(2012) 05 DEL CK 0554

Delhi High Court

Case No: Regular First Appeal No. 539 of 2004

Oriental Insurance Co. Ltd.	APPELLANT
Vs	
Baldev Raj Chib	RESPONDENT

Date of Decision: May 28, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 41 Rule 33, 96

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: L.K. Tyagi, for the Appellant; Deo Prakash Sharma and Mr. Dinesh Kumar, for the Respondent

Final Decision: Allowed

Judgement

Valmiki J Mehta, J

1. This Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 3.8.2004 decreeing the suit of the respondent/plaintiff for recovery of Rs. 5,26,601/- alongwith interest. The suit has been decreed with respect to the insurance claim made by the respondent/plaintiff under an insurance policy issued by the appellant/defendant for a car which was owned by the respondent/plaintiff. The facts of the case are that the respondent/plaintiff purchased a vehicle being Mahindra Bolero on 9.8.2001 bearing registration no. DL-3CS-8205 and insured the vehicle with the appellant/defendant vide policy no. Yr/No. 2002/2280 and cover note 162161 dated 17.8.2001. The period of insurance was from 17.8.2001 to 16.8.2002 for a sum of Rs. 5,26,601/-. The vehicle was stolen in the evening of 8.4.2002 and which fact was found out in the morning of 9.4.2002. The respondent/plaintiff lodged an FIR bearing no. 215/2002 on 9.4.2002 with the police station, Hauz Khas. Since the vehicle remained untraced, the respondent/plaintiff lodged a claim with the appellant/insurance company for the recovery of the amount of Rs. 5,26,601/- being the amount which was stated in the

policy.

2. The respondent/plaintiff, in the plaint, also pleaded a case that though he had sent his letter dated 31.7.2002 agreeing to receive an amount of Rs. 4,65,000/- in full and final settlement/satisfaction, however, that concession was valid provided the amount would be released immediately, but since the amount was not released immediately, the concession in the letter dated 31.7.2002 stood withdrawn. It was further pleaded that the appellant/defendant wrote its letter dated 26.7.2002 for furnishing of documents and the respondent/plaintiff is said to have complied with the request. Since the appellant/defendant failed to pay the amount of insurance, the respondent/plaintiff filed the subject suit after serving a demand notice dated 8.10.2002.

3. The appellant/defendant contested the suit and took up several defences. One plea was of non-joinder of necessary party inasmuch as, the vehicle was hypothecated to Allahabad Bank which was not made a party. A further defence was that the claim of the respondent/plaintiff was agreed to be payable for Rs. 4,65,000/- and vide letter dated 30.10.2002 of the appellant/defendant request was made for giving of documents for transfer of the registration certificate, but since this requirement was not complied with, the amount of Rs. 4,65,000/- could not be released. It was further pleaded that as per condition no. 3 of the insurance policy, the liability of the appellant/insurance company cannot exceed the insured value as stated in the policy or the market value whichever is less and since the market value was less, the respondent/plaintiff was not entitled to more than the amount of Rs. 4,65,000/-, and which was offered to be paid to the respondent/plaintiff subject to transfer of the registration certificate in the name of the appellant/defendant.

4. After the pleadings were complete, the trial Court framed the following issues:-

i. Whether the suit is not maintainable for the reasons stated in paragraph 1 of the preliminary objections of the written statement OPD

ii. Whether the suit is bad for non joinder of Allahabad Bank as pleaded by the defendant in paragraph 2 of the preliminary objections of the written statement OPD

iii. Whether the suit of the plaintiff is not maintainable for the reasons stated in paragraph 3 of the preliminary objections of the written statement OPD

iv. Whether the plaintiff has no cause of action for filing the suit on the ground pleaded in paragraph 4 of the preliminary objections of the written statement OPD

v. Whether the suit is not maintainable for the reasons stated in paragraph 5 of the preliminary objections of the written statement OPD

vi. Whether the plaintiff is not entitled to receive a sum exceeding Rs. 4,65,000/- OPD

vii. Relief.

5. The thrust on behalf of the appellant/insurance company was twofold before this Court. The first was that the liability under the insurance policy cannot exceed the market value of the vehicle or the insured value whichever is less and since the market value was lesser at Rs. 4,65,000/-, it was this value which was liable to be paid. The second ground on behalf of the appellant/insurance company which was urged before this Court was that the respondent/plaintiff himself had written a letter dated 31.7.2002 (Ex.PW1/DA), as per which, the respondent/plaintiff agreed to Rs. 4,65,000/-, and he cannot thereafter back out of the agreement/accord and satisfaction at Rs. 4,65,000/- inasmuch as, this amount was not paid to the respondent/plaintiff only because of failure of the respondent/plaintiff to give the registration certificate alongwith the transfer documents in favour of the appellant/defendant.

6. So far as the first argument of the liability only to pay the market value and not the value as stated in the insurance policy is concerned, reliance is placed upon Clause-3 of the policy which reads as under:-

The company may at its own option repair, reinstate or replace the Motor Vehicle or part thereof and/or its accessories or may pay in cash the amount of the loss or damage and the liability of the Company shall not exceed the actual value of the part damaged or lost less depreciation plus the reasonable cost of fitting and shall in no case exceed the insured''s estimate of value of the Motor vehicle (including accessories thereon) at the time of the loss or damage whichever is less.

In my opinion, this argument on behalf of the appellant is completely misconceived because the Clause relied upon deals with the situation where the vehicle is involved in an accident and thus the damage parts are sought to be replaced. This Clause does not cover, as per its plain language, theft of the vehicle, and which is an admitted fact in the present case. I, therefore, reject the argument that as per the Clause-3 of the policy of insurance, the appellant/defendant could have paid not the insured value but was entitled to pay only the lesser market value.

7. It is the second argument which is urged on behalf of the appellant/defendant, which has merit and is therefore entitled to be accepted. In order to appreciate the argument let us read Ex.PW1/DA, the letter dated 31.7.2002 admittedly written by the respondent/plaintiff to the appellant/defendant. This letter was also admitted during admission/denial of documents, and it was exhibited as Ex.P-2.

Date: 31.7.2002

THE ORIENTAL INSURANCE COMPANY LTD.

2E/16, JHANDEWALAN EXTN.

NEW DELHI

SUB: VEHICLE NO. DL-3CS-8205 MAKE MAHINDRA BOLERO

Dear Sir,

This has reference to the discussion with Mr. Jeevan Aggarwal. I agreed for full & final settlement of our claim against the above subject vehicle for Rs 4,65,000/-(Rupees Four lakh sixty five thousand only)

Thanking You,

Yours faithfully,

(Baldev Raj)

C-103, DDA Flats,

Saket, New Delhi.

8. A reading of the aforesaid letter shows that there is no condition in this letter, as the counsel for the respondent/plaintiff wanted me to believe, that the agreement was for receiving of Rs. 4,65,000/- in full and final settlement provided the amount was paid immediately. This letter dated 31.7.2002 only states that there is an agreement for receiving of amount of Rs. 4,65,000/- in full and final settlement. Once in law there is an agreement, there cannot be unilateral revocation/withdrawal, and therefore, merely because the respondent/plaintiff had thereafter sent its legal notice dated 8.10.2002, Ex.PW1/7, alleging that the agreement contained in the letter dated 31.7.2002 (sic. 1.7.2002) will not bind the respondent/plaintiff, it is however not permissible to add a term to a letter by a subsequent notice, moreso when the addition which is sought to be made will vitally change the factual and legal position. I, therefore, reject the argument that the agreement contained in the letter dated 31.7.2002 would stand withdrawn in terms of the notice Ex.PW1/7 issued by the respondent/plaintiff to the appellant/defendant, and, I hold that respondent/plaintiff agreed to receive an amount of Rs. 4,65,000/- in full and final satisfaction of his claim under the policy. The appellant/defendant would have in fact paid this amount as claimed by the respondent/plaintiff in terms of the letter dated 31.7.2002, however, this amount could not be paid because of the default of the respondent/plaintiff in failing to give the registration certificate alongwith the transfer documents to the appellant/defendant. The appellant/defendant had written two letters dated 30.10.2002 and 28.11.2002, Ex.P-3 and Ex.P-4 respectively, to the respondent/plaintiff, but admittedly, the registration certificate (with the transfer documents) was not given. The insurance company on payment of the amount under the policy with respect to a car, surely is entitled to receive the registration document of the vehicle duly transferred in its name inasmuch as after paying the insured amount, the insurance company will become owner of the vehicle, and can claim the same if at any time it is thereafter recovered. Therefore, the blame must lie for nonpayment of the amount of Rs. 4,65,000/- with the respondent/plaintiff. I may state that the blame must lie with the respondent/plaintiff only partly because

even the appellant/defendant is partly to blame inasmuch as there was no reason for the delay from 31.7.2002 to 30.10.2002 (Ex.P-3) when the letter was written by the appellant/defendant to the respondent/plaintiff. I, therefore, hold that the appellant/defendant was only liable to pay a sum of Rs. 4,65,000/- to the respondent/plaintiff.

9. The only issue which now remains to be examined is what should be the rate of interest which has to be granted on this amount of Rs. 4,65,000/-. Learned counsel for the respondent/plaintiff relies upon Order 41 Rule 33 CPC to urge that though no cross objections have been filed, interest of justice in the facts of the present case requires that the low rate of interest at 6% which has been granted should be enhanced, moreso because the respondent/plaintiff has only partially received the decretal amount because he was not in a position to furnish security for release of the balance decretal amount. Learned counsel for respondent/plaintiff rightly urges that interest only at 6% per annum will not even cover the inflation cost during this period. Learned counsel for the respondent/plaintiff, and in my opinion, rightly urges that if the appellant/defendant was really sincere, it would have at least during the pendency of the suit paid the amount of Rs. 4,65,000/-, without prejudice to its rights but even this amount was not paid which was in fact an admitted amount and a lesser amount for which the appellant/defendant should have admitted its liability in terms of Order 12 Rule 6 CPC. Considering the facts of the present case, in my opinion, it would be in accordance with justice and equity to enhance the rate of interest granted by the trial Court from 6% per annum simple to 7 1/2 per annum simple.

10. In view of the above, the appeal is allowed. The impugned judgment and decree dated 3.8.2004 is set aside. The respondent/plaintiff will be entitled to a decree only for a sum of Rs. 4,65,000/- alongwith interest at 7 1/2 % per annum simple from 1.7.2002 till payment. The respondent /plaintiff will be bound to give adjustment for the amount which he has already received from the appellant/defendant after passing of the impugned judgment and decree being the amount withdrawn by the respondent/plaintiff from this Court, and which amount was deposited by the appellant/defendant. Parties are left to bear their own costs. In case the amount already deposited in this Court is sufficient to cover the liability of the appellant/defendant under today''s judgment and decree, then, after paying such amount to the respondent/plaintiff, if there is any balance available, the same be refunded to the appellant/defendant. In case the amount deposited in this Court is less than as per today''s judgment and decree, the respondent/plaintiff will be at liberty to execute the judgment and decree for the balance amount. Decree sheet be prepared. Trial court record be sent back.