

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.551 OF 2013

JUDGMENT:

This Second Appeal is filed by the first defendant, under Section 100 of C.P.C., assailing the judgment and decree dated 22.07.2011 passed in A.S.No.41 of 2007 on the file of the Court of III Additional District Judge at Karimnagar, wherein and whereby the judgment and decree dated 28.12.2005 passed in O.S.No.103 of 1990 on the file of the Court of the Senior Civil Judge at Karimnagar, decreeing the suit filed by the plaintiff for recovery of the suit amount with interest, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. At the time of arguments, learned counsel for both parties submitted that the only point involved in this appeal is with regard to granting of interest.

4. The substantial question of law formulated by the learned counsel for the appellant is:

“Whether the Courts below are justified in granting interest from the date of incident in view of Section 34 of C.P.C.?”

5. It is not in dispute that at the relevant point of time, the building and machinery of the plaintiff was insured with the first defendant-insurance company. Learned counsel for both parties submitted that the trial Court arrived at a conclusion that the plaintiff is entitled to an amount of Rs.2,60,000/- towards damage of machinery and building. The first appellate Court, after

reappraising the oral and documentary evidence available on record, arrived at a conclusion that the plaintiff is entitled to damages of Rs.2,60,000/- from the first defendant. It is needless to say that this Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below. The finding recorded by the Courts below on this aspect is supported by evidence much less legally admissible evidence.

6. Having regard to the facts and circumstances of the case, this Court is of the considered view that the plaintiff is entitled to claim damages of Rs.2,60,000/- from the first defendant.

7. The next question that falls for consideration is whether the Courts below are justified in granting interest to the tune of Rs.1,35,460/-.

8. The plaintiff calculated the interest from 07.02.1985 i.e., date of the incident. It is needless to say that the plaintiff is entitled to interest from the date of demand only. Admittedly, there is no clause in the insurance policy enabling the plaintiff to claim interest. In the absence of a specific clause in the policy, the plaintiff is entitled to claim interest from the date of demand. A perusal of the record reveals that the plaintiff got issued a notice on 11.11.1986 directing the defendant to pay the sum insured. Therefore, the plaintiff is entitled to interest from the date of demand i.e., 11.11.1986. The plaintiff filed the suit for an amount of Rs.4,20,826/-. Out of which, the principal amount comes to Rs.2,60,000/- and the plaintiff claimed an amount of Rs.1,35,460/- towards interest. It is needless to say that the plaintiff is entitled to interest at the rate of 12% on Rs.2,60,000/-

from 11.11.1986 only. The finding recorded by the Courts below that the plaintiff is entitled to claim interest with effect from 07.02.1985 is not sustainable either on facts or in law. The Courts below have not considered the scope of provisions of the Interest Act as well as Section 34 of C.P.C. and granted interest, which is impermissible under law.

9. Sri C.Ramesh Sagar, the learned counsel for the first respondent (plaintiff), in all fairness, submitted that the Courts below have committed some mistake while preparing the decree. Granting of interest contrary to the provisions of Interest Act as well as Section 34 of C.P.C. is a substantial question of law as contended by the learned counsel for the appellant-defendant No.1.

10. Having regard to the facts and circumstances of the case, this Court is of the considered view that it is a fit case to modify the judgment and decree of the Courts below.

11. In the result, the Second Appeal is allowed in part by modifying the judgment and decree 22.07.2011 passed in A.S.No.41 of 2007 on the file of the Court of III Additional District Judge at Karimnagar, confirming the judgment and decree dated 28.12.2005 passed in O.S.No.103 of 1990 on the file of the Court of the Senior Civil Judge at Karimnagar. Consequently, the suit filed by the plaintiff is decreed for an amount of Rs.2,60,000/-. The plaintiff is also entitled to interest on Rs.2,60,000/- at the rate of 12% per annum from 11.11.1986 till the date of passing of the decree by the trial court i.e., 28.12.2005. The plaintiff is entitled to interest at the rate of 6% per annum

from 28.12.2005 till the date of realisation. Both the parties are directed to bear their own costs.

12. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 30.10.2018
Ivd

