
(1989) 03 GAU CK 0023
In the Gauhati High Court
Case No : First Appeal No. 53 of 1977

Oriental Fire and General Insurance Company Ltd., Divisional Officer, Gauhati APPELLANT

Vs

Dotco, Badarpur, Cachar RESPONDENT

Date of Decision : 31-03-1989

Acts Referred:

Citation : (1989) 2 GLJ 129 : (1989) 2 GLR 399

Hon'ble Judges : S.K.Homchaudhuri, J

Bench : Single Bench

Advocate : P.K.Musahary, B.K.Das, S.N.Bhuyan, D.P.Chaliha, Advocates
appearing for Parties

Judgement

1. Thousands insure their properties against damages/destruction and/or loss thereof due to accidental fire, riot, theft and/or by other unforeseen incidents and continue to pay premium to the insurer years after years with the full sense of security that in the event of such unforeseen, unfortunate happening, the insurer would come to rescue by making prompt payment of the insured money. The subscribers never desire such incident to happen in respect of his insured property yet in case of one amongst thousand, such incident may happen. It is normally expected that insurer who continues to receive premium would come forward and make the prompt payment of insured money 16" "the unfortunate few subscribers out of thousands without reservation. It will indeed be very frustrating and shocking, if the insured finds that his claim for payment of insured: money is to pass through "acid test and that insurers on various pleas or by resorting procedural/ legal juggle turns its back and ultimately subject the insured to "protracted litigation for realisation of the insured money. How many amongst such unfortunate insured, can afford to approach the Court of law for realisation of the insured money. Such contingency is never expected and should be discouraged. As a matter of course, in case of total destruction or loss of the insured property, the insurer must make prompt payment of the insured money unless the incident is fraudulent in the sense the same is selfengineered by the

insured for the purpose of making illegal gain. However, in that contingency the onus would on the insurer to establish that the insured property was destroyed/lost due to fraud and destruction or loss was selfengineered. In case the insurer disputes the claim of total destruction of the insured property and refuses to pay the entire insured money, the part of the insured money to the extent of the value of the quantum of undisputed destroyed property should be paid immediately and for nonpayment of the balance it is for the insurer to establish that total property was not destroyed.

2. The present case is an instance of such frustrating and shocking story of protracted litigation of about 19 years, for realisation of insured money after the plaintiffrespondent lost all the insured goods in an accidental fire in April, 1967. The present appeal is by defendant insurer impugning the money decree of the insured sum obtained by the insured after 7 long years of litigation.

3. Plaintiffrespondent is a registered partnership firm which came to subscribe a proposal of insurance at Silchar bearing the No. 6863 dated 31.10.65 against the risk of destruction by fire of the running stock in trade, furniture fixture etc. of the plaintiff's business in shoe, at Badarpur Bazar with the defendant No. 1, The Phoenix Assurance Co. Ltd., covering the risk of Rs. 30,000/on payment of premium of Rs. 208.50 P. per annum. The plaintiff renewed the policy from year to year by paying the premium in due time. Under the terms of the policy, the defendant insurer bound itself to pay the insured the value of the insured property in case of destruction thereof by accidental fire, to the extent of Rs. 30,000.00.

4. During the subsistence of the said policy on the night of 12th/ 13th April, 1967 the shop house of the plaintiff with the stock in trade, furniture, fixture, books of account and other documents pertaining to the business were all completely gutted by accidental fire. The fire having broken out at the dead of night nothing could be saved. As many as eight shops along with the plaintiff's shop in the said Bazar were gutted. An information was lodged with the Badarpur Police Station on the following morning and the police registered a case. The plaintiff also sent a telegram on 13.4.67 to the defendant No. 1 intimating the incident of fire accident and also the complete loss of insured goods of the shop, and asking the defendant insurance company, to take steps for payment of insured money at an, early date. Thereafter, defendant No. 1 sent its Assessor, viz., Mr. S. D. Ghosal of M/s. S. D. Ghosal & Co. Mr. S. D Ghosal with the Secretary of the defendant No. 1 on 19.4.67 inspected the place of occurrence to see any salvage, if any, and made necessary enquiries. It appears from Ext. "D", which is a letter dated 17.8.67 by the plaintiff addressed to the defendant No. 1 that the Assessor, S. D. Ghosal, after being satisfied that the entire stock in trade with furniture, fixture etc. of the plaintiff's business at Badarpur were gutted by fire and destroyed, after bargaining with the partner of the plaintiff offered a sum of Rs. 23,000/as damages to be paid to the plaintiff by the defendant No. 1. Being in immediate need of money, the plaintiff accepted the offer on being assured

that the payment of amount would be made within 15 days. However, the defendant No. 1 did not pay the money and instead sent the 2nd Surveyor, M/s. Mathuradas Oamodar & Co. on 27.7.67 for assessment of the actual loss of insured goods. It further appears from the contents of the Ext.D that the 2nd Assessor offered Rs. 22,000/ as damages with full and final settlement of the plaintiff's claim to which plaintiff did not agree. The plaintiff made demand of payment of full amount of the insured money by several letters/notices but defendant No. 1 did not pay and, consequently, the plaintiff filed this Money Suit No. 18/70 in the Court of Assistant District Judge (1) Cachar, Silchar for a decree of Rs. 30,000/ of the insured money plus interest for 3 years @ 6% on the insured money totalling Rs. 35,400/ and paid ad valorem Court Fee of Rs. 35,400/. The plaintiff also made claim for interest pendente lite and future interest till realisation of the money. Defendant contested the suit by filing written statement.

5. : On the pleading of the parties the following issues were framed by the learned Asstt. District Judge :

1. Has the plaintiff any cause of action ?
2. Is the suit maintainable in its present form ?
3. Is the suit bad for estoppel, acquiescence and waiver ? .
- 4.: Has this Court any jurisdiction to try this suit ?
5. Is the claim of the plaintiff just, proper and legal ?
6. Had the plaintiff delivered claims in terms of the policy, if not, is the plaintiff's suit maintainable ?
7. Whether all benefits under the policy should be forfeit in view of the condition Nos 11, 12 and 13 of the policy
8. Is the claim, of the plaintiff barred by law of limitation and by the conditions of the said policy?
9. To what relief, if any, the plaintiffs are entitled?

6. During the pendency, of the suit, by Act VII of 1972, namely, the General Insurance Business Nationalisation Act, 1972 the business of the Phoenix Assurance Co. Ltd., defendant No. 1 came to be merged with the defendant-appellant, viz., the Oriental Fire and General Insurance Co. Ltd.

7. In the hearing of the suit, both the parties led evidence and proved various documents. The learned Asstt. District Judge on consideration of the evidences and materials on record, decided all the issues in favour of the plaintiff and decreed the plaintiff's suit for the sum of Rs. 35,400/. The learned Assistant District Judge also decreed that plaintiff would get future interest @ 6% & per annum on the decretal amount till realisation.

8. Being aggrieved the defendantappellant filed this instant appeal in this Court. Before going to the merits of the appeal, I must observe that there could not be any valid reason for the defendantappellant for not paying Rs. 22,000/ the value of destroyed property as assessed by the 2nd Surveyor and to sort out the dispute regarding the claim of the balance amount. The learned counsel for the appellant submits that the assessment of Rs. 30,000/ as damages caused by fire, by the learned Assistant District Judge, is erroneous, inasmuch as, the value of the stock in trade in the plaintiff's shop at the time of accidental fire is lesser than the amount insured which would be evident from the documents filed by the plaintiff.

9. In the instant case, the exact value of the stock in trade of the plaintiff's shop on the closing day prior to accidental fire could not be ascertained, inasmuch as, the books of account, documents etc. were also gutted by fire along with stock in trade, furniture, fixture etc. It is to be understood that this policy of insurance covering of Rs. 30,000/ was accepted by the representatives of the defendantappellant on making proper assessment of the average stock in trade of the plaintiff's business. Since stock in trade cannot be same on each day, insurance policy was continuing for 3 years and it must be presumed that the estimated value of the average stock in trade of the plaintiff's shop at Badarpur along with furniture and books of account etc. were around of Rs. 30,000/ and being so satisfied the defendantappellant took the liability indemnifying the plaintiff to the extent of Rs. 30,000/ in case the stock in trade and furniture, fixture etc. are totally damaged or destroyed by accidental fire. In the instant case, plaintiff made no undue claim since nothing could be saved when fire broke out. The entire insured goods, namely, the stock in trade, furniture, fixture etc. of the plaintiff were gutted by fire. When books of account and other documents were gutted by fire, it was impossible on the part of the plaintiff to satisfy the exact value of the stock in trade in the shop prior to accidental fire. Besides, as indicated above, I am of the opinion that when the destruction of the plaintiff's insured properties by accidental fire was not disputed the onus is on the defendant insurer to establish that the value of the stock in trade destroyed by fire was lesser than what was insured. When the entire insured goods were totally destroyed by accidental fire the defendant is bound to pay the insured money unless it can prove that the stock in trade, furniture etc. prior to the date of accidental fire were removed by the insured or that some portion of the insured goods was saved when fire broke out. Although an attempt was made at a belated stage that plaintiff fraudulently removed the goods prior to incident of fire, and the incidence of fire was an act of fraud but that story was rightly disbelieved by the learned Assistant District Judge.

10. The stock in trade on the day just before the accidental fire might have been less or more than the insured amount. In the facts and circumstances of the case although it was impossible on the part of the plaintiff or anybody to quantify the extent of damages caused by fire, however, the plaintiff was asked to establish what was the exact value of the stock in trade etc. on the closing day of the

business prior to the accidental fire. In the absence of any fraud, when the entire stock in trade and other insured goods, including, the books of account and other documents of the business, keeping day to day account were gutted by fire and totally destroyed the value of the damaged goods should be presumed to be equal to the insured money and the plaintiff need not be required to establish the exact value of the destroyed insured goods.

11. On perusal of the impugned judgment and decree and the evidence and other materials on record, I do not find that the learned Assistant District Judge erred in law or on facts in determining the quantum of damages of the insured goods destroyed by accidental fire and that being so,, the appeal is without substance and is liable to be dismissed.

12. The plaintiffrespondent on the other hand filed crossobjection in the appeal claiming interest @ 14% per annum on the decretal amount with effect from the date of institution of the suit upto the date of payment. The plaintiff claimed interest pendente lite and future interest on the decretal amount in the suit without specifying the rate of interest. The learned Assistant District Judge in the impugned judgment and decree has not decreed any interest for the period from the date of suit to the delivery of judgment and decree, however, decreed the plaintiff's suit for interest @ 6% from the date of judgment and decree till the payment of the decretal amount.

13. Mr. B.K. Das, learned counsel for the plaintiff has submitted that during the long period from the date when this claim of the plaintiff arose to the date of payment of the decretal amount money value has gone down to a great extent due to continuous inflation and, as a result, although entire claim is decreed, with the passage of time the plaintiff will really get a nominal amount of compensation in terms of rupee value, what it was in 1967, and even interest @ 14% as claimed, if decreed, will not compensate the loss caused to plaintiff in terms of rupee value. In support of his contention the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Shree Hanoman Jute Mills vs. Kishore Kbelar (1987 (Supple) SCC 61). In the said decision the Apex Court awarded interest @ 12% on the decretal amount on and from Oct. 7, 1970 till the date of payment on the ground that due to inflation during the pendency of litigation the Rupee value of the decretal amount has gone down to a great extent and decree holder would get much lesser amount in terms of Rupee value, what it was when" the claim arose. Mr. S. N. Bhuyan, learned counsel for the appellant has submitted that plaintiff having claimed interest. @ 6%, claim of higher rate of interest in cross objection is not tenable. I have gone through ,the plaint and the evidence on record and I find that plaintiff has claimed interest pendente lite and future interest without stating the rate.

14. Taking judicial notice of the fact of inflation that taken place during the pendency of litigation and continuous fall of rupee value from year to year, I find much force in the submission of Mr. B. K. Das and falling in queue with the observation and decision of the Apex Court in the case of Shree Hanuman Jate

Mills vs. Kishore Khela (Supra), I hold that plaintiff is entitled to the interest on the decretal sum @ 12% per annum from the date of institution of the suit to the date of payment of the decretal amount and, as such, the cross objection of the plaintiff respondent is allowed to the extent of awarding interest @ 12% per annum on the decretal amount from the "date of institution of the suit till the date of payment of the decretal amount.

15. In the result, (I) the Appeal is dismissed with costs throughout, (II) the cross objection is allowed to the extent of awarding interest at the @ 12% on the decretal amount from the date of institution of Money Suit No. 18/70 to the date of payment of the decretal amount, with costs.