



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 02ND DAY OF NOVEMBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S.No.70 of 2012

M/s. TamilNadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower -II
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
Represented by its Managing Director,
Shri T.Soundiah

... Plaintiff

-Vs-

M/s. Reliance General Insurance Co. Ltd.,
6th Floor, Reliance House,
No.6, Haddows Road, Nungambakkam,
Chennai 600 006.
Represented by its Regional Head.

... Defendant

Civil suit praying that this Hon'ble Court be pleased to a Judgment
and decree against the defendant company:

(a) To pay a sum of Rs.3,51,14,655/- together with interest @ 18% on
Rs.2,57,45,245/- from the date of plaint till the date of realization.

(b) Directing the defendants to pay cost.

This Civil Suit having been heard on 21.10.2021 in the presence of

Mr. J. Ravindran, Additional Advocate General for M/s. K. Sathish Kumar,



Advocate for the plaintiff herein and Mr. S.R. Sundar, Advocate for the defendant herein and upon reading the pleadings filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this Court or orders in the presence of said advocates for the parties hereto and this Court having observed that the plaintiff is entitled to recover the 30% of the claim amount which was unjustly with held by the plaintiff and the interest claimed at 18% is on the higher side and grant of interest at 12% would be just and reasonable in the circumstances of the case and such a case has not been projected by the defendant even in he written statement, having accepted the claim and settled the claim partially, this Court does not think that the defendant could be allowed to contend that there was a delay in making the claim or that the premium paid was insufficient, **it is ordered and decreed as follows:-**

That the defendant herein, do pay to the plaintiff herein, a sum of Rs.6,33,37,938/- (Rupees Six Crore Thirty Three Lakhs Three Seven Thousand Nine Hundred and Thirty Eight only) with further interest at the rate of 12% p.a. on the sum of Rs.2,57,45,245/- (Rupees Two Crore Fifty Seven Lakhs Forty Five Thousand Two Hundred and Forty Five only) from this day till the date of realisation.



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2. That the defendant herein, do-pay to the plaintiff herein, the proportionate costs of this suit, as and when taxed by the taxing officer of this Court and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
02ND DAY OF NOVEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
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C.S.No. 70 of 2012

DECREE :

DATED : 02/11/2021

THE HON'BLE MR. JUSTICE
R. SUBRAMANIAN

FOR APPROVAL: 29/12/2021

APPROVED ON : 27/01/2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on 21.10.2021	Delivered on 02.11.2021
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CORAM**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN****C.S.No.70 of 2012**

M/s. TamilNadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower -II
Gandhi Irwin Bridge Road,
Egmore, Chennai 600 008
Rep. by its Managing Director,
Shri T.Soundiah

... Plaintiff

Vs

M/s. Reliance General Insurance Co. Ltd.,
6th Floor, Reliance House,
No.6, Haddows Road, Nungambakkam,
Chennai 600 006.
Rep. by its Regional Head

... Defendant

Prayer : Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, praying for the following judgment and decree:-

(a) To pay a sum of Rs.3,51,14,655/- together with interest @ 18% on Rs.2,57,45,245/- from the date of plaint till the date of realisation;

(b) Directing the defendants to pay cost;



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For Plaintiff : Mr.J.Ravindran,
Additional Advocate General for
M/s.K.Sathish Kumar

For Defendant : Mr.S.R.Sundar

J U D G M E N T

The plaintiff, which is a statutory Corporation wholly owned by the Government of Tamil Nadu, has filed the above suit seeking a money decree for a sum of Rs.3,51,14,655/- with subsequent interest at 18% per annum and for costs.

2. The plaint averments are as follows:

2.1. The plaintiff holds the monopoly for supply of Indian Made Foreign Spirits (IMFS)/Beer products all over the State. The plaintiff has its godowns and outlets spread across the State. Upon purchase of the products namely IMFS/Beer they are transported through lorries arranged by the manufacturers and suppliers from their breweries or distilleries to the 41 stock points of the plaintiff. At times there are inter stock point transfer of the products. Since the plaintiff suffered significant percentage of loss due to loss in transit, breakage, etc., the plaintiff decided to have the said loss covered by Marine Transit Insurance.



2.2. The plaintiff therefore called for tenders from Insurers approved by the Insurance Regulatory Authority (IRDA). The several Nationalised as well as Private Insurance Companies took part in the tender processes and the defendant emerged as a successful tenderer. Upon being declared as a successful tenderer, a contract of Insurance was entered into between the plaintiff and the defendant for the period between 01.10.2008 and 30.09.2009. The policy was to cover the risk against breakages, damages and all other risks including accident that may occur during the transport of the Indian Made Foreign Spirits and Beer from the breweries or distilleries to the stock points or from the stock points to the retail outlets or inter stock point transit. Along with the tender, the plaintiff also furnished the statistics for the 10 year period prior to 2008 and 2009, to enable the defendant to assess the expected risk that it would have to cover in the event it emerges as a successful tenderer. The furnishing of the statistics was only to enable the defendant to have a general idea of the risk involved in the transaction.

2.3. As per the conditions in the contract of Insurance, the plaintiff is bound to pay a premium on the expected quantity of (IMFS)/Beer that is to be transported through a month in advance at the beginning of the month and within five days after the last date of the month



the premium payable for the entire volume of stock that was transported during the month is ascertained and if the premium paid is in excess, the same is to be adjusted towards the premium payable in the subsequent month. If the premium paid is in deficit, the plaintiff will have to make good the deficit.

2.4. Upon initiation of the contract from 01.10.2008 to January 2009, the defendant settled the claims of the plaintiff without any dispute what so ever. Thereafter the defendant paid only 70% of the claim and retained 30% of the claim. Despite repeated objections and requests made by the plaintiff, the defendant did not choose to make good the deficit. The defendant took a stand that the percentage of loss has increased due to the substandard packing of the products by the manufacturers and use of a particular kind of a lorry (Taurus) for transport of the IMFS and Beer, hence the defendant is not liable to make good the entire loss. However, the defendant did not choose to disclose the basis on which it had arrived at the quantum of loss at 30%.

2.5. According to the plaintiff, as per the Policy conditions for claims below Rs.5,000/- per GRA (Goods Receipt Acknowledgement), the defendant should pay the entire claim within 5 to 7 days solely on the



production of GRA without insisting upon any other supporting documents.

As regards claims above Rs.5,000/-, the same will have to be paid within 15 days on production of the documents that are set out in the schedule to the policy. The plaintiff would further point out that there is no dispute regarding the total loss caused and the documents produced, since the defendant honoured its commitment under the policy and paid 70% of the claim. The suit claim relates only to the unpaid portion of 30% of the claim under both the categories. The plaintiff has given the month wise claims and the month wise settlement made as follows:

Item-A – Insurance Claims – Below Rs.5000/- Category

<i>Month/ year</i>	<i>Total claim preferred</i>	<i>Total claim settled</i>	<i>% of settlement</i>	<i>Balance 30% amount due</i>
	Rs.	Rs.	%	Rs.
Oct-08	7812560	7812560	100	0
Nov-08	7821757	7821757	100	0
Dec-08	8299318	8299318	100	0
Jan-09	8009067	8009067	100	0
Feb-09	8976150	6283228	70	2692922
Mar-09	9587568	6711304	70	2876264
Apr-09	9520502	6664360	70	2856142
May-09	10049673	7034778	70	3014895
Jun-09	10915679	7641336	70	3274343
Jul-09	11416050	7991245	70	3424805
Aug-09	10503989	7352802	70	3151187



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Month/ year	Total claim preferred	Total claim settled	% of settlement	Balance 30% amount due
	Rs.	Rs.	%	Rs.
Sep-09	12732845	8913006	70	3819839
Total	11,56,45,158	9,05,34,761		2,51,10,397

Total claim preferred (A) : Rs.11,56,45,158

Total claim settled (A) : Rs. 9,05,34,761

Balance 30% amount due (A) : Rs. 2,52,10,397

**Item-B – Insurance Claims – Above Rs.5000/- Category
& Accident Cases**

Month/ year	Total claim preferred (Damaged bottle value only)	Total claim settled (Damaged bottle value only)	Balance amount due
	Rs.	Rs.	Rs.
Oct-08	28615	25501	3114
Nov-08	45267	33326	11941
Dec-08	32635	22844	9791
Jan-09	91938	74110	17828
Feb-09	130824	93971	36853
Mar-09	107647	70513	37134
Apr-09	63752	52935	10817
May-09	235836	165083	70753
Jun-09	154979	40773	114206
Jul-09	78075	51965	26110
Aug-09	117060	9161	107899



<i>Month/ year</i>	<i>Total claim preferred (Damaged bottle value only)</i>	<i>Total claim settled (Damaged bottle value only)</i>	<i>Balance amount due</i>
	Rs.	Rs.	Rs.
Sep-09	441384	252982	188402
Total	15,28,012	8,93,164	6,34,848

Total claim preferred (B) : Rs.15,28,012

Total claim settled (B) : Rs. 8,93,164

Balance amount due (B) : Rs. 6,34,848

Total Claim preferred (A+B) : Rs.11,56,45,158 + Rs.15,28,012

= **Rs.11,71,73,170/-**

Total claim settled (A+B) : Rs. 9,05,34,761 + Rs.8,93,164

= **Rs.9,14,27,925/-**

Balance 30% amount due (A+B): Rs.2,51,10,397 + Rs.6,34,848

= **Rs.2,57,45,245/-**

2.6. The plaintiff would further claim that it is entitled to interest after a period of two months from the date on which the amount fell due and payable and the plaintiff had claimed interest at 18% per annum. The interest so claimed by the plaintiff on claims below Rs.5,000/- till the date of suit works out to Rs.91,43,857/- and interest claimed on the claims which are above Rs.5,000/- works out to Rs.2,25,553/-. Thus, the plaintiff has



justified in settling the claims at a lesser percentage. It was also contended that the plaintiff had not produced the required documents in time to enable the defendant to settle the claims. The defendant would further contend that the casual handling of the material by the plaintiff at the time of loading and unloading has also contributed to the excess loss.

4. On the above pleadings, this Court had framed the following issues.

i) Whether the defendant participated in the tender called by the plaintiff to indemnify the damages occurred to the plaintiff while transporting the IMFL / BEER bottle in cartons from the manufacturing unit to various depots;

ii) Whether the defendant agreed to the terms and conditions of the tender floated by the plaintiff;

iii) Whether the plaintiff fulfilled its part of the terms and conditions by paying the advance premium promptly;

iv) Whether the defendant defaulted in payment of 30% of the claim amount from February 2009 to September 2009;

v) Whether the defendant made arbitrary deduction in settlement of claim amount;



vi) *Whether the defendant breached the tender terms*

and conditions;

vii) *Is not the plaintiff entitled to the 30% claim amount defaulted by the defendant;*

viii) *Is not the plaintiff entitled to interest at the rate of 18% p.a. on delayed / defaulted payment;*

ix) *Whether this suit / claim is based on the Tender document or Contract of Insurance Policy especially when the terms of the Tender Document has been incorporated in the Insurance Policy and the said Insurance Policy was accepted by the Plaintiff and continued to pay monthly premium;*

x) *Whether the defendant has taken loss minimization measures to the extent that packing was sufficient to withstand the jerks and jolts during road transit;*

xi) *Whether the plaintiff has taken all reasonable measures to avoid or minimize the loss;*

xii) *Whether the RECOVERY RIGHTS were protected as stipulated in the policy condition by the plaintiff in the subject claim;*

xiii) *Whether the plaintiff is absolved from their responsibility as to packing since the plaintiff has indicated*



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the percentage of breakage as mentioned in the Tender Document itself;

xiv) Whether quoting first 4 months settlement as precedent for rest of the policy period is incorrect;

xv) Is not the plaintiff entitled to other reliefs as the Hon'ble Court may deem fit.

5. After hearing the counsels for the parties, it is felt that the controversy lies in a very narrow campus and hence the issues are recast as follows:

1. Whether the defendant was justified in making a deduction of 30% of the claim amount for the period between February 2009 and September 2009;

2. Whether the action of the defendant in deducting 30% of the value of the claims during the aforesaid period is within its powers under the contract of Insurance dated 18.10.2008;

3. Whether the deduction made by the defendant is arbitrary and is in breach of the



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conditions contained in the tender document and the policy of Insurance;

4. Whether the plaintiff is entitled to recover the 30% of the claim amount;

5. Whether the plaintiff is entitled to interest on the delayed payment;

6. Whether the plaintiff had taken loss minimization efforts and ensured that the packing was sufficient with stand jerks and jolts during road transit;

7. Whether the recovery rights were protected as stipulated in the policy condition by the plaintiff;

8. Whether the defendant is not estopped from contending that the recovery rights were not protected and that the documents required to be furnished were not furnished by its own conduct of settling 70% of the claim amount.



6. At trial, one Mr.T.Soundiah, was examined as P.W.1 and Exhibits P1 to P24 were marked. One Mr.Raja Narasimhan, was examined as D.W.1 and Exhibit D1 was marked.

7. I have heard Mr.J.Ravindran, learned Additional Advocate General appearing for Mr.K.Sathish Kumar, for the plaintiff and Mr.S.R.Sundar, learned counsel appearing for the defendant.

Issue Nos. 1, 2, 3 and 4:

8. These issues are taken up together as they are interlinked and will depend on the answers to the common question relating to the liability of the defendant as an insurer on the basis of the policy conditions. The fact that the defendant emerged as a L1 tenderer and the tender was awarded to the defendant is not in dispute. The defendant had also issued a policy on 18.10.2008 covering the period of risk between 01.10.2008 and 30.09.2009. The policy of Insurance having been issued by the defendant, the defendant is bound by it and the rights of the parties will have to be determined on the basis of the contract of Insurance. The Policy of Insurance issued by the defendant has been marked as Ex.P9. The subject matter of Insurance as per



“All types of Liquor including IMFL, Beer and

such other allied products pertaining to the assured's trade excluding scotch items”

The nature of packing required is stated as follows:

“Standard and Customary. Cartons with segregation for bottles; Premium Bottles are packed with extra lining.”

The risk covered is shown as

“This insurance covers all risks of loss or damage to the subject matter insured except as provided in clause Nos.2,3,4 and 5 below.”

Clauses 3, 4 and 5 are not germane for our purposes in this action. Clause 2 which comes under the heading Exclusions, reads as follows:

General Exclusions:

“2. In no case shall this insurance cover

2.1. loss damage or expense attributable to willful misconduct of the assured.

2.2. ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject matter insured.



2.3. loss damage or expense caused by

insufficiency or unsuitability of packing or preparation of the subject matter insured (for the purpose of this clause 2.3 “packing” shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants.

2.4. loss damage or expense proximately caused

by delay even though the delay be caused by a risk insured against.

2.5. loss damage or expense caused by inherent

vice or nature of the subject-matter insured.”

8.1. It is not in dispute that the premium payable is to be paid every month in advance on the estimated quantity of the goods and any short fall is to be made good by the plaintiff and any excess is to be adjusted in the subsequent month's premium payable by the plaintiff. In fact there is no dispute regarding the payment of premium, though the defendant would claim that there was some delay in payment of the premium, I do not think that the defendant could raise the same as a defence to this action, inasmuch

as the defendant had accepted its liability and paid a major portion of the



claim namely 70% without any demur. Therefore, the dispute is only with reference to the remaining 30% which, according to the defendant, it is entitled to deduct on certain contingencies.

8.2. The sum and substance of the plea of the defendant is that it had chosen to deduct 30% of the claim for the following reasons:

- (i) Deficiency in packing;
- (ii) Over loading ;
- (iii) Mishandling of the cargo at the loading and unloading points;
- (iv) Use of Taurus Lorries which are prone to more jerks in transit, etc.

This action of the defendant must have a contractual backing in order to be justified. Both Mr.J.Ravindran, the learned Additional Advocate General appearing for the plaintiff and Mr.S.R.Sundar, learned counsel appearing for the defendant, have taken me through the contract of Insurance namely the Marine Inland Open Policy (Cargo), issued by the defendant on 18.10.2008.

8.3. A reading of the policy would show that the liability of the

insurer is excluded only under certain circumstances contemplated in the



exclusion clauses namely Clauses 2, 3, 4 and 5 of the contract. Clauses 3, 4 and 5 deal with specific situations where the liability of the insurer will stand excluded. It is not the case of either of the parties that those specific situations arose in the case on hand. Therefore the only exclusion clause that is available to the defendant is clause 2, extracted supra.

8.4. No doubt Clause 2.3 would exclude the damage or expense caused by insufficiency or unsuitability of the packing. As already adverted to, the policy condition in respect of packaging shows that the packaging must be standard and customary and the cartons should have segregations for bottles and premium bottles are packed with extra lining. The policy does not prescribe a particular standard of packing namely IS 9313-1979. There is nothing in the policy to show that the plaintiff is required to ensure that the goods are loaded in the lorries are packed as per the standards required in IS 9313-1979. In the absence of a contractual requirement, the defendant cannot insist on a particular standard of packing.

8.5. Strangely the defendant had paid 70% of the loss and had claimed that 30% of the loss alone is attributable to deficiency in packing.

There is nothing in the pleadings or in the evidence to show the basis on which the said 30% was arrived at. No doubt, Mr.S.R.Sundar, learned



counsel would draw my attention to the evidence of P.W.1, wherein P.W.1 has admitted to certain delay in making the claim. I do not think the defendant can be allowed to project the delay as a cause for partial rejection of the claim. The defendant had accepted the claim and paid 70% of the claim. Therefore it is not open to the defendant to now contend that there was a delay in making a claim or that supporting documents were not made available by the plaintiff or that the recovery rights were not ensured by the plaintiff.

8.6. The correspondence between the parties vide the Exhibits P10 to P24 would demonstrate that the only dispute between the parties was the deduction of 30% of the claim by the defendant on the ground that the packaging was insufficient and that there was mishandling at the distillery point. Therefore, I do not think that the defendant could be allowed or permitted to raise the issue relating to non-furnishing of documents or failure on the part of the plaintiff to ensure recovery rights. The entire correspondence between the parties commencing from the first letter dated 04.04.2009 marked as Exhibits P10 to P24 dated 16.12.2009 would show that the entire dispute was relating to the 30% deduction on the basis of the alleged deficiency in packing.



8.7. As already pointed out the policy does not prescribe a particular standard of packing namely IS 9313-1979. The defendant had started insisting on the deficiency in packing only from the month of February 2009, in fact the dispute arose precisely on 04.04.2009 when the plaintiff wrote to the defendant objecting to the deduction. It is not shown that the defendant had raised the issue relating to insufficiency in packing prior to the said date. The defendant had straight away deducted 30% of the claim amount, while settling the bills for the month of February 2009. The same was objected to by the plaintiff under Ex.P10 dated 04.04.2009 and it was followed by detailed letter dated 22.04.2009 pointing out that such deduction was unwarranted. Again while settling the claims for the month of March 2009, the defendant persisted with the deduction. The same was also objected to by the plaintiff vide its letter dated 08.05.2009 marked as Ex.P12.

8.8. After receipt of Ex.P12, the defendant chose to send a reply on 05.06.2009 claiming that the deduction of 30% was done towards non-standard packing, recycling of bottles, improper handling at distillery point etc. Though a reference is made to a letter dated 24.04.2009, the said letter has not been produced by the defendant. It is only in the letter dated

05.06.2009 namely Ex.P13, the defendant would claim that the packing



does not meet the requirements of IS 9313-1979. Though it is claimed that there were earlier correspondence regarding the insufficiency of packing etc. no document has been produced by the defendant to prove that there were any earlier correspondence between the parties regarding the insufficiency of packing etc.

8.9. As I had already pointed out the contract of Insurance does not enable the defendant to make any deduction on a non-existent exclusion clause. It is not the case of the defendant that the products were not packed, the defendant would claim that the packaging was not up to the standard prescribed in IS 9313-1979. The policy condition does not require such standard of packaging. It only states that there should be a standard and customary packing and the carton should have separators between bottles. There is no evidence to show that such packing was not there. It was well open to the defendant to have repudiated the policy, but the defendant persisted with the policy and chose to deduct a certain percentage without any basis.

8.10. As rightly contended by Mr.J.Ravindran, learned Additional Advocate General appearing for the plaintiff, the deduction is only an attempt by the defendant to minimize the loss for itself. No doubt a claim is



interest at 18% per annum. Though the suit has been taken cognizance of a commercial cause, it is a claim arising out of a contract of Insurance, wherein the object is to mitigate the loss and not to make profit out of the contract. The very object with which the plaintiff insured the goods under a marine transit policy is to insulate itself from the loss caused during transit. I am therefore of the considered opinion that the interest claimed at 18% is on the higher side and grant of interest at 12% would be just and reasonable in the circumstances of the case. If interest is calculated at 12%, the claim of the plaintiff would be as follows:

For Claims Less Than Rs.5000/- Category

<i>S.No.</i>	<i>Month/ year</i>	<i>30% of the claim amount which remains unpaid</i>	<i>Interest at 12% per annum from the default month upto July 2011</i>
		Rs.	Rs.
1	Feb-09	2692922	754018
2	Mar-09	2876264	776591
3	Apr-09	2856142	742597
4	May-09	3014895	753724
5	Jun-09	3274343	785842
6	Jul-09	3424805	787705
7	Aug-09	3151187	693261
8	Sep-09	3819839	802166
	Total	2,51,10,397	60,95,904



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Total outstanding i.e., 30% : Rs.2,51,10,397

Interest as above : Rs. 60,95,904

Total Due with interest
as on the date of the suit : **Rs.3,12,06,301**

Interest calculation For Claims above Rs.5000/- Category

S.No.	Month/ year	Balance amount due	Interest at 12% per annum from the default month upto July 2011
		Rs.	Rs.
1	Oct-08	3114	996
2	Nov-08	11941	3702
3	Dec-08	9791	2937
4	Jan-09	17828	5170
5	Feb-09	36853	10319
6	Mar-09	37134	10026
7	Apr-09	10817	2812
8	May-09	70753	17688
9	Jun-09	114206	27409
10	Jul-09	26110	6005
11	Aug-09	107899	23738
12	Sep-09	188402	39564
	Total	6,34,848	1,50,366

Balance amount due : Rs.6,34,848

Interest at 12% per annum from
the default month upto July 2011 : Rs.1,50,366

Total :Rs.7,85,214



10. As regards *pendent lite* interest and future interest also, I am of the opinion that grant of interest will at 12% per annum would sub-serve the interest of justice. The plaintiff therefore would be entitled to *pendent lite* interest and post decreetal interest at the rate of 12% per annum on Rs.2,57,45,245/- being the deficit in the claim amount from the date of suit till date of realization.

Issue No.6 :

11. It is the contention of the defendant that the plaintiff had not taken any loss minimization efforts despite repeated request by the plaintiff. The defendant would contend that the percentage of loss had increased because of the failure on the part of the plaintiff to have implemented necessary steps for minimisation of loss and to ensure that the packing was improved. Reliance is placed upon the minutes of the meeting between the representatives of the defendant and the Managing Director of the plaintiff which has been marked as Ex.P15, to demonstrate that the plaintiff had acknowledged certain deficiencies in the packing.

12. No doubt the minutes of the meeting dated 04.07.2009 would show that the Managing Director of the plaintiff had welcomed the suggestion for improvement made by the Regional Head of the defendant.



It also reads that the efforts taken by the plaintiff had decreased the breakages was brought to the notice of the representative of the defendant.

It was also pointed out that deduction of 30% of the claim unilaterally is without any basis is unjust. By its letter dated 13.07.2009 marked as Ex.P16, the plaintiff had pointed out that the defendant is raising the issue relating to packing only to wriggle out of the liability. The claim of the defendant that the loss had increased to 0.22% because of the defective packing was also denied by the plaintiff. Therefore, in the absence of any documentary evidence to show that the defendant had raised the issue relating to packing prior to its letter dated 05.06.2009 marked as Ex.P13, it is not possible to conclude that the defendant had in fact flagged the issue of packing and mishandling at the loading and unloading points prior to 05.06.2009 and the plaintiff had failed to take such steps as necessary to prevent such losses. Hence this issue is answered against the defendant.

Issue No.7:

13. It is contended that the plaintiff has not produced the documents to enable the defendant to exercise its right of recovery against the carriers. Even on this aspect, I find that there is no material placed on record to show that the defendant had flagged the issue relating to recovery

rights at any time prior to the filing of the written statement. For the first



time only in the written statement such a plea has been raised. The correspondence prior to the suit does not refer to any such claim having been made by the defendant. Here again, the doctrine of estoppel by conduct would operate against the defendant. If recovery rights are not ensured, it was well open to the defendant to repudiate the policy. Having made a deduction of 30% without any basis, the defendant cannot attempt to fill up the *lucuna* by raising several non-issues after the suit. Hence this issue is also answered against the defendant.

Issue No.8:

14. Mr.J.Ravindran, learned Additional Advocate General appearing for the plaintiff would contend that the defendant is estopped from raising the issue relating to delay in making the claim, delay in payment of premium based on Section 64VB of the Insurance Act, and the delay in furnishing the total value of the goods transported through the month by its own conduct. According to the learned counsel, the above contentions could form the basis for repudiation of the contract of Insurance. Having not chosen to repudiate the contract and having paid 70% of the claim amount, the defendant is estopped from contending that it is entitled to deduct a percentage of the loss on the aforesaid grounds.



14.1. Mr.S.R.Sundar, learned counsel appearing for the defendant would place reliance on Section 64VB of the Insurance Act, to contend that if premium is not paid in advance, the risk cannot be covered. I find that such a pleading has not been raised in the written statement and there is no issue relating to non-payment of premium. In fact, in none of the correspondence had the defendant claimed that the premium was not paid as required under the policy. Though reference to Section 64VB of the Act was made in the letter dated 30.07.2009 marked as Ex.P18, the same appears to be out of context and there is nothing in the said letter to indicate that there was any delay in payment of premium and the Insurance Company would be absolved of its liability under Section 64VB of the Act.

14.2. In sub paragraph 7 of paragraph 4 of Ex.P18, the defendant had claimed that the delay in receipt of declaration and subsequent confirmation has only led to delay in settlement. It does not refer to any deficiency in the premium. Section 64VB of the Insurance Act, absolves Insurance Company of the liability to cover the risk, if the premium had not been paid in advance. Such a case has not been projected by the defendant even in the written statement. Having accepted the claim and settled the claim partially, I do not think that the defendant could be allowed to contend that there was a delay in making the claim or that the premium paid



15. In fine, the suit is decreed

- (a). Directing the defendant to pay a sum of Rs. 3,19,91,515/- with interest at 12% per annum on Rs.2,57,45,245/- from the date of suit till date of payment.*
- (b). The plaintiff would also be entitled to proportionate costs.*

List of Witness examined on the side of the plaintiff:

PW1 – Mr.T.Soundiah

List of Exhibits marked on the side of the Plaintiff:

S.No	Exhibits	Description of Documents	Date
1	Ex.P1	The Xerox copy of the plaintiff tender advertisement notice.	20.08.2008
2	Ex.P2	The xerox copy of the plaintiff tender document.	-
3	Ex.P3	The Xerox copy of the accepted tender document of the defendant company.	-
4	Ex.P4	The xerox copy of the price bid of the defendant company.	-
5	Ex.P5	The xerox copy of the price bid evaluation statement.	-
6	Ex.P6	The xerox copy of the intimation letter plaintiff calling for negotiation with defendant company.	29.09.2008
7	Ex.P7	The xerox copy of the letter defendant company ensuring service level.	29.09.2008



S.No	Exhibits	Description of Documents	Date
8	Ex.P8	The xerox copy of the tender acceptance letter to defendant company.	30.09.2008
9	Ex.P9	The xerox copy of the marine inland open policy issued by the defendant company.	18.10.2008
10	Ex.P10	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of February 2009.	-
11	Ex.P11	The xerox copy of the letter sent to the Zonal Head of the Defendant company to instruct the Regional Head to settle the balance 30% claim.	22.04.2009
12	Ex.P12	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of March 2009.	-
13	Ex.P13	The xerox copy of the defendant company reply to letter.	22.04.2009
14	Ex.P14	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of April 2009.	
15	Ex.P15	The xerox copy of the minutes of meeting held on 29.06.2009 with the defendant Company	04072009
16	Ex.P16	The xerox of the detailed reply sent on the observations made by the defendant company.	13.07.2009
17	Ex.P17	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of May 2009.	-
18	Ex.P18	The xerox copy of the reply sent to the defendant company on minutes of meeting held on 29.06.2009.	30.07.2009
19	Ex.P19	The xerox copy of the letter sent to the defendant company requesting to settle the balance amount	080809
20	Ex.P20	The xerox copy of the letter of acknowledging the settlement of claim	-



S.No	Exhibits	Description of Documents	Date
		under protest for month of June 2009.	
21	Ex.P21	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of July 2009.	-
22	Ex.P22	The xerox copy of the show cause notice issued to the defendant company.	071009
23	Ex.P23	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of August 2009.	-
24	Ex.P24	The xerox copy of the letter of acknowledging the settlement of claim under protest for month of September 2009.	-

List of Witness examined on the side of the Defendant:

DW1 – Mr.RajaNarasimhan

List of Exhibits marked on the side of the Defendant:

S. No.	Exhibits	Description of Documents	Date
1	Ex.D1	Authorisation Letter	20.11.2013

Sd./- R.S.M.J.
02.11.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.