

**(1997) 05 P&H CK 0218**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular Second Appeal No. 283 of 1989**

Subhash Chander (Deceased) represented by his LR's and Others APPELLANT

Vs

United India Insurance Company (Subsidiary of General Insurance Corporation of India) RESPONDENT

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**Date of Decision : 01-05-1997**

**Acts Referred:**

**Citation :** (1998) 2 ACC 655 : (1997) 116 PLR 757 : (1997) 4 RCR(Civil) 63 : (1997) 3 RCR(Civil) 473

**Hon'ble Judges :** Jawahar Lal Gupta, J

**Bench :** Single Bench

**Advocate :** Hemant Kumar, for the Appellant; D.P. Gupta, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Jawahar Lal Gupta, J.—This is the plaintiffs second appeal. A few facts may be noticed.

2. In May 1980 the plaintiff had taken a loan of Rs. 2,50,000/- from the Bank of India for purchase of a truck on August 26, 1980 the truck was actually purchased. However, on March 4, 1983 the truck was destroyed in a fire. Litigation ensued. On August 3, 1983, the plaintiff filed a suit against the United India Insurance Co. Ltd. for recovery of Rs. four lakhs as compensation. The defendants resisted the suit on the ground that the plaintiff had caused the fire intentionally. After perusal of pleadings, the trial Court framed various issues. Ultimately, vide its judgment dated August 13, 1986, the trial Court decreed the plaintiffs suit.

3. Another fact which may be mentioned here is that on March 15, 1984 even the Bank had filed a suit against the plaintiff for recovery of Rs. 3,06,936/-. This suit was also tried by the Civil Court. It was decreed. Consequently, -while deciding the suit filed by the plaintiff, the trial Court had directed that out of the

amount of Rs. four lakhs, the amount claimed by the Bank shall be paid to it by the Insurance Company. Aggrieved by the judgment and decree, the Insurance Company filed an appeal. It was contended before the Appellate Court that the Insurance Company was liable to compensate the plaintiff only to the extent of the actual loss suffered by him. This contention was accepted. It was held that the value of the truck according to the survey report was Rs. 1,52,900/-. The value of the material which had been salvaged was Rs. 10,000/-. Thus, the liability of the Insurance Company was held that to be Rs. 1,42,000/- with interest at the rate of 12% per annum from the date of fire till the realisation of the decretal amount. It was further directed that "the entire amount shall be paid by the Insurance Company towards the decree passed in favour of the Bank. Aggrieved by this judgment, the plaintiff has filed the present appeal.

4. Mr. Hemant Kumar, learned counsel for the appellant has contended that the truck having been insured for an amount of Rs. four lakhs, the Company was liable to either provide a truck to the appellant in the same condition in which it was at the time of accident or the Company should pay the amount for which the truck had been insured. On the other hand, learned counsel for the respondent-Insurance Company has contended that the truck having been purchased in the year 1980 for a total amount less than Rs. four lakhs, the appellant was not entitled to be paid anything beyond the depreciated value as awarded by the learned Appellate Court.

5. Admittedly, the plaintiff had filed a suit for recovery of Rs. four lakhs on account of the loss caused by the accidental fire. The onus of proving the actual loss was on him. In the plaint, the plaintiff has not indicated the extent of the actual loss suffered by him. There is nothing to show as to what was the actual value of the vehicle at the time of accident. Secondly, the plaintiff has appeared at P.W. 8. Even in his statement, the plaintiff has not indicated as to what was the actual value of the truck at the time it was destroyed in the fire.

6. The obligation of the Insurance Company was to indemnify the appellant for the actual loss suffered by him. Under the policy, it had the option to repair, reinstate or replace the motor vehicle. Since the vehicle had been almost completely destroyed in fire, the question of its repair or reinstatement did not arise. However, the Company had to indemnify the plaintiff for the actual loss which he had suffered. The extent of loss had to be proved by the appellant. He having failed to do so, the lower Appellate Court has considered the depreciated value as the amount of actual loss. It may be that the actual value was more. It could have been even less. It was a matter to be established by evidence. Learned counsel for the appellant has not referred to any evidence which may clearly show that the value of the truck was . more than Rs. 1,52,900/- as determined by the Appellate Court. Consequently, he cannot claim more.

7. Mr. Hemant Kumar has placed reliance on the decision of the Andhra Pradesh High Court in United India Fire and General Insurance Co. Ltd. and Ors. v. Mowli Bai 1985 ACJ 794 to contend that the Insurance Company is liable to pay the

amount for which the vehicle has been insured. This contention cannot be accepted. A perusal of the decision indicates that the principle called out by the Court was that "in determining the sum of money as reparation for a breach of contract as damages.....get at that sum of money which will place the party injured in the same position as he would have been in as if the contract has been performed or in the case of tort as if he had not sustained the wrong for which compensation is being paid for....." Thus, the Court has to arrive at the figure which will place the aggrieved party in the position which he would have been in if he had not sustained the wrong for which the compensation is being paid. The onus of proving the extent of loss and thus the amount of compensation, is on the person who claims it. The sum for which a vehicle is insured is the maximum amount which can be awarded. However, it is not a figure which would always be awarded even though the loss for that amount has not been proved. Consequently, learned counsel can derive no advantage from this decision.

8. No other point has been urged.

9. In view of the above, there is no merit in this appeal. It is, consequently, dismissed. However, in the circumstances of the case, there will be no order as to costs.