



A.S.(MD).No.10

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.02.2023

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THE HONOURABLE MRS.JUSTICE N.MALA

A.S.(MD)No. 10 of 2009

1.M/s. Chellam Tyre Retreading
represented by its Managing Partner
Mr.C.J.Hemanth S/oJeyapaul and
having the regd. Office
at 48/1, Madurai Road,
Vadakarai,
Periyakulam, Theni District.

2.M/s. Chellam Tyres
represented by its Partner
Mr.C.J. Rishwanth S/o. Jeyapaul
and having office at Post Office Road,
Kodaikanal, Dindigul District.

...Appellants/ Plaintiffs

Vs.

M/s. National Insurance Company Ltd.,
represented by its Branch Manager
II MIG, No.315, 80 Feet Main Road,
Anna Nagar, Madurai 20

...Respondent/ Defendant

Prayer: Appeal Suit is filed under Section 96 of C.P.C, 1908, praying to set aside the Judgment and Decree dismissing the suit in O.S.No.108 of 2006, dated 23.04.2008 on the file of First Additional District Judge, Madurai.

For Appellants : Mr.S.Madhavan
For Respondent : Mr.S.Srinivasa Raghavan



JUDGMENT

The plaintiff is the appellant in the appeal. The appeal is filed against the Judgment and Decree dated 23.04.2008 in O.S.No.108 of 2006, on the file of the First Additional District Judge, Madurai, dismissing the suit filed by the plaintiff.

2. The parties will be referred to as per the ranking in the suit.

3. The suit is filed by the plaintiff for recovering a sum of Rs.5,84,830/- under a Insurance Policy along with damages for a sum of Rs.1,000/- for negligence in service, loss of mental peace and agony and for cost.

4. The pleadings in brief are as follows:

The first plaintiff is an Automobile tyre retreading company having its unit at Periyakulam. The company is a partnership company consisting of 5 partners. The employees of the 1st plaintiff company were engaged in collecting tyres from in and around Periyakulam for the purpose of retreading and after retreading the tyres, the employees used to deliver the tyres at the door step of its customers by collecting payments, either in full or in installments. The 2nd plaintiff company was engaged in sale of new tyres at Kodaikanal and was the sister concern of the 1st plaintiff company. The employees of the 2nd plaintiff company were engaged in collecting orders for new tyres in and around Kodaikanal and used to deliver the same to the



concerned parties by collecting the payment either at once or in installments. The 1st plaintiff company considering the risk involved in collection of money from the customers by its employees, availed fidelity guarantee Insurance Policy from the defendant for the period from 1996 to 2002. While so, an employee of the 1st plaintiff company by name P. Savarimuthu, who was a collecting agent working for the 1st plaintiff in the Kodaikanal region, was deputed to the 2nd plaintiff company as additional incharge. According to the plaintiff's, the said employee Savarimuthu misappropriated huge amount from the plaintiff concern and therefore a criminal case was registered against him. The plaintiff claimed fidelity guarantee under the Insurance Policy for the amounts misappropriated by Savarimuthu and as the defendant refused the claim, the suit was filed by the plaintiffs for recovery of sum of Rs.5,84,830/- and damages of Rs.1,000/- and costs.

5. The defendant contested the suit by filing a writtarn statement. According to the defendant, the suit itself was not maintainable both in law and on facts. According to the defendant, the said Savarimuthu was employed in Chellam Tyre Retreading Company at Kodaikanal, which was a separate entity and was not covered under the fidelity guarantee Insurance Policy taken by the plaintiff. According to the defendant's, the fidelity guarantee Insurance Policy was extended to Chellam Tyre Retreading Company at Periyakulam and to Chellam Tyre Company at Kodaikanal but it was not extended to Chellam Tyre Retreading Company,



Kodaikanal. According to the defendant, assuming that Chellam Tyres Retreading Company at Kodaikanal was a sister concern of the plaintiff's, the said material fact was not disclosed by the plaintiff at the time of the submission of the proposal form for taking the policy. As there was non-disclosure of material fact, the defendant contended that it was legally entitled to avoid the claim. The defendant's case was that, from the documents on record it was clear that the delinquent employee, Savarimuthu was an employee of Chellam tyres Retreading Company at Kodaikanal, which was a separate entity and that even the salary of Savarimuthu was paid only by Chellam Tyre Retreading Company and not the plaintiff. The defendant further denied that the delinquent employee, Savarimuthu was given additional incharge by the 1st plaintiff. According to the defendant the said contention was raised for the purpose of claiming coverage under the fidelity guarantee Insurance Policy and assuming that Savarimuthu was indeed sent on deputation, the non-disclosure of this transfer on deputation violated the policy conditions 5 and 12. The defendants therefore repudiated the plaintiff's claim on the grounds of non-disclosure of material facts, absence of coverage and violation of conditions of policy.

6. In the Trial Court, the plaintiffs examined 2 witnesses and marked Ex.A.1 to Ex.A.30 in support of their case and on the defendant's side, the defendant examined 2 witnesses and marked 4 documents Ex.B.1. to Ex.B.4. in support of their case.



7. The Trial Court framed the following issues:-

1. Whether the plaintiffs are entitled to get a sum of Rs.5,84,830/- from the defendant as mentioned in the plaint?

2. Whether the plaintiffs are entitled to get damages at Rs.1000/- from the defendant for the reason mentioned in the plaint?

To what relief if any plaintiffs are entitled?

8. The Trial Court on the basis of the pleadings and on the assessment of the entire evidence on record dismissed the suit filed by the plaintiff's, on the ground that the plaintiff's failed to prove that the said Savarimuthu was employed either with the 1st plaintiff or with the 2nd plaintiff and that the plaintiff's had failed to inform to the defendant about the deputation of Savarimuthu to the 2nd plaintiff concern and hence there was violation of policy conditions 5, 8, 11 and 12. The Trial Court therefore held that the repudiation of the claim was valid and hence dismissed the suit.

9. Aggreived by the Judgment and Decree of the Trial Court, the plaintiff's have filed the above appeal.

10. The learned counsel for the plaintiff submitted that the repudiation of the claim was unlawful and unreasonable, as the same was based on flimsy grounds.



The learned counsel further submitted that the policy was taken for the benefit of the plaintiff and therefore in the absence of justifiable reasons, the repudiation of the claim was unsustainable. The learned counsel submitted that the Trial Court failed to appreciate in proper perspective the documentary evidences under Ex.A.10 to Ex.A.12 read with A.2. which clearly established that the delinquent employee was deputed to the 2nd plaintiff company by the 1st plaintiff company. The learned counsel further submitted that, as the plaintiff's were covered under the policy Ex.B.8 and Ex.B.9, the claim could not be repudiated. The learned counsel therefore submitted that the Judgment and Decree of the Trial Court deserved to be set aside.

11. The learned counsel for the defendant on the other hand submitted that the policy was repudiated on valid grounds like non-disclosure of material facts, absence of coverage and violation of policy conditions. According to the defendant's counsel the delinquent employee was employed in Chellam Tyre Retreading Company at Kodaikanal which was a separate entity and as such not covered by the policy. The learned counsel therefore submitted that repudiation on the ground of absence of coverage was justified. The learned counsel further submitted that the plaintiff had suppressed the material fact that Chellam Tyre Retreading Company, at Kodaikanal was its sister concern. Therefore the defendant was justified in repudiating the claim on the ground of non-disclosure of material fact. The learned counsel further submitted that the contentions of the plaintiff that the delinquent employee was



deputed to the 2nd plaintiff company by the 1st plaintiff company was projected for the purpose of making a claim under the policy and assuming that the deputation was indeed valid, non-disclosure of the same violates policy condition 5 and 12 and hence on this ground also the rejection of claim was justified. On these grounds, the learned counsel for the defendant submitted that there were no merits in the appeal and the same deserved to be rejected.

12. I have heard both the learned counsels and I have perused the entire materials on record.

13. The short point that is to be considered in this appeal is whether repudiation of the claim by the defendant is valid and sustainable in law?

14. The 1st plaintiff is a retreading company consisting of 5 partners and having unit at Periyakulam. According to the plaintiff, the employees of the 1st plaintiff company were to go around Periyakulam area to collect the old tyres for the purpose of retreading and thereafter deliver the same at the door step of the customers either by collecting the amount in lumpsum or in instalments. The 2nd plaintiff company having business at Kodaikanal, was also a partnership company comprising of 3 partners and according to the plaintiffs, the 2nd plaintiff company was a sister concern of the 1st plaintiff company. The 2nd plaintiff company was



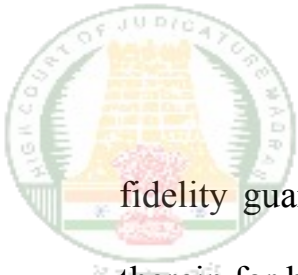
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engaged in the sale of new tyres and therefore its employees were to go around the area, collect orders and deliver the new tyres to the customers on receiving one time payment or instalments. According to the plaintiffs, as the employees of the plaintiff were engaged in collection of money, at the instance of the defendant, the plaintiff decided to take the fidelity guarantee Insurance Policy to indemnify itself for loss, if any, caused in the course of collection of money by its employees including misappropriation by its employees. The plaintiff company under Ex.A.5 to Ex.A.9. took the fidelity guarantee Insurance Policy for the period stated therein. The policies that are relevant for the purpose of the appeal are Ex.A.8 and A.9, under Ex.A.8 and Ex.A.9, fidelity guarantee Insurance Policy was taken covering the employees of the 1st plaintiff company and the 2nd plaintiff company for the period from 01.12.2000 to 30.11.2001 and from 01.12.2001 to 30.11.2002 respectively. It is pertinent to note here that under the policy, the coverage of employees for the plaintiff's is as follows:

RENEWAL DATE : 01.12.2002				
Employee		ANY PERSON NAMED OR IN A CATEGORY BELOW:		
SL.No.	Name of Employee/s	Place of Employment	Capacity & Duties	Amount Guaranteed
1.	CHELLAM TYRE RETREADING & CHELLAM TYRES	Periyakulam	CASHIER 2 NOS CLERKS 4 NOS MANAGER CUM ACCOUNTANT 2 NOS COLLECTION AGENTS 8 NOS CASHIER CUM CLERK 2 NOS.	FLOATER SUM INSURED RS. 3 LAKHS
2.	CHELLAM TYRES	KODAIKANAL		----- Rs.3,00,000 -----

Therefore from a reading of the policy, it is clear that under Ex.A.8 and Ex.A.9, the

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fidelity guarantee for a sum of Rs.3,00,000/- was issued for the employees stated therein for both the plaintiff companies.

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15. It was the defendants case that the plaintiff's in order to claim the misappropriated amount under the policy created the story of deputation by the 1st plaintiff of the delinquent employee to the 2nd plaintiff. The defendant's further case was that the plaintiff's were not entitled to the claim because the 3rd concern was not covered by the policy and also because there was no coverage for the 1st plaintiff at Kodaikanal. The delinquent employee, Savarimuthu was not an employee of the 2nd plaintiff, either in periakulam or in Kodaikanal. It is the case of the plaintiff that the said Savarimuthu was engaged in collecting old tyres for retreading from the 1st plaintiff's customers at Kodaikanal, as the 2nd plaintiff's employees left the job, the delinquent employee was deputed to the 2nd plaintiff company on additional charge. Therefore, it is the case of the plaintiff that the said Savarimuthu was discharging his duty of collecting old tyres for retreading on behalf of the 1st plaintiff and therefore as there was misappropriation by the said Savarimuthu, the plaintiffs were entitled to the claim.

16. The defendant's contend that the said Savarimuthu was engaged by the 3rd concern namely, Chellam Tyre Retreading company at Kodaikanal, which was not covered under the policy. It is pertinent to refer to the evidence of the plaintiffs



witnesses, i.e. P.W.1 and P.W.2 to find out whether the contention of the defendant that there was a 3rd concern and it was not covered by the fidelity policy is tenable.

P.W.1 stated as follows:

“செல்லம் டயர்ஸ் கொடைக்கானல் நிறுவனத்தில் உள்ள தொழிலாளி கையாடல்செய்திருந்தால் தான் வா.சா.ஆ.8மற்றும் 9 இழப்பீட்டுபாலிசியின்படி பிரதிவாதி நிறுவனம் பொறுப்பு என்றால் சரி. செல்லம் ரீடேடிங் கம்பெனி கொடைக்கானல் என்ற நிறுவனத்தில் இருந்து ஒரு தொழிலாளி கையாடல்செய்திருந்தால் வா.சா.ஆ.8,9 பாலிசியின்படி பிரதிவாதி நிறுவனம் தொகை எதுவும் செலுத்தவேண்டியதில்லை.”

P.W.2 stated as follows:

"செல்லம் டயர்ஸ்க்கு கொடைக்கானலில் தனி அலுவலகம் உள்ளது./ வா.சா.ஆ.1ன்படி அண்ணாசாலை கொடைக்கானல் என்ற இடத்தில் செல்லம் ரீடேடிங் கம்பெனியிருப்பதாக கண்டு நடப்புகளுக்கு ஓபன் செய்திருக்கிறோம். அண்ணா சாலை கொடைக்கானல் என்ற விலாசம் நடப்பு கணக்கு வைப்பதற்காக கொடுக்கப்பட்டது. அண்ணாசாலை கொடைக்கானலில் உள்ள செல்லம் ரீடேடிங் கம்பெனிக்கு தனியாக பாலிசி எதுவும் எடுக்கவில்லை."

Therefore from the evidence of P.W.1 and P.W.2, it is clear that there was a 3rd concern, namely Chellam Retreading Company at Kodaikanal and therefore in the light of the evidence of P.W.2. and the specific admission of P.W.1., it is clear that the contention of the 3rd defendant that there was a 3rd entity and that it was not covered by the policy is clearly proved. According to the defendant to overcome the non



coverage of the 3rd entity, the plaintiff set up the story of deputation of Savarimuthu to the 2nd plaintiff concern.

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17. The defendant submits that there is absolutely no evidence to show that the Savarimuthu was deputed to the 2nd plaintiff company as additional incharge. According to the defendant the plaintiff projected that the said Savarimuthu was deputed as additional incharge, only to claim the policy amount. The plaintiff relies on Ex.A.10, A.11 and A.12 in support of their plea of deputation. As far as the documents A.10, A.11 and A.12 are concerned, the defendants case is that the said documents are just internal communications between the plaintiffs and in the absence of any records like the attendance register, salary disbursement register etc. of the plaintiffs either at Periyakulam or Kodaikanal, it cannot be said that Savarimuthu was an employee of the 1st plaintiff at Periyakulam office deputed with the 2nd plaintiff at Kodaikanal. The plaintiffs relied on Ex.A.23 to establish that Savarimuthu himself admitted employment under the plaintiffs. In my view, the Trial Court has rightly rejected the said contention on the ground that the Savarimuthu did not enter into the witness box and subject himself to cross-examination in this regard.

18. The learned counsel for the defendants submitted that assuming that the



said Savarimuthu was deputed to the 2nd plaintiff company by the 1st plaintiff company the same ought to have been disclosed to the defendant. From the evidence of P.W.1 it is clear that the deputation of Savarimuthu was not disclosed to the defendant. P.W.1 stated as follows:

“வா.சா.ஆ.10,11,12 கடிதங்கள் செல்லம் ரீடேடிங் கம்பெனி பெரியகுளத்திலிருந்து செல்லம் டயர்ஸ் கொடைக்கானல் நிறுவனத்திற்கு டெபுடேசன் அனுப்பியது சம்பந்தமாக எழுதப்பட்ட கடிதங்கள் என்றால் சரிதான். அந்த கடிதங்கள் பற்றிய விவரத்தையோ கடிதத்தின் நகலையோ பிரதிவாதி நிறுவனத்திற்கு தாங்கள் அனுப்பவில்லை என்றால் சரிதான்.”

The material fact of deputation was suppressed and hence there was absolutely no infirmity in repudiating the policy on the ground of non-disclosure. From Ex.B.2, it is clear that the 3rd concern by name Chellam Tyre Retreading, Kodaikanal was very much in existence and the same is also admitted by P.W.2 in his evidence. The plaintiff's have failed to prove by cogent evidence that the delinquent employee was deputed as additional incharge to the 2nd plaintiff concern and therefore I find no infirmity in the repudiation of the claims by the defendants on the ground of non disclosure. One other reason for rejection of the claim is the violation of condition 5 and 12 of the policy which mandates the disclosure of the said fact.

Condition 5 of the policy reads as follows:-

"Unless the company be advised and it's written approval be obtained the



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company shall not be liable hereunder in the event of any change in the nature of the business of the insured or in the duties and conditions of service of the employee or if remuneration of employee be reduced or its basis altered or if the precautions stated by the insured with regard to accounting be not duly followed or if the insured shall continue to entrust the employee with money or goods after having knowledge of any material fact bearing on the honesty of the employee."

Condition 12 of the policy reads as follows :-

"For the purpose of identifying employee in all cases of change of residence or occupation or change of name whether by marriage or otherwise due notice thereof in writing shall be given by the insured to the company."

19. It is admitted by both P.W.1 and P.W.2 in their evidence that they are bound by the conditions of the policy. Conditions 5 and 12 of the contract as stated above clearly stipulate that any change in the nature of business of insured or in the duties and conditions of service of the employee or any other matter referred to therein shall be disclosed. In the present case, the plaintiffs have admitted that they have not informed the company about the deputation of Savarimuthu and therefore the plaintiff's have violated conditions 5 and 12 of the policy. The contract of Insurance is a contract in good faith i.e *Uberrima fide* and therefore non-disclosure can be very well taken as a ground for repudiation of the claim.

20. I am therefore of the view that there are no merits in the appeal and the



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same deserves to be dismissed. The Judgment and Decree of the Trial Court is confirmed. There shall be no order as to costs.

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Speaking Order: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

To
The First Additional District Judge,
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