THE HIGH COURT OF SINDH AT KARACHI

M.A.No.05 of 2016

Present:

Mr. Justice Irfan Saadat Khan
Justice Mrs. Kausar Sultana Hussain

Date of hearing: 09.04.2019 .

Appellant: Through Mr. Jamil Ahmed Javaid, advocate .

Respondent: Through Mr. Mujahid Bhatti, advocate .

J U D G M E N T

IRFAN SAADAT KHAN, J. This Misc. Appeal has been filed against the judgment and decree dated 04.02.2016 passed by the Member of Insurance Tribunal at Karachi in Suit No.08/2008.

2. Briefly stated the facts of the case are that the appellant is an Insurance Company having its head office at Rawalpindi. The respondent is a sole proprietorship engaged in business of making Bathrobes, Bathmates, Face washing towels, Yarn (Stitch & non Stitch) other allied items under the name and style of M/s. Textile Farms. The respondent pledged with the Habib Bank Limited (HBL) their stock. The bank required from the appellant to insure their stock, which were insured at Rs.11000,000/-. Due to the sad demise of Mohtrama Benazir Bhutto on 27.12.2007 riots spread out in whole Karachi and some evil doers on that date entered into the premises of the respondent and forcibly picked up 65 bags of 16/9, 157 bags of 20/2 and 710 Kg of terry yarn cloth. The respondent immediately reported the matter to the concerned Police Station and a FIR bearing No.226/2007 was registered on 28.12.2007. The respondent also informed HBL about the incident and an insurance claim was then lodged by them for Rs.14,47,000/- in respect of the stolen items.

M/s Pakistan Inspection & Co. (Pvt) Ltd then surveyed the premises. As per the respondent, the surveyors asked the respondent to settle their insurance claim at Rs.5,00,000/-. However when the respondent refused to accept the claim offered to them, the surveyors informed the appellant company that the respondent is not entitled for any insurance claim since the items, which were allegedly stolen, were not the insured goods. Dispute then arose between the parties and when the appellant refused to entertain the claim of insurance of Rs.14,47,000/- as claimed by the respondent, the respondent filed a suit for recovery of losses under Insurance Policy along with liquidated damages. The matter proceeded before the Insurance Tribunal at Karachi and the learned Member vide judgment dated 04.02.2016 found out the claim of the respondent to be in accordance with law and directed the appellant to pay an amount of Rs.14,47,000/- along with 18% liquidated damages to the respondent. Being aggrieved and dissatisfied with the said order the present Misc. Appeal has been filed.

3. Mr. Muhammad Jamil Bhutta, advocate has appeared on behalf of the appellant company and stated that the judgment of the learned Member of the Tribunal is not in accordance with law. As per the learned counsel, the learned Member while passing the judgment has not considered various aspects going to the roots of the case and the evidences produced before her and the cross-examination of the parties. He stated that from the Insurance Policy it is evident that the only goods insured were “stock of towels” and not other items. Hence according to him, the appellant was not required to pay the claim in respect of loss for other items not insured, which aspect, according to him, has totally been ignored by the learned Member. He further stated that the appellant acted as per the instructions of HBL and whatever instructions were issued to them by the HBL were complied with and the only items insured were “stock of towel” and nothing else. He stated that from the claim of the respondent it could be seen that loss of towel was shown only at Rs.1,60,000/- whereas the learned Member of the Tribunal decreed the suit at Rs.14,47,000/- along with 18% liquidated damages. He stated that learned Member of the Tribunal has not cared to go through the terms of the contract of the insurance policy and has totally brushed aside the

same. He further stated that the previous agreement made between the respondent and the EFU has no concern with the appellant company as the items insured by the respondent with the appellant was “stock of towel” only. He stated that the grant of claim by the learned Member of Tribunal to make good loss of the respondent with regard to items which were not stock of towel is not only illegal but also uncalled for as the same was not a part and parcel of the agreement entered between the parties and hence not as per the insurance policy. He stated that the surveyor after examining the matter clearly opined that since the stolen items were not stock of towel hence the respondent was not entitled for any compensation of the loss of items by the appellant. He stated that the judgment of the learned Member of the Tribunal may therefore be set aside. He also stated that award of liquidated damages under Section 118 of the Insurance Ordinance is also not in accordance with law.

4. Mr. Mujahid Bhatti, advocate has appeared on behalf of the respondent and supported the judgment of the learned Member of the Tribunal. He stated that the learned Member while passing the order has considered the entire facts and thereafter came to the conclusion that the appellant was under legal obligation to make good the loss of the stock worth Rs.14,47,000/-. He stated that several attempts were made by the respondent with the request to furnish him details of the stock mentioned by the HBL while instructing the appellant to insure the goods pledged/hypothecated by them but that was done quite late, which clearly proves mala fide on the part of the appellant. He stated that previously the respondent had an agreement of insurance of their entire stock which comprises terry yarn and other items with EFU however when goods were pledged/hypothecated with the HBL, the HBL got insured the stock with the appellant company on the same terms as that were with the EFU by the respondent, which is evident from the record. He submitted that the appellant is now trying to play smart with the respondent by mentioning that only stock of towel was insured by leaving other stock whereas it was the entire stock of the respondent that was insured by the appellant. He stated that the sum insured was Rs.1,1000,000 (Eleven million only) which included stock of towel beside other stock, hence the assertion of the appellant that it was only the stock of towel that was insured and not

other stock is nothing but an afterthought on the part of the appellant just to deprive the respondent, of the losses suffered by them, in contravention of the agreement and the insurance policy entered between the parties. He further stated that even the surveyor has totally ignored the fact that it was the entire stock that was insured and not the stock of towel only. He further stated that the policy included making good the losses in case of fire, riot, strike, burglary etc. hence the learned Member was quite justified in observing that the insured items would cover the entire stock of the respondent and not stock of towel alone. He finally submitted that the instant Misc. Appeal is devoid of any merit hence the same may be dismissed and the order of the learned Member, whereby the claim of loss of Rs.14,47,000/- by the respondent was allowed along with 18% liquidated damages may be upheld.

5. We have heard both the learned counsel at considerable length and have also perused the record.

6. Perusal of the record reveals that the respondent mortgaged its stock with HBL and thereafter under the instructions of the Bank got the said goods insured in the sum of Rs.1,1000,000/- covering entire stock which included Bathrobes, Bathmates, Face washing towels, Yarn (Stitch & non Stitch) other allied items. It is noted that the said policy included risks arising out of fire, riot, strike etc. The list of the stock was furnished by the Bank to the appellant and it was categorically mentioned by the HBL that description of the goods were same as that previously insured with the EFU. In the previous insurance policy made by the EFU complete stock, which not only included stock of towel but other goods also were insured and mentioned. It is noted that the only change which took place was the change of the insurance company as before 2007-08 goods were insured with EFU whereas after that the appellant company insured the goods. However the appellant only mentioned stock of towel as goods insured in their policy. Counsel for the respondent was categorically asked that when insured goods were only stock of towel and not other items why he did not approach the appellant for clarification; to which he replied that despite several requests the details about the policy and that of stock was not provided to them by the appellant and they only came to know about

such fact when dispute arose between the respondent and the appellant. Hence we do not find any force in the submissions of the learned counsel for the appellant that the respondent was in full knowledge about the insurance policy and the sock being insured by them. It is further noted that if there was a mistake on the part of the appellant with regard to non mentioning of the full description of the stock, the respondent could not be penalized in this behalf. It is also an undeniable fact that original policy was never provided to the respondent by the appellant company nor the same was provided during the time of cross-examination. So far as the contention of the learned counsel for the appellant that they have insured goods as per the details provided to them by the HBL and if the respondent has any grievance he should have initiated legal proceedings against the HBL. In our view this argument carries no force on the ground that it was the respondent who was to be reimbursed/compensated by the appellant and it was not the outlook of the appellant company to suggest the respondent company about the legal action to be taken by them against the HBL. It is a settled proposition of law that in case of loss suffered by insured the insurance company as per the terms entered between them is under legal obligation to make good the loss. From the contents of the letter dated 22.8.2007 written by the respondent to the appellant it was categorically mentioned that they needed insurance policy for their stock with HBL in the sum of Rs.1,10,00,000/- and the description of the intended stock was duly enclosed. The receipt of this letter was not denied by the counsel for the appellant. Hence the submission of the learned counsel for the appellant that the respondent only insured with them stock of towel is not proved from their own admission. We also asked from the counsel for the appellant that whether they provided details of the policy and the description of the goods insured to the respondent. No plausible reply in this behalf was furnished by the appellant except saying that details were provided to HBL and if the HBL has not provided the same to the respondent it was a matter between the respondent and the HBL. From the facts the lien between the insurer and the insurance company has been established. Hence in our view the learned Member of the Tribunal was justified in decreeing the suit in favour of the respondent at Rs.14,47,000/- along with 18% liquidated damages since no illegality, irregularity or legal infirmity has been found in

the order passed by the learned Member of the Tribunal, which is upheld and the instant Misc. Appeal filed by the appellant is dismissed along with the listed application being meritless.

Above are the reason of our short order dated 09.04.2019.

JUDGE

JUDGE

Gulzar/PA