

RSA Nos.3212 and 3189 of 2017 (O&M)

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

Date of decision : 26.03.2019

1. RSA-3212-2017 (O&M)

Ramesh Chander

... Appellant

Versus

The New India Assurance Company Ltd. and others

... Respondents

2. RSA-3189-2017 (O&M)

Ramesh Chander

... Appellant

Versus

The National Insurance Company Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. L.M. Gulati, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two regular second appeals bearing **RSA No.3212 of 2017** titled as **“Ramesh Chander V/s The New India Assurance Company Ltd. and others”**, arising out of the Civil Suit No.303 of 2009 and RSA No. **RSA No.3189 of 2017** titled as **“Ramesh Chander V/s The National Insurance Company Ltd. and others”**, arising out of the Civil Suit No.304 of 2009.

The plaintiff instituted the suits seeking recovery of

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₹35,00,000/- along with interest against the Insurance Company on account of not honouring their commitment by indemnifying the insured, on the premise that the plaintiff had taken two policies from the same Insurance Company regarding the goods stored in the premises, where the business in the name and style “M/s Bhardwaj Textiles and Shop No.4, near Shashtri Market, Amritsar, was carried out. On the day of Diwali Festival, fire broke out in the premises and the matter was reported to the Insurance Company and the surveyor was deputed, who did not assess the loss and the claim was repudiated. The plaintiff had already filed a complaint before the State Consumer Disputes Redressal Commission at Chandigarh, but the same was dismissed in 2008 and the appeal taken before the National Commission was also dismissed.

The defendants opposed the suit and raised the objection qua maintainability and repudiation of the claim, on the basis of the report of the Surveyor, to whom, the plaintiff could not satisfy regarding the alleged loss.

The plaintiff in support of the pleadings examined as many as five witnesses including the Architect and brought on record many documents.

Mr. Gulati, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have erroneously non-suited the plaintiff by applying the *doctrine akin to res judicata*, whereas the remedy availed under the separate statute was in addition to the other provisions of law, in other words, the provisions of Section 9 of the Code of Civil Procedure, can always be invoked and were not barred. The documentary evidence established the loss, yet the Courts below declined the relief.

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I am afraid the aforementioned argument is not sustainable for the simple reason that it is a case, where surveyor did not assess the loss in favour of the plaintiff and the claim was repudiated. The relief of declaration by challenging the report as well as the decision of the Insurance Company, was also required to be assailed and not the simpliciter suit for recovery.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Gulati, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. Resultantly, the second appeals are dismissed.

26.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**