HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CIMA no. 65/2001 Date of order: 10.02.2010
CMP no. 149/2001

Oriental Insurance Co. v. Bhushan Lal Pandita & anr.

Coram:
Hon'ble Mr. Justice Barin Ghosh, Chief Justice
Hon'ble Mr. Justice Gh. Hasnain Massodi, Judge

Appearing counsel:

For appellant(s) : Mrs. Zainab Shamas Wattali, Advocate.
For respondent(s) : Mr. C. J. Dhar, Advocate.

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i) Whether approved for reporting in Law journals etc.: Yes.
ii) Whether approved for publication in press: Optional

A claim lodged against the appellant-Insurance Company before the J&K State Consumers Protection Commission, Jammu, resulted in the award impugned in the appeal.

The claim arouse out of a Fire Insurance Policy, undisputedly validity whereof, was from March 16,1999 to March 15, 2000. The claimants approached the appellant contending that the subject matter of the

Insurance Policy, namely the house property of the claimants, has been destroyed by fire, which took place some times in the month of May 1999, i.e., when the said policy was in force. Appellant deputed its surveyor, who surveyed the property on October 16, 1999. The surveyor there upon submitted his report. In the report, it was stated that the insured property has been damaged by fire. Appellant thereupon appointed an investigator. The investigator reported that the exact date of occurrence, i.e, the exact date when the fire took place, is not known. He, however, did not doubt that destruction of the property, as was claimed, was not due to fire. Without obtaining permission of Inspector of Insurance, the appellant purported to appoint the second surveyor. Admittedly, appointment of the second surveyor was not communicated to the claimants, nor the second surveyor informed the claimants of his appointment. Admittedly, the second surveyor did not involve the claimants at the time of making the second survey. The second surveyor also did not say that destruction of the insured property was not by fire. Even after receipt of both the survey

reports, the appellant did not take any step to settle the claim of claimants. The claimants, accordingly, went before the Commission. Before the Commission, it was contended that the exact date of the incident of fire is not known and, accordingly, it is a question of fact, which is to be gone in and for that matter, Commission may not be the appropriate forum. It was not contended before the Commission that policy of Insurance is invalid, inasmuch as the same was issued on the basis of untrue informations supplied by the claimants. Having regard to the admitted fact that the claim was lodged when the Insurance Policy was still valid and the same was surveyed when the policy of Insurance was also alive and taking note of the fact that there is no dispute that it was fire, i.e., the peril covered by the Insurance Policy, which destroyed the insured property and there being no contention that the policy of Insurance was invalid, the Commission allowed the complaint, directed payment of compensation, as was assessed by first surveyor together with interest and ignored the report of the second surveyor because appointment of the second

surveyor was without permission of the Inspector of Insurance.

In the present appeal, it is being contended that it was only one of the claimants alone who deposed before the Commission and stated that the fire incident took place some times in May 1999. It is being contended that the same was not corroborated by any other evidence. Before the Commission, the Investigator and the second surveyor were produced as witnesses of the appellant and none of them even throw a hint in course of their examination that the fire complained of may have had taken place prior to March 16, 1999.

That being the situation, we are of the view that evidence tendered by the claimants, in the circumstances, did not require any further corroboration.

It was contended before us that when the date of occurrence was not pinpointed and the appellant had denied before Commission that the fire took place in the month of May 1999, a disputed question of fact

arouse, which could not be sorted out by the Commission.

The fact remains that the Insurance Policy was valid from March 16, 1999. In the absence of a contention that the said policy of Insurance was obtained by suppression of material facts, presumption would be that the insurable interest in the policy of insurance was subsisting as on March 16, 1999. The survey was conducted on October 16, 1999, i.e., when the policy was still alive, and at that stage and even subsequent thereto on two occasions, it was not doubted that the destruction has been caused by fire. In such situation, we do not find there was a disputed question of fact before the Commission.

As aforesaid, even the witnesses of the appellant, who deposed before the Commission, did not doubt that the fire had taken place before March 16, 1999, as a result conclusion would be that the matter was such which could be decided by the Commission.

It was contended by the appellant that it was not contended on its behalf before the Commission that

the claim of the claimants was sought to be settled at the loss assessed by the second surveyor but the Commission purported to proceed on that basis.

Assuming what the appellant is contending is correct, still then no interference is called for, inasmuch as, the report of the second surveyor, in law, could not be looked at by the Commission and, in fact, the Commission has not relied on said report, inasmuch as, appointment of the second surveyor, without the permission of the Inspector of the Insurance, was contrary to law.

Learned counsel for the appellant submitted that when the claimants themselves did not know the exact date of fire, it was obligatory on their part to produce some other evidence to suggest the exact date of fire.

For the reasons already indicated above, we do not think there was any such requirement in the instant case. In the absence of a contention that the policy of Insurance was bad, it must be deemed in law that the appellant had accepted existence of the insured property as on March 16, 1999, and the

surveyor inspected the said property when the policy of Insurance was alive and found that the same has been destroyed by one of the perils covered by the Policy of Insurance. Subsequently the Inspector and the second surveyor did not doubt the cause of destruction of the insured property.

We, accordingly, conclude the matter.

Learned counsel for the appellant submitted that 12% interest awarded is excessive. It should be 6% as has been granted by the Hon’ble Supreme Court in many cases. The quantum of interest is discretionary. In the instant case, discretion has been used to fix interest @ 12% taking into account the conduct of the appellant. Having regard to the conduct of the appellant we see no reason to interfere with the quantum of interest fixed by the Commission.

We, accordingly, have nothing further to be done in the appeal, the same is dismissed.

(Gh. Hasnain Massodi)
Judge

(Barin Ghosh)
Chief Justice

Jammu,
10.02.2010
Tilak, Secy.