(2006) 12 DEL CK 0035

In the Delhi High Court

Case No : Regular First Appeal : 707 of 2003

The Oriental Insurance Co. Ltd. APPELLANT

Vs

Ram Asrey Pandey RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338, 427

Citation : (2007) 1 ILR Delhi 45

Hon'ble Judges : T.S. Thakur, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : G.L. Chawla, for the Appellant; S.K. Grover, for the Respondent

Judgement

T.S. Thakur, J.—This Regular First Appeal arises out of a suit for recovery of money representing the loss which the plaintiff is alleged to have suffered on account of a motor vehicle accident in which the truck insured by the company was completely destroyed. The trial court of Additional District Judge, Delhi has decreed the suit for a sum of Rs. 4,96,000/- representing the estimated value of the vehicle, as indicated in the policy of insurance and interest due on the same. Interest @ 12% per annum on the suit amount, pendente lite and till realization, has also been awarded. The plaintiff-respondent was at the relevant time carrying on business in the transport of goods in the name and style of Hari Roadways. A truck bearing No. DL-1G-0670 duly insured by him with the appellant company for an estimated value of Rs. 4 lakhs was one of the vehicles being used by the respondent for his business.

2. On 26th October, 1992, the truck aforementioned was on its way to Delhi with a consignment of goods booked from Kolkata. When it reached near Bulandshahar, it met with an accident with another vehicle coming from opposite direction. As a result of the collision, the plaintiff''s vehicle caught fire and was completely destroyed in the same. The driver of the truck also could not escape the blaze and was burnt alive. A police case under sections 279, 337, 338, 304-A and 427 IPC was registered against the driver of the offending vehicle who was

taken into custody.

3. The plaintiff, it appears, raised a claim for payment of compensation on the basis of the insurance policies issued in his favour. The insurance company, however, insisted upon the production of the driving licence of the driver of the vehicle, which the plaintiff could not produce as the licence had also been burnt along with the holder thereof. It was in this backdrop that the plaintiff filed a suit for recovery of Rs. 4 lakhs representing the estimated value of the truck at the time of the insurance apart from claiming a sum of Rs. 96,000/- towards interest @ 12% per annum up to the filing of the suit.

4. The defendant company contested the suit and filed a written statement in which it was, inter alia, alleged that the driving licence held by the driver of the truck was not valid on the date of the accident and the suit was bad for non-joinder of the Corporation Bank with whom the vehicle was financed. On the pleadings of the parties, the trial court framed the following three issues for determination:-

1. Did the driver of the truck in question have a driving licence? If not, to what effect?

2. Is the suit bad for non-joinder of Corporation Bank?

3. To what amount, if any, is the plaintiff entitled?

5. In support of his case, the plaintiff stepped into the witness box as PW-1 and produced PW-2 Shri B.R. Arora and PW-3 Shri Navin Kumar. The defendant remained content with the deposition of DW-1 Shri P.C. Jain, Assistant Divisional Manager of the company. By the judgment impugned in this appeal, the trial court held issue no. 1 against the defendant and came to the conclusion that the driver of the vehicle was duly licensed and that the defendant-appellant had failed to prove that the licence had ceased to be valid on the date of the accident. Issue No. 2 was also answered against the defendant appellant and the suit held maintainable even in the absence of the Corporation Bank. As regards the quantum of compensation payable to the plaintiff, the trial court was of the opinion that the plaintiff was entitled to claim the entire amount of Rs. 4 lakhs representing the estimated value of the truck on the date of the issue of insurance policy and also interest of Rs. 96,000/ - up to the date of the filing of the suit. Relying upon the decision of this court in Mr. Vishan Narain Vs. The Oriental Insurance Company Ltd., and Gupta and Gupta Versus New India Assurance Company Ltd., 1 CPJ (1994) 422, the court held that the amount of Rs. 4 lakhs for which the insurance policy had been issued was recoverable from the insurance company, regardless of what the actual value of the vehicle at the time of loss was. A decree for a sum of Rs. 4,96,000/- with interest @ 12% per annum pendente lite and till realization was accordingly passed.

6. Appearing for the appellant, Mr. Chawla made a two - fold submission in support of the appeal. Firstly, he contended that the finding of the trial court on

Issue No. 1 was erroneous in as much as the absence of a valid driving licence with the driver of the vehicle in question would constitute a breach of the conditions of the insurance policy. He urged that the non-production of the driver''s licence was in itself sufficient to justify dismissal of the suit filed by the plaintiff

7. Secondly, he argued that the trial court was in error in awarding a sum of Rs. 4 lakhs in favour of the plaintiff without there being any evidence to support that claim. The court had, argued Mr. Chawla, wrongly assumed that upon loss of the insured vehicle, the owner was entitled to the payment of the estimated value of the vehicle as indicated in the policy. A policy of insurance being a contract of indemnity, the owner was at best entitled to claim the actual loss suffered on account of the accident in question. The liability of the insurance company would, therefore, be restricted to the extent of loss not exceeding the estimated value for which the vehicle was insured.

8. We have given our careful consideration to the submissions made at the bar and perused the judgment under appeal. The driver of the ill-fated vehicle had, as already noticed earlier, died in the accident. The plaintiffs case that the driving licence held by him also got destroyed in the accident has been accepted by the trial court and, in our opinion, rightly so. The best person to produce the driving licence was the driver of the vehicle in question. Since the driver was also burnt alive in the accident, there was no chance of the driving licence escaping the fire or being produced by the plaintiff. That apart, it was not the case of the defendant appellant that the driver never held any driving licence. The trial court has rightly noticed the appellant''s case in this regard and held that what was asserted by the company was that the licence was not valid on the date of the accident. No evidence was, however, produced by the appellant to support that plea. In the absence of any material to show that the licence held by the driver had been revoked for any reason or otherwise suspended, it would be reasonable to assume that the same continued to remain valid. We have, therefore, no hesitation in affirming the findings recorded by the trial court that the driver of the vehicle involved in the accident did hold a valid licence on the date of the accident.

9. That brings us to the only other submission urged on behalf of the appellant. The trial court as noticed above has decreed the suit as if the estimated value of the vehicle covered by the policy was an amount which the policy of insurance guaranteed in toto in case the vehicle was lost by theft or damaged in an accident or otherwise. That, however, is not the correct understanding of a policy of insurance. Unlike a life insurance policy or a policy of insurance against personal accident, a contract of insurance is a mere contract of indemnity. The object underlying the policy is to place the insured as far as possible in the same position in which he would be, if the insured event causing the loss had not occurred. The policy does not permit or envisage the insured making a gain. It is to leave him neither a loser nor a gainer. The legal position in India is much the

same as in England in this regard.

10. In Castellain V. Preston, (1883) 11 O.B.D. 380, Bret, L.J. explained the legal theory underlying an insurance policy in the following words:-

The very foundation in my opinion of every rule which has been applied to the insurance law is that the contract of insurance contained in a fire or marine policy is a contract of indemnity and of indemnity only and that this means that the assured in the case of loss against which the policy has been made, shall be fully indemnified but never more than fully indemnified. That is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say which either will prevent the assured from obtaining a full indemnity, that proposition must certainly be wrong.

In Vania Silk Mills (P) Ltd. Vs. Commissioner of Income Tax, Ahmedabad [OVERRULED], , the Supreme Court described the nature of an insurance policy and payment towards a loss in the following words:-

The fact that while paying for the total loss of or damage to the property, the insurance company takes over such property or whatever is left of it, does not change the nature of the insurance claim which is indemnity or compensation for the loss. The payment of insurance claim is not in consideration of the property taken over by the insurance company, for one is not consideration for the other. It is incorrect to argue that the insurance claim is the value of the damaged property. The claim is assessed on the basis of the damage sustained by the property or the amount necessary to restore it to its original condition. It is not a consideration for the damaged property.

(emphasis supplied)

11. There are several incidents of indemnity. For instance, the assured must show that he has, in fact, sustained a loss in the subject matter of insurance. The assured may not be entitled to receive anything, if for instance, he has transferred his interest in the property insured before the happening of the event. So also the insurer is bound to make good the actual loss by reason of happening of the event insured against. This would mean that if more than the actual loss is recovered, the insurer can recover the excess if paid. The indemnity is, in that way, limited to the amount named in the policy. The contract is that insured shall be indemnified only to the extent of damages caused directly by the happening of the event. Damages resulting indirectly are not recoverable. The amount of indemnity is determined by the market value of the property at the time of loss. (See Carreras Limited V. Cunard Steamship Company Ltd., 1918 (1) KB 188).

12. The courts in England have often applied the principle of restitutio in integrum so far as money can do it while dealing with claims of indemnification. The principle envisages an insured person being put in the same position as he would have been in if he had not sustained the wrong viz. if the tort had not

been committed or the contract had not been influenced, (vide Halsbury''s Laws of England 4th Edition Vol. 12 Para 1129 Page 430).

13. In Living Stone V. Rawyards Coal Company, (1880) 5 AC 25 at 39, Lord Blackburn stated the principle of indemnification in the realm of tort thus:

The point may be reduced to a small compass when you come to look at it. I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured or who has suffered in the same position as he could have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

14. To sum up:

15. The contract of insurance in the instant case would entitle the plaintiff only to payment of the loss that the insured had suffered on account of the accident. This would necessarily depend upon the market value of the asset destroyed in the accident on the date, the same occurred. It is that loss alone which the insurance company is under the policy of insurance obliged to reimburse to the insured and no more. Even that obligation is subject to the optimum stipulated in the contract of insurance entered into between the parties. This implies that even if the loss actually caused by reason of the insured event is more than the estimated value of the asset involved in the accident, the insured would be entitled to recover only the actual loss and no more. He cannot make a gain out of his misfortune. He has simply to be relegated to the position which he held before the occurrence of the accident by payment of such amount as would be sufficient to do so within the outer limit fixed in the policy. Viewed thus, the plaintiff could in no case go beyond Rs. 4 lakhs. But that did not mean that just because the asset was lost in toto, he would without proof of the extent of loss arising from the accident, be entitled to demand payment of the optimum amount under the policy. The approach adopted by the trial court and the award of Rs. 4 lakhs representing the estimated value of the vehicle on the date of the issue of the policy was, therefore, clearly erroneous.

16. The only other aspect that needs to be examined is the extent of loss actually suffered by the plaintiff in the instant case. Mr. Chawla pointed out and in our opinion rightly so that there is no evidence to show as to what was the market value of the vehicle on the date of the accident. The appellant had, based on the report of the Surveyor, assessed the extent of the loss to be Rs. 3,28,500/-. The value of the salvage of the truck was estimated by the Surveyor to be Rs. 95,000/-. Since the salvage was not admittedly handed over to the insurance company, the said amount shall have to be reduced from the total value of the asset on the date of the loss. This would mean that the plaintiff had suffered a net loss of Rs. 2,33,500/-. This amount was, in our opinion, wrongly withheld by the appellant for it ought to have been paid within a reasonable time

of the occurrence of the loss. The company''s insistence upon production of the driving licence of the deceased driver as a condition precedent for the payment of the loss was not justified entitling the plaintiff to claim interest on the above amount at a reasonable rate. Having regard to the prevailing bank rates during the period, the amount so withheld by the defendant appellant, interest @ 10% per annum would be, in our opinion, reasonable to be reckoned from 1st November, 1993 by which time the company ought to have processed and paid the claim made by the plaintiff to him. Interest at the same rate cannot on the same principle be denied to the plaintiff for the pendente lite and till realization.

17. On behalf of the respondent, it was argued by Mr. Grover that the deduction of Rs. 95,000/- towards the value of the salvage was not justified as according to the plaintiff, the value of the salvage was not more than Rs. 40,000/-. No evidence, however, was laid by the plaintiff to prove the value of the salvage. That being so, we are inclined to go by the assessment of the value made by the Surveyor especially when we are accepting and relying upon his report while holding that the value of the asset lost in the accident was to the tune of Rs. 3,28,500/-. We cannot accept the report in part while rejecting the rest especially when apart from the self serving assertion of the plaintiff that the value of the salvage was not more than Rs. 40,000/-, there is no cogent evidence to establish that it was really so. In the result, we allow this appeal but only in part and to the following extent:

(1) The suit filed by the plaintiff respondent herein shall stand decreed to the extent of Rs. 2,33,500/- with interest @ 10% per annum to be calculated from 1st November, 1993 onwards pendente lite and till actual payment of the decretal amount with proportionate costs in the suit and in the present appeal.

(2) The judgment and decree passed by the trial court shall to the above extent stand modified.

(3) Since the appellant has deposited the decretal amount in this court, we direct release of the decretal amount payable in terms of this judgment out of the said amount in favour of the plaintiff respondent and refund of the balance to the appellant.