

UNION OF INDIA

v.

M/S. SOHANLAL SAMPATLAL

October 27, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Indian Post Office Act, 1890, s. 6—Rule 81(g)—Gold coins sent by parcel post—Value declared Rs. 2500—Parcel lost in transit—Suit for compensation—Burden is on insurer to prove that value declared was not the market value at date and place of posting—Slight difference does not absolve insurer from liability.

The respondent firm sent a parcel containing gold coins which had been purchased for Rs. 2465-14-0 by post from Bombay to Bikaner. After adding Rs. 9-1-6 for insurance and profit at 1% the value came, according to the respondent, to Rs. 2499-11-6. The parcel was insured for the round figure of Rs. 2500. When it was lost in transit the respondent filed a suit for Rs. 2474-15-6 to be paid by the Union of India represented by its postal department. The Union of India resisted the claim on the ground that under s. 6 of the Indian Post Office Act, 1898 read with r. 81(g) made thereunder the liability to pay compensation could arise only if the plaintiff had declared the actual value of the contents on the date of the insurance. It was pointed out that in the present case neither the admitted purchase price of the coins nor the claim in the plaint amounted to Rs. 2500 and thus there was a discrepancy between the value declared and the actual or market value of the goods. The contract was therefore not enforceable. The Single Judge as well as the Full Bench of the Court of Small Causes accepted the argument on behalf of the Union of India. However, the High Court took the view that the burden of proving that the market value of the gold on the day of posting was different from the value declared was on the insurer which in the present case the insurer had failed to discharge. The Union of India, by special leave, appealed to this Court.

HELD : The statutory provisions of the Act and the rules have to be construed and read in a reasonable manner. The rules seem to ensure that the insured should not make a declaration in excess of the market value so as to avoid fraudulent dealings. Nor can the insured get more compensation than the market value. But this does not and cannot mean that any innocent and insignificant misstatement by the insured of the actual value which has to be the market value on a particular date and at the place of posting can lead to the startling result that he becomes wholly disentitled to receive any compensation. The market in articles like gold and bullion exists only in large towns and the value fluctuates from day to day and from hour to hour. It may be sometimes impossible for any person sending gold or bullion by post after getting it insured to ascertain the exact value on a particular date. This does not mean that he is completely absolved from the responsibility of ascertaining it but if he gives a value which is approximately the same as the market value the insurer cannot take up the position that owing to an insignificant difference the insured cannot recover the compensation. [709 F—710 B]

In the present case the High Court found that no evidence of any kind regarding the market rate of gold prevailing on the date of posting was on record. On general principles which were rightly relied on by the High

A Court, it was for the insurer to lead evidence on that point and show that according to the market rate prevailing on that date the value could not be Rs. 2500. The mere fact that the respondent was under the impression or had stated in the plaint that value of the gold was less than Rs. 2500 was not sufficient to absolve the insurer from proving that the value which was declared i.e. Rs. 2500 was not the market value on the date and at the place of posting. The appeal must accordingly be dismissed. [710 C-E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2223 of 1966.

Appeal by special leave from the judgment and order dated August 31, 1965 of the Bombay High Court in Civil Revision Application No. 1263 of 1961.

C *L. M. Singhvi, Ram Panjwani and S. P. Nayar*, for the appellant.

G. L. Sanghi and Janendra Lal, for the respondent.

The Judgment of the Court was delivered by

D *Grover, J.* This is an appeal by special leave from a judgment of the Bombay High Court made in exercise of its revisional jurisdiction.

On June 15, 1955 the respondent firm purchased gold coins for an aggregate price of Rs. 2465-14-0 as commission agents for transmission and delivery to their constituents at Bikaner. On the following day the parcel containing the gold coins was handed in at Ramwadi Post Office, Bombay for transmission to the addressee. The parcel was insured for Rs. 2500/-. It was lost in the course of transit. The respondents filed a suit for recovery of about 2475/- as compensation under the insurance effected by the Union of India, the present appellant, represented by its postal department. The appellant denied its liability for the claim on the ground that under s.6 of the Indian Post Office Act, 1898, hereinafter called the "Act", read with Rule 81(g) of the rules framed thereunder, its liability could arise only if the plaintiff had declared the actual value of the contents on the date of the insurance. As a wrong declaration had been made there was no valid and enforceable contract. The case of the plaintiffs in evidence however, was that in addition to the price paid for the gold coins a sum of Rs. 9-1-6 had been spent as postal charges and the cost of insurance, packing, commission and brokerage. Profit was added to this at 1% and the total value came to Rs. 2499-11-6 and it was for that reason that the parcel was got insured for Rs. 2500/-. A learned single judge of the Small Causes dismissed the suit. The matter was taken before the Full Court of Small Causes by the respondent firm. While conceding that the difference in the actual value and the value declared was small the Full Court held that the rules had not been complied with properly and upheld

the dismissal of the suit. After examining all the relevant provisions of the Act and the rules the High Court was of the view that it was for the insurer to prove that it had been discharged from the liability because of fraud, misrepresentation, mistake or incorrect statements made by the insured and the burden had to be strictly discharged by the insurer. As it had not been proved by the Union of India that the value declared by the plaintiffs on June 16, 1955 was not the actual market value of the gold delivered by the plaintiffs for transmission by means of a postal parcel the plaintiffs were entitled to a decree for Rs. 2474-15-6 with interest at 6% per annum from the date of the suit.

Section 6 of the Act provides that the Government shall not incur any liability by reason of the loss, misdelivery etc. of any article in the course of transmission by post except in so far as such liability may in express terms be undertaken by the Government. Section 3 O provides for insurance of postal articles. Section 33 is in the following terms :

“Subject to such conditions and restrictions as the Central Government may, by rule, prescribe the Central Government shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post :

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused”.

The relevant rules may also be referred to. According to rule 44(1) gold coin or bullion of value exceeding Rs. 2500/- shall not be transmitted by post. The value for the purpose of this sub-rule, the second proviso to rule 72 clause (g), the second proviso to rule 81 and rule 83-A shall be the market value on the date and at the place of posting. Part IV of the rules deals with insurance of postal articles. The second proviso to rule 72(1) lays down that articles containing government currency notes or gold coin or bullion shall be insured for the actual value of the contents. Rule 74 gives the additional fee chargeable for the insurance. Under rule 81 the compensation payable to the sender of an insured article shall not exceed the amount for which the article has been insured for the loss of the postal article or any of its contents. According to the first proviso the compensation shall in no case exceed the value of the article or any of its contents lost. Clause (g) of the second proviso is to the effect that no compensation shall be payable where

- A** the insured article contains gold coins or both and has not been insured for the actual value of the contents. Rule 83A makes it obligatory for the sender to declare on the article the value of the contents where gold coin, bullion etc. is despatched. Thus under the rules whenever gold coin or bullion is sent by parcel post it must be insured for the actual value of the contents. If the articles are lost the amount of compensation cannot exceed the amount for which the article have been insured and no compensation shall be payable where the articles have not been insured for the actual value. By reference to rule 44 the value has to be the market value on the date and at the place of posting.
- B**

- C** The argument which has been raised on behalf of the Union of India is that the respondent firm had purchased the gold coin for Rs. 2465-14-0 on June 15, 1955. Its actual market value therefore, on respondent's own admission was not Rs. 2500 . It has, further, been pointed out that in para 2 of the plaint it has been stated that on or about June 16, 1955 the plaintiffs despatched 26 tolas gold valued at Rs. 2474-15-6 under insured parcel which was lost in transit and even the decree was claimed for that amount and not for Rs. 2500/-. As there was a discrepancy between the value declared and the actual or market value the respondent firm was not entitled to any compensation. The plea in defence substantially was that the respondent ought to have declared the actual value of the contents on the date of insurance, namely, June 16, 1955 which it failed to do and therefore there was no contract of insurance between the parties.
- D**
- E**

- Now the statutory provisions of the Act and the rules have to be construed and read in a reasonable manner. If the interpretation sought to be placed on behalf of the appellant is accepted it would mean that where a person declares a value which varies even by one paise from the market value on the date and at the place of posting the insured would be deprived of the compensation for the loss of the article. That could never have been in the contemplation of the legislature and the rule making authority. The rules seem to ensure that the insured should not make a declaration in excess of the market value so as to avoid fraudulent dealings. Nor can the insured get more compensation than the market value. But this does not and cannot mean that any innocent and insignificant mis-statement by the insured of the actual value which has to be the market value on a particular date and at the place of posting can lead to the startling result that he becomes wholly disentitled to receive any compensation.
- F**
- G**
- H** It is well known that the market in articles like gold and bullion exists only in large towns and the values fluctuates from day to day and from hour to hour. It may be sometimes impossible for any person sending gold or bullion by post after getting it insured

to ascertain the exact value on a particular date. Take for instance the case of a person who is illiterate and has to despatch gold from a place in the vicinity of which there is no market from where the market value can be ascertained. He cannot in the very nature of things be absolutely precise and accurate about the market value prevailing at the material time. This does not, however, mean that he is completely absolved from the responsibility of ascertaining it but if he gives some value which is approximately the same as the market value the insurer cannot take up the position that owing to an insignificant difference the insured cannot recover the compensation.

The High Court referred to Article 429 in Halsbury's Laws of England III Edition, Vol. 22, at page 227 and to certain other text books on the law of insurance according to which the burden is on the insurer of showing that the policy is no longer subsisting or that there had been a breach of such a condition which relieves the insurer from liability. It has not been shown that these general principles will not be applicable when an insurance has been effected under the provisions of the Act and the rules. The finding of the High Court was that there was no evidence of any kind regarding the market rate of gold prevailing on June 16, 1955 on the record. It was for the insurer to lead evidence on that point and show that according to the market rate prevailing on that date the value could not be Rs. 2500/-. The mere fact that the respondent was under the impression or had stated in the plaint that the value of the gold was less than Rs. 2500/- was not sufficient to absolve the insurer from the responsibility of proving that the value which was declared *i.e.* Rs. 2500/- was not the market value on the date and at the place of posting.

There is no merit in this appeal which fails and is dismissed with costs.

G.C.

Appeal dismissed.