

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.11.2016

PRONOUNCED ON: 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.137 of 2010

1. M/s.Transformers and Electricals Kerala Limited
(A Government of Kerala Undertaking) Ernakulam
Kerala 683573 by Power Agent and Subrogee
M/s.National Insurance Company Limited
Aluva Divisional Office, Post Box No.89
Urumbath Building, Pump Junction, Aluva
Ernakulam, Kerala 638101

2. M/s.National Insurance Company Limited
Aluva Divisional Office, Post Box No.89
Urumbath Building, Pump Junction, Aluva
Ernakulam, Kerala 638101

Plaintiffs

Vs

Thomas Ittiawara, Proprietor
M/s.Carewell Roadlines, Chennai-1

Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC and Section 26 of CPC for the reliefs as stated therein.

For Plaintiff : M/s.Nageswaran & Narichania

For Defendant : Mr.V.Raghavachari

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendant:-

(a) holding the Defendant responsible and liable for the suit

claim and consequently, directing the Defendant to pay a sum of Rs.82,97,374/- with interest at the rate of 12% per annum from the date of the plaint till the date of payment in full, being a commercial cause.

(b) directing the Defendant to pay the costs of the suit.

2. The case of the Plaintiff, as set out in the plaint, is that the 1st Plaintiff is a Public Limited Company, incorporated under the Indian Companies Act, a Government of Kerala Undertaking and the 2nd Plaintiff is a Public Limited Company, incorporated under the Indian Companies Act, carrying on the business of general insurance. The 1st Plaintiff, during the course of their business, had despatched a consignment of 1 no. of 100 MVA Transformer from their Angamally Office in Kerala to the Assistant Executive Engineer, TLC, Stores, APTRANSO, Kalikiri, Tirupati, vide Invoice No.630, dated 29.1.2007, valued at Rs.2,88,00,000/- through the Defendant Carrier. The Defendant had issued a consignment note bearing No.3711, dated 29.1.2007 and the suit consignment was insured by the 1st Plaintiff with the 2nd Plaintiff Insurance Company under Special Policy No.571000/21/06/4400000002 and declared for transit insurance vide declaration bearing No.1939, dated 29.1.2007.

3. It is the further case of the Plaintiffs that due to an alleged accident on 4.2.2007, the consignment was highly damaged while it was in the custody of the Defendant. M/s.Alpha Surveyors, licensed surveyor appointed by the 2nd Plaintiff Insurance Company had conducted a survey and submitted a report dated 23.3.2007 and thereafter, the consignment was brought back to the 1st Plaintiff's factory for carrying out necessary repairs. Again, another

Agent, by name, M/s.Thomas Grom Surveyors, licensed surveyor appointed by the 2nd Plaintiff had conducted a survey and submitted an interim survey report. The said surveyors had submitted a final report dated 25.1.2008, assessing the net loss at Rs.82,97,374/-. The 1st Plaintiff had caused notice of loss under the Carriers Act with the Defendant by their letter dated 23.3.2007, informing them about the loss, which was acknowledged by the Defendant by their reply dated 23.3.2007. Subsequently, the 1st Plaintiff had issued another notice of loss dated 4.5.2007, to which also the Defendants had sent a reply dated 10.5.2007, acknowledging the fact of the accident and subsequent transshipment and the return of the suit consignment to the consignor's factory for repairs.

4. It is the further case of the Plaintiffs that the 1st Plaintiff had sent a letter dated 20.7.2007, assessing the claim to the tune of Rs.275 lakhs. In all, the 1st Plaintiff had suffered a pecuniary loss of Rs.82,97,374. The said loss had been caused only due to the negligence, lack of care and caution and failure on the part of the Defendant and also failure to discharge the statutory obligation as prescribed under the Carriers Act. The suit consignment having been insured with the 2nd Plaintiff Insurance Company, the 1st Plaintiff had lodged their claim with them and as per the terms and conditions of the Insurance Policy, the 2nd Plaintiff had settled the claim to the tune of Rs.82,97,374/-. On being indemnified by the 2nd Plaintiff, the 1st Plaintiff had executed a letter of subrogation and a special power of attorney, both dated 23.05.2008 in favour of the 2nd Plaintiff. Thus, the 2nd Plaintiff Insurance Company is entitled to file and maintain the suit by virtue of Section 79 of the

Marine Insurance Act.

5. It is the further case of the Plaintiffs that the 2nd Plaintiff had sent a notice to the Defendant on 20.02.2009, calling upon them to settle the claim, to which the Defendant had sent a reply dated 9.3.2009, denying the liability. Thereafter, a rejoinder was also sent on 3.4.2009. However, the Defendant did not come forward to settle the claim. In such circumstances, this civil suit has been filed for the reliefs as stated above.

6 On the earlier occasion on 7.7.2011, for non filing of the written statement, the Defendant was set exparte and exparte evidence was ordered and thereafter, the Defendant had filed the written statement on 17.07.2011, denying the suit claim.

7. On the side of the Plaintiffs, one Xavier Alexander, the Senior Divisional Manager of the 2nd Plaintiff Insurance Company was examined as PW.1. and Exs.P1 to P17 were marked as documentary evidence. The evidence of PW.2 was eschewed by this court. On the side of the Defendant, no documentary or oral evidence was let in.

8. On 22.11.2016, the learned counsel for the Defendant had reported 'no instructions' from the Defendant, in spite of his several communications and hence, the Defendant was again set exparte.

9. In this civil suit, the suit claim is for a sum of Rs.82,97,374/- with interest at the rate of 12% per annum and also required court fee had also been paid. Though the Defendant had filed a written statement, he did not come forward to let in evidence despite several opportunities given to him and hence, he had been set exparte. Therefore, taking into consideration the evidence both oral and documentary adduced by the Plaintiffs, this Court is of the view that the Plaintiffs have proved the suit claim.

10. In the result, this civil suit is decreed as prayed for with costs.
Time for payment is three months.

.12.2016

Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiffs:-
 1. P.W.1 - Xavier Alexander, Senior Divisional Manager
 2. PW.2 - T.Thomas, licensed surveyor
2. List of Exhibits Marked on the side of the Plaintiffs:-
 1. Ex.P1 is the special declaration policy dated 5.4.2006 issued to the 1st Plaintiff.
 2. Ex.P2 is the marine declaration certificate dated 29.1.2007 issued to the 1st Plaintiff.
 3. Ex.P3 is the invoice no.630 dated 29.1.2007 of the 1st Plaintiff
 4. Ex.P4 is the consignment note no.3711 dated 29.1.2007.
 5. Ex.P5 is the letter dated 5.2.2007 of the 1st Plaintiff.
 6. Ex.P6 is the spot survey report with photos dated 23.3.2007.

7. Ex.P7 is the office copy of notice dated 23.3.2007 issued by the Plaintiff to the Defendant.
8. Ex.P8 is the fax reply dated 23.3.2007 of the Defendant.
9. Ex.P9 is the office copy of notice of loss dated 4.5.2007 with acknowledgement card sent by the 1st Plaintiff to the Defendant.
- 10.Ex.P10 is the reply dated 10.5.2007 along with certificate sent by the Defendant to the 1st Plaintiff.
- 11.Ex.P11 is the original final survey report within interim report and annexure.
- 12.Ex.P12 is the original discharge voucher dated 23.5.2008.
- 13.Ex.P13 is the original letter of subrogation dated 23.5.2008.
- 14.Ex.P14 is the special power of attorney dated 23.5.2008.
- 15.Ex.P15 is the office copy of demand notice dated 20.2.2009 with AD Card.
- 16.Ex.P16 is the original reply dated 9.3.2009 from the Defendant advocate to the Plaintiff.
- 17.Ex.P17 is the office copy of rejoinder dated 3.4.2009 with postal acknowledgement.

3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendant:-

Nil

.12.2016

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.137 of 2010

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