IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-105-2013(O&M)
Date of decision:-13.2.2019

Delhi Punjab Goods Carrier Pvt.

...Appellant

Versus

National Insurance Company Ltd. and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Puneet Jindal, Senior Advocate with
Ms.Neha Anand Mahajan, Advocate
for the appellant.

Mr.Ravinder Arora, Advocate
for the respondents.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Delhi Punjab Goods Carrier Pvt. Ltd. through its Managing Director – Sh.Gurdip Singh had filed a suit against National Insurance Co. Ltd. Kolkata and its Divisional Manager at Jalandhar seeking recovery of Rs.23,40,202/- i.e. amount of loss assessed by Surveyor on

11.11.2004 – Rs.18,42,679/- and interest @ 18% per annum from 11.11.2004 till date – Rs.4,97,523/-, on account of damages caused to the plaintiff due to flood accrued in the godown of the plaintiff on 2/3/4 August, 2004 on the basis of Insurance Cover Note No.227367 dated 3.1.2004 issued by defendant No.2.

Inter alia, in the plaint, the plaintiff had contended that the plaintiff is a Public Goods Carrier doing business of booking the goods of public and transporting the same from one place to another; that the plaintiff company had its godown located at Saroli near Lalji Mulji Transport, Surat; that on 2/3/4 August, 2004, there were floods at Surat (Gujarat), which caused damage to the goods lying in the godown of plaintiff at Surat to the extent of Rs.25,03,401/-; that this amount was payable by the plaintiff to the respective parties; that the stock in that godown was duly insured with defendant No.2 for Rs.30,00,000/- for the purposes of fire and flood etc. vide policy No.227367 dated 3.1.2004; that the plaintiff had paid premium of Rs.9,720/- on 3.1.2004 and the policy was valid from 4.1.2004 to 3.1.2005; that the defendant company had appointed its Surveyor Sh.D.T. Patel to assess the loss, who found the same to the tune of Rs.18,42,679/- in terms of his report dated 11.11.2004, however the defendant company repudiated the claim of the plaintiff company on the basis of report submitted by Sh.Rajesh Gupta, Chartered Accountant vide letter dated 2.2.2006. According to the plaintiff such action of the defendant company is illegal, inoperative and not binding upon the plaintiff, since the goods were actually found in the godown and the plaintiff had in fact given the compensation to the respective parties; that the plaintiff requested the defendant insurance company to admit its claim several times but to no effect, as such, the plaintiff had brought the suit in question.

On notice, the defendants appeared and filed written statement contesting the suit raising preliminary objections that the suit was bad for non-joinder of necessary parties and the claim of the plaintiff was not valid. On merits, the defendants contended that the bills in question caused apparent doubt with regard to their genuineness; that those were sent for investigation through the investigator; that out of 29 items, the bills of items No.25, 28 and 29 were not provided by the plaintiff, as such are to be presumed as fake and bogus; that the reasons given in the report of the investigator regarding the bills being fake have not been disputed by the plaintiff; that the defendant No.2 with an elaborate letter of repudiation declined the claim, forfeiting all the benefits of the policy; that the report of the Surveyor Sh.D.T. Patel is based on obvious visual aid on the site; that the report of investigator was received by defendant No.2 in which it was mentioned that a number of consignors/consignee did not exist at all and the particulars were fake; that the reply dated 7.5.2005 submitted by the plaintiff was misconceived; that as per the insurance Tariff Advisory Committee's guidelines, if the claim in any respect is made on the basis of false documents, then all the benefits under the insurance policy are forfeited and that is what exactly has been done by the defendant. It was denied that the plaintiff had made payment of compensation to the respective parties. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to the recovery of suit amount as prayed for? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the claim of the plaintiff is not valid nor lawful? OPD.
4. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
5. Relief.

Both the parties led evidence in respect of their claims.

During the course of evidence, the plaintiff examined Sh.D.T. Patel as PW1, Sh.D.P. Bajaj as PW2 and Sh.Gurdeep Singh, Managing Director as PW3.

On the other hand, the defendants examined Sh.Kapil Dev Verma, Assistant Manager as DW1 and Sh.Rajesh Gupta, Surveyor & Loss Assessor as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 3 in favour of the plaintiff and against the defendants, issue No.2 against the defendants and in favour of the plaintiff, issue No.4 against the defendants and in favour of the plaintiff. Resultantly suit of the plaintiff was decreed for recovery of Rs.23,40,202/- with interest @ 10% per annum from the date of assessment of loss by the Surveyor i.e. 11.11.2004 till the date of decree and future interest @ 6% per annum from the date of decree till actual realization of decretal amount besides cost of the suit. This was so done by the trial Court vide judgment and decree dated 6.9.2010.

Defendants were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Jalandhar, who vide judgment and decree dated 8.8.2012 accepted the appeal.

Now it was the turn of the plaintiff to feel aggrieved and it had knocked at the door of this Court by way of filing present regular second appeal, notice of which was issued to the respondents, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant has argued that the first Surveyor appointed by the defendants themselves had visited the godown of plaintiff, carried out inspection and vide detailed report found damages to the tune of Rs.18,42,679/-, however without any reason and justification, the defendants appointed another Surveyor, who in a wrong and arbitrary manner reported that some of the bills were forged when it was not so and insurance policy taken by the plaintiff could not be repudiated for such like reasons. In support of his such contention, he has referred to authority ***Sri Venkateswara Syndicate Versus Oriental Insurance Company Limited and another, (2009) 8 Supreme Court Cases 507*** wherein it was observed that though an insurer is not prohibited from appointing or another surveyor for fresh estimation of loss, however, appointing surveyors one after another so as to get a tailor-made report to the satisfaction of the insurer is impermissible; the insurer cannot appoint second surveyor as a matter of course and it must specify cogent and satisfactory reasons for not accepting report of first surveyor and need to appoint second surveyor and further non consideration of material facts that ought to have been taken into consideration can be a ground for insurance company to appoint another surveyor for conducting fresh survey. It was further observed that though option to accept or not to accept report of surveyor lies with the insurer, however, if report is prepared in good faith, with due application of mind and in the absence of any error or ill motive, the insurance company cannot reject report of surveyors and that the Courts or other forums can intervene only if rejection is arbitrary and based on no acceptable reasons.

On the other hand, learned counsel for the respondents has contended that since the claim was more than Rs.20 lacs, as per procedure and guidelines, the second surveyor was appointed, who inquired into the matter of genuineness of the bills and found that several such bills were fake and forged resulting in repudiation of the policy, as such, the First Appellate Court had rightly dismissed the suit of the plaintiff by accepting the appeal against wrong judgment passed by the trial Court.

After hearing the rival contentions, I find that there was no justification for the insurance company to discard the report submitted by the first surveyor appointed by it. The factum of plaintiff having taken the insurance policy is not in dispute. The first Surveyor Sh.D.T. Patel had visited the godown of the plaintiff company at Saroli near Lalji Mulji Transport, Surat and found the loss of the goods to the tune of Rs.18,42,679/- on account of floods, which means goods were there and damage had been caused. There is nothing on record to show that such surveyor had connived with the plaintiff company and submitted a false report. Nothing was brought on record to show that some action has been taken against the said surveyor for allegedly submitting a wrong report. Flood water having entered the godown where the goods of plaintiff were stored, the version of the plaintiff comes out to be natural. Had the loss been caused by fire, then there was possibility of the mischief of the goods being set on fire by the insured or any other person on its behalf to claim compensation but flooding of godown, as a result of mischief by the insured just to get compensation seems highly unlikely when as stated there were floods in the entire town at the relevant time during those days. The second surveyor appointed proceeded to determine the genuineness of the bills etc. vide which the consignments had been booked with the plaintiff carrier. There may be some shortcoming or lapse in that regard but that could not possibly form a ground for repudiation of claim of the plaintiffs. There was no reason to disbelieve the report of first surveyor and accepting the report of the second surveyor as gospels truth.

The judgment passed by the trial Court is well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. Whereas the judgment passed by learned District Judge, Jalandhar upsetting the judgment and decree passed by the trial Court lacks sound reasoning, rather showing non application of judicial mind. The judgment and decree passed by learned District Judge, Jalandhar are not sustainable and the same are set aside, whereas judgment and decree passed by the trial Court are restored by way of acceptance of this appeal with costs.

13.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No