
(1951) 07 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 74 of 1950

Ram Narain Mehra

APPELLANT

Vs

General Accident Assurance Corporation Ltd.

RESPONDENT

Date of Decision : 26-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Displaced Persons (Institution of Suits) Act, 1948 — Section 4

Citation : AIR 1952 P&H 113

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : M.L. Sethi, for the Appellant; K.L. Kapur and Akhlaque Hussain, for the Respondent

Final Decision : Allowed

Judgement

Kapur, J.—This is an appeal against an order passed by Mr. Jagdish Narain Kapur, Senior Subordinate Judge, Simla, holding that the Court at Simla had no jurisdiction to entertain the application because (1) no part of the cause of action arose in Pakistan, and (2) the applicant before him was not residing in Simla. A policy against loss or damage due to fire, lightning, theft, etc. was taken by the applicant Ram Narain Mehra with General Assurance Corporation which has its Branch Office in India in Calcutta. In the schedule given in this insurance policy it is stated:

"Agency; Mr. C. S. Deva, Branch Calcutta. The Insured: Mr. Ram Narain Mehra, 7A, Birdwood Road, Lahore."

There are given the details of the property insured and at the bottom it is signed by the Acting Branch Manager.

2. On the 1st of June, 1947, the applicant booked a box from Lahore (now in Pakistan) for delivery at Dehra Dun which was delivered there on the 17th August 1947. It appears the applicant discovered certain loss of belongings which

were in the box.

3. On the 17th February, 1950, he filed an application in the Court at Simla in which he alleged that a contract of insurance had been entered into between him and the respondent corporation, that there was an arbitration clause and that the applicant booked a steel trunk which was received at Dehra Dun and It was found that some jewellery was missing.

Clause 6 of the application is as follows:

"6. That the cause of action arose at Lahore in Pakistan and at Simla. The applicant was originally a resident of Lahore who now permanently resides at Simla. In accordance with the provisions of Displaced Persons (Institution of Suits) Ordinance No. XVIII of 1948 he is entitled to institute this suit at Simla. This Court has therefore jurisdiction to entertain hear and dispose of the present case."

4. A preliminary objection was taken that the Court at Simla had no jurisdiction to entertain the application and the trial Court gave effect of it, holding that the cause of action arose at Dehra Dun and that the plaintiff is not residing at Simla.

5. In appeal Mr. Sethi contends that the application showed quite clearly that part of the cause of action had arisen in Pakistan. He has referred to the evidence of Ram Narain P. W. 2 who has stated that the policy was taken at Lahore and the amount was payable at Lahore and the trunk was booked at Lahore. The policy itself shows the residence of the insured at Lahore and I have no doubt that it must have been delivered to him at Lahore and it supports his testimony. He says that the policy was taken at Lahore and in case of theft etc., had there been no partition, the money would have been payable at Lahore. The learned Judge has found that the goods were insured at Lahore and as the loss was discovered at Dehra Dun the cause of action wholly arose at Dehra Dun and not at Lahore. With this I am unable to agree. In order to succeed, the applicant had to show where the policy was taken and how the loss had occurred and in order to do that he has shown that the policy was taken at Lahore, the box was booked from Lahore to Dehra Dun and when it arrived at Dehra Dun the loss was discovered. In these circumstances I must hold that a part of the cause of action did arise in Lahore and therefore in Pakistan.

6. The next question to be decided is whether the plaintiff resides at Simla within the meaning of 5. 4 of Act XLVII of 1948. There is the evidence of Dr. Soni P. W. 1, who states that the plaintiff who used to reside at 1, Bird-wood Road, Lahore, has come and settled in Simla and is living in "Hari Lodge" which is just near his house. The applicant has also gone into the witness-box and stated that he came to Simla from Lahore, that his house was derequisitioned in 1948 and up till then he was living in Dehra Dun and other places. In cross-examination he stated that he might have been living in Dehra Dun even up to the middle of 1948, but since then he had come to reside in Simla. At the time when he had brought the suit, which was in February 1950, he had gone down to Delhi, but that was only

temporarily. In Mulla's CPC it is stated at P. 15:

"Therefore, when the defendant had a permanent dwelling at one place, he cannot be said to "dwell" at a place where he has lodged for a temporary purpose only e.g., to defend a suit brought against him, or for a change while on leave."

At P. 116 it is said:

"Every person is deemed in law to have a dwelling or place of residence, and so if he has no permanent place of residence he will be deemed to "dwell" where he is actually, staying at the time."

But, in this case the applicant has permanent place of residence, which is "Hari Lodge" a house which belongs to him and merely because he went down to Delhi because of the severity of the weather does not mean that he was not dwelling in Simla. I therefore hold that it is proved on this evidence that the applicant was residing in Simla when he brought the application, and he does come within Section 4 of the Displaced Persons (Institution of Suits) Act, Act No. XLVII of 1948.

7. I therefore allow this appeal, set aside the order of the Court of the Senior Subordinate Judge and hold that the Court in Simla has jurisdiction to entertain the application which was filed by the applicant. The applicant will have his costs in this Court and in the Court below. The parties are directed to appear in the trial Court on 13th August 1951.