
(1965) 09 AHC CK 0016
In the Allahabad High Court
Case No : First Appeal No. 120 of 1955

Sterling General Insurance Co. Ltd.

APPELLANT

Vs

Lala Bahali Rampuri and Another

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

Displaced Persons (Debts Adjustment) Act, 1951 — Section 13, 18, 2(10), 2(6)
Displaced Persons (Institution of Suits) Act, 1948 — Section 3

Citation : AIR 1966 All 385 : (1967) 37 CompCas 369

Hon'ble Judges : S.D. Khare, J;D.P. Uniyal, J

Bench : Division Bench

Advocate : R.S. Pathak, for the Appellant; S.N. Kacker and K.C. Agarwal, for the Respondent

Final Decision : Partly Allowed

Judgement

S.D. Khare, J.—This is a first appeal filed by the Sterling General Insurance Co., Ltd., Scindia House, New Delhi (hereinafter referred to as the Insurance Company) against the judgment and decree dated 27th November, 1954, passed by the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act, 1951, thereafter referred to as the Act).

2. Lala Bahali Rampuri, respondent No. 1, (hereinafter referred to as the applicant) filed an application u/s 13 of the Act against the Insurance Company and the Hindustan Commercial Bank Ltd., respondent No. 2 (hereinafter referred to as the Bank). The applicant carried on business in sugar in the year 1947 and had opened a cash-credit account with the Kasur Branch of the Bank against the security of the sugar bags placed in the godown and hypothecated by him with the Bank. The hypothecated goods used to be stored in the godowns situate at Mianwala, Bhikkiwind and Usmanwala. All these three godowns were situate in Kasur Tahsil. However, as a result of the partition of India in the year 1947 Usmanwala passed on the Pakistan while Bhikkiwind and Mianwala remained parts of India. The allegations made in the application filed by the applicant were

that he was a displaced person from Kasur (district Lahore) which was in Pakistan, and had taken up his residence at Muzaffarnagar. He further alleged that in the month of August, 1947 sugar of the value of Rs. 54,175 belonging to the applicant was in possession of the Kasur Branch of the Bank. The stock of sugar at all the three places was insured with the Insurance Company for Rs. 55,300 only for a period of thirty days commencing from 14th August, 1947. A risk note had been issued by the agent of the Insurance Company though the regular policy could not be prepared before the disturbances following the partition of India started. On account of the communal disturbances in Kasur tahsil and other parts of Pakistan various riots took place with the result that the hypothecated goods in the godowns at Mianwala, Bhikkiwind and Usmanwala were looted by the mobs in the month of August, 1947. The applicant sent a telegram to the Insurance Company within three days of the loot and subsequently made a formal claim to the Company in respect of Rs. 54,175. However, he could recover nothing from the Insurance Company because the Bank and the Insurance Company colluded with each other with the result that respondent No. 1 (the applicant) sustained a loss. The applicant, therefore, claimed that a decree for Rs. 13,000 only or more found due on accounting be passed against both the Insurance Company and the Bank jointly or severally against each for whatever amount they were found liable to pay to the applicant.

3. The application was subsequently amended and the relief claimed against the Insurance Company was specifically mentioned to be u/s 18 of the Act also.

4. During the pendency of the application a compromise took place between the applicant on the one hand and the Bank on the other as a result of which it was agreed between them that out of the amount realised from the Insurance Company, the Bank will receive two-thirds and the applicant one-third only.

5. The Insurance Company did not admit that the insured goods had been looted as alleged by the applicant. It was further pleaded that the applicant had no right to make a claim, as under the agreement between the parties it was agreed that the insurance money will be payable only to the Bank and the discharge granted by the Bank shall be considered to be a full discharge of the liability of the Insurance Company to both the insured. The other pleas taken were that the claim was not maintainable and was barred by time and it had not been made within the period stipulated in the policy and also within the period allowed by the law.

6. The learned Tribunal, after having considered the entire evidence led in the case arrived at the conclusion that the goods at all the three places had been looted in the course of the riots which occurred following the partition of India in August, 1947, and that the applicant could claim the sum for which the goods were insured from the Insurance Company. It also held that claim was not barred by time. The Tribunal, therefore, granted a decree for Rs. 20,877/12 with pendente lite interest at 6 per cent per annum against the Insurance Company in respect of the property looted from the godowns situated in Mianwala and

Bhikkiwind. It further directed that out of the decretal amount realised two-thirds share will be payable to the Bank and a one-third share to the applicant. With regard to the property in Usmanwala a place in West Pakistan, the finding of the Tribunal was that the amount of loss was Rs. 30,250, although the insurance was for Rs. 30,860. A preliminary decree was, therefore, passed mentioning those facts and giving the direction that a report be made to the insurance Claims Board. The Tribunal further ordered that a final decree will be passed on receipt of the proposals of the Board in respect of the amount for which the claim is to be decreed.

7. The Insurance Company has come up in appeal and reiterated its contentions that the applicant was not entitled to make any claim and the alleged loss had not been established. It was also contended that the claim was barred by time.

8. We have heard the learned counsel for both the parties. In our opinion there is no force in most of the contentions of the appellant.

9. There can be no doubt that the bags of sugar stored in the godowns situate at all the three places, namely, Mianwala, Bhikkiwind and Usmanwala were looted in the course of riots which followed the partition of India soon after the 15th August 1947. All the three places named above were situate in the district of Lahore in one and the same tahsil namely, tahsil Kasur. The applicant stated that he himself had witnessed the looting at all the three places. It is contended by the learned counsel for the appellant that the applicant should not be believed on that point because the probabilities are that he must have run away from Lahore to save his life as soon as the disturbances had started and could not have cared to remain in the tahsil to witness the looting of his stores at all the three places. All the three places, where the sugar bags were stored, were situated in one and the same tahsil, and, therefore, even though the looting was started on one and the same day, i.e., 18th August 1947, the possibility that the applicant could visit all those places on one and the same date was there. It is, however, contended that although the presence of the applicant at the time of the looting was possible it was not probable.

In our opinion there is no force in this contention. We have carefully examined the cross-examination of the applicant. No question was put to the witness to find out how it had been possible for the applicant to have reached all those three places before he left Pakistan to save his life. No question was put to the applicant to find out why he considered it safe to visit all his three stores on 18th August 1947, when his life must have been in danger. In our opinion before any such argument could be advanced it was necessary for the counsel for the Insurance Company to have elicited from the witness all those facts. On the other hand, we find that there was absolutely no cross-examination of the witness on that point. All that was asked from the witness was that he had lodged no report with the police in respect of that loot and he replied in the negative. That by itself could not indicate that no looting had taken place. Taking into consideration the riots and other atrocities which were committed in certain

parts of Pakistan and India in the month of August 1947, it cannot be said that the applicant's contention regarding the looting of his stores at all the three places was inherently improbable and should not be relied upon. In our opinion there is no infirmity in the deposition of the applicant (Lala Bahali Rampuri) and it has to be accepted.

10-13. The applicant was not the only witness on that point. The other witnesses examined by the applicant on the point of the looting are Ami Chand Agarwal, Gyan Chand, Hansraj and Khairati Ram. (His Lordship examined their evidence and continued).

14-16. Three witnesses, namely, Hansraj, Amar Nath (a cousin of Hansraj) and Ragho Pratap were examined in support of the case of the Insurance Company that no looting had taken place at Usmanwala Mianwala and Bhikkiwind. (After examining their evidence, which His Lordship found unreliable. His Lordship proceeded).

17. The next point to be considered is whether there was any combined riot and fire policy in favour of the applicant Lala Bahali Rampuri, and whether under the terms of the insurance policy he was entitled to file a claim. It appears that insurance policy No. 1658 issued in favour of the applicant and the Bank for a period prior to 14th August 1947, was a fire-protection policy only; and while renewing that policy an application was made to the Insurance Company for insurance against loss or damage by fire. A risk note (Ex. 12) issued through the agency of M. R. Seth from Kasur on 7th August 1947, reads as follows:--

"Having made a proposal to the Sterling General Insurance Co. Ltd. for insurance against loss of damage by fire, is/are hereby held insured to the extent of Rs. 55,300 fifty five thousand three hundred only on the following policy No. 6158 in complete of cover Nos. 2816, 2817, 2819) is renewed for riot fire and End B for 30 days for a reduced amount from the date of its expiry as under:--

Rs. At Mianwala 9,490 At Bhikkiwind 14,850 At Usmanwala 30,860 -----
55,300

Agreed bank Claim

For one month from 14-8-47 to 18-9-47. The said property is hereby insured subject to the usual condition of the Company's Fire Policy. The protection note to remain in force for a period not exceeding thirty days only from the date of issue unless specially renewed until cancelled by a policy issued in lieu hereof or by notice from the Company that the proposal has been declined."

18. The rate of premium was shown as Rs. 470-2-0 only. The statement of cash-credit account (Ex. 16) of Lala Bahali Rampuri & Sons opened at Kasur Office shows that a sum of Rs. 470-2-0 was paid to the Insurance Company on August 4, 1947.

19. Sri Mulkraj Seth, the agent of the Insurance Company, working at Kasur was

examined by the applicant. He stated that he had worked as an agent of the Insurance Company upto the month of September 1947, and the cover note Ex. 12 had been issued by him on behalf of the Insurance Company after the insurance premium had been realised from the Hank. When cross-examined the witness stated that the premium of the insurance must have been sent to the Insurance Company.

20. Another witness examined in that connection was Sri Ram Saran Das, who looked after the legal affairs of the Insurance Company. He stated that the cover note (the duplicate of Ex. 12) did reach his office, although the premium did not reach there.

21. No question was asked from any of these witnesses in support of the present contention of the appellant that the risk note was in respect of fire policy only and not in respect of loss-cum-fire protection policy. The risk note (Ex. 12) actually issued by an agent of the Insurance Company clearly shows that it was in respect of loss-cum-fire protection policy and in renewal of the old fire protection policy. The premium paid was much more than what had been paid under the old policy. In the circumstances, we have no hesitation in holding that the risk note was in respect of loss-cum-fire protection policy and that the risk note had been validly issued by an agent of the Insurance Company in the regular discharge of his business. It was, therefore, binding on the Insurance Company.

22. It is well-settled law and has not been disputed before us that after the issue of the risk note the risk was fully covered although due to some reason (disturbances) the policy itself could not be issued in favour of the appellant and the Bank.

23. The terms of the agreement can be ascertained from the printed forms of the old policies. It is not disputed that one of the terms of the agreement was that although under the policy both the applicant (mortgagor) and the Bank (mortgagee) were considered to be insured, the insurance money was to be paid to the mortgagee, i.e., the Hindustan Commercial Bank Ltd., and the payment to the Bank was to constitute as discharge to both. The relevant portion of the agreement reads as follows:--

It is hereby declared and agreed

(1) That upon any monies becoming payable under the policy the same shall be paid by the company to the Bank and such part of any monies so paid as may relate to the interests of other parties insured hereunder shall be received by the Bank as Agents for such other parties.

(2) That the receipts of the Bank shall be complete discharge of the liability thereof and shall be binding on all parties insured hereunder.

(4) That any adjustment, settlement, compromise or reference to arbitration in connection with any dispute between the company and the insured or any of

them arising under or in connection with this policy if made by the Bank shall be valid and binding on all parties insured hereunder, but not so as to impair the right of the Bank to recover the full amount of any claim it may have on other parties insured hereunder and

24. In view of the aforesaid agreement it is contended that it was the Bank alone which was entitled to receive money from the Insurance Company and, therefore, no claim could be made by the applicant.

25. The risk note clearly showed that the insured were both the applicant and the Bank. It is not disputed that but for the special terms in the agreement any one of the insured could have made a claim against the Insurance Company for his own benefit and the benefit of the co-insured. All that has to be seen is whether the applicant lost all rights to lay any claim in respect of the loss suffered by him under the policy because of the special terms contained in the insurance policy. In our opinion this question must be answered in the negative for the following reasons:--

26. (1) There is nothing in the agreement to show that under no circumstance could the applicant lay any claim under the policy. All that was mentioned in the agreement was that upon any monies becoming payable under the policy the same shall be paid by the Company to the Bank which shall receive the same in its capacity as one of the insured and as the agent for the co-insured and that the receipt granted by the Bank shall be complete discharge of the liability thereof and shall be binding on all the parties insured under the deed. Had the insurance company made any payment to the Bank in respect of the claim under the policy the receipt granted by the Bank would have been complete discharge of the liability and must have been binding on all the parties, including the applicant. However, nothing was paid under the policy to the Bank, and, therefore, that contingency could not arise.

27. Since the insured persons were two in number the agreement provided the mode in which payment under the policy was to be made. One of the insured persons, namely, the Bank was made the agent of the other. However, nothing was mentioned in the document itself to show that in no circumstance could the applicant make a claim under the policy. That matter need not have been at all considered at the time of the execution of the deed of insurance, and, in our opinion, the agreement arrived at between the parties does not cover the complete non-suiting of the applicant, one of the insured.

28. (2) It was specifically mentioned in the agreement that if and when payment under the policy was made to the Bank the Bank would be considered to be an agent for the other co-insured.

29. (3) The insurance policy had been taken out in respect of the goods belonging to, the applicant. The owner of the goods could unless debarred, claim the loss from the Insurance Company.

30. (4) It is proved, and has not been disputed, that the applicant is a displaced person within the meaning of Section 2(10) of the Act. Certain benefits have been conferred on such displaced persons under the provisions of the Act. u/s 13 of the Act a displaced person could lay claims against persons who are not displaced debtors within one year after the date on which the Act came into force (i.e., upto 9th December 1952). Section 18 of the Act provides as follows:--

"Where any property in West Pakistan belonging to a displaced person was insured with any insurance company before the 15th day of August 1947, against any risk arising out of fire or theft or riot and civil commotion and there has been a loss in respect of such property arising out of any such risk at a time when the contract of insurance was in force, such company shall not be entitled to refuse payment of the sum due under any claim in relation thereto on the ground that-

- (a) no report was lodged with the police within the agreed time, or
- (b) the claim was not made to the company within the agreed time, or
- (c) in the case of a policy covering any risk arising out of riot and civil commotion, the disturbances in West Pakistan were not in the nature of a riot or civil commotion, or
- (d) the displaced person has not fulfilled any other condition of the contract which in the opinion of the Central Government is of a technical nature and which the Central Government has, by notification in the Official Gazette, specified as a condition of the contract for the purposes of this section,

any contract to the contrary, to the extent to which it is in contravention of the provisions of this sub-section, shall be deemed to have had no effect.

(2) Where a loss has been incurred in respect of any property in the circumstances specified in Sub-section (1), the Tribunal shall, in every proceeding where it is necessary to do so, determine, respectively, the amount of the loss, the amount for which the property was insured on the date of such loss, and the amount, if any, paid by the insurance company, and shall make a report thereof to such board or other authority as may be prescribed, and the prescribed board or other authority shall, after taking into account such matters as may be prescribed as being relevant thereto, and subject to any rules made in this behalf, in turn propose to the Tribunal the amount for which the claim against the insurance company shall be decreed, and the Tribunal shall pass a decree accordingly.

(3) The amount realised from the insurance company under any decree passed under Sub-section (2) shall first be applied towards the satisfaction of the debt due from the displaced person, and the balance, if any, shall be refunded to the displaced person."

31. The special law (Displaced Persons (Debts Adjustment) Act, Act LXX of 1951) is in favour of the applicant and he is entitled to avail of its benefits. It may be

that the Bank cannot now lay any claim against the Insurance Company because of the ordinary law of limitation, the special law has extended the period of limitation for displaced persons and there can be no reason why the provisions of the Act should be defeated merely because in the insurance agreement it was mentioned that the payment made to one of the two assured persons, namely, the Bank, would be deemed to be payment to both. In our opinion the right of the applicant, the owner of the goods insured, to lay a claim against the Insurance Company could not be defeated merely because of the aforesaid provisions in the insurance policy.

32. (5) Section 203 of the Indian Contract Act, provides that-

"The principal may, save as is otherwise provided by the last preceding section revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal."

Section 202 of the Indian Contract Act lays down that

"Where the agent is himself interested in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

33. In the present case the Bank, which was to receive from the Insurance Company the entire amount becoming payable both in his capacity as an insured person and as an agent for the applicant, the other co-insured, had certainly an interest in the property which formed the subject matter of agency. However, it is clear from the facts of the present case that the agency is not being terminated to the prejudice of such interest. At the time the application was originally filed the applicant had claimed only that much amount which he considered to be due to him after satisfying the debt of the Bank. After the amendment of the application the claim is no doubt in respect of the entire amount but not to the prejudice of the Bank. In fact there has been a compromise between the applicant on the one hand and the Bank on the other as a result of which the share of the applicant in entire claim has been clearly specified. The applicant does not claim for himself anything more than what is due to him under the compromise.

34. The third main contention of the appellant is that the application u/s 13/18 or the Act is barred by time. It has been proved, and is not disputed, that the applicant is a displaced person within the meaning of the Act and also within the meaning of Section 8 of the Displaced Persons (Institution of Suits) Act, 1948 (Act No. 47 of 1948). The cause of action arose on 18th August 1947, when the goods inside the three godowns were looted. Section 8 of Act 47 of 1948 provides as follows:--

"Notwithstanding anything contained in Section 3 of the Indian Limitation Act, 1908 (IX of 1908), or in any special or local law, any suit or other legal proceeding by a displaced person-

(a) where such suit or other legal proceeding is instituted in pursuance of Section 4 and the period of limitation expires or has expired on or after the 14th day of August 1947, or

(b) may be instituted at any time before the date of expiry of this Act."

According to Section 2 of Act No. 47 of 1948, the provisions of the Act were to remain in force till 31st March 1952. Section 4 of the aforesaid Act lays down-

"4. Institution of suits by displaced persons.--Notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 1908 or in any law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, if-

(i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides, or carries on business, or personally works for gain in India and is not a displaced person;

(ii) the cause of action, wholly or in part, arises or has arisen in place now situate within the territories of Pakistan;

(iii) the Court in which the suit is instituted is otherwise competent to try it; and

(iv) the suit does not relate to Immovable property."

35. Act No. 47 of 1948 was repealed by the Displaced Persons (Debts Adjustment) Act, Act 70 of 1951, which came into force in Uttar Pradesh with effect from 10th December 1951. Section 13 of the Act provides that-

"At any time within one year after the date on which this Act comes into force in any local area, any displaced creditor claiming a debt from any other person who is not a displaced person may make an application, in such form as may be prescribed, to the Tribunal. . . "

36. From what has been stated in the preceding paragraphs it is clear that an application u/s 13 of the Act could have been moved by a displaced person at any time before 9th December 1952. The application out of which this appeal arises was filed on 8th December 1952. It was, therefore, well within time.

37. Another contention is that the claim is barred by time, because under the terms of the insurance policy which was renewed-

(a) the insured had to file within 15 days of the loss a complete claim giving full particulars as envisaged by condition 11 of the policy; and

(b) the policy did not cover any loss or damage happening during the existence of abnormal conditions, vide condition (6) of the policy, the relevant portion of which reads-

"This insurance does not cover any loss or damage which either in origin or extent is directly or indirectly, proximately or remotely occasioned by or contributed to by any of the following occurrences or which either in origin or extent, directly or indirectly, proximately or remotely arises out of or in connection with any of such occurrences, namely-

(2) War, invasion, act of foreign enemy, hostilities of War-like operations, (whether war be declared or not), mutiny, riot, civil commotion, insurrection, rebellion, revolution, conspiracy, military usurped power, martial law or state of siege, or any of the events or causes which determined the proclamation or maintenance of martial law or siege.

Any loss or damage happening during the existence of abnormal conditions (whether physical or otherwise) directly or indirectly, proximately or remotely, occasioned by or contributed to by or arising out of or in connection with any of the said occurrences shall be deemed to be loss or damage which is not covered by the insurance, except to the extent that the insured shall prove that such loss or damage happened independently of the existence of such abnormal conditions."

38. None of these contentions could be by the insurance company in respect of the godown at Usmanwala because of the special provision of Section 18 of the Act. However, in view of the fact that Section 18 would not be applicable to the property stored in the godowns at Mianwala and Bhikkiwind (which are in India) the contention is that the claim for damages in respect of loss to the property kept in the godowns at Mianwala and Bhikkiwind is not maintainable.

39. It is clear from the facts stated in this judgment that only Usmanwala is in West Pakistan, while the remaining two places, namely, Mianwala and Bhikkiwind are in India. Section 18 of the Act can apply only in respect of claims against the insurance company where any property belonging to the displaced person in West Pakistan was insured. The aforesaid provision cannot apply in respect of claims against the insurance company where the insured property is in India. It has been fairly conceded by the learned counsel for the respondent that the provisions of Section 18 of the Act will not apply to the claim so far as it relates to the godowns at Mianwala and Bhikkiwind, which are in India.

40. There can be no doubt that the conditions of the policy as contained in para. 6 must stand in the way of the applicant to lay any claim against the insurance company in respect of the goods stored and kept in the godowns at Mianwala and Bhikkiwind. No effort was made by the applicant to prove that the disturbances which took place in the tahsil of Kasur following the partition of India were not in the nature of a loss as envisaged by para. 6 of the policy. According to the terms of the policy the burden lay on the applicant (the insured) to prove that the loss or damage is covered by the policy.

41. Again no proper claim was made by the applicant to the insurance company

within 15 days of the date of the loss. All that the applicant did was to send a telegram on 21st August 1947, to the insurance company to the following effect:--

"Sugar is looted. Please note.

Bahali Rampuri and Sons, Kasur."

42. The insurance company sent a reply on 25th August 1947, in the following terms:--

"We shall thank you to please quote us the policy number and the circumstances of the loss to enable us to deal further in the matter. In case you have not got the policy number, we shall be glad to have some details of the risk and the situation to enable us to locate the policy number at this end."

43. On 8th September 1947, another communication was addressed to the insurance company and it reads as follows:--

Dear Sir,

Received your note of the 25th ultimo on the 6th instant. In reply we beg to say that the policies of insurance are with the Imperial Bank of India, Kasur and Hindustan Commercial Bank Ltd., Kasur as the sugar stocks were under lien to these Banks. Stocks of sugar with Imperial Bank of India were got insured by your Agent, M. R. Sethi, Kasur in the end of month of July 1947, and those with Hindustan Commercial Bank Ltd., re-insured on the 7th of August 1947, for another thirty days beginning from the 14th of August 1947.

With regard to the circumstances in which sugar is looted suffice it to say that riots with numerous cases of looting began on the 18th August 1947, and our sugar looted too.

Anticipating early move.

Yours faithfully,

Dated; 8th Sept. '47.

for Bahali Rampuri and Sons, Faridkot

44. This communication (Ex. 3) was sent to the insurance company more than 15 days after the date of the loss. It is, obvious that it did not contain full particulars as required under paragraph 11 of the insurance policy. It is clear from the documents filed on behalf of the applicant that he made an attempt to gather full particulars from the Bank but did not succeed, till 22nd April 1948, as is clear from the applicant's letter (Ex. 2), dated 22nd April 1948, addressed to the Bank, the relevant portion of which reads as follows:--

"How ridiculous it is that you are not in a position to report us reference to our case ever since August 1947. It is all due to your negligence for which we will be

compelled to approach the Reserve Bank of India and challenge you in the civil court if satisfactory information is not furnished to us within reasonable time and you will be held responsible for all the expenses and consequences to occur thereof It is to be pointed out that all our godowns under your lien were not only in Pakistan but also in Hindustan at Bhikkiwind, Khem Karan Mianwala etc."

45. The insurance company ultimately rejected the applicant's claim. It could do so under the terms of the insurance policy.

46. The mere fact that the application u/s 13 of the Act is within time will not entitle the applicant to get any relief in respect of the loss caused to the sugar bags kept in the godowns at Mianwala and Bhikkiwind. His claim with regard to these two items must fail because:

(a) Section 18 of the Act will not apply to the cases of loss to the property which was in India; and

(b) there is no satisfactory evidence on the record to prove that under the terms of the policy the applicant was entitled to be reimbursed and that his claim had been made within time.

47. The claim in respect of the loss of the property kept in the godown at Usmanwala (Pakistan) must succeed because of the special provisions of Section 18 of the Act by virtue of which the insurance company is not entitled to raise any of the pleas mentioned above.

48. It has, however, been contended by the learned counsel for the appellant that the claim in respect of the loss to Usmanwala property also must be rejected because the claim for the loss, could not be brought within the definition of "debt" as defined in Clause (6) of Section 2 of the Act. The relevant portion of the definition reads as follows:

"debt means any pecuniary liability whether payable presently or in future or under decree or order of civil or revenue court or otherwise or whether ascertained or to be ascertained "

49. On the plain reading of the definition the claim against the insurance company, the exact amount of which had yet to be ascertained, should be included within the definition of the term "debt" Reliance is, however, placed on the following two cases in support of the contention that unliquidated damages cannot be considered to be "any pecuniary liability" on the date of the contract and can become pecuniary liability only on the date the court determines the question of the liability for damages:

(1) Iron and Hardware (India) Co. Vs. Firm Shamlal and Bros., and

(2) Ram Lal Jain Vs. Central Bank of India Ltd., Bombay,

50. In the Bombay case it was held by Chagla, J. (as he then was) that the claim for damages for breach of contract is not debt within the meaning of Section 2(6)

of the Act because

(a) greater emphasis has to be given to the words "any pecuniary liability than to the words "whether ascertained or to be ascertained" occurring in the definition of the term "debt", and

(b) in the case of damages for breach of contract there is no pecuniary liability on the date of the suit and the same has to be determined by the decree of the court.

51. In Full Bench case of AIR 1901 P&H 340 the reasoning given by Chagla, J. in *Iron and Iron and Hardware (India) Co. Vs. Firm Shamlal and Bros.*, was accepted by two out of the three learned Judges constituting the Full Bench. The case before them was or the breach of contract of the bailment and the majority decision was that in such case the plaintiff possesses only a sanctioning right as distinct from a primary right.

52. In our opinion, the principles underlying the two cases cited above will not apply to the facts of the present case because (i) the claim against the insurance company is based on contract and can, therefore, be considered to be a primary liability on the date the loss takes place, and (ii) the intention of the legislature was clearly to include such claims within the definition of the term "debt" as given in Section 2(6) of the Act. The very fact that Section 18 finds place in the Act is clear evidence of that intention.

53. The controversy on the point, whether or not the above mentioned cases were correctly decided, need not, therefore, be examined by us.

54. The result is that the claim in respect of the loss to Usmanwala property must be upheld.

55. The appeal is partly allowed, the partly preliminary and partly final decree passed in favour of the applicant (respondent No. 1) for Rs. 20,877-12-0 and pendent lite interest in respect of the loss to the sugar kept in the godowns at Mianwala and Bhikkiwind is set aside, the preliminary decree in respect of the loss to the property kept in the godowns at Usmanwala (Pakistan) is maintained and the appeal against that part of the decree fails and is dismissed. In the circumstances of the case the parties shall bear their own costs in both the courts.