

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:17.11.2016

DATE OF DECISION:28.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.963 of 2008 and A.S.No.485 of 2011

A.S.No.963 of 2008

The National Insurance Co.Ltd.,
Khivraj Mansion 2nd Floor
No.738, Anna Salai,
Chennai-600 002.

.... Appellant/Defendant

Vs

New Kashmir Arts and Crafts
Rep. by its Partner
M.Abdul Majeed Khan
171 (Old No.111) Near LIC Building
Mount Road, Chennai-2.
... Respondent

A.S.No.485 of 2011

New Kashmir Arts and Crafts
Rep. by its Partner
M.Abdul Majeed Khan
171 (Old No.111) Near LIC Building
Mount Road, Chennai-2.

.... Appellant/Plaintiff

Vs

The National Insurance Co.Ltd.,
Khivraj Mansion 2nd Floor
No.738, Anna Salai,
Chennai-600 002.

... Respondent/defendant

A.S.No.963 of 2008

This appeal is filed under Section 96 of Civil Procedure Code against the Decree and Judgment passed by the learned VI Additional Judge, City Civil Court, Chennai dated 24.06.2008 in O.S.No.1862 of 2007.

A.S.No.485 of 2011

This appeal is filed under Section 96 read with Order 41 of Civil Procedure Code against the Judgment and decree

dated 24.06.2008 passed by the Hon'ble VI Additional Judge, City Civil Court, Chennai in O.S.No.1862 of 2007.

For Appellant :Mr.N.Venkatraman
for Mr.Nageswaran in A.S.963/2008
Mr.G.Rajkumar
for Mr.A.J.Jawad in A.S.No.485/2011
For Respondent :Mr.G.Rajkumar
for Mr.A.J.Jawad in A.S.No.963/2008
Mr.N.Venkatraman
for Mr.Nageswaran in A.S.485/2011

C O M M O N J U D G E M E N T

The above appeals have been filed against the judgement and decree passed by the VI Additional Judge, City Civil Court, Chennai in O.S.No.1862 of 2007 dated 24.06.2008. The suit in O.S.No.1862 of 2007 was filed by the appellant in A.S.No.963 of 2008 seeking a money decree for a sum of Rs.6,86,613/- with interest at 24% per annum on the principal sum of Rs.5,53,720/-.

2. According to the plaintiff, a sum of Rs.5,53,720/- represents the damages caused to the goods of the plaintiff stored at its place of business namely, New Kashmir Arts and Crafts No.171, (Old No.111) Near LIC Building, Mount Road, Chennai-2. The case of the plaintiff is that, it is a partnership firm carrying on business in sale of Kashmiriart, Kashmiri and Oriental carpets, handicrafts and jewelery. It has got three retail outlets in Chennai City. The plaintiff has taken Insurance Policy covering risks by storm, cyclone, typhoon, tempest, hurricane, tornado, flood or inundation, earthquake, fire and shock.

3. According to the plaintiff, it valued the goods for Rs.1,16,00,000/- and it had paid a premium of Rs.37,004/-. The policy was for a period of one year between 30.8.2005 to 24.8.2006. The plaintiff would contend that on 22.11.2005, there was a heavy thunderstorm in Chennai, as a result of which, the rain water entered into the plaintiff's premises at Mount Road and caused extensive damage to the valuable carpets stored in the said premises. The plaintiff, therefore, requested the defendant to survey the damage and quantify the loss. One Mr.P.Suresh was deputed by the defendant Insurance Company to assess the loss. The said Surveyor had visited the plaintiff's shop on 24.11.2005 and inspected the premises as well as the damaged goods.

4. The plaintiff had lodged a claim for a sum of Rs.4,30,720/- with the defendant on 23.11.2005. The defendant Insurance Company in its letter dated 24.3.2006 repudiated the claim of the plaintiff stating that the cause and the nature of

the loss do not fall within the scope of the policy. Hence, the plaintiff was forced to sue the defendant Insurance Company for recovery of loss said to have occurred due to heavy and continuous rain in Chennai City on 22.11.2005. Initially a claim was made for a sum of Rs.4,30,720/-. After shifting the shop and finalizing the loss, it was enhanced to Rs.5,53,720/-. According to the plaintiff, the damage was caused due to heavy rain accompanied by storm on the fateful day i.e. on 22.11.2005. The plaintiff had claimed that as a result of heavy rain, the rain water entered into its premises and caused the extensive damage.

5. The defendant Insurance Company resisted the suit contending that the loss caused to the goods is not by flooding. Quoting the surveyor report, it is claimed by the Insurance Company that the damage was caused to the carpets that were stored in the first floor of the building and there was no flooding or inundation in the first floor. The damage seems to have occurred because of the seepage of the water which happened due to poor maintenance of the building. The defendant would further contend that there was no thunder storm on 22.11.2005.

6. They would also rely upon the metrological report, which recorded the fact that maximum wind speed on 22.11.2005 was at 40 kilometers per hour and the same cannot be called as thunder storm. As per Beaufort Scales, wind speed at 40 to 50 kilometers per hour is strong breeze. The Insurance Company would further claim that it is not liable to make good the damage, since the risks covered by the appellant namely, storm, cyclone, Typhoon, tempest, Hurricane, Tornado, flood and inundation were not proximate causes of the loss. The Insurance Company also disputed the quantum of damages. On the aforesaid rival contentions, the learned Trial Judge framed the following issues for determination in the appeal:

- 1) Whether the plaintiff is entitled to get claim as per the plaint?
- 2) Whether the damages were caused due to thunder storm?
- 3) Whether the defendant is liable to pay compensation?
- 4) To what other relief, the plaintiff is entitled to?

7. On the side of the plaintiff, one of its partners Mr. Abdul Majid Khan was examined as PW1 and Exs.A-1 to A-24 were marked. On the side of the defendant the surveyor namely, P.Suresh was examined as D.W.1 and one S.Sridharan, an employee was examined as DW2 and Exs.B-1 to B-3 were marked.

8. After considering the rival contentions and the oral and documentary evidence, the learned Trial Judge came to the conclusion that the loss was caused due to heavy rain in Chennai City on 22.11.2005 and the claim of the defendant Insurance Company that the heavy rain was not proximate cause to the loss

was negatived. The learned Trial Judge however, found that the quantum of loss as claimed by the plaintiff at Rs.5,53,720/- has not been proved. The learned Trial Judge came to the conclusion that the loss could be fixed at 1,23,000/- based on Ex.A-1 and Ex.B-1. Upon the said findings, the learned Trial Judge, granted a decree for a sum of Rs.1,23,000/- towards damages with interest at 12% per annum from the date of plaint till the date of realization with proportionate costs. Aggrieved by the said judgement and decree, the plaintiff filed the appeal in A.S.No.485 of 2011 seeking enhancement of the damages and the Defendant Insurance Company has filed A.S.No.963 of 2008 seeking dismissal of the suit.

9. I have heard Mr.N.Venkatraman, learned counsel for M/s.Nageswaran & Narichania learned counsel appearing for the appellant in A.S.No.963 of 2008 and the respondent in A.S.No.485 of 2011 and Mr.G.Rajkumar, learned counsel for Mr.A.J.Jawad, learned counsel appearing for the respondent in A.S.No.963 of 2008 and the appellant in A.S.No.485 of 2011.

10. The following points arise for determination:

1)Whether the Insurance Company is right in repudiating the claim on the basis that heavy rain that had occurred on 22.11.2005 was not the proximate cause for the damage caused to the plaintiff?

2.Whether the claim of the Insurance Company that the loss occurred was due to bad maintenance of plaintiff's building is correct?

3.Whether the plaintiff is entitled to damages at Rs.5,53,720/- as claimed by them?

4.Whether the plaintiff has established the quantum of damages?

11. Since both the appeals arise out of the same suit, both the appeals are taken together and disposed of by a common judgement.

12. Mr.N.Venkatraman, the learned counsel appearing for M/s.S.Nageswaran and Narichania, the learned counsel for the Insurance Company would vehemently contend that unless the plaintiff establishes, that heavy rain/thunder storm that lashed the City of Chennai on 22.11.2005 was the proximate cause for the loss caused to the goods, the Insurance Company cannot be held liable for the loss. The learned counsel relying upon the survey report as well as the admission made by the partner of the plaintiff as PW1 that the cause for loss admittedly is seepage of water in the building and the said eventuality i.e. loss due to the seepage is not covered by the policy conditions. Therefore, according to the learned counsel, the Insurance Company cannot be held liable to make good the loss.

13. The learned counsel, taking me through the relevant portion of the policy namely Ex.A2, would contend that what is covered by the policy is loss, destruction or damage directly caused by storm, cyclone, typhoon, tempest, hurricane, tornado, flood or inundation excluding those resulting from earthquake or other convulsions of nature and would contend that seepage of water due to whatever reason is not covered by the policy. According to the learned counsel, seepage had occurred in the first floor of the building therefore, it cannot be said that loss has been caused due to flooding or inundation.

14. Mr.N.Venkatraman learned counsel appearing for the Insurance Company would also rely upon the judgement of the Hon'ble Supreme Court in United India Insurance Co.Ltd. and others vs. Roshanlal Oil Mills Ltd. and others reported in (2000) 10 SCC 19.

15. Countering the said argument, Mr.G.Rajkumar, learned counsel appearing for the plaintiff would contend that even as per survey report, seepage had occurred only because of the heavy down pour. The learned counsel would invite my attention to paragraph 2.3.2 of the survey report marked as Ex.B1. The said paragraph reads as follows:

" It was observed that stock mainly silk and woolen carpets, cotton dhurees and a piece of furniture were damaged by rain water because of very heavy down pour. The cause of seepage appeared to have resulted from an extraordinary heavy and continuous down pour in the city during the dates of reported damage in Mount Road and the neighborhood area. The heavy rain and water inundation in Mount Road and other areas in the city and other places in the districts of Tamilnadu were well reported in the newspapers and TV. The State Government is disbursing relief in cash and kind. In fact the most of the Tamilnadu suffered due to heavy down pour and release of water, overflowing and breach of banks of storage tanks, rivers and canals. The central Government team had appraised the damage and State Government had demanded a very huge sum of Rs.13700 crores to alleviate the loss suffered by the poor and agriculturists."

Relying heavily on the observations of the surveyor, learned counsel would claim that the seepage had occurred only due to extraordinary heavy and continuous rain in the City during the relevant days. The learned counsel would further contend that the policy itself was taken in August, 2005 and it expired on midnight 24.08.2006.

16. The officials of the defendant-Insurance Company had inspected the premises before the policy was determined. They claimed that the premises of the plaintiff was ill-maintained. A perusal of the evidence of DW1 and DW2 does not support the claim of the learned counsel for the insurance company that the premises was not properly maintained. According to Mr.G.Rajkumar, the evidence of DW2 is sketchy and bereft of any details. DW2 would claim ignorance of many details of the accident. He had gone into the extent of denying the fact that heavy rain had occurred on 22.11.2005. It must be pointed out at this juncture the fact that the City experienced heavy rain accompanied by gusty winds was not in dispute. The surveyor, who was examined as DW1, in fact, admitted that there was a heavy rain during the said period and that the conditions were windy.
Point No.1

17. I have gone through the evidence of PW1 as well as the survey report. From the evidence of PW1 and Ex.B1- survey report, it is clear that there was heavy rain accompanied by gusty wind during the relevant period i.e. on 22.11.2005. The said heavy down pour resulted in seepage of water into the plaintiff's building thereby the valuable goods like carpets etc. were damaged. The surveyor would also point out that most parts of the State of Tamil Nadu suffered due to heavy down pour. There were breach of banks i.e. banks of rivers and canals. It is seen from the report that the State Government had demanded Central Aid of Rs.13700 crores to alleviate the sufferings of the people. During the relevant period vehicles and carriers were stranded due to excess water logging in most parts of the City.

18. The learned counsel for the Insurance Company would not dispute the fact that there was heavy rain fall accompanied by wind during the relevant time. He would however contend that if the cause of the loss shown in the claim is not covered by the policy the company will be at liberty to repudiate the claim. I am unable to persuade myself to agree with the said contention of the learned counsel. I find it to be hyper technical. It should be born in mind that the contract of Insurance is in the nature of special contract, which is entered into with the object of minimising the loss caused by a natural calamity. If the Courts are to interpret the contract of Insurance in the manner suggested by the learned counsel Mr.N.Venkatraman, the very object of the contract of insurance would be defeated.

19. In the case on hand, the survey report is very clear, that the cause of seepage is due to heavy rain fall. In fact the surveyor had specifically observed that the cause of seepage appears to have resulted from an extraordinarily heavy and continuous down pour in the City, particularly in Mount Road and neighbouring areas. There are also other documents in the form of news paper reports, weather reports etc. to show that there was

in fact very heavy rain during the relevant period in the City of Chennai. Therefore, it is clear that the loss caused was due to seepage caused by heavy rain fall.

20. In the light of above discussion, I am constrained to conclude that the repudiation of the policy by the insurance company on the ground that the loss does not fall under the scope of the policy cannot be accepted. Therefore, I concur with the findings of the Trial Judge that the insurance company is liable for the loss caused to the goods. The judgement of the Hon'ble Supreme Court in United Indai Insurance Co.Ltd. and others vs. Roshanlal Oil Mills Ltd. and others reported in (2000) 10 SCC 19 relied on by Mr N.Venkatraman, the learned counsel appearing for the Insurance Company is of no assistance to him. In the said case, the Hon'ble Supreme Court held that non-consideration of the report of the Surveyors vitiates the findings of the National Consumer Disputes Redressal Commission. In this case, the Trial Judge has arrived at the findings on the basis of the surveyor report.

Point No.2

21. The next question to be decided is the value of the goods said to have been damaged due to the seepage of water. In order to assess the value of the loss, I have gone through evidence of PW1, DW2 the surveyor and his report marked as Ex.B1. Though the plaintiff has produced Ex.A11 dated 10.2.2006 the certificate of damage caused to the plaintiff, the person who issued the same, has not been examined. The surveyor in his report has stated the details of damage. On the question of salvage, the surveyor report reads as follows:

" 3.5 Salvage: The carpets are of high quality catering to the economically higher end of society; as such the offers to purchase such damaged high quality carpets will be limited. The insured had offered 10% as salvage. (See Annexure 1-2). However this salvage value is very low and after due consideration, we are adopting 70% of the loss as salvage, since the water damage has resulted in mild water marks; hence they may be sold as seconds. Provision has been made for cost for cleaning and mending.

The claim value after adjusting for salvage value (70%) is Rs.1,44,990/- (i.e. 4,83,300x0.3)"

On value of the damaged carpets, after adopting 70% as salvage value, the surveyor opined that the quantum of loss would be Rs.1,44,990/-. After deducting the usual statutory deductions, the surveyor had arrived at the value of the damages at Rs.1,20,867.97. Taking into account of the above factors, the learned Trial Judge had fixed the value of the damages caused to the plaintiff at Rs.1,23,000/-.

22. Though Mr.N.Venkatraman, the learned counsel appearing for the Insurance Company would contend that the Trial Court has not given any reason as to why it has fixed a sum of R.1,23,000/- as the value of loss and would submit that the same is without any basis. I am inclined to uphold the assessment made by the learned Trial Judge. There is bound to be some element of guess work in determination of quantum of loss in these type of cases. Hence, I am inclined to uphold the quantum of loss as fixed by the learned Trial Judge.

23. Mr.G.Rajkumar, learned counsel appearing for the appellant in A.S.No.485 of 2011 is unable to bring home any convincing reason which would justify the claim of Rs.5,53,720/-. As already stated, except the interested testimony of PW1, there is no other evidence available on record to ascertain the value of the loss. In such circumstance, I am unable to countenance the claim of the plaintiff that the quantum of loss is much more than Rs.1,23,000/-. Therefore, I find that the judgement and decree of the trial court are bound to be confirmed.

24. In the result, both the appeals are dismissed confirming the judgement and decree of the Trial Court. However, there will be no order as to costs in these appeals.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pa/vk

To
The VI Additional Judge,
City Civil Court, Chennai.

+1 cc to M/s.Nageswaran & Narichania Advocate sr 12969

Common Judgment
in

A.S.No.963 of 2008
and A.S.No.485 of 2011

rj(co)
aa16/03/2017