

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

RSA No.2627 of 2014 (O&M)

Date of decision: 05.02.2019

Barwala Agriculture Implements and
General Works PCIS Ltd.

..... Appellant

Versus

New India Assurance Company Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. R. Kartikeya, Advocate
for the appellant.

Mr. Vinod Gupta, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the appeal against the judgment passed
by the learned First Appellate Court.

Learned trial Court after recording a finding that the plaintiff
suffered loss to the tune of Rs.12,00,000/- awarded a sum of Rs.1,06,176/-.
Both the parties filed first appeal. The appeal filed by the plaintiff was
dismissed whereas cross-objections filed by the Insurance Company were
accepted resulting in dismissal of the suit.

In this case, because of loss due to fire which took place on
26.11.2002, a claim with Insurance Company i.e. the respondent was lodged
by the plaintiff-appellant. Insurance Company appointed a surveyor who
assessed the damages to the tune of Rs.1,06,176/-. However, the plaintiff-
appellant/firm claimed more amount. The surveyor directed the plaintiff-

appellant to provide the documents for examining the further claim of the plaintiff. The documents as required were not supplied. Ultimately, the Insurance Company closed the claim on 27.02.2004.

Insurance Company has defended the claim by pleading that Rs.1,06,176/- was offered but since the plaintiff did not accept the same, therefore, the matter was closed.

As noticed above, learned trial Court decreed the suit to the extent of Rs.1,06,176/- even after assessing the damages at Rs.10,00,000/-. In first appeal, when both the parties had challenged the judgment and decree, learned First Appellate Court re-analyzed the evidence and concluded that the plaintiff is entitled to only Rs.1,06,176/-. The First Appellate Court noticed that it is the plaintiff who failed to supply the requisite documents and information as required and demanded by the surveyor. The surveyor had asked for stock statement, copies of invoices of purchase and sale of the goods submitted by the insured to the sale tax department and record of electric consumption during the period when fire developed the unit. The Court has further found that the electric consumption of the plaintiff's unit was on the lower side and the stock manufactured is also low.

Learned counsel for the appellant has submitted that the documents were supplied but the documents were not from the source i.e. copy of the return of the same source as it was asked for. The surveyor had demanded documents namely details of verification or inspection done by the bankers of the insured and certified copy of the purchase and sale record as submitted by the insured to the sale tax department. In such circumstances, the First Appellate Court has rightly concluded that the

plaintiff has failed to establish that the loss was Rs.12,00,000/-. However, First Appellate Court has committed an error in accepting the cross-objections filed by the Insurance Company in total. The Insurance Company is liable to pay the amount which was assessed by their surveyor.

Accordingly, the judgment of the First Appellate Court is modified. The suit filed by the plaintiff is decreed to the extent of Rs.1,06,176/- along with interest @ 10% per annum from the date of institution of the suit till payment.

Appeal is disposed of.

05.02.2019

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No