

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR  
&  
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

**WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937**

**AS.No. 62 of 2000 ( )**  
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**AGAINST THE JUDGMENT AND DECREE IN OS 466/1993 OF SUB COURT, NEYYATTINKARA  
DATED 10-12-1998  
APPELLANT/DEFENDANT (1ST AND 2ND DEFENDANTS ARE THE SAME COMPANY):**  
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**THE NEW INDIA ASSURANCE COMPANY LTD.,  
REGIONAL OFFICE, M.G. ROAD, KOCHI -11.**

**BY ADV. SRI.SAJI VARGHESE**

**RESPONDENTS/APPELLANTS:**  
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- 1. M/S. SAMUEL TEXTILES,  
THALACHAN VILA, PARASSALA P.O.  
THIRUVANANTHAPURAM DISTRICT  
REP. BY ITS MANAGING PARTNER-P. SAMUEL**
- 2. P. SAMUEL, S/O. PADMANABHAN  
AGED 70 YEARS, RESIDING AT CHRISTEEYA  
BHAKTI VILASAM BUNGALOW  
THALACHAN VILA, PARASSALA P.O.  
THIRUVANANTHAPURAM DISTRICT**
- 3. S. NAVAL CHANDRA DAS, S/O. P. SAMUEL  
AGED 41 YEARS, CHRISTHIYA BHAKTI  
VILASAM BUNGALOW, THALACHAN VILA  
PARASSALA, P.O. THIRUVANANTHAPURAM**

**R1 TO R3 BY ADV. SRI.MURALI PURUSHOTHAMAN**

**THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 16-06-2015, THE  
COURT ON 08.07.2015 DELIVERED THE FOLLOWING:**

**SHG/**

**T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.**

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**A.S.No.62 of 2000**  
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**Dated this the 8<sup>th</sup> day of July, 2015**

**J U D G M E N T**

**K.P. Jyothindranath, J.**

This appeal is preferred by the New India Assurance Company Ltd. aggrieved by the judgment and decree dated 10.12.1998 in O.S.No.466/1993 on the file of the Sub Court, Neyyattinkara.

2. The facts in a nutshell are as follows:

The respondents/plaintiffs took an insurance policy under the appellant herein covering the textile goods worth Rs.3,99,810/- for loss due to fire, theft etc. It is the case of the respondents/plaintiffs that during the night on 30.4.1987 a theft took place in the business place of the respondents. Thereafter again during the night on 25.5.1987 another theft had also taken place. In respect of the same, crimes were registered by the police. It is the case that there is a loss of Rs.1,85,581.72 as well as Rs.10370.70 in the respective incidents. Claim petitions

were filed. Even though notice was issued, the claim was not settled by the appellant/defendants. Hence the suit.

3. The case put forwarded by the appellant/defendant is that even though policy was admitted the claims made by the plaintiffs were excessive. Defendant appointed a surveyor and a private detective agency in order to ascertain the correctness of the claims made by the plaintiffs. Even though defendant admitted the theft, the contention of the appellant/defendant is that the plaintiffs have not submitted correct accounts in order to settle the claims.

4. The court below framed issues. The finding on the issue “whether the plaintiffs are entitled to realise any amount from the defendant, if so, the quantum” is under challenge.

5. PW1 to PW7 were examined on the side of the plaintiffs and Exts.A1 to A40 were marked. DW1 and DW2 were examined and Exts.B1 to B5 were marked on the side of the defendants. Ext.X1 to X4 were also marked.

6. After appreciating the materials, the suit stands decreed and the appellant is directed to pay a sum of Rs.1,85,581.72 as well as 10307.70 with 12% interest per annum till the date of decree and thereafter at 6% interest till the realisation.

7. The submission made by the learned counsel for the appellant at the Bar is that the case of the respondents/plaintiffs is that on the night of 30.4.1987, a thief entered into the shop room through a small opening made in the roof of the building by removing six tiles and by breaking upon the ceiling. It is submitted that such a huge quantify of material (both in volume and weight) cannot be removed through the said opening. The version is not believable. It is the submission that immediately after the theft, an information was given to the police, by the manager of the firm on which, an FIR is registered. The case is that at that point of time the loss reported is only about Rs.10,000/-. But later, it appears that records are manipulated and a claim as of now is made. Under such

circumstances, the plaintiffs are not entitled for a decree as prayed for. It is the submission that in a very similar way a theft occurred on a second time where the loss is only that of about Rs.10,000/-. Then appreciating the earlier FIR as well as the second time theft where a loss caused is only that of about Rs.10,000/- it can be seen that a person making such a hole on the roof can only commit a theft of cloth worth Rs.10,000/- alone. It is the submission that when the surveyor's report and detective's report are casting a suspicion, it can be safely come to a conclusion that the lost article on the first theft is worth only Rs.10,000/-. There is also a case for the appellant that plaintiffs at first has not adhered to the arbitration clause.

8. The counsel appearing for the respondents/ plaintiffs submitted before us that in this case the court below appreciated the evidence properly and decreed the suit. It is the submission that there is no case for the Insurance Company that no theft took place or articles are not covered by policy. Then the only aspect that is to be

looked into is what are the materials produced by the plaintiffs to prove their case. The only question is that of quantum. Exts.A6, A7, A8 and A9 are the records that are produced to prove the case of the plaintiffs. Ext.A6 is the Account Book of Income of P. Samuel Textiles, Ext.A7 is the Account Book of purchase, sale and stock, Ext.A8 is the Day Book Accounts for the year 1987-88 and Ext.A9 is the Index Accounts Book for the year 1987-88. The court also marked Exts.X1 to X4 which are the proceedings of the Additional Sales Tax Officer, Trading account, Day book and ledger book. Appreciating all these documents the lower court decreed the suit.

9. The appellant/defendant has got a case that there was an arbitration clause in the agreement of insurance. If the defendant was intending to make use of the same it should have been brought to the notice of the court even before filing the written statement. More over in this case no amount was offered by the company. Thus, at that stage, it cannot be termed as a dispute regarding quantum. Thus

there is no merit in the said argument.

10. Ext.A6 is the Account Book of Income maintained by the plaintiffs during the period 1.4.1987 to 31.3.1988. In Ext.A6 it can be seen that the loss sustained by the plaintiffs on account of two thefts have been specifically mentioned in pages 12 and 23. Ext.A7 is the stock book pertaining to the period 1.4.1986 to 30.4.1987. The trial court took notice of the fact that the Manager of the Insurance Company signed in Ext.A7 in page No.46. The initial of the Circle Inspector of Police, Neyyattinkara is also made therein. Ext.A8 is the day book maintained by the plaintiffs during the period 1987-88. The trial court took note of the fact that page No.25 of the said document shows that it was submitted before the Sales Tax Authorities. Ext.A9 is the ledger for the period 1987-88, on which, the tax was assessed by the department. Exts.X1 to X4 are documents summoned by the court from the Sales Tax Office, which were marked through PW3, Additional Sales Tax Officer. Ext.X1 is the trading account of the plaintiffs for the period 1987-88.

Ext.X2 is the assessment order relating to the very same period. Ext.X3 is the page 146 of the ledger and Ext.X4 is the page No.305 of the ledger. PW3 the official had admitted that he had occasion to examine the ledgers presented by the plaintiffs for assessment of the sales tax. Ext.A39 is the copy of the trading accounts submitted on behalf of the 1<sup>st</sup> plaintiff firm for the period 1986-87. It can be seen that the opening stock was Rs.3,21,390.23.

11. In this case, the only aspect in dispute is regarding the quantum. Surely, the case of the defendant is that when a theft took place by a thief entering through ceiling it is not possible to steal such a large quantity of cloth. But the method adopted by the thief is only known to him. It is a fact that the theft took place. The quantities claimed by the plaintiffs are tallying with the records produced before the court. The defendants are mainly relying upon Ext.A38 which is a judgment of the criminal court in C.C.No.121/1998 in respect of the theft occurred on 25.5.1987. Appellant/defendant's case is that the allegation

is only against one accused that also entering through the slit made by him on the ceiling. The judgement of the criminal court will not be a substantial piece of evidence in appreciating the materials in the civil suit. Surely, the defendants have got a case that Ext.B4 is the survey report and Ext.B5 is the report prepared by a private detective agency namely Gobal Detective Agency. The lower court took note of the fact that Exts.B1 and B4 are not proved in accordance with law. It is the case of the appellant that the surveyor had reported that through the size of the gap made by the burglar, textiles goods worth Rs.2 lakhs could not be easily carried away that also during the midnight. The said conclusions reached at by the surveyor and the detective agency are only opinions of respective parties. The said opinions are not having much bearing in the conclusion that has to be reached at.

12. When documentary evidences are therein which are also acted upon by the sale tax authorities and immediately seen by the police officials, those documents

can be relied upon by this Court to come to a conclusion regarding the quantum. It is pertinent to note that the manager of the Insurance Company had signed in page No.46 of Ext.A7 document, which is the stock book of the insured. No contra evidence was adduced which will belie those documents. Thus there is nothing to disbelieve the documentary evidence produced by the plaintiffs to prove their case. When the documents Exts.A7 to A9 and Ext.A39 are appreciated, it can be seen that there is nothing to interfere with the finding of the lower court. When there is nothing to interfere with, the only conclusion that can be arrived at is that the appellant fails and the appeal is thus dismissed.

Parties shall bear their costs in the special circumstances.

Sd/-

**T.R. RAMACHANDRAN NAIR**  
**JUDGE**

Sd/-

**K.P. JYOTHINDRANATH**  
**JUDGE**

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P.A. TO JUDGE

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