



FIRE CLAIM

History of the case

Complainant states in his Complaint that due to loan requirement from Bank, he had to purchase a Fire Insurance Policy from M/s M/s AAA Insurance Co. Ltd. (hereinafter referred to as the Respondent Co.) to cover stock of all kinds of cloth lying at their shop of M/s FC. This Insurance Policy covers loss or damage caused by Fire, Burglary / Theft, Atmospheric Disturbance and Riot Strike Damage only whilst stored and / or lying in the shop. Complainant availed Running Finance (RF) Loan facility of Rs.3,000,000/- from M/s BankLtd., and as per requirement of the Bank completed all formalities of the Insurance Company. For the sum Insured Rs.4,000,000/- Complainant paid a Premium of Rs.9,833/- and the Policy covered the period from 21.05.2013 to 20.05.2014.

Unfortunately, during religious procession of Ashura on 15.11.2013, dozens of shops of Madina Market were set on fire by an aggressive mob due to which entire stock at Insured's premises was burnt / damaged. An FIR was lodged and Respondent Co. was also informed about the incident without delay. A Fire Insurance Claim of Rs.4,000,000/- was lodged and all required documents were sent to Respondent Co. Complainant stated that his shop was in the centre of Madina Market, Raja Bazar, Rawalpindi and after the fire incident, he has become penniless having no other source of income. On the one hand he is in immense trouble and on the other hand, the Bank is demanding the outstanding mark up on R/F limit. Before the incident of 15th November, 2013, M/s M/s FC was doing regular business transactions with the Bank including timely payments of Bank mark-up. As per Complainant, the relevant documents of Insurance Claim i.e. copy of FIR, proof regarding payment of rent, electricity bills, stock Reports duly verified by Bank, were completed almost 110 days ago yet the Respondent Co. has failed to make payment of the Claim.

It was further stated by the Complainant that the Respondent Co. had nominated Surveyor.... to survey and assess the loss caused by the said incident. The said Surveyor had submitted Report to the Insurance Company but its outcome was not known to him. Complainant had tried his best to settle the Insurance Claim but the Respondent Co. kept delaying the matter. After four (4) months of filing of the Claim, the Respondent Co. vide their letter dated 14.03.2014, addressed to the Bank and copy to Complainant, informed that Insurance Claim was not payable as per Surveyor's Report, which is reproduced below:-

“ On scrutiny of relevant documents and as per physical inspection it was observed that fire loss was occurred due to Religious Terrorism attack which is not covered under Insurance Policy. Therefore, we advise Insurer to close their file treated the matter as “NO LOSS ”.

The Complainant further stated that the Respondent Co. has failed to honour their commitment / obligation undertaken at the time of signing of fire Insurance Policy, which is against the norms and ethics of Insurance business.

At the end, Complainant requested the Hon'ble Federal Insurance Ombudsman to look into the matter and instruct the Respondent Co., to make payment of fire Insurance Claim, without further loss of time as he was in acute financial trouble because all the stock for which R/F loan facility was availed, was totally destroyed and on the other hand the Bank was demanding outstanding mark-up on R/F loan.

The Complaint with its enclosures was forwarded to the Respondent Co. who replied on 13.06.2014 and sent copies of the Insurance Policy, Repudiation letter, FIR and Survey Report. It was stated in the Comments by the Respondent Co. that they had already repudiated the Claim as the said incident did not fall under the Fire Insurance coverage. Further the FIR registered with the Police, covers the offences under sections 342, 324, 148, 188, 382, 302, 149 PPC and Section 7 of Anti-Terrorism Act. The

contents of FIR clearly show that the Insured shop of Complainant was subjected to an act of terrorism, which was not covered under the terms and conditions of Insurance Policy and come within the General Exclusions. Both the parties i.e., Insured and Respondent Co. being bound by the conditions of Insurance Policy, the Complaint merit outright rejection. It was also stated in the Comments that “if the Insured / Complainant has any grievances, he may invoke the jurisdiction of Insurance Tribunal under Section 122 of the Insurance Ordinance 2000, subject to all just Exceptions and conditions contained in and related to Insurance Policy.”

The Comments of Respondent Co., were forwarded to the Complainant, who reiterated that the Fire Insurance Claim was genuine because entire stock at the Insured premises had been destroyed and the business had totally collapsed, causing acute financial problem. Under such circumstances he was unable to survive in the business market. He got insurance coverage of his stock to cater for such unforeseen incident and got R/F loan from the Bank for betterment of his business but everything has been destroyed. It was further stated in the Rejoinder that such an incident of Fire was covered under riot / strike damage clause of the said Fire Insurance Policy. He was not aware of technicalities of Insurance Rules and Regulations and requested for help for payment of Insurance Claim under riot strike damage clause.

Case came up for hearing at Islamabad on 20.01.2015. Complainant appeared in person accompanied by his son, Aamir Furqan while M/s M/s AAA Insurance Co. Ltd. Ltd was represented by Mr. Islahuddin. Senior Manager Claims. Parties heard at length. Events leading to filing of this Complaint have been narrated above and need not be repeated. Respondent Co. has repudiated Claim on the basis of Surveyor’s Report dated 20.02.2014 which states as follows:-

“From the statement made by the Insured’s that on 15.11.2013 at Religious procession of Ashura where dozens of shops of Madina Market were set on fire by a aggressive mob and this news is circulated on all media channels all over country.

On arrival at site of loss, we observed that a lot of shops at Madina Market, Rawalpindi burnt badly and stocks lying in those shops were also burnt / damaged completely. Photographs were taken which are attached with the report. However after detailed check/examine it was noted that insured had two shops one in Madina Market and other one in Makka Market therefore our proposed assessment is as under :-

Stock of cloth lying in shop Madina Market (as per sum Insured i.e. Rs.4,000,000/- for two shops one in Madina Market & Makka Market) Rs.2,000,000/-

Insurer’s Maximum Liability (if any)

For the shop situated at Madina Market ..Rs.2,000,000/-

On scrutiny of relevant documents and as per physical inspection it was observed that fire loss was occurred due to Religious Terrorism attack which is not covered under Insurance Policy. Therefore we advise insurer to close their file treated the matter as “NO LOSS “.

On the other hand contention of the Complainant is that his Policy covers loss of stock of all kinds of cloth caused by Fire Burglary / Theft, Atmospheric Disturbance and Riot Strike Damage. He strongly believes that his Claim is covered by the last mentioned clause i.e., riot strike damage.

The moot point is whether burning of shops at Madina Market by the religious procession of Ashura on 15.11.2013 should be considered an act of terrorism or is attributable to riot strike damage. Acts of terrorism under clause I (iii) of GENERAL EXCLUSIONS, is but one of numerous exclusions which invalidate fire insurance Claim of an Insured. To show how every route, access or approach leading to realization of insurance Claim has been sealed, it would be profitable to reproduce in-extenso the Fire Policy containing General Exclusions and conditions, which form basis of contract between the Insured and the Insurance Company.

It would be observed that under the Policy, acts of terrorism have been defined as under:-

“ an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of an act harmful to human life, tangible or intangible property or infrastructure, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear. ”

The Insured is staking his Claim on the basis of coverage provided by riot and strike damage endorsement which reads as follows:-

“ Loss of or damage to the property Insured directly caused by:-

1. The act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lockout or not) not being an occurrence mentioned in condition II of the Special Conditions hereof.
2. The action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimizing the consequences of any such disturbance.
3. The willful act of any striker or locked-out worker done in furtherance of a strike or in resistance to a lockout.
4. The action of any lawfully constituted authority in preventing or attempting to prevent any such act or in minimizing the consequences of any such act. ”

A close examination of Policy document relating to (i) fire damage as well as (ii) riot strike damage reveals that exclusions in both the cases are exactly the same or quite similar. Fire damage Claim has been rendered null and void by act of terrorism clause of general exclusions. Finding this access blocked the Insured picks the coverage provided by riot strike damage but unfortunately here again he falls victim to the same familiar terrorism clause. What does it mean? It means that a damage by fire and a damage by riot/strike is one and the same thing in the eye of Respondent Co. which is ill-conceived or rather mischievous. Fire and riot are not synonymous but two different words altogether. In this particular case the Complainant must have felt satisfied that risk of damage or loss to his property against incidents of fire or riot/strike had been adequately covered by his Insurance Policy little knowing that definitions of two different and distinct words cannily crafted would make them synonymous. In this case what the insurer gives with one hand he takes away by the other. This, however, cannot be permitted.

The Respondent Co. has chosen to repudiate the claim primarily on the premise that the damage to the property of the Insured Complainant was caused in consequences of acts of terrorism, hence not covered by the Insurance Policy. The basis of reaching such conclusion is insertion of Section 7 of Anti

Terrorism Act, 1997 (ATA,97) in conjunction with other provisions / sections of law while registering case F.I.R. No.385 dated 15.11.2013.

Terrorism is an act with preponderance carried out individually or collectively by a group of persons to carry the agenda or will of their own or other perpetrators. The current application of Clauses of "Terrorism" thus lack the precision, objectivity and certainty demanded by legal discourse.

On the other hand the definition of term "riot" in Sec. 146 Pakistan Penal Code reads as under :-

" Whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting."

In the realm of PPC, rioting is a violent disturbance created by an unlawful assembly of three or more persons assembled for a common purpose.

The gravity of rioting is exacerbated with the use of weapons or arson and there are specific sections of law in the PPC addressing each individual scenario.

Rioting is typically a wild and turbulent disturbance caused by a large number of people. It is an unrestrained out break and is essentially a civil disorder characterized often by disorganized groups lashing out in a sudden or intense rash of violence against authority, property and/or people. Riots are essentially chaotic, with participants exhibiting a herd behavior and is a manifestation of reaction to a perceived grievance or dissent and typically involves vandalism and destruction of public and private property through any means including arson. The description of property involved is generally indiscriminate.

It can be seen that the definitions of "Terrorism" and "Rioting" overlap in some areas but the connotation of each act as seen objectively by a discerning eye, is different in intent and execution.

It is a common practice in Pakistan that Police applies sections of law carrying enhanced punishments for offences which may be covered by other sections of law under the PPC. This is done with the intention of creating deterrence, and is an effort to make it difficult for the accused to obtain bail. Before promulgation of Anti Terrorism Act, 1997, all such crimes were appropriately covered under the provisions of PPC, but the stretched interpretation of provisions of ATA 1997 have proved to be a boon in the hands of Police.

The Surveyor has coined a novel term to describe the incident as 'religious terrorism' an expression not to be found in the Policy. The shops at Madina Market were set on fire by the enraged rioters who were part of traditional Ashura procession. To describe these processionists as terrorists, irrespective of what they did, would be patently wrong.

Decision

The Respondent Co. can not use the misapplication of law by Police as a vehicle to deny the rights of the Insured and under the circumstances repudiation of Claim by Respondent Co. is unfair and amounts to maladministration. The Surveyor has assessed the loss / damage to stock of cloth at Rs.2,000,000/- which is a fair assessment. The Respondent Co. is directed to pay the Insurance Claim accordingly within a period of thirty (30) days from the receipt of this Order.