

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.392 of 2008

JUDGMENT:

The present appeal, under Section 96 of the Civil Procedure Code, 1908, is directed against the judgment and decree, dated 18.05.2002, in O.S.No.37 of 1998 on the file of the District Judge, Nellore.

2. The trial Court, in the aforesaid suit for recovery of Rs.5,35,943/- with interest at 12% per annum, on the ground that the defendants were due to the plaintiff on fire insurance policy number 1161140205126, dated 18.10.95, partly decreed the suit for a sum of Rs.19,042/-, while disallowing the rest of the claim.

3. Aggrieved over the same, the present appeal suit is preferred by the plaintiff seeking balance amount.

4. Heard Sri S. Sridhar, learned counsel for the appellant-plaintiff, and Sri Kota Subba Rao, learned counsel for the respondents-defendants.

5. The main submission of the learned counsel for the appellant is that the assessment of surveyor is wrong. His second submission is that no opportunity was given to the appellant to participate in the survey proceedings and the report of the surveyor is without any opportunity being given to the appellant. Learned counsel would also submit that the appellant received an amount of Rs.1,74,000/- under protest and, in fact, the surveyor estimated the loss at Rs.1,93,042/-, but the trial Court has granted the difference amount of Rs.19,042/-, instead of granting entire balance amount out of

Rs.6,30,000/-. He would also submit that the amount assured was Rs.9,20,000/- and the appellant did not waste time in preferring the claim petition for the total damages of Rs.9,20,000/-, and therefore, the balance amount of Rs.5,35,943/- be awarded with interest at 12.5% per annum thereon from the date of decree till realisation.

6. Per contra, learned counsel for the respondents would submit that the provisions of Section 64-UM of the Insurance Act, 1938, more particularly, clause (4) thereof would mandate appointment of surveyor before the settlement of claim and, thus, the appointment of surveyor is a statutory obligation. His submission is that the appellant is not prevented from either joining the surveyor or appointing his own surveyor and get the assessment done and then the Settlement Officer would have settled the claim basing on the assessment report of the surveyor.

7. In the context of the submission of the learned counsel for the appellant that no opportunity was afforded to the appellant when the survey was conducted by the surveyor, learned counsel for the respondents would submit that the survey was done by the surveyor over the premises in which the accident took place and that itself is, by inference, notice to the appellant and, therefore, the appellant cannot claim that he was not afforded an opportunity. It is also the submission of learned counsel for the respondents that the surveyor is not the Company's surveyor, but he is from the panel of the Union Government and, therefore, the appellant was not right in canvassing as such. Learned counsel for the respondents would further submit that when the

Settlement Officer decided the amount and the amount was granted to the appellant, the appellant issued a stamped receipt without there being any protest at all and, therefore, there was no cause of action at all to lay the claim and, therefore, there is no merit in the present appeal.

8. Learned counsel for the respondents also placed reliance in **United India Insurance Co. Ltd. V. Roshan Lal Oil Mills Ltd¹**, and the expression of the Honourable Supreme Court in paragraph ‘7’ thereof reads thus:

“The appellant had appointed joint surveyors in terms of Section 64-UM (2) of the Insurance Act, 1938. Their report has been placed on the record in which a detailed account of the factors on the basis of which the joint surveyors had come to the conclusion that there was no loss or damage caused on account of fire, was given and it was on this basis that the claim was not found entertainable. This is an important document which was placed before the Commission but the Commission, curiously, has not considered the report. Since the claim of the respondent was repudiated by the appellant on the basis of the joint survey report, the Commission was not justified in awarding the insurance amount to the respondent without adverting itself to the contents of the joint survey report specially the factors enumerated therein. In our opinion, non-consideration of this important document has resulted in serious miscarriage of justice and vitiates the judgment passed by the Commission. The case has, therefore, to be sent back to the Commission for a fresh hearing.”

¹ (2000) 10 SCC 19

9. Learned counsel further relied on **Bond Food Products Pvt. Ltd., v. Planters Airways Ltd.**², wherein a Division Bench of the Honourable High Court, in a similar situation, held that the carrier is liable for damages holding in paragraph ‘14.5’ thereof thus:

“When the defendant carrier failed to employ a surveyor for the assessment of the damages on his own and also failed to prove that they have not committed any negligence, the evidence of the surveyor, PW.2, the report of the surveyor, Exh. A-4 and his assessment with respect to the quantum of damages have to be accepted.”

10. Learned counsel for the appellant, of course, did not seriously contest the dispute in the present appeal, having found that the receipt Ex.B4 does not reflect that the appellant received the amount under protest and also in view of the propositions laid in the aforesaid rulings.

11. The points that arise for consideration are:

1. Whether the respondents or the surveyor were/was obligated with the duty to cause a notice before conducting a survey?
2. Whether the amount received under Ex.B4 was under protest, as pleaded?
3. Whether the judgment and decree passed by the trial Court are sustainable? If not, to what further relief the appellant is entitled?

12. **POINT No.1:** In **Bond Food Products Pvt. Ltd** (2 supra), the proposition laid down by a Division Bench of Madras High Court in paragraph ‘14.5’ afore-extracted makes it clear that notice is not

² 2006 ACJ 24

mandatory. Even in **Roshan Lal Oil Mills Ltd** (1 supra), the expression of the Honourable Supreme Court in paragraph '7', extracted in the above, would not obligate the insurance company or the Surveyor appointed to issue a notice. Even otherwise, when the premises in which the survey was done admittedly belongs to the appellant, then, without the authority of the appellant, the surveyor would not have entered into the premises and, thus, inescapable inference is that only after due notice to the appellant, the surveyor has conducted the survey. Therefore, the said submission is without any merit.

13. **POINT No.2:** A perusal of Ex.B4-receipt would clearly show that no endorsement was made by the appellant that he received the amount under protest. The amount mentioned therein is Rs.1,74,042/- and it contains the signature of the appellant on the revenue stamp and his name occurs below the revenue stamp. As endorsement regarding protest is not occurring in Ex.B4, the plea of the appellant that he received the amount under protest is not only baseless, but also not worthy of acceptance.

14. **POINT No.3:** In view of the findings recorded on points 1 and 2, the judgment and decree under challenge do not warrant any interference.

15. Hence, the appeal suit is dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending in the present appeal, stand closed.

A. SHANKAR NARAYANA, J

12.02.2018

v v