
(2015) 01 RAJ CK 0283
In the Rajasthan High Court
Case No : Civil First Appeal No. 165 of 1995

Orient Mailspeed Transport Service	Vs	APPELLANT
New India Assurance Co. and Others		RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2015) 3 WLN 156

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Ajeet Kumar Sharma, for the Appellant; Rishipal Agarwal, Advocates for the Respondent

Final Decision : Allowed

Judgement

Nisha Gupta, J—This first appeal under Sec. 96 CPC has been filed against the judgment and decree dt. 10.4.1995 passed by Additional District Judge No. 1, Ajmer in Civil Suit No. 201/1986 (130/86) whereby the suit of the plaintiff - appellant has been dismissed. The short facts of the case leading to filing of this appeal are that plaintiff appellant filed a suit for recovery of amount of Rs. 2,19,000/- under a policy of insurance. The plaintiff insured Truck No. RRZ-4777 with defendant with policy No. 4527301479 stipulating comprehensive coverage terms agreeing thereby to indemnify the plaintiff against the loss or damage caused to the vehicle by fire or malicious act of the people resulting from the accident. On 13.3.85 when the aforesaid truck was going from Kankroli, Rajasthan to Gauhati, it met an accident near Sahajanpur (Police Station Bhojnipur) Distt. Kanpur with a cyclist boy. On account of said accident, the people of nearby vicinity and students suddenly gathered and threatened to kill the driver and one person has set the truck maliciously on fire. On account of loss of truck, the plaintiff -appellant preferred a claim with the respondent which was rejected on the ground that it was because of riot and loss is not covered under the policy condition, hence the appellant has filed the suit before the Court

below. Same pleadings have been agitated before the Court below and Court below has dismissed the suit, hence this appeal.

2. The contention of the appellant is that suit of the plaintiff deserves to be decreed as the loss of the truck was caused by fire and malicious act of the people resulting from the accident and admittedly both the conditions are covered under the insurance policy. The case of the appellant could not be brought into the exception because of the isolated act of an individual and cannot be put under the definition of riot.

3. Heard the learned counsel for the parties and perused impugned judgment and decree as well as the original record of the case.

4. The contention of the appellant is that loss has been caused by fire and malicious act of an individual person which is covered under the policy and his claim has wrongly been refuted whereas the contention of the respondents is that there is no infirmity in the impugned judgment of the Court below as admittedly, the truck has been put on fire. It was the violent act of uncontrolled crowd which comes under the definition of riot.

5. There is no dispute about the policy condition that the truck has been insured against the loss or damage which can be resulted by external fire or malicious act. At the same time, it has also been made exception that in case of riot, the insurance company would not be liable. The pertinent question is whether in the circumstances in which the impugned truck has been put to fire could be termed as riot or malicious act. The contention of the appellant is that exception clause should be interpreted strictly and insurance policy was under operation, premium has been paid, hence the beneficial interpretation should be taken for the consumer.

6. Here in the present case, the facts are not in dispute that due to accident the people gathered at the place and someone in the gathering has put the truck on fire which was only an isolated act. No other vehicle property or person has been damaged at that time and it can safely be concluded that truck has been put to fire just to take revenge as the accident has occurred from the said truck. Apart from it, word "riot" has been used along with the words civil war, strike, mutiny, rebellion etc. which all pre-supposes act of violence at large scale, hence an individual act to set fire to the truck after the accident just to take revenge could not be placed under the exception and it squarely covers under the definition of malicious act as it has been committed to have revenge and it was an isolated incident, hence the Court below has taken an erroneous view. The intention of the policy has not been considered in right perspective. All has been done in a spur of moment. It was an intentional harm to the property and otherwise interpretation would result in injustice to the appellant. The contentions of the insurance policy should be interpreted in favour of consumer and exceptions are to be strictly adhered to. In view of the above, the Court below has erred in dismissing the suit and furthermore issue Nos. 2 and 4 are to be decided in

favour of the appellant, hence they are accordingly decided in favour of appellant. Issue No. 1 has already been decided in favour of the appellant.

Hence the appeal is allowed. The judgment and decree under appeal dt. 10.4.1995 passed by Additional District Judge No. 1, Ajmer in Civil Suit No. 201/1986 (130/86) is quashed and set aside and issue No. 2 and 4 are decided in favour of the appellant. The matter is remanded back to the Court below to assess the quantum of compensation as per law. The parties are directed to appear before the Court below on 03.03.2015.

The record of the Court below be sent back forthwith.