
(1971) 01 AHC CK 0028
In the Allahabad High Court
Case No : First Appeal No. 112 of 1959

The National Security Assurance Co. Ltd.	APPELLANT
Vs	
S.N. Jaggi	RESPONDENT

Date of Decision : 05-01-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Displaced Persons (Debts Adjustment) Act, 1951 — Section 10, 18, 18(4)
Evidence Act, 1872 — Section 115

Citation : AIR 1971 All 421

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : V.P. Misra, for the Appellant; S.N. Kacker, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Asthana, J.—This is an appeal u/s 40 of the Displaced Persons (Debts Adjustment) Act 1951 (No. LXX of 1951), hereinafter called the Act.

2. One S. N. Jaggi made an application u/s 13 read with Section 18 of the Act before the Civil Judge of Allahabad who was constituted as the Tribunal under the Act. The applicant claimed recovery of a sum of Rs. 18,500/-from the National Security Assurance Company Limited (hereinafter called the Company) as compensation for the loss suffered by him on account of the looting and destruction of his property during the disturbances and riots on 7th and 8th of September 1947 in the town of Peshawar. The company had insured the goods in the shop covering a risk to the amount of Rs. 18,500/- and the goods in the house covering a risk to the amount of Rs. 8,000/-under a contract evidenced by a document of insurance policy No. 12225. The insurance policy was effective during the period 13-9-1946 to 13-9-1947. At the time when the said insurance policy was issued the head office of the company was situate at Lahore and the applicant Jaggi was carrying on business of an optician in a shop at Arbad Road, Peshawar Cantt. The applicant's house was attacked by the rioters in September

1947 and the household goods including trading goods kept in the house for which the company had covered a risk to the extent of Rs. 8,000/- were looted.

The applicant in accordance with the terms of the insurance policy sent immediate intimation to the company about the loss of the goods worth Rs. 8,000/-. Though the shop in Arbad Road was also looted but the applicant did not lay any claim with the company in regard to the insured property in the shop and it turned out on evidence in the proceedings giving rise to this appeal that the applicant had no knowledge of it and he came to know about the incident only when he had arrived in India as a refugee sometime in January, 1948, having left Peshawar on account of disturbances. Meanwhile the company also shifted its Head-office to Simla. When the applicant learnt about the loss of the goods of the shop in Arbad Road in Peshawar he at once laid a claim with the company demanding the sum of Rs. 18,500/-. But the company expressed its inability to pay the amount claimed as the intimation to it of the incident of looting of the shop in Arbad Road, Peshawar, was not given within fifteen days of the occurrence as required by Clause (11) of the contract of insurance policy. As regards the sum of Rs. 8,000/- for the loss of the goods kept in the house at Peshawar, the company refused payment on technical pretexts. The applicant then filed a suit for recovery of Rs. 8,000/- in the civil court at Delhi which suit eventually ended in a compromise, the company having agreed to pay a sum of Rs. 5,500/- in full settlement of the claim under the insurance policy.

The applicant then came and settled at Allahabad having opened a shop for carrying on his old business of an optician. On 9th December, 1951, the Act was applied to Uttar Pradesh. The applicant then made the application giving rise to this appeal for recovery of Rs. 18,500/- claimed as debt by him as a displaced person from the company in the court of the Civil Judge of Allahabad. The company contested the claim of the applicant inter alia on the ground that the Tribunal at Allahabad had no jurisdiction; that the company itself was a displaced person having its Head-Office first at Simla and then at Delhi, that the claim of the applicant was barred by Order 2, Rule 2, of C. P. Code; that the applicant having received Rs. 5,500/- in Delhi in full settlement of the claim under the policy was not entitled to claim any further sum under the said policy and that the claim of the applicant was not in accordance with law.

2-A. On the pleadings of the parties the Tribunal framed the necessary issues which were as follows:--

(1) (a) Is the respondent a displaced person within the meaning of Displaced Persons (Debts Adjustment) Act 1951 ? If so, is the suit not maintainable in this court as provided u/s 10 ?

(b) What is the effect of Section 18 of the said Act on the question of jurisdiction ?

(2) Is the applicant a displaced person within the meaning of the said Act?

(3) Is the suit barred under Order 2, Rule 2, Civil Procedure Code, as alleged in the written statement ?

(4) Did the applicant's policy cover Riot Risk as alleged in paras 4 and 5 of the plaint ?

(5) Did the applicant suffer damage in respect of the goods stored in the shop as alleged on account of any riots ? If so, to what extent ?

(6) Did the respondent make any payment in full satisfaction of the claim under the policy in suit i.e., tender the compromise as alleged in the written statement ?

(7) To what relief, if any, is the applicant entitled ?

(8) Whether the applicant gave information to the respondent of the loss within one year of the loss ? If so, or not, its effect

(9) Has the applicant not complied with the conditions of the policy as alleged in para 8 of the written statement and is the applicant's claim within time?

3. On a consideration of the material on record the Tribunal recorded its findings. On issue No. 1 (a) it held that the company was not a displaced person as there was no evidence on record that it shifted its Head-office to Simla on account of the disturbances or as a result of partition. The issue No. 1 (b) was answered in favour of the applicant the Tribunal having held that provisions of Section 18 override the provisions of Section 10 of the Act, assuming the company was a displaced person the application for the claim against the company was competently filed before the Tribunal at Allahabad.

4. On issue No. 2 it was held that the applicant was a displaced person within the meaning of the Act.

5. Issue No. 3 was answered in favour of the applicant. It was held that in the previous suit filed at Delhi as the relief for recovery of a sum of Rupees 18,500/- for the loss of the goods in the shop in Arbad Road, Peshawar, could not have been claimed, provisions of Order 2, Rule 2, Civil P. C. were not attracted.

6. On issue No. 4 it was held that the policy issued by the company covered the risk of the goods being looted or destroyed in riots.

7. Issue No. 5 was also answered in favour of the applicant.

8. On issue No. 6 the finding of the Tribunal was that the payment of Rupees 5,500/- under the compromise in previous suit related to the claim of the goods worth Rs. 8,000/- looted from the house of the applicant and the satisfaction recorded in the compromise decree was limited to that loss and not to the loss of goods looted from the shop of the applicant in Arbad Road Peshawar.

9. As regards issues numbers 8 and 9, it was held that intimation was given by the applicant to the company; even though that intimation was not in conformity with the conditions of the policy but under the provisions of the Act the applicant

was entitled to recover from the company compensation for the loss of the goods of the shop. The Tribunal on the findings above awarded a decree of Rs. 18,500/- to the applicant recoverable from the company and made the parties to bear their own costs.

10. Issue No. 7 was answered accordingly.

11. From this decree the company has now come up in appeal.

12. During the pendency of this appeal the Court was informed that the company has gone under liquidation. Time was granted to the learned counsel to take necessary steps and intimate the Court whether the liquidators wanted to continue with the appeal. An application supported by an affidavit has been filed on behalf of the liquidators praying that a note be made that Sri Niranjana Rashik Lal and R. C. Cooper are joint liquidators and they be permitted to prosecute the present appeal. I have granted that application by my order dated 4-1-1971.

13. The learned counsel for the appellant has rightly not assailed the findings recorded by the Tribunal on issues numbers 2, 4, 8 and 9. There is ample evidence on record that the applicant S. N. Jaggi migrated to India on account of the disturbances in Peshawar. It cannot be doubted that he is a displaced person within the meaning of the Act. The policy, a copy of which is Exhibit 1 on record, clearly contains a term that the insurance under the policy extended to cover all riot risks. It was not disputed by the learned counsel for the appellant that under the provisions of the Act the applicant was entitled to claim the insurance money as a debt from the company even without complying with the conditions of the limitation of time imposed under the terms of the policy.

14. The two main grounds which were urged in support of the appeal were that (1) Order 2, Rule 2 of the C. P. Code applied to the claim of the applicant for recovery of Rs. 18,500/- as due under the insurance policy for the loss of the goods in the shop of the applicant in Peshawar and the applicant was not entitled to re-agitate the matter, he having agreed to receive Rs. 5,500/- from the company in full satisfaction of the amount due under the policy; and that (2) the company being a displaced person within the meaning of the Act the provisions of Section 10 of the Act applied and the application could not be entertained at Allahabad. An attempt was also made by the learned counsel for the applicant to show that there was no satisfactory evidence on record proving applicant's case that he actually suffered the loss of Rs. 18,500/- as a result of the destruction or looting of his goods during the course of riots in Peshawar in September 1947.

15. Having perused the evidence on record, I think the assessment and conclusion of the Tribunal that the goods in the shop of the applicant in Arbad Road, Peshawar, had been looted during the course of riot on 7th and 8th of September, 1947, is correct. Nothing has been shown by the learned counsel for the appellant as a compelling circumstance to persuade me as a result of the scrutiny of the evidence in that behalf to disagree with the conclusion of the trial court. Deoraj (P. W. 7) who had been left in charge of the shop by the applicant

clearly stated all about the incidents and the occurrence. I do not find any good reason to discard his testimony.

16. Now coming to the two grounds indicated above urged in support of the appeal, I would first take up the second ground, namely, whether the company is a "displaced person" within the meaning of the Act and the application should have been filed in Delhi where the Company subsequently shifted its Head Office. Learned counsel for the appellant referred to a decision of the Punjab High Court in Punjab National Bank Ltd. Vs. Punjab Property Development Co. and Others, in support of the proposition that u/s 2(10) of the Act a limited company or a corporation will be a "displaced person" if such company or corporation shifts its Head-office or place of business from any place which now falls in the territory of West Pakistan to any place which now falls in the territory of India on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances. I have my own doubts whether the provisions of Section 2(10) of the Act were intended to apply to "artificial persons". I think that section applies only to "natural persons". However, it appears to me that for purposes of this case it is not necessary to decide the status of the company and to record a finding whether it is a "displaced person" within the meaning of the Act. I will assume that the company is a "displaced person" within the meaning of the Act and then examine the question whether the Tribunal at Allahabad had jurisdiction to entertain the application filed u/s 13 read with Section 18 of the Act by the applicant S. N. Jaggi.

17. It cannot be disputed and it has not been disputed by the learned counsel for the appellant that the Company is an insurance company and will remain an insurance company even if it were a "displaced person". The question then arises whether the provisions of Section 10 of the Act will still apply, though there is in the Act a special provision u/s 18 entitling a displaced person to recover any sum due on an insurance policy. It was strenuously contended for the appellant that any sum due on insurance policy would be a debt within the meaning of the Act. A reference was made to the case of Sterling General Insurance Co. Ltd. Vs. Lala Bahali Rampuri and Another, in which it was held that a sum due on insurance policy would be a debt. On this basis it was urged that the applicant being a displaced person to whom another displaced person owed a debt the provisions of Section 10 of the Act will apply and the claim could only be laid before the Tribunal in whose jurisdiction the displaced debtor carried on business and in the instant case the company as a displaced debtor having its Head-Office at Delhi will be deemed to be voluntarily residing and carrying on business in Delhi. On the other hand the learned counsel for the respondent urged that Section 18 of the Act being a special provision for claims against insurance companies with whom any property in West Pakistan belonging to a displaced person was insured before the 15th day of August, 1947, against any risk arising out of riot, its provisions would prevail over the provisions of Section 10 which is a general provision. The Tribunal has taken the same view as urged by the learned counsel for the respondent on this point before me.

18. It would be seen that Sections 10, 13 and 18 deal with the jurisdiction of the Tribunal for entertaining various kinds of claims. When the claim is by a displaced creditor against a displaced debtor as defined in the Act, then the jurisdiction is conferred on the Tribunal within whose local limits the displaced debtor actually and voluntarily resides or carries on business or personally works for gain. When a claim is by a displaced creditor against a person who is not a displaced debtor the Tribunal within the local limits of whose jurisdiction the displaced person actually and voluntarily resides or carries on business or personally works for gain, will entertain the application. Then u/s 18 of the Act a provision has been made for the benefit of a displaced person to recover any debt due on an insurance policy from the insurance company who insured before the 15th day of August, 1947, any property in West Pakistan belonging to such displaced person against any risk arising out of fire or theft or riot and civil commotion. It is clear from the scheme of this section that conditions putting limitations of time for making the claim under the insurance policy have been done away with and an insurance company cannot resist the claim on the ground that the claim had not been made within the time and the formalities had not been observed as required under the terms and conditions of the insurance policy.

There is nothing in the scheme of the section indicating that an insurance company who had its Head-office in any place now in West Pakistan and had shifted its Head-office to any place now in India due to coming into existence of Dominions of India and Pakistan or due to disturbances is excluded from this section and a displaced person will remain bound by the terms and conditions of the insurance policy and will stand deprived of the benefit of the provisions of this section merely because he had insured his goods with an insurance company who had at one time its Head-office in a place now in West Pakistan. Since the main object behind Sections 10, 13 and 18 is to fix the forum for entertainment of claims under various conditions, I have no hesitation in agreeing with the view of the Tribunal that in case of a displaced person having any claim arising out of loss in respect of the insured property on account of fire, theft, riot and civil commotion it will four-squarely fall u/s 18 and the forum will be as indicated under the said section by its Sub-section (4) and the company would not be able to resist the claim on the ground that the claim was not made to the company within the agreed time or that the disturbances in West Pakistan causing the loss were not in the nature of a riot or civil commotion.

If it be said that Section 18 will not apply in case the insurance company was a "displaced debtor" then it would amount to depriving the displaced person who suffered the loss, the benefit which various other subsections of Section 18 confer. If I were to hold that the company being a "displaced debtor" the provisions of Section 10 would be applicable, the result would be that it would be open to the company to raise all such defences as the claim not having been made to the company within the agreed time, or that the loss was not due to any riot or civil commotion and so on. This would frustrate the purpose of the Act itself. I hold, therefore, assuming the company to be a "displaced debtor" within

the meaning of the Act, that the provisions of Section 18 will apply, the company being an insurance company and the application was rightly entertained by the Tribunal at Allahabad under Sub-section (4) of Section 18 of the Act.

19. There now remains to consider the argument whether the provisions of Order 2, Rule 2 were attracted and otherwise the applicant was not entitled to claim the amount he having accepted Rs. 5,500/-in full payment of the claim under the insurance policy.

20. The case of the applicant was that the insured goods in the shop at Arbad Road, Peshawar, were looted in the riot between 7th and 8th of September, 1947. The insured goods which were kept in the house of the applicant were also looted about the same time. From the insurance policy it is clear that there were separate specifications with regard to the goods kept in the house of the applicant and the goods kept in the shop of the applicant. The former were covered to the extent of Rs. 8,000/- while the latter were covered to the extent of Rs. 18,500/-against loss of risk arising out of riot and civil commotion, fire or theft. There were two lists appended to the policy. The case of the applicant that he intimated to the company, within the time of fifteen days of the loss as regards the goods which were looted from his house, but he did not know of the looting of the goods of his shop till about January, 1948 when he came away to India, has been believed.

The learned counsel for the appellant has not been able to point out any compelling circumstance arising from the material on the record to disbelieve the applicant's evidence in this regard. It is obvious that the applicant did not know that his shop had also been looted till January 1948, the shop being managed by Deoraj. It is quite possible, rather probable, that in the disturbed conditions as must have been prevailing in Peshawar in September 1947 soon after the partition, that the communication between Deoraj and the applicant must have come to an end. It has come in evidence that the house of the applicant and the shop were at a distance from each other in different localities. After the looting of his house the applicant with his family must have thought of escaping to India. So must have Deoraj. The contact between the two must have been lost. There is no reason to disbelieve the applicant that he knew of the looting of the goods in the shop much later. As the law stood in 1948 the applicant under the terms of the policy was not entitled to recover the loss incurred by him for the destruction of the goods of the shop or looting thereof as he had not been able to intimate of the loss to the company within fifteen days of the occurrence. Since the applicant had been able to intimate the loss of the insured goods kept in the house within fifteen days of the occurrence, he filed a suit No. 650 of 1948 in the Civil Court at Delhi for recovery of Rs. 8,000/- from the company which represented the risk which the company covered for the loss of the goods in the house.

That being the position no question of the application of provisions of Order 2, Rule 2 will arise as in that suit which was instituted by the applicant in 1948 he could not, in law, claim a relief for the loss of the goods kept in the shop as

under the terms of the insurance policy he could not recover the amount representing risk covered by the company for those goods. I think the Tribunal was right in holding that in the suit filed by the applicant in the Civil Court at Delhi the applicant could not have obtained any relief in respect of loss of the goods kept in his shop. The compromise in the said suit, to my mind, would remain confined to the claim in regard to the loss of the goods kept in the house of the applicant and when the applicant who was the plaintiff in the suit accepted the sum of Rs. 5,500/- in full settlement of the claim under the policy it would only mean that he accepted that smaller sum as against Rs. 8,000/-, a sum claimed in full satisfaction of the claim under the policy relating to the loss of the goods kept in the house and not to the loss of the goods kept in the shop as they were not the subject-matter of the suit at all.

I do not agree with the learned counsel for the appellant that the applicant is estopped now to raise any claim and re-agitate the matter as he would be deemed to have given up the claim, in regard to the loss of the goods kept in the shop. I do not see how the provisions of Order 2, Rule 2, C. P. Code, or the principles of estoppel bar the applicant from recovering the money due under the insurance policy for the loss of the goods kept in the shop. In fact the company in 1948 told the applicant that he was not entitled to recover any thing in regard to the loss of the goods in the shop as the claim had not been made within the time as agreed under the policy, then to say now that the applicant could have claimed that sum will be allowing the company to blow hot and cold at the same time.

21. The claim for the loss of the goods kept in the shop which amounts to a debt owed by the insurer to the insured under the Limitation Act could have been made in a suit filed within three years of the loss when the cause of action arose, that is, the suit could have been brought by 8th of September, 1950. However, the limitation would be saved by the Displaced Persons (Institution of Suits) Act 1948, Act No. XLVII of 1948 as amended by the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act 1950, Act No. XLVIII of 1950, and the suit could have been filed by the applicant up to 31st day of March, 1952, But long before the said date the Displaced Persons (Debts Adjustment) Act 1951 came into force on 9-11-1951 which repealed the Displaced Persons (Institution of Suits) Act 1948 and by its Section 36 the period of limitation was extended by one year for displaced persons from the commencement of the Act for bringing a suit or other legal proceedings in respect whereof the period of limitation was extended by the Displaced Persons (Institution of Suits) Act 1948.

Thus it is clear that on the date on which the applicant filed his application before the Tribunal at Allahabad the debt due under the policy was recoverable from the company. The argument advanced on behalf of the company that the claim was not sustainable as the recovery of the amount under the policy had become time-barred has no substance. The claim for the recovery of Rs. 18,500/- due on insurance policy, the law condoning the lapses, so to say, on the part of the

insured and extending the time, was rightly entertained by the Tribunal. The Act enacted special provisions which revived the claim of the applicant and it can be said that a fresh right was conferred on the applicant by the Act to recover the amount due on the policy for the loss of the goods kept in the shop and in that view of the matter also no question of applicability of Order 2, Rule 2, C. P. Code or any principles of estoppel, can bar the applicant's claim.

22. As a result of the discussion above, I do not find any force in this appeal and dismiss it. The respondent will be entitled to his costs of this appeal.