

PUNJAB AND HARYANA HIGH COURT

Great American Insurance Co. Ltd

Vs

Dina Nath

(Falshaw ,J.)

30.01.1956

JUDGMENT

Falshaw ,J.

1. This is an appeal by the Great American Insurance Company Limited against the order of the lower Court under Section 20 of the Arbitration Act calling on the parties to nominate their arbitrators.

2. The application was filed under Section 20 by Dina Nath Suri on the allegation that under a policy which remained in force from the 6th of March 1947 to the 6th of March 1948 he had insured his house at Rawalpindi for Its. 40,000/- and household effects contained therein for Rs. 10,000/-with the defendant Company and that in consequence of the disturbances he had been forced to leave Rawalpindi and flee to this country on the 1st of August 1947 leaving behind his house and furniture, etc. He had learnt in January 1948 that during the month of September 1947 his household goods had been looted by Muslims. He thereupon preferred a claim to the Company in respect thereof and after a lengthy correspondence the Company by its letter dated the 13th of April 1949 rejected his claim informing him that as a result of a report from Messrs. Sinclair Murray and Company and from investigations carried out on behalf of the Company it appeared that the premises were neither looted nor burnt. The petitioner alleged that he had received this letter which came from Calcutta by registered acknowledgment post on the 17th of April 1949 and he filed his application under Section 20 of the Act on the 16th of July 1949 claiming a reference to arbitration in accordance with the terms in Clause 18 of the policy.

3. The application was opposed by the Company which pleaded that the claim no longer subsisted in view of the terms of Clauses 13 and 19 of the policy and that the dispute between the parties was not covered by the narrow terms of Clause 18. These points were decided by the lower Court against the Company which has come in appeal,

4. As regards the second of these questions it seems that the only ground on which the Company

has repudiated the petitioner's claim under the policy was that in fact no damage had been sustained either to the house or its contents, which is simply a question of fact, and even now the claim is not repudiated on any other ground. The relevant words of Clause 18 are-

"If any difference arises as to the amount of any loss or damage, such difference shall, independently of all other questions, be referred to the decision of an arbitrator," The learned counsel for the Company has attempted to argue that the total repudiation of any liability on the part of the Company takes the dispute between the parties out of the scope of these words, which, as far as I could gather from him, will only come into play if the Company admits that some loss or damage has been caused and the dispute is only regarding the extent. I cannot see any force in this argument, since it does not seem to me to make any difference whether the Company says that no damage or loss at all has been caused, or whether it says that some damage has been caused, but not as much as is claimed by the insured. In either case it is quite obvious that there is a dispute between them as to the amount of loss or damage and it does not seem to me that any authority is necessary for holding that the present dispute between the parties falls within the scope of the arbitration clause in the policy.

5. The other points which arise in the appeal relate to the effect of Clauses 13 and 19. The relevant portion of Clause 13 reads-

"..... or if the claim be made and rejected and an action or suit be not commenced within three months after such rejection

..... all benefit under this policy shall be forfeited."

Clause 19 reads-

"In no case whatever shall the Company be liable for any loss or damage after the expiration of twelve months from the happening of the loss to damage unless the claim is the subject of pending action or arbitration."

The lower Court decided on the first of these points in favour of the petitioner on the ground that the period of three months mentioned in Clause 13 must be deemed to commence from the date on which the repudiation of his claim by the Company was actually received by him and his evidence that he received the letter on the 17th of April 1949 was believed mainly on the ground that the Company had not produced the registered, acknowledgment due form, which would have shown a different date if the petitioner's allegation was incorrect. The effect of Clause 19 was surmounted by the lower Court by holding that the Company could not take advantage of the fact that It had taken so long to investigate the petitioner's claim that the repudiation of the claim following a lengthy correspondence itself only came very much more than one year after the loss or damage was sustained.

6. As regards the effect of Clause 13, I agree with the lower Court that the period of three months should be deemed to start from the date on which the repudiation of the claim was actually conveyed to the petitioner. Reliance was placed by the appellant on the decision of Rupchand A. J. C. in -- '*Shaw Wallace and Company v. Gurbuzsing Beshensing*'¹, in which a clause in the contract between the parties read-

"All letters and notices given to the buyers by the sellers in connection with this contract may be sent by prepaid post letters and addressed to the buyers at Amritsar, which the buyers hereby admit to be their address, and all notices so sent shall be considered to be served on the buyers at the time the same ought to have been delivered in due course of post by the Post Office, etc."

It seems that the notice sent by the Company requiring the respondents to appoint an arbitrator within seven days of the date of notice in accordance with 'the terms of the contract actually took a fortnight to reach the addresses, and in the meantime the Company had appointed an arbitrator on behalf of the so-called defaulting party in accordance with the same terms. It was held that no sufficient cause had been shown why the provisions of reducing the period of notice to seven days from the date of despatch and agreed to by the parties with open eyes should not be given effect to and that the objection by the defaulting party to the appointment of arbitrator on their behalf by the other party on that ground must fail. I can only say with due respect that I do not agree with that decision and consider that in those circumstances there was ample ground for interference by the Court. In any case there is no such seven days' clause in the contract between the present parties and I consider that the period of three months must be taken to start from the date on which the letter repudiating the claim reached the petitioner.

7. With regard to the effect of Clause 19, my attention has been drawn by the learned counsel for the respondent to the provisions of Ss. 18 and 36 of the Displaced Persons (Debts Adjustment) Act LXX of 1951 which came into force during the pendency of the present appeal. The relevant portion of Section 18(1) reads-

"18 (1) Where any property in West Pakistan belonging to a displaced person was insured with any insurance company before the 15th day of August, 1947, against any risk arising out of fire or theft or riot and civil commotion and there has been a loss in respect of such property arising out of any such risk at a time when the contract of insurance was in force, such company shall not be entitled to refuse payment of the sum due under any claim in relation thereto on the ground that (a) (b) the claim was not made to the company within the agreed time, (c)

..... (d) the displaced person has not fulfilled any other condition of the contract which in the opinion of the Central Government is of a technical nature and which the Central Government has, by notification in the Official Gazette, specified as a condition of the contract for the purposes of this section, and any contract to the contrary, to the extent to

which it is in contravention of the provisions of this sub-section, shall be deemed to have had no effect." The relevant portion of Section 36 reads-

"36. Notwithstanding anything contained in the Indian Limitation. Act, 1908 (IX of 1908) or in any special or local law or in any agreement,--

(a)

(b) any suit or other legal proceeding for the enforcement of a claim against an insurance company not falling within the provisions of Clause (a) in respect whereof the cause of action had arisen, whether wholly or in part, In the territories now situate in West Pakistan and the institution of the suit or other legal proceeding has become barred by reason of a condition in the contract, which, but for the condition would have been governed by the provisions contained in Clause

(a), may be instituted at any time within one year from the commencement of this Act."

8. The Question whether the provisions of this Act can be applied to proceedings which were pending before the" Act came into force came up for consideration before Harnam Singh and Dulat JJ. in-- '*National Fire and General Assurance Co. Ltd. v. Mool Singh Gurdev*', Regular² which was an appeal by an insurance company against a decree passed in favour of a Rawalpindi firm on the basis of a similar claim.

In that case the company had relied on the defence that the claim under the policy could not be enforced because no claim had been filed within 15 days of the loss or damage as required by the terms of the policy. The trial Court had decided this point in the plaintiffs' favour on the finding that the condition in question had been waived by the company by its conduct. The learned Judges held that it was not necessary to go into the question of waiver in view of the provisions of Section 18(1) Of Act LXX of 1951 which was cited and Dulat J., who delivered the, judgment went on-

"It is quite plain from the provision of law quoted above, that in a case like the present the insurance company cannot avoid liability by urging that the claim was not made within the agreed time. Mr. Isaacs first contended that this Act was not applicable to the present case as it had been enacted after the present suit had been decided, but ho did not press this contention after he had considered the decision of the Federal Court in -- "*Lachmeshwar Prasad v. Keshwar Lal*", AIR 1941 FC 5 (C), which authority laid down that a Court of appeal in India is entitled to take notice of any legislative change governing the rights of the parties and give effect to it because an appeal is in the nature of a re-hearing. He did contend, however, that Section 18, Sub-section (1) of the Act applied only to a case before a Tribunal set up under the Act and the provision had no application to proceedings pending elsewhere.

For this contention he depended on the argument advanced in -- '*Banke Mal Naranjan Das v. Central Bank of India Limited*'³. in respect of Section 17 of the same Act; In which case Weston C. J., was persuaded to hold that that section was applicable to proceedings held by the Tribunal appointed under the Act and not applicable outside those proceedings. This view was, however, overruled by a Division Bench of which one of us was a member in '*Sulakhan Singh Seth Mool Chand v. Central Bank of India Ltd.*'⁴, and the argument therefore has little force. Mr. Isaacs then pointed out that there was a difference between Section 17 and Section 18 of the Act in so far as Section 17 does not at all mention the Tribunal while Section 18, Sub-section (2), does so. This distinction is of no consequence because what we have to consider is not Sub-section (2) of Section 18 but Sub-section (1), for it is Sub-section (1) that contains the substantive provision of law. The language of this sub-section is plain enough and there is in my opinion little doubt that Parliament here intended to do away with the effect of certain conditions in certain contracts and there seems to me little merit in the argument that such contracts are intended to be read one way by the Tribunal appointed under the Act and in another way by other Tribunals in the country. , I am in the circumstances unable to agree with Mr. Isaacs that the provision contained in Section 18, Sub-section (1) of this Act would not apply to the present case and that being so it is clear that the insurance company can derive no advantage from the fact that the claim was not made within the agreed time."

9. This Judgment admittedly does not mention any of the provisions of Section 36 of the Act, but it is clearly an authority for applying them if they are applicable in any way to the present case. In any case, Section 36(b) clearly refers "to any suit or other legal proceeding" for the enforcement of a claim against an insurance company and so this section cannot be said to be applicable only to proceedings before a Tribunal set up under the Act. Its effect certainly seems to be to nullify clauses similar to Clause 19 in the present case in any insurance policies where the claim is brought by a displaced person with regard to a property insured in West Pakistan before the 15th of August 1947.

10. It was contended on behalf of the Company that the provisions of Section 36 were not applicable because the validity of clauses similar to Clause 19 in the present policy had been upheld by the Courts on many occasions on the ground that although the parties could not by agreement change the law of limitation, they could agree that their rights would lapse after certain period regardless of the law of limitation. I have, however, no doubt in my mind that the words "or in any agreement", in the first part of Section 36 and "the institution of the suit or other legal proceeding has become barred by reason of a condition in the contract", in Clause (b) were clearly intended by the Legislature to nullify clauses of this nature with regard to claims by displaced persons regarding property insured and left behind in Pakistan. Otherwise the words do not seem to me to have any meaning at all.

11. Some attempt was made to argue that an application under Section 20 was not a legal proceeding, but in my opinion there can be no doubt whatever that an application filed in Court

to enforce an arbitration agreement is a legal proceeding. I accordingly dismiss the appeal with costs. Counsel's fee Rs. 50/-. At the request of the learned counsel for the appellant I grant him a certificate that the case is a fit one for riling a Letters Patent Appeal.

Cases Referred.

1AIR 1929 Sind 58 (A)

2First Appeal No. 1-D of 1952: (AIR 1955 NUC (Punjab) 4988 (B))

354 Pun LR 324: (AIR 1952 Punj 400) (D)

455 Pun LR 348 : (AIR 1954 Punj 66) (E)