Supplied)

12. Two technical defences were pleaded by National. The first was that the plaint was neither signed nor verified by a duly authorized person nor was Sh. Pawan Kumar Aggarwal, the Managing Director of Weston authorized to sue on behalf of Weston. The second was whether Weston had accepted Rs. 16,10,807/- (Rupees Sixteen Lacs Ten Thousand Eight Hundred and Seven only) in full and final settlement of its claims.

13. Vide order dated March 17, 2004 the following six issues were settled:-

1. Whether the plaintiff is a duly incorporated Company and the suit has been signed, verified and filed by a duly authorized person? OPP

2. Whether the enhancement of the insured sum was after the incident of fire and as such the defendants are not liable to pay amount under the enhanced sum in terms of preliminary objection No. 2 of the written statement? OPD

3. Whether the plaintiff had accepted a sum of Rs. 16,10,807/- from the defendants in full and final settlement of its claim and as such is not entitled to claim any further amount? OPD

4. Whether the plaintiff is entitled to the amount claimed in the suit? OPP

5. Whether the plaintiff is entitled to interest? If so, for which period, on what amount and at what rate? OPP

6. Relief.

14. Weston led evidence by examining one Virender Aggarwal, the brother of Mr. Pawan Kumar Aggarwal who deposed facts as per the plaint, and thus we need not reproduce the same for the reason the seven documents he referred to in his

 

testimony were admitted documents evidenced by the order dated February 25, 2004 when admission/denial was conducted and National admitted Ex. P-1 to Ex. P-7. The said seven documents are :

15. National examined two witnesses in defence, its Divisional Manager Sh. Anupam Suri of Division V as DW-1 and one Arun Gupta, an Investigator of the firm of surveyors who had submitted the investigation report as DW-2. The former deposed as per the defence and proved Ex. D-1 and Ex. D-2, being the investigation report of the surveyor and the report of the surveyor assessing the loss, to which we have already made a reference hereinabove. DW-2 deposed to the fact that the additional machinery had been installed by March 07, 1996 and Weston gave no plausible reason as to why it had not sought enhancement of the sum insured in said month as also that Weston failed to explain as to why it had submitted a proposal for the sum insured to be enhanced only four day prior to the date of the validity of the existing insurance policy.

16. Vide impugned decision dated May 14, 2013, issue No. 1 has been decided against Weston for the obvious reason its witness Mr. Virender Aggarwal did not prove any Board resolution authorizing Sh. Pawan Kumar Aggarwal to institute the suit on behalf of Weston, sign and verify the pleadings.

17. Issue No. 2 has been decided in favour of National and against Weston and for which the learned Single Judge has relied upon the facts mentioned in Ex. D-1, to which we have referred to in paragraph 7 above. The learned Single Judge has held that the dates on which cheques bearing No. 731754, 731755 and 731756 were issued as also the dates on which cheques No. 731760 and 731761 were issued made it highly suspicious that cheque No. 731758, being the cheque under which Weston claimed to have paid the enhanced premium, was drawn up as claimed on May 01, 1996. Thus, the view taken is that the cheque was anti-dated. The learned Single Judge has also found it be a suspicious circumstance that the additional machinery which was installed at site on March 07, 1996 was got to be ensured in the month of May, 1996 when only four days were left for the existing policy of insurance lapsing. The learned Single Judge has held that the tender of a cheque towards premium does not result in an insurance contract till when the proposal is accepted. The learned Single Judge has held that the proposal was accepted on May 02, 1996 and thus has concluded that the contract enhancing the cover came into being on May 05, 1996.

18. On the third issue the learned Single Judge has noted that there was no evidence that Weston accepted Rs. 16,10,807/- (Rupees Sixteen Lacs Ten Thousand Eight Hundred and Seven only) towards part payment under duress. The learned Single Judge has held that there was no evidence that Weston accepted the payment under protest and showing prejudice. Therefrom, the learned Single Judge has concluded that the amount was accepted in full and final settlement of the claim.

 

19. In that view of the matter, issues No. 4, 5 and 6 were decided against Weston.

20. Concerning the decision of the learned Single Judge relating to issue No. 1, it is to be regretted that learned counsel for the Weston has conducted the trial most negligently. He has not made any attempt to prove the Board resolution dated July 31, 2002 filed along with the plaint recording that at a Board meeting held on July 31, 2002 of Weston, its Managing Director Sh. Pawan Kumar Aggarwal was authorized to file the suit against National and was also authorized to sign and verify the pleadings. But, fortunately for Weston the decision of the Supreme Court reported as United Bank of India Vs. Naresh Kumar and others, . comes to its rescue. In para 9 the Supreme Court observed that procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. A power of attorney in favour of the manager of the branch of the bank to sue on behalf of the bank not being proved resulting in a finding that the authority to sue, sign and verify the pleadings on behalf of the bank was not proved and hence the suit for recovery filed by the bank being dismissed, was set aside by the Supreme Court observing in paragraph 10 as under:-

10. It cannot be disputed that a company like the appellant can sue and be sued in its in its own name. Under Order 6 Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the CPC, therefore, provides that in a suit by or against a corporation the secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto an de hors Order 29 Rule 1 of the CPC, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the CPC. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

21. In this connection it assumes importance to note that Ex. P-4 and P-5, being the letter dated May 24, 1996 and May 02, 1996 which have been admitted by

 

National as addressed to it have been signed on behalf of Weston by Pawan Aggarwal in his capacity as a Director and authorized signatory of Weston. Further, National has admitted legal notice dated May 22, 2000 sent through an advocate, which has been exhibited as Ex. P-6. Its reply dated June 10, 2000 by National, exhibited as Ex. P-7 has also been admitted. In the legal notice dated May 22, 2000, Ex. P-6, sent by Weston to National, inter-alia, it was stated as under:-

Sir/Sirs,

Under instructions from and on behalf of my client M/s. Weston Tubes (Pvt.) Ltd. through its Managing Director, Mr. Pawan Kumar Aggarwal having its registered office at 3420, Shanti Market, Hauz Qazi, Delhi-110006, I serve you with the following notice.

1. That my client M/s. Weston Tubes (Pvt.) Ltd. is a company registered under the provisions of the Companies Act, 1956 and Mr. Pawan Kumar Aggarwal is the Managing Director of the said company.

22. In the reply dated June 10, 2000, Ex. P-7, National responded as under:-

Your above said notice has been handed over to me by clients M/s. National Insurance Co. Ltd. with the instructions to reply to your notice in the following terms :

That the notice under reply is misconceived, untenable and your client is not entitled to any further amount than the amount already received by him in respect of the present claim after discharging the discharge voucher in full and final settlement. As per the principles of estoppel your client is now estopped from raising any further demand for any further amount and my clients are not liable to pay any further amount. It may further be stated here that the sum insured under the policy increased with effect from 2.5.96 and therefore the claim which is prior in time in respect of enhanced sum insured cannot be considered under the said endorsement.

The parawise reply to your notice is as under :

1. That para 1 of your notice needs no reply.

23. It is apparent that Weston''s assertion that Sh. Pawan Kumar Aggarwal was its Managing Director has not been refuted by National.

24. In view of the law declared by the Supreme Court in Naresh Kumar''s case (supra) and in view of Ex. P-4, P-5, P-6 and P-7, contents whereof we have discussed hereinbefore, the decision of the learned Single Judge concerning issue No. 1 is set aside and issue No. 1 is decided in favour of Weston and against National. We hold that the evidence and record establishes that the suit was instituted and the plaint was signed and verified by a duly authorized person.

25. Concerning issue No. 2 and the finding returned thereon, we note at the

 

outset that as framed the issue does not correctly bring out the real point of variance between the parties. The issue whether the enhancement of the insured sum was after the incident of fire and as such the defendants are not liable to pay any further amount in terms of preliminary objection No. 2 of the written statement is ill-settled.

26. The reason is that unless a proposal is accepted by the person to whom the proposal is made, the proposal is meaningless. A contract comes into existence when an offer is accepted.

27. The case of Weston was that cheque No. 731758 enclosing additional premium in sum of Rs. 929/- (Rupees Nine Hundred Twenty Nine only) was delivered at the Division-X of National at Hanuman Road on May 01, 1996 and was received by the Division-V the next day because the file concerning the policy of insurance Ex. P-1 and P-2 had been transmitted from Division-X to Division-V. Ex. P-3 brings out that the sum insured was enhanced with effect from May 02, 1996. The acceptance of the proposal was on May 02, 1996.

28. The real issue was, what was the effect of Ex. P-3 in view of the fact that the fire took place past mid-night of the intervening night of May 01, 1996 and May 02, 1996.

29. In the absence of any specific time mentioned in the contract of insurance, the policy would be operative from the mid-night of the day it is supposed to commence from.

30. In the decision reported as New India Assurance Co. Ltd. Vs. Ram Dayal and Others, , it was held as under:

We are inclined to agree with the view indicated in these decisions that when a policy is taken on a particular date its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award.

31. The said view was affirmed in the decision reported as M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, wherein it was held as under:

This Court in New India Assurance Co. Ltd. Vs. Ram Dayal and Others, had held that in the absence of any specific time mentioned in that behalf, the contract would be operative from the mid-night of the day by operation of provisions of the General Clauses Act.

32. The Court clarified that if the insurance contract contemplated a specific time for the commencement of the insurance policy, the policy would become operational at that specific time of the day and not at midnight. It was held as under:

But in view of the special contract mentioned in the insurance policy, namely, it would be operative from 4.00 p.m. on October 25, 1983 and the accident had occurred earlier thereto, the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant-Company.

33. The said position of law was further elucidated upon by the Supreme Court in the decision reported as Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, . wherein it was held as under:-

The facts of that decision show that the time of issuance of the Policy was not mentioned therein and the question, therefore, was of presumption when the date alone was mentioned and not the time at which the insurance was to become effective on that date. In such a situation, it was held in Ram Dayal''s case (supra) that in the absence of any specific time being mentioned, the logical inference to draw was that insurance became effective from the previous midnight and, therefore, for an accident which took place on the date of the policy, the insurer became liable. There is no such difficulty in the present case in view of the clear finding based on undisputed facts that the accident occurred at 2.20 PM and the cover note was obtained only thereafter at 2.55 PM in which it was expressly mentioned that the effective date and time of commencement of the insurance for the purpose of the Act was 10.12.1991 at 2.55 PM. The reliance on Ram Dayal''s case (supra) by the Tribunal and the High Court was, therefore, misplaced, we find that in a similar situation, the same view which we have taken, was also the view in M/s. National Insurance Co. Ltd. Vs. Smt. Jijubhai Nathuji Dabhi and others, , wherein Ram Dayal''s case (supra) was distinguished on the same basis.

34. The same position of law was upheld by the Supreme Court in decisions reported as New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors, . and J. Kalaivani and Others Vs. K. Sivashankar and Another, .

35. An interesting insight in the delineation of the term ''day'' was provided by the Andhra High Court in the judgment reported as United India Insurance Co. Ltd. Vs. Bobbili Simhachalam and Others, . wherein it was held as under:

Commencement and Termination of Time

33. In common law, for the purpose of determining the rights and duties, the concept of unit(s) time of that is an "Hour", "Day", "Week", "Month" and "Year" and the like. These have been interpreted in ways more than one depending on (i) contextual situation (ii) consensus ad idem between/among contracting parties; and (iii) general perception of the concept of time. General Clauses Act, 1897 defines various terms used for indicating time in the past, present and future. Some of the enactments made by Parliament as well as State Legislatures also define the various terms in relation to ''time''. Almanac is part of common law in England and it was recognised in England by a Statute in 1662. Halsbury''s Laws of England devotes entire chapter (Paragraphs 201 to 300) Halsbury''s Laws of England Volume 45(2) Fourth Edition (Reissue) for this subject. Paragraphs 212, 213 and 214 give the description of ''Week'', ''Day'' and ''Hour''

 

in the following manner. They read as under:

...

213. Day and night. The term ''day'' is, like the terms ''year'' and ''month'', used in more senses than one. A day is strictly the period of time which begins with one mid-night and ends with the next. It may also denote any period of twenty-four hours, and again it may denote the period of time between sunrise and sunset. A ''business day'' has been defined as any day except Saturday, Sunday or a bank holiday.

The term ''night'' is also defined differently for different purposes.

...

34. A ''day'' begins with one mid-night and ends with the next mid-night and denotes a period of 24 hours, though generally persons not connected with legal interpretation assume that a day denotes the period of time between sunrise and sunset.

36. The Court further explained:

36. There is no gainsaying to mention that the Parliament enactments, rules and regulations made by Central Government are to be interpreted, in the light of the General Clauses Act. The Pension Rules and Fundamental Rules are the "law" governing the conditions of service of Central Government employees and as mentioned earlier the General Clauses Act equally applies to these Rules. The term ''Day'' is not defined in the General Clauses Act but Section 3(35) and 3(66) defined ''Month'' and ''Year'' respectively. They read as under.

3(35): "month", shall mean a month reckoned according to the British Calendar.

3(66): "year" shall mean a year reckoned according to the British calendar.

37. Sections 9 and 10 of the General Clauses Act deal with ''commencement of time'' and ''computation of time'' respectively, which read as under:

9. Commencement and termination of time :-(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "or".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Computation of time :-(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the

 

prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open;

Provided that nothing in this section shall apply to any act of proceeding to which the Indian Limitation Act, 1877, applies. (2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.

38. The common law principles as well as relevant provisions in General Clauses Act dealing with commencement and completion of the time as well as calculation of time-be it day, month or year-do not support the contention of the learned Counsel for respondents that the next day after the date of retirement should also be considered for the purpose of granting annual increment deeming the next day as the day of the retirement. We have already held that a Government servant retiring on the last working day of the month shall be deemed to have ceased be Government employee with effect from midnight of that day and immediately after commencement of the next day, i.e., after mid-night 12''O clock he becomes pensioner. Though he is paid pension, he shall not be deemed to be on duty as a Government servant and therefore annual increment cannot be sanctioned to such retired Government servant.

37. In view of Ex. P-3, which makes a reference to Weston''s letter dated May 01, 1996 received at the Divisional Office on May 02, 1996, coupled with National''s pleadings in the written statement that cheque No. 731758 dated May 01, 1996 was received in its Divisional Office-V on May 02, 1996, there would hardly be any scope for a discussion, as done by the Surveyor and as accepted by the learned Single Judge that the cheque was ante dated in view of the dates of the preceding and the succeeding cheques issued by Weston.

38. DW-1, the Divisional Manager of National deposed that during the office hours after 10.00 A.M. on May 02, 1996 the Divisional Office No. V received the cheque issued by Weston for enhancement of the sum assured and accordingly accepting the proposal the sum assured was enhanced by Rs. 20,00,000/- (Rupees Twenty Lacs only) for the remainder period of Ex. P-1. In cross-examination he admitted that letter mark-B along with the cheque was received by the Divisional Office No. V through official channel i.e. policy issuing office.

39. It is apparent that National had received the cheque at its Divisional Office No. X on May 01, 1996 wherefrom it was transmitted the next day to Divisional Office No. V and the proposal was accepted. Even if it was received on May 02, 1996 and accepted on said day, the enhanced cover came into effect from May 02, 1996 i.e. at the mid-night.

40. The investigator surveyor and the learned Single Judge had their eye brows raised from the fact that the cheque to enhance the sum assured for the balance period of insurance as per Ex. P-2 concerning only four days was stated to have been delivered on May 01, 1996 and on the intervening night of the said day and

 

the next a fire took place.

41. Well, the best luxury liner of its era: TITANIC got sunk at its maiden voyage. Accidents take place unexpectedly and anything can happen any time. Miseries may strike people at the most unexpected places and at the most unexpected time.

42. The raised eyebrows ought to have dropped in view of the fact that the letter mark ''B'' and cheque No. 731758 was admittedly received by National at its Division Office No. V on May 02, 1996, a fact admitted in the pleadings by National, a fact admitted by the witness of National, a fact evidenced in Ex. P-3. It was useless to thereafter discuss what could possibly be inferred from the fact that cheque No. 731754 was issued in the name of M/s. Prajapat Chemical on May 26, 1996, cheque No. 731755 was issued in the name of M/s. Finolex Industries Ltd. on May 01, 1996, cheque No. 731756 was issued in the name of M/s. Finolex Industries Ltd. on May 04, 1996. Cheque No. 731757 was drawn on self on June 30, 1996, cheque No. 731760 was drawn in the name of ESI on May 18, 1996 and cheque No. 731761 was drawn to the provident fund account on May 18, 1996.

43. In view of the fact that the fire took place post 12 mid-night and Ex. P-3 enhances the sum assured from May 02, 1996 without time being specified thereon, the inevitable conclusion has to be that the sum assured stood enhanced from the mid-night of the intervening night of May 01, 1996 and May 02, 1996 on account of the fact that May 02, 1996 commenced at the stroke of the first second passed mid-night of the intervening night of May 01, 1996 and May 02, 1996.

44. The decision of the learned Single Judge on issue No. 2 is accordingly over ruled and said issue is decided in favour of Weston and against National. It is held that in view of Ex. P-3 National was liable to pay to Weston the enhanced sum assured.

45. As regards issue No. 3, when Weston received Rs. 16,10,807/- (Rupees Sixteen Lacs Ten Thousand Eight Hundred and Seven only) on August 20, 1999 and for doing so had to sign on the dotted lines i.e. a receipt drawn up by National which records that the payment was being received in full and final settlement of the dues; and had Weston not signed on the dotted lines even said amount would not have been received by it. Any attempt by Weston to record that the payment was being received under protest would have been met by a response of no payment being made. Whether the acceptance of the cheque was without demur or not had to be decided in view of the contemporaneous conduct of the parties and for which we find that legal notice Ex. P-6 sent by Weston has been replied to by National vide Ex. P-7. Weston''s averment in paragraph 11 of Ex. P-6 that on receipt of Rs. 16,10,807/- (Rupees Sixteen Lacs Ten Thousand Eight Hundred and Seven only) it sent various representations to National and additionally to the Director (Public Grievances), General Insurance Corporation of

 

India have been replied to in Ex. P-7 by referring to the fact that the contents of para 11 of Ex. P-6 are a matter of record.

46. Unfortunately for Weston its counsel has been negligent in filing, but not proving, letters mark-C and D dated September 10, 1999 and October 25, 1999 which bring out that Weston made protest of the meagre amount paid to it, but Ex. P-6 and P-7 would be sufficient evidence to bring home that Weston was protesting against the meagre amount released.

47. The decision by the learned Single Judge on issue No. 3 is set aside and we hold that the evidence on record establishes that the Weston did not accept Rs. 16,10,807/- (Rupees Sixteen Lacs Ten Thousand Eight Hundred and Seven only) in full and final settlement of its claim.

48. That takes us to the last limb; what amount to be further paid to Weston by National.

49. The answer would lie in the report Ex. D-2.

50. As per the same the loss to plant and machinery which has been assessed is Rs. 29,05,050/- (Rupees Twenty Nine Lacs Five Thousand and Fifty only). As per the said document, not giving the benefit of the enhanced sum prayed for i.e. Rs. 20,00,000/- (Rupees Twenty Lacs only) the loss has been restricted to Rs. 11,65,491/- (Rupees Eleven Lacs Sixty Five Thousand Four Hundred and Ninety One only) which amount has been paid. Thus, the additional amount payable by National to Weston would be Rs. 29,05,050- Rs. 11,65,499 = Rs. 17,39,551.

51. Suit filed by Weston had thus to be decreed in said amount.

52. We dispose of the appeal setting aside the impugned judgment and decree dated May 14, 2013. Suit filed by Weston is decreed in sum of Rs. 17,39,551/- (Rupees Seventeen Lacs Thirty Nine Thousand Five Hundred and Fifty One only) together with simple interest @ 6% per annum from the date of the suit till realization as also proportionate cost in the suit as well as the appeal.

 