

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **11.08.2016**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**O.S.A.No.1 of 2006,
Cross.Obj.No.41 of 2009
and C.M.P.No.101 of 2010**

1. United India Insurance Co., Ltd.,
Rep. by its Chairman,
No.24, White Road,
Chennai - 600 014.
2. The Branch Manager
United India Insurance Co., Ltd.,
Great Cotton Road,
Apupukottai.
3. The Divisional Manager
United India Insurance Co., Ltd.,
132, Madurai Road,
Virudhunagar.
4. The Regional Manager
United India Insurance Co., Ltd.,
7-A, West Veli Street,
Madurai - 1. Appellants in O.S.A.No.1 of 2006 and
Respondents in Cross.Obj.No.41 of 2009

Vs.

Sri Jaya Steels
A registered Partnership firm,
Through its Managing Partner
T.R.Kannan.Respondent in O.S.A.No.1 of 2006 and
Cross Objector in Cross.Obj.No.41 of 2009

Original Side Appeal under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent against the Order, dated 15.06.2005 made in C.S.No.746 of 1992.

Cross Objection filed under Order XLI Rule 22 CPC read with Order XXXVI Rule 2 of Original Side Rules against the Order, dated 15.06.2005 made in C.S.No.746 of 1992.

For appellant : Mr.R.Premkumar
for M/s. King and Partridge

For Cross Objector : Mr.P.R.Shankar

For respondents : Mr.T.Srinivasaraghavan
for Mr.P.Jagadeeswaran
in O.S.A.No.1 of 2006

Mr.R.Premkumar for
M/s. King and Partridge
in Cross. Obj.No.41 of 2009

COMMON JUDGMENT

(Judgment of the Court was delivered by
P.KALAIYARASAN, J)

These Original Side Appeal and Cross Objection are directed against the Judgment of the learned single Judge, dated 15.06.2005 made in C.S.No.746 of 1992.

2. O.S.A.No.1 of 2006 is filed by the defendants against the decree entitling the plaintiff for a sum of Rs.1,00,70,165/- with interest at 12% and the Cross.Obj.No.41 of 2009 is filed by the plaintiff as far as rejection of their counter claim for the salvage operation.

3. The case of the plaintiff in nutshell are as follows :

(i) The plaintiff firm is engaged in acquiring old ships / vessels for the purpose of breaking and retrieving usable materials therefrom. The plaintiff has a scrapping yard at Valinokkam, a coastal village in Ramanathapuram District. The plaintiff is a registered ship breaker with the Canalising Agency, the Metal Scrap Trade Corporation, a Government of India Enterprises (herein after referred as MSTC for brevity). The plaintiff was allotted the vessel "M.V.Yak" by MSTC, which was acquired by MSTC from M/s. Zaide Shipping Inc., Liberia. The plaintiff was allotted the said vessel by MSTC for scrapping by letter of allotment-cum-sale, dated 03.03.1989. As per the memorandum of agreement between MSTC and the seller, vessel was arrived at Tuticorin outer port at 12.45 hours on 28.04.1989 and was anchored. The vessel, which was seaworthy, was under cover of valid insurance till it arrived at Tuticorin. The provisional price as fixed by MSTC, a sum of Rs.75,18,775/- was also remitted by the plaintiff.

(ii) The officials of the Tuticorin Customs Collectorate inspected the vessel on 09.05.1989. The Seaworthiness Certificate was also issued by the International Naval Surveyors Bureau, London on 09.05.1989 for the onward voyager of the vessel from

Tuticorin to Valinokkam for beaching. On 04.05.1989, M/s. Ericson and Richards (Tuticorin) inspected the vessel at 16.00 hours and issued their survey reports. On 19.05.1989, the Assistant Collector of Customs, Tuticorin permitted the plaintiff to move the vessel from Tutirocin Harbour to Valinokkam for beaching. The vessel was physically delivered at Tuticorin at 11.45 hours on 24.05.1989 at Tuticorin Anchorage, as per the Physical Delivery Certificate signed by the Master of the vessel and authorised representative of the plaintiff. Till delivery of the vessel, the risk was that of the seller and the responsibility of the plaintiff commenced from physical delivery only.

(iii) On coming to know of the allotment of the vessel, the second defendant, Branch Manager, one Mr.V.Raghavan had been approaching the plaintiff, since middle of March, 1989 and canvassed for insurance coverage for the vessel. On 24.05.1989, the plaintiff approached the second defendant around 11.00 hours over phone for insurance coverage of the vessel for its voyager from Tuticorin to Valinokkam. The Branch Manager, V.Raghavan called on the Managing Partner of the plaintiff firm at 11.30 hours and perused the entire file relating to the vessel including the prescribed certificates and the correspondence relating to plaintiff's earlier

approach for coverage with M/s. Oriental Insurance Co., Ltd., who expressed its inability to act speedily at a later stage.

(iv) After perusal of the file, the Assistant Branch Manager, who had been approaching for the insurance of the vessel and who had already contacted and secured prior concurrence of defendants 3 and 4 readily agreed to afford an all risk insurance coverage for the vessel for its journey from Tuticorin to Valinokkam for beaching. On 24.05.1989 at 11.45 hours, the provisional premium of Rs.24,416.70 was paid to the second defendant by Cheque and the second defendant Branch also issued a receipt acknowledging the payment towards premium. The second defendant expressed its inability to issue Marine Policy for want of stamp to be affixed on the policy. At 12.00 noon on 24.05.1989 itself, the second defendant issued a Marine Hull Cover Note No.82577, dated 24.05.1989 covering the vessel for a value of Rupees One Crore on its voyage commencing from 12.00 hours on 24.05.1989 onwards on own power of the vessel from Tuticorin to Valinokkam for beaching and the risks incidental thereto.

(v) In terms of the said Cover Note issued on 24.05.1989, the vessel amongst others was insured against total and / or

constructive total loss, subject to institute Clause-Hulls as attached, including salvage charges incurred in preventing loss covered under the Cover Note by perils insured against. Thus, a valid contract of Insurance has been entered into between the plaintiff and the defendant.

(vi) The said vessel commenced its journey from Tuticorin on 24.05.1989 and the Engine of the vessel was started at 13.30 hours. The vessel proceeded under way at 14.20 hours towards Valinokkam. When the vessel was proceeding near Vembar Coast, suddenly the propeller of the vessel ceased to function at 16.30 hours. The vessel had developed technical problems as it grounded on a sand bar, also known as Shol Patch. On 25.05.1989, the main Engine of the vessel was restarted at 1.30 hours and pitch was tried and still the vessel remained unmoved. All efforts taken by crew failed to move the vessel and hence, at 12.30 hours, the main engine was stopped. On 26.05.1989, the vessel developed crack and the engine room was flooded completely and the vessel was ultimately abandoned by the crew on 26.05.1989 at 11.00 hours.

(vii) The plaintiff put the defendants on notice about the grounding of the vessel of a sand bar and all further developments

by its letter on 26.05.1989. As the coastal area between Tuticorin and Rameswaram is notorious for pirates and there was attempt to forcefully get on board of the vessel, despite presence of watch and ward. The plaintiff lodged a police complaint with Sayalkudi police station, seeking protection of the vessel, which is stranded off Vembar coast, at a distance of 5 Kms away from sea-shore. In fact, the pirates managed to get on board and committed theft of cabin articles, spares and movables and fixtures which were easily removable.

(viii) The plaintiff retained the service of M/s. Seascan Services, Goa, a reputed consulting surveyors for the due and proper survey of the stranded vessel. The first defendant insurer engaged M/s. J.B.Boda Surveyors to conduct survey of the vessel on its behalf. The insurer's surveyor on or about 28.05.1989, made a perfunctory survey to submit an initial report to the insurer. As suggested by the insurer's surveyor, attempt was made by bringing expert advice from Tuticorin Port Trust to plug the leakage but in vein. The insurer as well as its Surveyor without any reservation of insurer's liability required the plaintiff to undertake immediate salvage of the vessel. Only on the assurance of the defendant insurer, the plaintiff engaged M/s. Madgavkar salvage company,

Panjim, Goa and remuneration was agreed at Rs.23 lakhs. The plaintiff by communication, dated 26.06.1989 called upon the first respondent insurer to issue an irrevocable authorisation to pay salvage charges to the said Salvors within 8 days of completion of salvage. The plaintiff on 08.07.1989 required the 4th defendant, the Regional Manager of the first defendant insurance company to issue letter of indemnity. On 08.08.1989, the third defendant for obvious reasons and on the orders of the first defendant insurer required the plaintiff themselves to furnish Bank Fuarantee of Rs.23,00,000/- and however, insurer's liability was not disputed. The plaintiff filed a writ petition seeking direction to the first respondent insurer to assure payment of remuneration of Salvors. Only in the counter, dated 10.11.1989, the first defendant insurer for the first time disclosed that the claim of the plaintiff has been rejected on 30.10.1989 and the plaintiff has to institute suit to establish its claim.

(ix) The first defendant with a view to avoid its liability as insurer of the vessel, had lodged a complaint before the Superintendent of Police, Special Police Establishment, Madras Bench and a case No.R.C.37/89 has been registered for alleged offence under Section 120 (B) r/w Section 420 IPC and Section 13

(i) (d) of Prevention of Corruption Act, 1988. The CBI had obtained a search warrant on 21.08.1989 from the Court and conducted the search of plaintiff's premises and took away files containing original documents relating to purchase and insurance of the vessel, etc. Only with a view to avoid its obligation under the cover note, the first defendant insurer had chosen to falsely implicate the plaintiff as well as its then Arupukottai Branch Manager.

(x) The plaintiff in respect of salvage operations, so far spent Rs.72,00,874/-, which expenses is covered by proper vouchers. The plaintiff has so far realised scrap of the value of Rs.40,000,583/- from the vessel. After giving credit to the said sum, the plaintiff is entitled to recover 32,00,290/- under sue and labour clause. The first defendant insurer is liable to pay Rs.32,00,290/- being the cost of salvage operations to plaintiff. The plaintiff is also entitled to recover Rs.1,00,38,165/- being the total cost of the vessel from the first defendant insurer including the interest at the rate of 18%. The plaintiff claims Rs.1,83,70,456/- with subsequent interest.

(xi) The first defendant is liable for the acts of the defendants 2 to 4, who are the officers of the first defendant

company at various levels and it is not open to the first defendant to put forth a novel plea that the acts and functions of the second defendant and also that of the defendants 3 and 4 are distinct or independent and that the first defendant is not bound by the acts, functions, transactions or obligations undertaken by the other defendants or entered on behalf of the first defendant insurance company. In the absence of any public notice or such notification informing the insurer like plaintiff about the powers of restriction of the authority or power of the second defendant, it is not open to the first defendant to disown the liability as insurer.

(xii) The plea that the second defendant had connived with the plaintiff is denied as false, baseless and after thought and raised that with a view to avoid the liability. The plaintiff reiterates that the then Assistant Branch Manager, Mr. Raghavan perused the entire file including the materials till 24.05.1989 and there is absolutely no suppression about the earlier approach with the Oriental Insurance Company.

4. The contentions in the written statement of the first defendant are as follows :

(i) The contract of the insurance is vitiated in law and void

ab initio for the reasons (i) that Mr.Raghavan, the then Assistant Branch Manager, Arupukottai not only issued a cover note unauthorisedly in violation of the departmental instructions but also kept back the information about the issuance of this cover from the higher-ups till the afternoon of 26.05.1989; (2) that the cheque in question was not enclosed as stated in the letter; (3) the Assistant Branch Manager has not obtained the proposal form for insurance of Hull insurance cover from the plaintiff firm before the cover in question was issued and the Assistant Branch Manager, Arupukottai has connived with the plaintiff in issuance of cover note contrary to the Rules.

(ii) As per Section 19 of Marine Insurance Act, 1963, a contract of marine insurance is a contract based on utmost good faith and if the utmost good faith is not observed by either party the same may be avoided by the other party. The Branch Manager in having obtained a proposal form and a declaration from the plaintiff firm, the omission of which amounts to suppression of material facts conferring the right on the insurer to avoid the contract. The plaintiff had approached the first defendant fraudulently suppressing the material facts that the plaintiff had approached the Oriental Insurance Company for the voyage covers. The alleged suit claim is

false, vexatious, frivolous and exorbitant and on this ground also, the suit deserves to be dismissed.

(iii) It is denied that the vessel was seaworthy or that it was under the cover of valid insurance till it arrived at Tuticorin. It is not correct that the entire file was perused by the then Assistant Branch Manager and agreed to offer on all risk insurance coverage for the vessel, for its voyage to Vallinokkam for beaching. Assuming it to be true, it would only go to confirm the conspiracy between him and the plaintiff to defraud the insurance company. The survey of vessel through M/s.J.B.Boda surveyor which was required by the insurer for a direct bearing on the grant of insurance cover, the vessel was not seaworthy and it was in unfit condition on 21.05.1990. The alleged seaworthy certificate has been procured devious means to meet the requirements of port authority for clearance and it was not seaworthy between 02.05.1989 and 24.05.1989. The alleged seaworthiness certificate is as a result of the conspiracy hatched by the plaintiff to enrich himself at the expenses of the first defendant.

(iv) It is denied that J.B.Boda Surveyors conducted the survey on behalf of the defendant. On the contrary, they are independent and licensed surveyor and their service are available

for any interested party for a consideration. As a matter of fact, the plaintiff was advised, without prejudice to seek technical assistance of JB Boda to refloat the vessel, since they had the necessary expertise in this regard. It is denied that J.B.Boda Surveyors were engaged by the first defendant and they are the insurer's representatives. As a matter of fact, as per the salvor's agreement, the plaintiff had to execute Bank Guarantee for Rs.23,00,000/- towards Salvor's remuneration. It is also denied that the defendant in order to escape from the liability as insurer of the vessel had lodged a complaint with the Superintendent of Police, Special Branch, realising that the plaintiff would not succeed. In keeping a cover from the Insurance company, the plaintiff struck upon a plan to contact the defendant for such insurance, without disclosing its past conduct and that itself a fraud committed on the defendant.

(v) The contract of insurance is void abinitio, since the plaintiff is not only guilty of suppression of material facts but also fraudulently induced Mr.Raghavan, the then Asst. Branch Manager, Arupukottai to issue a cover note contrary to the rules and norms of the Insurance company and also committed various culpable acts of commission and omission. There is no question of a valid consideration being passed on from the plaintiff to the insurer or

that the premium is the consideration which the defendant had received. It is denied that the cover note issued by the defendant confirms and establishes a concluded contract of insurance. The defendant does not admit the plaintiff's detailed account in respect of salvage operation said to have been so far undertaken by the plaintiff, in sue and labour clause. The plaintiff failed to execute the Bank Guarantee as a result of which Salver's had to abandon the salvage operations, which again resulted in the Salver's abandoning the vessel. Such act constitute also a breach of the conditions of the policies, which would disentitle the plaintiff to any remedy. There is no valid contract of insurance and hence, there is no question of these defendant being liable for the loss said to have been sustained by the plaintiff in respect of the vessel.

5. The learned single Judge framed 12 issues and analysed the oral and documentary evidence of both sides, decreed the suit, holding that the plaintiff is entitled for a sum of Rs.10,070,165/- with interest at 12% p.a from the date of coverage till date of plaint and interest at 9% p.a., from the date of plaint till the date of realisation, after deducting a sum of Rs.40,00,483/- and rejected the claim of the plaintiff as far as salvage operation is concerned. Aggrieved over the said order, the defendants filed O.S.A.No.1 of 2006 and the plaintiff filed Cross.Obj.No.41 of 2009.

6. The learned counsel appearing for the appellants / defendants contended that the Branch Manager has no power to accept the premium and the then Assistant Branch Manager, Mr.Raghavan had issued the cover note unauthorisedly exceeding his powers, which squarely comes within the ambit of Sections 227 and 228 of the Indian Contract Act, whereby the principal is not bound when the agent does an act beyond the scope of his authority. Every material representation made by the insure or his agent with the insurer during the insertion for the contract and before the contract must be true. It is contended that on account of misrepresentation of material fact, the policy is vitiated in law. It is also contended that policy is not supported by valid consideration and the insurance of the cover note was not communicated till afternoon 25th May 1989 and therefore, the contract of insurance is not complete, since the accident took place before the realisation of the premium. The plaintiff avoided to submit the proposal form or bringing to the notice of the insurer that he has approached another insurance company for a insurance cover for the same purpose and it was refused. It is also contended that appointment of Surveyor or investigator etc., cannot be a ground for any admission or liability.

7. The learned counsel appearing for the respondent per contra contends that there was no collusion between the plaintiff and the then Assistant Branch Manager; that the Assistant Branch Manager only after perusal of the entire file including the correspondence with the Oriental Insurance Company agreed and issued cover note, after receipt of the premium and that the insurance company is liable for the acts of its officers and cannot absolve from its liability. It is further contended that the learned single Judge, after analysing the evidence rightly granted the relief.

8. As far as Cross-objection is concerned, the learned counsel for the cross-objector / plaintiff contends that the plaintiff is entitled to the amount spent by him towards salvage of the vessel from the insurer.

9. The undisputed facts are that the plaintiff engaged in acquiring old ships / vessels for the purpose of breaking and retrieving usable materials therefrom was allotted vessel "M.V.Yak" by MSTC, a Government of India Enterprises, by letter of allotment-cum-sale, dated 03.03.1989 for scrapping. The vessel arrived Tuticorin port at 5.45 hours from Colombo on 28.04.1989. Seaworthiness certificate was issued by International Marine

Certificate Bureau, London for the vessel on 09.05.1989. The vessel was physically handed over to the plaintiff at 11.45 a.m on 24.05.1989. The Insurance cover note was issued by the then Assistant Manager of the appellant company at 12.15 pm on 24.05.1989 and on the same day, receipt for premium was also issued. Vessel sailed of from Tuticorin port at 2.20 p.m and drifted grounded on a shoal about 5 miles from Vembar Coast at 7.15 pm and stranded later. Efforts were taken to carry out the repairs and vessel was abandoned at 8.30 a.m on 26.05.1989 by the master and the crew. The plaintiff informed the first defendant about the events on 26.05.1989.

10. D.W.1, the Assistant Manager in defendant's company has deposed during cross-examination that Ex.P.10, cover note was issued by the first defendant company for the vessel "M.V.Yak" and the nature of the insurance under this cover, Ex.P.10 is Hull and machinery. She further says that Hull is the physical part of the ship and the first defendant has received the premium by way of cheque No.870632 drawn on SBI as per Ex.P.11. She has also stated that in Ex.P.1, receipt the cashier has initialled and one Sankaralingam has signed as the authorised signatory. In Ex.P.23, letter from D3 Divisional Officer of United India Insurance Co., Ltd., to the plaintiff,

dated 26.06.1989 insurance cover note has been mentioned thus :

"We understand that the vessel MV.Yak insured with us vide our cover note No.82577, dated 24.05.1989 has run around 5 miles off Vembar."

Thus on receipt of premium, cover note has been issued to the plaintiff.

11. It is well settled that mere receipt and retention of premium, without signifying by some act or acts agreed on by parties or from which the law raises the presumption of acceptance, it cannot be said that the proposal was accepted and the contract was concluded.

12. Section 23 of the Marine Insurance Act is as follows :

"When contract is deemed to be concluded.—A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip, covering note or other customary memorandum of the contract, although it be unstamped."

13. Here in this case, cover note, Ex.P.10 has been issued. Therefore, as per law, it is to be taken that the insurance company issued the cover note accepting the proposal of the insured.

14. The contention raised by the appellant is that the plaintiff in connivance with the then Asst. Manager Mr.Raghavan suppressed the material facts as to the earlier approach with the Oriental Insurance Company for the policy and obtained the cover note against the Rules and the Asst. Manager exceeded his authority in issuing cover note.

15. It is pertinent to note that the defendant-insurance company has not stated in their letters addressed to the plaintiff namely Ex.P.23, dated 26.06.1989 and Ex.P.30, dated 08.08.1989 that the Assistant Manager exceeded his authority and there is no concluded contract. Ex.P.23 is the letter from the third defendant to the plaintiff, dated 26.06.1989. In this letter accepting the cover note, the defendant requested the plaintiff to undertake immediate salvage operations. Ex.P.30 is the letter from the third defendant to the plaintiff, dated 08.08.1989 requesting to make necessary arrangements to furnish the required Bank Guarantee for Rs.23,00,000/- towards salvage remuneration. In both these communications, the defendant have not disputed the cover note.

16. The Insurance Company though repudiated the claim at later stage admitted the insurance and sent letters to the plaintiff under Ex.P.23 and Ex.P.30 requesting to arrange for salvage of the vessel and to furnish guarantee to Salvors. The plaintiff has proved the acceptance of valid insurance coverage of the vessel at the time of sinking.

17. It is also pertinent to note that the defendants appointed M/s. J.B.Boda Surveyors to survey the vessel and appointed Mr.P.S.Mahadeven, Investigator only because the appellants accepted the cover note as a valid insurance contract.

18. It is also pertinent to note that even in the counter affidavit filed by the first defendant in W.P.No.12400 of 1989, the first defendant has not stated that the Asst. Branch Manager exceeded the authority or about the connivance of the plaintiff with the Asst. Branch Manager.

19. The plaintiff contends that he approached the Oriental Insurance Company for the policy and as they expressed inability to speed up the process, they contacted the defendants' Branch. It is the case of the plaintiff that entire file was perused by the Asst.

Branch Manager, including the correspondence between the plaintiff and the Oriental Insurance Company and then only he accepted the premium and issued the cover note.

20. The learned counsel appearing for the appellants argued that the principal is not bound for the acts of the agent, when the agent exceeds his authority.

21. Section 227 and 228 of the Indian Contract Act, 1872 reads as follows :

"227. Principal how far bound, when agent exceeds authority - When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

228. Principal not bound when excess of agent's authority is not separable - Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction."

22. No doubt when the act is separable, the principal will be liable only to the part for which the agent is having the authority. If the transaction is not separable, the principal is not bound to recognise the transaction.

23. Here in this case, though the appellant contends that the Asst. Branch Manager exceeded his authority and Rules, no material has been brought to the notice of this Court to establish that the Asst. Branch Manager exceeded his authority in issuance of cover note. Even if there is any Rule or circular restricting the authority of the Asst. Branch Manager, unless it is made known to public or at least to the plaintiff, the Insurance Company cannot absolve from its liability by saying that one of its officer exceeded his authority.

24. Another contention of the appellant is about seaworthiness of the vessel on the date of voyage. As already stated the vessel arrived Tuticorin on 28.04.1989 from Columbo and the same was physically handed over to the plaintiff on 24.05.1989. Ex.P.6 is the seaworthiness certificate, dated 09.05.1989 issued by the International Marine Surveyors Bureau, London. In this it is stated that the vessel in question namely "M.V.Yak" is seaworthy

and can safely sail from Tuticorin Anchorage to the place of scrap yard Vallinokkam. It further says that Certificate will be remain in force until 16.00 hrs on 25.05.1989. The same has not been controverted while marking the document through P.W.1. It is also disclosed from the certificate that condition of the Hull, Machinery and Equipment was in satisfactory condition and the certificate is found issued at Tuticorin on 24.05.1989 at 10.00 hrs.

25. Ex.P.7 is the Port Worthiness Certificate, dated 10.05.1989 issued by M/s. Ericson & Richards. After inspection, it was certified that the vessel is suitable to remain safely afloat at any anchorage Tuticorin / Vallinokkam during her lay up period awaiting to be scrapped and however, it was suggested to ensure safety, the vessel should be beached at Vallinokkam at the first available high tide.

26. Ex.P.8 is the Port Clearance Letter issued by the Customs Department for the voyage of the vessel from Tuticorin port to Vallinokkam for beaching and scrapping. Ex.P.9, the physical delivery certificate issued by the Master of the vessel disclosed about handing over all certificates including seaworthy certificate.

27. M/s. J.B.Boda Surveyors Pvt., Ltd., have been appointed by the Insurance Company to conduct survey of the stranded vessel in question. Ex.P.13 is the letter of the said Surveyors, dated 02.06.1989. In this letter, it is stated that they have been appointed by M/s. United India Insurance Company Ltd., to conduct survey of the vessel M.V.Yak. In this letter, it is stated as follows :

"We have been appointed by Messrs. United India Insurance Company Ltd., to conduct survey of the above stranded vessel. In this connection, we boarded the vessel on 28th May 1989 and inspected the vessel. The engine room of the vessel was flooded. No other compartment was apparently damaged. In our opinion, the vessel could be refloated after plugging the leakage in the Engine-Room and pumping out the water. The vessel can be beached at Vembar for breaking up."

28. Therefore, even according to the Surveyors engaged by the appellants / defendants, the vessel could be refloated after plugging the leakage in the engine room and pumping out the water. Nothing has been whispered about the unseaworthiness of the vessel. Therefore, in any angle, it is to be concluded that the vessel was seaworthy for the voyage from Tuticorin to Vallinokkam.

29. For the aforesaid reasons, there is valid concluded contract between the plaintiff and the defendants and the appellants / defendants are liable to indemnify the plaintiff, as per the Contract.

30. The learned single Judge after careful analysis of the evidence, has rightly granted the claim with reasonable interest deducting the amount realised by the plaintiff through scraps.

31. As far as Cross-objection is concerned, the cross-objector / plaintiff has not established his claim as to the salvage expenses through acceptable evidence. The expenses towards salvage of the vessel is to be established not only by exhibiting the documents but also the same has to be proved as per law. Therefore, for want of proof, the learned single Judge has rightly rejected the claim of the plaintiff towards salvage operation expenses.

32. For the aforementioned reasons, this Court do not find any reason to interfere with the well merited Judgment of the learned single Judge and accordingly, both the Original Side Appeal and Cross Objection are liable to be dismissed.

In fine, both the Original Side Appeal and Cross Objection are dismissed, confirming the Judgment and Decree of the learned single Judge, dated 15.06.2005 made in C.S.No.746 of 1992. No costs. Consequently, connected miscellaneous petition is closed.

(A.S.,J.) (P.K.,J)
11-08-2016

Index:Yes / No

tsvn

**A.SELVAM,J.
AND
P.KALAIYARASAN,J.**

tsvn

**Common Judgment
in O.S.A.No.1 of 2006
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11-08-2016