

(1933) 12 AHC CK 0020
In the Allahabad High Court

Muhammad Sultan

APPELLANT

Vs

Clive Insurance Co., Ltd. and Another

RESPONDENT

Date of Decision : 11-12-1933

Acts Referred:

Contract Act, 1872 — Section 7

Citation : AIR 1934 All 298

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukerji, J.—This is a plaintiff's appeal and arises out of a contract of insurance alleged to have been entered into between the plaintiff and defendant No. 1 with the defendant No. 2 as the general manager of defendant No. 1. The facts briefly are these. The plaintiff was approached by one Mr. Dungal, a canvasser for the Insurance Company, to insure against burglary his (the plaintiff's) goods and furniture with the defendant No. 1. On 7th November 1928 a proposal form was filled in and signed by the plaintiff. It is not printed, because the respondents are not represented in this Court and they did not print any document or oral evidence produced by them in the Court below. When the plaintiff signed the proposal form he also paid a sum of Rs. 95, being the amount of premium. The insurance was to be in force for one year, and the sum of Rs. 95, was the entire premium for that year. On 22nd November 1928 the plaintiff received a document, which has been described as a "cover note" and is printed at p. 22 of our record. It runs as follows:

Muhammad Sultan (plaintiff)...having made a proposal for insurance of burglary etc., and having paid the sum of Rs. 95 being the amount of premium thereon, the risk is hereby held insured subject to the terms and conditions of the company's usual form of policy for a period of 30 days from date within which period (provided the premium is paid) the policy will be issued.

2. Below this cover-note appear brief particulars of the property insured. This is signed by somebody on behalf of Messrs. Gillanders Arbuthnot & Co. As a matter of fact no policy was issued to the plaintiff. A theft took place at his house in the night between 15th and 16th January 1929. The plaintiff made a report of this theft to the defendants; but they repudiated all liability to recompense the plaintiff for his loss on the ground that no policy had been issued by them and the proposal had never been accepted by them. Thereupon the plaintiff instituted the suit out of which this appeal has arisen. He claimed a sum of Rs. 8,164 principal amount, being the value of the goods lost, and future interest. Both the defendants contested the suit. They contended that there was never any acceptance of the proposal on behalf of the Company. They further contended that the plaintiff was guilty of concealment of certain facts from the defendants and was therefore not entitled to recover anything. They denied that there was any theft at the plaintiff's house and put him to the proof of his loss. The learned Judge of the Court below framed eight issues and found that there had been a theft in the plaintiff's house and that the plaintiff was not guilty of any material concealment. He estimated the plaintiff's loss at a figure nearly equal to the figure claimed by the plaintiff, but held that, as the insurance covered other goods the plaintiff was entitled to recover Rs. 5,700, if the other issues were decided in his favour. On the question whether the defendants accepted the plaintiff's proposal, the learned Judge came to the conclusion that they did not, and accordingly dismissed the suit.

3. We are somewhat handicapped in the decision of this case, which involves a decision of questions of fact and also of a question of law, by the reason of the respondents being not represented in this Court. We have however done our best to go through the record. At the outset we may say that we have no reason to disagree with the findings of fact arrived at by the Court below on a consideration of the whole evidence before it. We hold that there was a theft at the plaintiff's house; that there was no material concealment on the plaintiff's part of any facts which the defendants wanted to know before accepting the proposal; and that the plaintiff's loss and the defendants' liabilities have been rightly estimated by the Court below. There remains then the most important question to be decided in this appeal, namely, whether the proposal of the plaintiff was accepted by the defendant and whether the defendants are liable. The decision of the question last mentioned depends on the correct interpretation of the letter Ex. 2, at p. 22 which we have already reproduced. The language of the document implies, to our minds, this and nothing else. The company had received the premium and the proposal. They were prepared to issue a policy of insurance; but as that was likely to take sometime, to cover the period which the issue of a policy might take, estimated at 30 days, the cover-note, bearing the date of 22nd November 1928, was issued. It appears that Messrs, Gillanders Arbuthnot & Co., have an office at Cawnpore, and this document was issued from their Cawnpore office. If the meaning which we put on this document be correct, it implies that the defendants' definitely undertook to issue a policy within the 30

days. The cover-note was not to the effect that a policy would be issued only if on a further consideration the proposal for insurance was accepted, and not otherwise. The fact that they promised unequivocally to issue a policy within 30 days of 22nd November 1928 implies that they had made up their minds that they had accepted the proposal and all that remained to do was to issue a formal policy.

4. On the record there is what has been called a written argument placed before the Court below on behalf of the defendants. In the absence of the counsel for the respondents we went through it and found that one of the arguments advanced there was that Messrs. Gillanders Arbuthnot & Co., were not authorised to issue a policy on behalf of the defendant No. 1. But no such plea was taken in the written statement. On the other hand, in reply to the paragraph 2 of the plaintiff, where the plaintiff said that defendant No. 2 was the general manager of defendant No. 1 and had full authority of defendant No. 1 to do insurance business on behalf of defendant No. 1 the defendants admitted this statement in paragraph 1 (page 4) of the written statement. In the circumstances the argument that Messrs. Gillanders Arbuthnot & Co., were not entitled to say definitely on behalf of defendant No. 1 that a policy was going to issue would not have been accepted by us if it had been advanced before us. If Messrs. Gillanders Arbuthnot & Co., were authorised to bind the defendant No. 1 for 30 days, we do not see how Messrs. Gillanders Arbuthnot & Co., were not authorised to say that a policy was going to issue. In our opinion there was a clear acceptance of the proposal on behalf of the defendants. We have considered, although no arguments were addressed to us on the point, Section 7 of the Contract Act. We find that the acceptance is absolute and unequivocal, and has been expressed in the usual and reasonable manner inasmuch as it is contained in a cover-note. It is true that the policy did not arrive before the burglary took place; but that fact cannot be relied on by the defendants where the acceptance of the proposal is complete and has been communicated to the plaintiff. The result is that we allow the appeal with proportionate costs in both the Courts and decree the claim for recovery of Rs. 5,700 which will carry interest from the date of the institution of the suit till recovery at 6 per cent, per annum. The defendants will have their costs in the Court below in proportion to their success.