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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 5th February 2018
Date of decision : 13th February, 2018

+ **RFA 177/2017 & CM No.6067/2017 (stay)**

THE ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pradeep Gaur (M:9810081811)
and Mr. Himanshu Joshi
(M:8126008110), Advocates.

versus

SUBODH CHAND GUPTA Respondent
Through: Mr. Vichitra Kumar (M:9350288356)
and Mr. Dinesh Kumar
(M:9250727154), Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal arises out of judgment dated 19th September, 2016 by which the suit of the Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) was decreed for a sum of Rs.7 Lakhs along with the interest @ 9% per annum from the date of accident i.e. on 4th March 2011 till realisation.
2. Plaintiff is in the business of running LPG carriers. An insurance policy was obtained by the Plaintiff for the LPG fuel container vehicle bearing No.HR-38-P-0231 from the Appellant/Defendant (*hereinafter, 'Insurance Company'*). Insurance policy bearing no.271500/48/2011/306 was issued which was valid from 22nd April 2010 to 21st April 2011. The charges for the said insurance contract of Rs.3042/- was paid and as per the contract the fuel inside the closed body of the carrier was insured.

3. It is claimed that on 4th March 2011, the LPG carrier which was refilled with LPG from Bharat Petroleum Corporation Limited, (*hereinafter*, 'BPCL'), Lucknow met with an accident. FIR No.58/2011 under Sections 279/427 of the Indian Penal Code, 1860 was registered at PS Tundla, District, Firozabad. According to the Plaintiff, it suffered a loss to the tune of Rs.8.45 Lakhs which was claimed/adjusted by BPCL towards the loss of fuel.
4. It is the Plaintiff's case that it raised a claim with the Insurance Company on 11th March, 2011. Subsequently, notice dated 5th May, 2012 was issued. The notice was replied by a printed standard reply, on 25th May 2012, that the claim of the Plaintiff was being processed. However, since the claim was not allowed, the Plaintiff approached the Consumer Dispute Redressal Forum. The complaint before the consumer forum was dismissed on 5th July 2012. The Plaintiff issued another letter dated 4th August 2012. However, the amount was not released. Plaintiff, thus, filed a suit for recovery of Rs.8,45,000/- along with the interest @ 24% per annum.
5. The main plank of the arguments of the Insurance Company is that the Plaintiff never lodged its claim with the Insurance Company and that the so called letter dated 11th March, 2011 was manipulated. The Insurance Company also submitted that the maximum payable amount is Rs.7 Lakhs.
6. The following issues were framed by the Trial Court on 16th May 2013.

"1. Whether the plaintiff is entitled for a direction to the defendant to pay a sum of Rs.8,45,000/- to him for the losses suffered due to the accident in terms of policy agreement, inconvenience and harassment along with cost of litigation and

interest at the rate of 24% pa? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Whether the suit of the plaintiff is devoid of any cause of action and as such the same is liable to be dismissed? OPD

4. Whether the present suit has not been signed, verified and instituted by a duly authorized person? OPD

5. Relief, if any.”

7. Plaintiff led evidence of Shri Subodh Chand Gupta who was PW-1. He is the proprietor of the Plaintiff. He exhibited the following documents.

- **Ex.PW-1/DX-1** - Carrier legal liability policy schedule
- **Ex.PW-1/A** - Certified copy of the FIR dated 4th March 2011.
- **Ex.PW-1/B** - Office copy of the letter dated 11th March 2011 bearing original seal of the Insurance Company showing receipt of letter dated 11th March 2011.
- **Ex.PW-1/C & Ex.PW-1/D**- Original reply dated 25th May 2012 by the Insurance Company along with original envelope.
- **Ex.PW-1/E** - Office copy of letter dated 4th August 2012 issued by learned counsel for Plaintiff.
- **Ex.PW-1/F & Ex.PW-1/G** - Speed post receipt showing dispatch and receipt of courier agency.

The Insurance Company led the evidence of the Assistant Manager who exhibited the original policy documents.

8. After examining the evidence on record, the Trial Court held that there is no basis to hold that the letter dated 11th March 2011 was forged and fabricated. However, the Trial Court limited the liability of the Insurance

Company to Rs.7 Lakhs and passed a decree for the said amount with interest @ 9% per annum from date of accident i.e., 4th March, 2011.

9. In appeal, on 15th February, 2017 the Insurance Company was directed to deposit the entire decretal amount and subject to the same, the impugned judgment and decree were stayed.

10. Mr. Pradeep Gaur, Counsel for the Insurance Company submits:

(a) That as per condition no.3 (c), notice in writing had to be given by the Plaintiff within 10 days from the date of occurrence of the accident and that claim ought to have been delivered in writing within 20 days from the date of occurrence of the accident. However, no claim was lodged in the present case.

(b) That the letter dated 11th March 2011 was fabricated. The seal of the Insurance Company appearing on the said letter did not bear any signatures and hence the said letter was never served upon the Insurance Company.

(c) That the conduct of the Plaintiff is extremely doubtful as in the cross-examination the Plaintiff admits that he did not personally serve the letter on the Insurance Company.

(d) That it is highly unlikely that a person who suffered an accident on 4th March, 2011 would not follow up his claim as the legal notice was issued more than one year later i.e. on 5th May 2012.

(e) That once a claim is lodged, the usual process of the Company is to appoint a surveyor to inspect the vehicle and to prepare a report. Since there was no surveyor who was appointed, the claim was never received.

(f) That the practice of appointment of a Surveyor is well known to

the Plaintiff who is a regular customer of the Insurance Company.

(g) In the absence of a claim and survey report, as per the conditions of the policy no money is liable to be paid. He relies on ***New India Assurance Co. Ltd. V. M/s. Hira Lal Ramesh Chand & Ors. AIR 2008 SC 2620*** (hereinafter, 'Hira Lal Ramesh Chand'), ***The Oriental Insurance Co. Ltd. V. Sony Cheriyan & Ors. AIR 1999 SC 3252*** (hereinafter, 'Sony Cheriyan'), ***General Assurance Society Ltd.. v. Chandumull Jain & Anr. AIR 1966 SC 1644*** (hereinafter, 'Chandumull Jain') and ***United India Insurance Co. v. Harchand Rai Chandan Lal (2004) 8 SCC 644*** (hereinafter, 'Harchand Rai') to submit that the terms and conditions of an Insurance policy have to be strictly complied with and no departure from the same is permissible.

On all these grounds, it is submitted that the decree is wrongly granted contrary to the terms and conditions of the Policy.

11. Learned counsel for Plaintiff however submits that letter dated 11th March, 2011 bears the original seal of the Insurance Company. It is usual for the Insurance Company not to put the initials of the person receiving the notice. In support of this submission, the Plaintiff relies on AD card which is in original in the trial court record to argue that this was an AD card received when the notice dated 5th May 2012 was dispatched and even this AD card did not bear any signatures. According to the Plaintiff it is not usual for Insurance companies to come forward and acknowledge the receipt of such letters. Their usual practice is to avoid such letters. The original AD card was sought to be placed on record as an additional document but vide order dated 14th September 2016 it was not taken on record by the Trial Court as the case was at the stage of final arguments and since the receipt of

letter dated 5th May, 2012 to which the AD card related, was not denied by the Insurance Company. He further submits that the email written by BPCL dated 18th March 2011 (Mark PW-B) clearly shows that BPCL has booked a loss of Rs.8.45 Lakhs to the Plaintiff.

Analysis and Findings

12. A perusal of the pleadings and evidence shows that the Plaintiff has not discharged its onus. Apart from filing a certified copy of the FIR, there is no other credible document on record to show that the accident actually took place. There are no photographs of the vehicle which have been filed. The alleged email from BPCL is also marked as Mark B and is not an exhibited document. The Plaintiff made no effort to produce any witness from BPCL to corroborate the accident and the payment made to BPCL. The letter dated 11th March, 2011 Ex.PW-1/B is severely disputed by the Insurance Company.

13. The Plaintiff claims to be a regular customer of the Insurance Company and is obviously well aware of the procedure adopted by them. Plaintiff has placed no evidence on record to show that it conducted any follow up pursuant to the letter dated 11th March, 2011. Plaintiff ought to have been aware that surveyors are deputed by the Insurance Company to conduct inspection of the damaged vehicle and to determine the amount payable. In this case, the claim lodged is seriously disputed. There was no survey which has been conducted by the Insurance Company and also there is no independent evidence to corroborate the actual happening of the accident. Even presuming that the claim was lodged with the Insurance Company on 11th March, 2011, the Plaintiff under normal situations would

have made several follow-ups with the Insurance Company to depute the surveyor. Presuming that the Plaintiff could not even do that, there is no reason why in the present suit a witness from BPCL could not have been examined by the Plaintiff. The Plaintiff took no pains even to prove receipt of email dated 18th March, 2011 as per the provisions of the Indian Evidence Act. There is no certificate accompanying the said email.

14. The first notice after the letter dated 11th March, 2011 is dated 5th May, 2012 i.e. almost 14 months later. There is no communication either oral or written by the Plaintiff in between these two letters. The certified copy of the FIR dated 4th March, 2011 was obtained by the Plaintiff on 20th June, 2013 but there is no evidence led to establish as to what was the progress subsequent to lodging of the FIR. Investigation report consequent of an investigation, if any, carried out by Firozabad police has not been placed on record. In a case like the present, onus lies on the Plaintiff to establish that it is entitled to recover the claimed amount. The claim cannot be allowed merely on the basis of evidence which is fluid in nature. The claim can be allowed only if the claim is established and the amount is payable. The evidence on record has to be unchallengeable. The cross examination of PW-1 also shows that the circumstances surrounding the letter dated 11th March, 2011 do not inspire confidence that the said letter was actually served upon the Insurance Company. Some part of the cross examination is relevant and is extracted hereinbelow:

“27.01.2015

***PW-1 Sh. Subodh Chand Gupta, recalled for
further cross examination continued from
08.08.2014***

On SA

XXXX by Ld. Counsel Shri Navdeep Singh for the defendant.

I have brought the letter dated 11.3.2011 which was submitted with the defendant company. It is correct that the seal affixed at point A is not signed by any one vol. Company used to received all letters by putting the stamp of the company with date. I have not personally gone to deliver the exhibit Ex.PW-1/B. It is correct that stamp encircled at point A was not affixed in my presence. It is wrong to suggest that the seal is false and fabricated. I do not remember whom my person has met in the deft. Company. I am not aware if I had made any written communication to the concerned divisional office. I have placed all the record of communication which I had made with the divisional office.

Q. You have stated above that the Company affixes the seal in the manner as is at point A. Can you show any letter where the similar seal has been affixed?

Ans. I have no document to show pertaining to this claim to show that the stamp is affixed in the same manner. Vol. I can produce similar seal affixed on the letter.

The letter Ex.PW-1/B was not written by me. It was written by the person on the letter of the plaintiff. It bears my initial which I put after reading the same. It is correct that it is no where mention in the Ex.PW-1/B that I had orally informed the defendant company.”

15. PW-1 in fact states that there was a survey conducted at the site for loss of vehicle. This survey must have been by a surveyor appointed by BPCL. However, no survey report of BPCL has been placed on record. The witness could not testify about any oral communication with the Insurance

Company. There is, therefore, a serious doubt as to the Plaintiff's entitlement, inasmuch as there is no evidence to support the factum of the accident, the extent of damage and the payment to BPCL by the Plaintiff.

16. The Insurance Company is right in its submission that the policy requires to be adhered to. The relevant clause of the policy is set out herein below:

“3. Upon the happening of any event or occurrence likely to give rise to a claim under this policy and immediately after the same shall have come to the knowledge of the insured or his agent the insured shall:

(a) take all practicable steps to cause the discovery of any guilty person.

(b) take steps for the safety of the goods

(c) give to the Company notice in writing within 10 days from the date of occurrence of the accident and shall deliver to the Company a claim in writing within 20 days from the date of occurrence of the accident and supply all such detailed particulars and proofs as may be reasonable required. In no case shall the Company be liable for any loss or damage not notified to the Company within fifteen days of the happening of the event.

(d) give to the Company notice in writing with full particulars of any claim or of any other subsequent proceeding as soon as possible after the same shall have come to the notice of the Insured and/or his agent.

(e) at his own expenses furnish all such information, explanation, vouchers, proof of ownership and of loss and such other evidence to substantiate the claim as may be reasonably required by the Company.”

17. As per the above clause, notice has to be given to the Insurance Company within 10 days after the accident took place. The claim is to be submitted within 20 days. The above condition being a part of the policy document is binding upon the Plaintiff. Plaintiff has failed to comply with the said conditions. As per the law laid down in ***Sony Cheriyan (supra)***, the Supreme Court has held as under:

“The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy. That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein.”

18. Again in ***Hira Lal Ramesh Chand (supra)*** the Supreme Court held as under:

“The Commission has referred to the delay of nine months on the part of the Insurer in repudiating the claim, after receiving the surveyor’s Report, and the failure to furnish a copy of the reports to the complainants as deficiency in service. But what is overlooked is that the complainants did not lodge any claim in writing. At all events, they did not produce any document showing the lodging of claim. It was on a mere oral intimation on 2.2.1996, the investigation by surveyor was set in motion. Further, the contents of the report had already been notified to the complainants by the surveyor in the telexes dated 4.3.1996 and

1.4.1996. Therefore, the finding of deficiency in service was not warranted.”

19. In ***Chandumull Jain (supra)***, it was held as under:

“The policy not only defines the risk and its duration but also lays down the special terms and conditions under which the policy may be enforced on either side.”

20. All the above judgments go to show that strict adherence of the policy document is the norm. A serious doubt exists as to whether or not the notice was given and whether the claim was submitted. Evidence of the Plaintiff's witness does not inspire confidence. No independent evidence has been led even to prove the occurrence of the accident. No surveyor was deputed by the Insurance Company and the follow up, if any, also lacks urgency to say the least. Learned counsel for Respondent relies upon ***Oriental Insurance Co. Ltd. v. Meenakshi Khosla 2012 (130) DRJ 319*** to submit that a legal notice was served and despite serious assertions made in the same, reply to the notice did not deal with the averments in the notice. He relies on ***Kalu Ram v. Sita Ram 1980 R.L.R. 45*** wherein the Court held as under:

“It was held that the plaintiff before filing suit had served defendant with a notice making serious allegations that defendant was a trespasser and that his possession was illegal Defendant did not refute these charges and remained silent by ignoring to reply the notice. Silence showed that he had nothing to deny and hence it was a fit case for raising adverse presumption.”

21. The proposition in the above judgments cannot be questioned, however the letter dated 25th May, 2012 written by the Insurance Company

merely said that the claim was being processed. This letter, which is a standard form printed letter by the Insurance Company is not happily worded. However, that by itself would not entitle the Plaintiff to the decree for the amount claimed, especially, when it has failed to discharge the onus which lies on it.

22. For the reasons stated hereinabove it is held that issue no.1 is held against the Plaintiff. Other issues are rendered academic. The Appeal is therefore allowed and the suit is dismissed. The amount lying deposited in the Registry along with the interest accrued thereon is liable to be refunded to the Appellant Insurance Company. In the facts of the case, there is no order as to costs. All miscellaneous applications also stand disposed of.

PRATHIBA M. SINGH, J.
Judge

FEBRUARY 13, 2018/dk