

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.2097 of 2015 (O&M)

Date of decision:27.3.2019

Oriental Insurance Company Limited and another ... Appellants

Vs.

Rohit Kumar ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.C.Gupta, Advocate
for the appellants.

Mr. Munish Kumar Garg, Advocate
for the respondent.

AMIT RAWAL J.

C.M.No.4296-C of 2019

The application is allowed, subject to all just exceptions. The document, affidavit of Regional Manager, Ambala Regional Office, Ambala as Annexure AY is taken on record.

RSA No.2097 of 2015 (O&M)

The appellants/Insurance Company are in regular second appeal against the concurrent findings of fact and law whereby suit of the respondent-plaintiff for recovery of Rs.7,50,598/- alongwith interest @ 6% per annum, has been decreed.

As per the averments, M/s R.R.Textiles, O-5 Industrial Area, Panipat, was running its Industrial Unit for manufacturing of Shody Yarn by installing the machines insured with the Insurance Company vide

policies of Rs.5.00 lakhs qua stock, Rs.15.00 lakhs of machinery and Rs.5,50,000/- for building, total comes to Rs.25,50,000/-. On 6/7.10.2007 at about 2:45 a.m, in the intervening night fire broken due to friction in the carding machine and entire building, machinery and stock were totally damaged. Even ten labourers also died. The matter was reported to the police vide FIR No.400 dated 07.10.2007. The Insurance Company appointed Mr. S.K.Singla and S.Soni & Company Karol Bagh as surveyor to assess the loss at the premises but despite that company appointed the second surveyor which was not permissible in law, thus, in such circumstances, sought the aforementioned claim which was assessed by the surveyor.

The defendants opposed the suit but did not deny the Insurance Policy but it was found that as per the report of Investigator, there was a case of theft of electricity and in the FIR lodged by the Electricity Department, the concerned person was convicted. Both the parties led extensive evidence. The trial Court by not agreeing with the contention of the Insurance Company, decreed the suit.

Mr. R.C.Gupta, learned counsel appearing on behalf of the appellants submitted that suit was liable to be dismissed, though the surveyor had assessed the loss but as per the terms and conditions of the Insurance Policy, in case insured found to have flouted any conditions i.e. theft of the electricity, the claim was liable to be repudiated. In this regard, reference was made to the general condition No.3(a) of the Contract of Insurance. The findings are contrary to the report of the independent and

expert surveyor/loss assessor. The Insurance Company is custodian of the public money and this amount cannot be permitted to squander away for entertaining the false and frivolous case.

Mr. Munish Garg, learned counsel for the caveator/respondent submitted that amount of compensation has been paid except a sum of Rs.59,000/-.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Gupta.

The existence of factory, insurance policy, breaking of fire, and registration of criminal case against the plaintiff qua said incident as well as death of 10 labourers are not in dispute. The question arises whether the defendant is liable to pay the compensation or not?

As per the evidence brought on record, defendants have not been able to place on record any material except the report, Ex.D4 which cannot be made basis for declining the claim. There has to be direct and cogent evidence with regard to theft of electricity. No such evidence has been placed on record.

In such circumstances, in my view, the defendants failed to rebut the claim of the plaintiff by not discharging the onus. The findings of fact and law cannot be said to be suffering from illegality and perversity.

Resultantly, the regular second appeal is dismissed.

March 27, 2019

savita

(AMIT RAWAL)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No