INSURANCE CORPORATION OF SRI LANKA
v.
SENEVIRATNE

COURT OF APPEAL
WEERASURIYA, J. (P/CA) AND
BALAPATABENDI, J.
CA NO. 1176/95 (F)
DC COLOMBO NO. 6098/M
JANUARY 30, 2002

Insurance – Contract of Insurance – Damages – Breach of the policy of Insurance – Is the owner entitled to claim damages as consequential loss arising from the breach of contract? – Does the law of insurance permit recovery of consequential loss? – Does the doctrine of remoteness prevent a claim for damages from consequential loss?

The plaintiff-respondent claimed a sum of Rs. 200,000 as damages for breach of the contract of Insurance entered into with the defendant-appellant in respect of his car and a further sum of Rs. 100,000 and Rs. 5,000 per month as consequential loss purportedly arising from the said breach of contract.

The District Court granted all reliefs.

On Appeal –

Held:

(1) It is a fundamental rule of Insurance Law that the Insurer is only liable to losses proximately caused by the peril covered by the policy.

(2) It is a general rule applicable to contracts of insurance that if the insurance policy is a valid policy the amount recoverable by the assured is the agreed value.

(3) The plaintiff-respondent has failed to produce any documentary evidence in proof of any claim in respect of expenses incurred in obtaining alternative transportation.

(4) The award of Rs. 100,000 and Rs. 5,000 per annum as consequential loss has no basis.

APPEAL from the judgment of the District Court of Colombo.

Cases referred to :

1. *Hadley v. Baxeudale* – 1854 9 EX 341.
2. *Victoria Laundry v. Newman* – 1949 vol. 22 KB 528.
3. *Eeise v. Agular* – 1811 – 3 Taunt.

S. A. Parathalingam, **PC** with *Kuvera de Soyza* for defendant-appellant.

A. S. M. Perera, PC with *Hemantha Situge* for plaintiff-respondent.

Cur. adv. vult.

March 07, 2002

WEERASURIYA, J. (P/CA)

The plaintiff-respondent brought this action against the defendant-appellant claiming a sum of Rs. 200,000 as damages for breach of the contract of insurance entered into with the defendant-appellant in respect of car bearing registered number 15 Sri 2890 and a further sum of Rs. 100,000 and Rs. 5,000 per month as consequential loss purportedly arising from the said breach of contract. 1

The defendant-appellant in its answer whilst denying liability prayed for dismissal of the action.

This case proceeded to trial on 14 issues and the learned District Judge by his judgment dated 11. 01. 1995, entered judgment for the plaintiff-respondent as prayed for in the plaint. The present appeal is from the aforesaid judgment. 10

At the hearing of this appeal, learned President's Counsel for the defendant-appellant did not seek to canvass the award of Rs. 200,000 as damages arising from breach of the policy of Insurance in respect of car bearing registration No. 15 Sri 2890.

However, he submitted that learned District Judge has misdirected himself in awarding damages in a further sum of Rs. 100,000 and Rs. 5,000 per month on the basis of consequential loss purportedly arising from the said breach of the contract of insurance. 20

The plaintiff-respondent was the owner of motor car bearing registration No. 15 Sri 2890 and on or about 28. 12. 1987, the plaintiff-respondent and the defendant-appellant entered into a contract of insurance No. A/11/084966/10/10 in respect of the said motor car, for a sum of Rs. 200,000. On or about 29. 02. 1988 the said motor car driven by the plaintiff-respondent met with an accident resulting in damages beyond repair. The plaintiff-respondent made his claim from the defendant-appellant for the total insured sum of Rs. 200,000. The defendant-appellant offered a sum of Rs. 190,000 on a total loss and directed the plaintiff-respondent to surrender the damaged vehicle 30 along with the relevant documents. Thereafter, the defendant-appellant by letter dated 10. 06. 1983, acting contrary to the aforesaid offer, rejected the claim of the plaintiff-respondent on the ground that, he had violated the provisions of clause 5 of the general exceptions contained in the policy of insurance.

The finding of the learned District Judge that, there was a breach of the contract by the defendant-appellant and therefore it was liable to pay Rs. 200,000 remain unassailed, since learned Counsel for the defendant-appellant did not seek to canvass it.

However, the question that arises for determination in this appeal is whether the plaintiff-respondent is entitled to claim damages as consequential loss purportedly arising from the said breach of contract.

The contention that no liability could be attached to the defendant-appellant to pay damages for any consequential loss purportedly incurred by the plaintiff-respondent was founded on the following basis :

(*a*) that in the law of contracts doctrine of remoteness of damages prevents a claim for damages arising from consequential loss;

(*b*) that the law of insurance does not permit recovery of consequential loss; and

(*c*) that clause 1 in the policy of insurance (P1) exempts the defendant-appellant from any liability to pay any consequential loss.

Learned President's Counsel for the defendant-appellant cited the following cases in support of his contention :

(1) *Hadley v. Baxendale.*[1]
(2) *Victoria Laundry v. Newman.*[2]

In *Hadley v. Baxendale* (*supra*) it was held that where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach should be such as may fairly and reasonably be considered either arising naturally, ie according to the usual course of things from such breach of contract itself or such as reasonably may be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it.

In *Victoria Laundry v. Newman* (*supra*) following propositions were laid down :

(*a*) that in cases of breaches of contract the aggrieved party is only entitled to recover such part of loss actually resulting in as was at the time of the contract reasonably foreseeable as liable to result from the breach;

(*b*) that what was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or at all events by the party who later commits the breach;

(*c*) that for this purpose 'knowledge possessed' is of two kinds, one imputed the other actual. Everyone as a reasonable person is taken to know the ordinary course of things and consequentially what loss is liable to result from a breach of contract in that ordinary course.

Macgillivary and Parkington on *Insurance Law* (8th edition – page 1562 – chapter 22) states as follows on consequential loss :

"An insurance policy will *prima facie* cover only loss or damage to the property insured and not consequential damages. Thus, a simple insurance on property does not cover loss of rent, occupancy, business, profits, wages of servants or workmen rendered idle or other consequential damage. Any such loss can however be expressly insured and loss of rent and non-occupancy during repairs are very common subjects of insurance. Business profit may also be insured and owners of monopolies such as patent rights may insure against diminution of royalties consequent upon the premises of licensee being destroyed by fire. Similarly, no

policy will be held to cover a merely sentimental loss. It is usually said that such losses are too remote to be recoverable since they are not proximately caused by the peril insured against, but the better view is probably that on a true construction of the policies concerned, such losses are not provided for."

It is a fundamental rule of insurance law that the insurer is only liable for losses proximately caused by the peril covered by the policy.

The consequential loss claimed by the plaintiff-respondent is based upon the following averments in paragraph 11 of the plaint :

(1) that the plaintiff-respondent is a medical specialist;

(2) that the plaintiff-respondent does extensive travelling islandwide;

(3) that the plaintiff-respondent as a matter of practice travels to see his patients.

Those averments were clarified by him in his testimony as follows :

(*a*) that he is a specialist in treating snake-bites;

(*b*) that he is the only such specialist in Sri Lanka;

(*c*) that he conducts lectures at the Police Training School, Teachers Training Schools and Universities; and

(*d*) that he has to travel to these places for the said lectures.

It is unfortunate that the plaintiff-respondent has failed to produce any documentary evidence in proof of any of these claims in respect of expenses incurred in obtaining alternative transportation.

The policy of insurance contains the address of the plaintiff-respondent as *Visha Veda Rohala* and therefore the question may be justifiably posed whether an ordinary reasonable man can assume whether he travels islandwide when he has a hospital for treatment for snake-bite. In the circumstances, the defendant-appellant could never have foreseen the plaintiff-respondent as a person travelling islandwide for his vocation or profession. Therefore, such facts cannot be within the knowledge of the defendant-appellant.

The exemption from damages arising from consequential loss contained in clause 1 of the Insurance Policy (P1) reads as follows :

> "Corporation shall not be liable to make any payment in respect of consequential loss, depreciation, wear and tear mechanical or electrical breakdown, failure of breakages."

It is a general rule applicable to contracts of insurance that if the insurance policy is a valued policy the amount recoverable by the assured is the agreed value. (*Feise v. Agular*[3] – *vide* Macgillivary and Parkington on *Insurance Law* page 1558).

For the above reasons the award of Rs. 100,000 and Rs. 5,000 per mensum as consequential loss has no basis.

Learned District Judge having made a finding that the plaintiff-respondent is entitled to claim damages on the insurance policy, has also answered issues 9 – 12 in the affirmative in respect of the claim

for damages purportedly arising from consequential loss as pleaded in the plaint.

Therefore, I proceed to set aside that part of the judgment relating 140
to the award of Rs. 100,000 and Rs. 5,000 per mensum as consequential loss.

In the circumstances, the plaintiff-respondent would be entitled to claim only Rs. 200,000 with legal interest from the defendant-appellant.

The learned District Judge is directed to vary the decree accordingly.

Subject to the above variation in the judgment and the decree, this appeal is dismissed without costs.

BALAPATABENDI, J. – I agree.

Appeal partly allowed.