

2 SCOB [2015] HCD 77**HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)**

First Appeal No. 77 of 2006

Delta Life Insurance Co. Limited
90-91 Motijhel, C/A Dhaka and another
.... Defendant /Appellants

VERSUS

Bangladesh Agricultural Development Corporation,
on behalf Secretary, Krishi Bhavan,
49-51 Dilkusha, Dhaka
....Plaintiff/ Respondent

Heard On.07.04.2015,08.04.2015,09.04.2015
and Judgment On 12 April, 2015

Present:

Mr. Justice AKM Asaduzzaman
and
Mr. Justice Md. Iqbal Kabir

Regarding the claim (No.viii) we find that the accident has taken place during the contract period and thereafter he took treatment and failed to succeed as a result he suffered a lot and finally he lost one of his legs, which was also held within the time frame of contract and MoU and claims was made within stipulated time mentioned in MoU. So there is nothing wrong to get the benefit of the insurance claim. ...(Para 30)

The court has no discretion in the matter awarding compensation. However considering the sufferings of the applicant as well as upon taking the considered view of agreement made by the appellants advocate, we are of the opinion that the interest of justice will be served if the appellants are directed to pay the claim of Abdul Motalib along with interest at the rate of 6% of his claim from the date of institution of the suit till date. ...(Para 31)

JUDGMENT

Md. Iqbal Kabir, J:

1. This appeal has been presented, at the instance of the defendants/appellants against the judgment and decree dated 31.01.2006 passed by the Joint District Judge, 5th Court, Dhaka in Money Suit No. 28 of 2003.
2. The facts relevant for disposal of the appeal are that the plaintiff filed the aforesaid Money Suit for compensation, stating inter alia that the plaintiff Bangladesh Agricultural Development Corporation here in after called BADC engaged with the development of agriculture under the Ministry of Agriculture entered into an agreement for Group Term Insurance on 05.08.1990 known as Contract No. 0181/90 with the defendant No.2, Delta Life Insurance Company Ltd. The Contract was initially effective from 01.07.1990 to 30.06.1993, extendable annually upon mutual consent of the parties. The said contract No. 0181/90 was remained in force until 30-06-1994 and thereafter, both the parties made a Memorandum of Understanding herein after called (MOU) and as per the MOU the said

contract was extended from 01.11.1994 to 30.06.1995. The plaintiff corporation demanded some claim against their employees. But the settlement of the aforesaid claims having remained unsettled, thereafter, a tripartite meeting was held amongst the plaintiff corporation and the company that is the defendant No.1 and the Controller of Insurance (defendant No.3). The meeting was convened at the instance of the plaintiff Corporation and it was Chaired by the defendant No.3.

3. Pursuant to the decisions the defendants made settlement of 11 claims out of 19, remaining 8 claims which amounting of Tk. 5,01,165/-, remained un settled, while company do not make such payment the plaintiff made representation for the same. The defendants are also responsible to pay the said amount as per clause 2 of the contract, though it has also mentioned in the tripartite agreement. While defendants failed to settle the claims as per the tripartite agreement and contract, then the plaintiff made several remainder about the payment. This inaction of the defendants hampered the livelihood of the poor employees of the plaintiff. Thereafter, on 31-07-01 the plaintiff corporation issued a legal notice upon the defendants, demanding payment of the amount of Tk. 5,01,165/- on insurance claims and Tk.6,00,000/- as compensation for having not been paid the claims money to the poor staff members of the plaintiff corporation intentionally, which led to their suffering and harassment and by this notice threatened to take legal action. In response to the reply of the notice the plaintiff corporation issued another notice stating that since defendants failed to pay the insurance claims made by the plaintiff corporation, there is no scope to renew the new insurance contract. On the contrary the defendants were in breach of the contract for which they became liable to pay damages to the Corporation having not executed the terms and obligation laid down in the contract and MOU. Subsequently one legal notice was published in 'the Daily Inquilab' dated 17.02.2002 by the plaintiff corporation asking to pay the insurance claims along with compensation money all together Tk. 11, 01, 165/ within 15 days from the receipt of the notice.

4. The suit was contested by the defendants by filing the written statements contending inter alia that the plaintiff company entered into a contract for Group Term Insurance on 05.08.1990 known as contract no. 0181/90 with the defendant No.2, Delta Life Insurance Company Ltd. which was effective from 01.07.1990 to 30.06.1995, extendable annually upon mutual consent of the parties. The said contract No. 0181/90 was remained in force until 14.11.1994 and by a Memorandum of Understanding the said contract extended from 01.11.1994 to 30.06.1995, subject to the condition that if any claim had not been submitted by the plaintiff corporation within 31.01.1995 it would not qualify for settlement. The defendant No.1 has made a settlement of 374 claims totaling an amount of taka 3,84,79,005/- of the plaintiff corporation and when only 22 claims remained outstanding the said defendants paid 14 of those claims whereby only 8 claims were left for settlement.

5. The plaintiff corporation submitted eight claims for settlement to the defendant No.1, the particulars of which are as follows: i) Atul Tudu, Tk. 58,680/; ii) Shukra Chandra, Tk.95,130/; iii) Sultan Ahmed, Tk.89,460/; iv) Habibullah Kazi, Tk.1,25,820/; v) Khoka Mia, Tk.17,325/; vi) Emadul Haq, Tk.50,400/; vii) Abdul Khaleque, Tk.16,200/; and viii) Abdul Motaleb, Tk.48,150/- all together Tk. 5,01,165/- (Taka five lac one thousand one hundred and sixty five) only.

6. Out of the above mentioned eight claims (i) to (v) were submitted to the defendant No.1 beyond the time limit prescribed in MOU, which is part of the Contract No.0181/90; claims mentioned at no (vi) and (vii) could not be settled as the plaintiff Corporation demanded payment at an enhanced rate, without making payment of the increased premium at the applicable rate corresponding to the said demand of enhancement, and the claim shown at item (viii) as aforesaid was made for the reason of amputation of one leg of the assured due to Buerger's disease which does not fall within the purview of the contract as it is stipulated therein that such claim could be made only for disability arising from accident.

7. The trial court examined one witnesses on behalf of the plaintiff and one witness on behalf of the defendants and by the impugned judgment decreed the suit.

8. The plaintiff examined only one witness who is Mr. Mohammad Ismail stated in his examination in chief that plaintiff has filed money suit calming Tk. 11, 01,165/-. The Group Term contract No. is 58/90. This contract was remained in force until 30-06-93, later on it was extended for further one year. As per contract the defendants are responsible for all risk. This witness further stated that as per fixed rate they gave the premium. Since defendant refused to pay the insurance claims, hence on 15.11.94 a MoU has been made in between plaintiff and defendants. As per the said MoU, it has decided that plaintiff made all his claim within 31st January, 95 and defendant will pay the claim with 28th February, 95. But defendant failed to pay. As per MoU the defendant settled 11 insurance claims and reaming 8 were not settled. On 25th January 97, a tripartite meeting was held amongst the plaintiff corporation and the Company, this meeting had decided about payment, but defendant not willing to pay the claims. The plaintiff corporation submitted eight claims for settlement and all together the claim is Tk, 5,01,165/-. As per the contract dated 28th February, 95 the defendants are responsible to pay the claim within that period but when they failed, the corporation made two separate representations before the controller of insurance. Thereafter, a tripartite agreement was signed on 25th January, 97 and 22nd February, 97 wherein it was decided that defendant will pay the insurance claims, failing which the plaintiff made several remainder letter. Thereafter, on 31-07-01 the plaintiff corporation issued a legal notice upon these defendants demanding payment of the amount of Tk. 5, 01,165/- against insurance claims and Tk.6, 00,000/- as compensation for having not been paid the claim money of the poor staff members of the plaintiff corporation intentionally. On 16th September, 01, the defendants refused to pay the said amount. Then to reduce the damage of the employees of corporation legal advisor of the plaintiff corporation issued another legal notice on 04th December, 01 claiming Tk. 11, 01, 165/-. Thereafter, plaintiff corporation published the said legal notice in the daily news paper namely 'The Daily Inquilab' on 17. 02.2002, but the defendant did not pay heed to it, hence this suit. To support the claim, he submitted some documents.

9. In his cross examination this witness stated that he is an accounts officer and service holder of BADC. After obtaining the consent from the concerned authority he made this witness. He stated that on 5th August, 90 the contract was executed in-between plaintiff corporation and Delta Life Insurance Ltd, at that time he was not present. He informed that the total claim including the compensation was of Tk. 11,01,165/-, out of that Insurance claim was of Tk. 5,01,165/-. He also denied the defence suggestions that the contract would be failed if the claim dose not made in specific time; new Group Term insurance contract would be made; plaintiff breach the condition of the contract; as per the condition of the contract plaintiffs failed to make the claims in time. Claims are not acceptable.

10. The defendants examined only one witness, who is Mr. Asif Iqbal, Joint Vice-President of the Company stated in his examination in chief that for the employees and the officers of the Corporation, Insurance Contract was made in between the BADC and Delta Life Insurance Ltd. The Group Term contract No. is 181/90 dated 5th August, 90. (Exhibit-L), The contract began on 1st July, 1991, remain valid until 30th June, 93. After this contract another MOU was made in between the plaintiff corporation and the defendant on 1st November, 94 (exhibit-M) and that was remain valid till 30th June, 94. Condition No.2 of the MOU suggest that every claim have to be made within stipulated time. But the claims were not submitted with in that stipulated time. The plaintiff corporation issued the legal notice and the company on 16th September, 01, made reply against on it (Exhibit-N), On 17th, February, 02, that legal notice was published in daily Inquilab, against which on 21st February, 02 defendants made a protest through publishing a Notice in daily Inquilab. (Exhibit-.O).The defendant made payment against 11 claims out of 19 claims. Out of eight claims (i) to (v) were submitted their claims beyond the time limit prescribed in MOU which is part of the Contract.; claims no (vi) and (vii) could not be settled as the plaintiff Corporation demanded payment at an enhanced rate: since they failed to make payment of the premium in enhance rate, the claim (viii) as aforesaid was made for the reason of amputation of one leg of the assured due to Berger's disease which does not fall within the purview of the contract as it is stipulated therein that such claim could be made only for disability arising from accident. In support certificate was produced, (Exhibit-P). On 11th October, 98, it was duly informed to the Controller (Exhibit-Q), There is no reason to file this suit. This suit has been filed only to harass the defendants; plaintiff cannot get any relief from this suit. This DW also

denied the suggestions made by the plaintiff that the plaintiff is entitled to get the relief from this suit.

11. In his cross examination he stated that the Company has been registered under Joint Stock Company, and have Article of Association. BADC and Delta Life Insurance Ltd entered into a contract, which was effective from 01.07.1990 to 30.06.1993. Later on it was extended for one year that is till 30th June, 94. MOU has been signed on 1st November, 94. It was remained valid from 1st November, 94, to 30th June, 95. As per MOU the defendant made their payment within 28th February, 95, if plaintiff submitted their claims within time. It is not true that the claims have not submitted as per schedule time. Plaintiff submitted their claims before the Controller of Insurance and through him a contract has been signed in between the plaintiff and defendants. It is not true that 8 claims out of 19 have not purposely been fulfilled by the defendants. The defendants made reply against the letters submitted by the plaintiff, it is not true that company have breach the conditions of MOU and contract. It is not true that company have to fulfill the 8 claims. The claims made by Hossain Gazi has been fulfilled later on. It is not true that Motaleb Miah may get his claim as because he fall in an accident but due to operation has fallen in Buerger's disease.

12. The trial court examined the witnesses as well as documents produced by the plaintiff and the defendants, the fact and circumstances of the case and evidence both oral and documentary on record and found that plaintiff has succeeded to prove his case. Upon consideration of the evidences on record the trial court, decreed the suit.

13. Being aggrieved by the impugned judgment and decree the contesting defendant Nos. 1 and 2 have preferred this appeal.

14. We have heard the learned Advocate Mr. M A Azim Khair along with Mr. Abul Kalam Azad who appeared on behalf of the appellants and submitted that trial court erred in law in passing the impugned judgment and decree.

15. Learned advocate for the appellant, submitted that contract No. 0181/90 was remained in force until 30-06-1994 and by a MoU the said contract was extended from 01.11.1994 to 30.06.1995, subject to the condition that if any claim had not been submitted by the plaintiff corporation those have to be made and submitted within 31.01.1995, otherwise it would not qualify for settlement. It is evident from the record that alleged 5 claims out of 8 the plaintiff corporation submitted to the defendant No.1 for settlement of late Atul Tudu (Exbt. 1N) on 06.05.1995, Shukra Chandra Ray (Exbt.1O) on 06.05.1995, Sultan Ahmed (Exbt-1P), Habibulah Kazi (Exbt. -1(Q) both on 18.06.1995, and Khoka Mia (Exbt.1(L) on 18.06.1995 respectively, which apparently have claimed after long times from due times in breach of the contractual time limit set in MOU and accordingly claims are barred by limitation.

16. The learned advocate for the appellant further submits that the claims no (vi) and (vii) could not be settled as the plaintiff Corporation demanded payment at an enhanced rate but against those they did not deposit the yearly premium in enhanced rate, in such a situation their claims are premature one, in such a situation they have not come with a clean hand. He further submits that the claim no. (viii), against Md. Abdul Motalib (Exbt.1(M), was made for the reason of amputation of one leg of the assured due to Buerger's disease which does not fall within the purview of the contract as it is stipulated therein that such claim could be made only for disability arising from accident.

17. The learned advocate further submits that the defendant had made settlement of 374 claims totaling an amount of Tk. 3,84,79,005/ of the plaintiff corporation and when only 22 claims remained outstanding the said defendant paid 14 of those claims where by only 8 claims were left for settlement as because those claims does not fulfill the legal requirement as per the contract and Memorandum of Understanding.

তবে উক্ত আবেদন প্রসঙ্গে বিচারক মহোদয়ের বিচারিক ক্ষমতা
 বিচারক মহোদয়ের বিচারিক ক্ষমতা
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উক্ত- জনাব মোঃ আব্দুল মোতালিব, সহকারী মেকানিক, গফরগাঁও জোনের পংগু/ অংগহানী বীমা দাবী পরিশোধ সংক্রান্ত।

উক্ত- জনাব মোঃ আব্দুল মোতালিব, সহকারী মেকানিক, গফরগাঁও জোনের পংগু/ অংগহানী বীমা দাবী পরিশোধ সংক্রান্ত।
 তবে, উক্ত আবেদন প্রসঙ্গে বিচারক মহোদয়ের বিচারিক ক্ষমতা
 বিচারক মহোদয়ের বিচারিক ক্ষমতা
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24. In this connection the provision of the contract stated as follows:

L) 'যদিও প্রথমতঃ উক্ত আবেদন প্রসঙ্গে বিচারক মহোদয়ের বিচারিক ক্ষমতা
 বিচারক মহোদয়ের বিচারিক ক্ষমতা
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গ) পঙ্গুতের বীমা : যদি বীমাকৃত কোন সদস্য দুর্ঘটনাজনিত কারণে সম্পূর্ণ বাহ্যিক এবং দৃশ্যমান আঘাতে আক্রান্ত হন এবং দুর্ঘটনার সময়
 নতুন ১০ বিচারিক ক্ষমতা
 বিচারক মহোদয়ের বিচারিক ক্ষমতা
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হাত এবং পা নষ্ট/ খোয়া বলিতে যথাক্রমে কজি এবং গোড়ালিতে অস্থিসন্ধির উপর কেটে ফেলা এবং চক্ষুর দৃষ্টি বলিতে সম্পূর্ণ
 বিচারক মহোদয়ের বিচারিক ক্ষমতা
 বিচারক মহোদয়ের বিচারিক ক্ষমতা
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25. We have examined the record and found that there is no tripartite agreement, but there is a meeting minutes and the decision of the meeting does not support to meet up the claims in favour of the plaintiff beyond the scope of MoU. The decision of the meeting as follows:

উক্ত- জনাব মোঃ আব্দুল মোতালিব, সহকারী মেকানিক, গফরগাঁও জোনের পংগু/ অংগহানী বীমা দাবী পরিশোধ সংক্রান্ত-
 ১০-১১, গুলশান-২, ঢাকা
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26. On our careful scrutiny it is evident from the statement made by the P.W. that plaintiff deposited their claims within stipulated time mentioned in the MoU, plaintiff witness also denied the suggestion made by the defendants lawyer that they do not deposited claims within time, in this connection P.W. produced some documents. But the oral evidence does not supported by the documentary evidence shown as exhibits. Those documents suggested that claims have been submitted after expiry of the time limited mentioned in the MoU. On the other hand the defence witness stated that the plaintiff failed to submit their claims within time and they do not deposite their premium in an enhanced rate. In support thereof this defendant's witness produced some documents which were shown as exhibits, those exhibit also support the oral evidence made by the DW.

27. The finding of the trial court is that since there was a contract and MoU and the plaintiff submitted their claims and made several reminder as a results defendants have to settle their claims and have to make payment. But the records suggested that the oral evidence of the plaintiff does not support the documentary evidence produced by the plaintiff. On the other hand defendant case has been proved through the exhibits produced by the defendant as a result we can say mere submitting of claims and

issuance of reminder are not enough to settle the claim. The finding of the trial court is thus not correct hence it is necessary to interfere.

28. From the above circumstances, examining the rules, law and contract. We find that the plaintiff made the claims No.I-V, on 31.01.95. But as per the provision of the contract and MoU these claims ought to have been submitted within 31st January, 95. For the others claim the plaintiff claimed in an enhanced rate without depositing their premium at the enhanced rate. Apart from that they do not comply with the other obligations which are also laid down in the contract.

29. In support of the claims no (i) to (vii), we find that nothing was wrong in not adjusting the claims by the defendant and the submission made by the advocate for the appellants are the valid submissions and we find substance in his submission. It is found that contract No. 0181/90 was in force until 30-06-1994. By the MoU the said contract was extended from 01.11.1994 to 30.06.1995, it needs to mention here that the MoU has been signed only to resolve the previous claim to which premium was paid, wherein a condition was laid down that any remaining claim have to be submitted by the plaintiff corporation within 31.01.1995, otherwise it would not qualify for settlement. It is evident from the record that alleged 5 claims out of 8 the claim of (i) Atul Tudu, Tk. 58,680/; dated 06.05.95, Exhibit-1(N) ii) Shukra Chandra, Tk.95,130/; dated 06.05.95, Exhibit-1(O) iii) Sultan Ahmed, Tk.89,460/, dated 09.05.95 Exhibit-1(P) iv) Habibullah Kazi, Tk.1,25,820/; dated 18.06.95 Exhibit-1(Q) v) Khoka Mia, Tk.17,325/, dated 18.06.95 Exhibit-1(L) respectively, were made after long times from due date, in breach of the contractual time limit set in MoU. The claims no (vi) and (vii) the plaintiff Corporation demanded payment at an enhanced rate but against those they do not deposit their premium in enhanced rate, as a result they cannot claim those at enhanced rate and the defendant has rightly refused to pay the enhanced amount.

30. Regarding the claim (No.viii) we find that the accident has taken place during the contract period and thereafter he took treatment and failed to succeed as a result he suffered a lot and finally he lost one of his legs, which was also held within the time frame of contract and MoU and claims were made within stipulated time mentioned in MoU. So there is nothing wrong to get the benefit of the insurance claim. At the same time the advocate for the appellant also agreed to pay the claim No viii. In such situation, we are of the opinion that Abdul Motaleb is entitled to get his claim. In this connection we further observed that his claim was made within time in the year 1995, but it was refused illegally and thereby he suffered a huge loss.

31. We further observed that the court has no discretion in the matter awarding compensation. However considering the sufferings of the applicant as well as upon taking the considered view of agreement made by the appellants advocate, we are of the opinion that the interest of justice will be served if the appellants are directed to pay the claim of Abdul Motalib along with interest at the rate of 6% of his claim from the date of institution of the suit till date.

32. On an overall consideration of the entire matter, we find that the trial court committed illegality in decreeing the suit in full. We find substance in the appeal. In the result, the appeal is allowed in part with the observation and direction made herein above.

33. In the result, the appeal is allowed in part. The impugned judgment and decree dated 31.01.2006 (decree drawn on 06-02-06) passed by the Joint District Judge, 5th Court, Dhaka in Money Suit No. 28 of 2003 is hereby set aside in part.

34. The defendant appellant are directed to pay the claim against claim No. viii of Abdul Motalib in terms of decree along with interest at the rate of 6% of the decretal amount from the date of institution of the suit up to realization of the claim.

35. Let the lower Court record along with the copy of this Judgment be transmitted down and the order also be communicated to the authority concerned at once.