BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.08.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
A.S.(MD)No.115 of 2015

C.Gilbert ... Appellant / Plaintiff

-Vs-

The Oriental Insurance Company Limited,
Rep., by its Divisional Manager,
6-A, North Cotton Road,
Tuticorin, Tuticorin District. ... Respondent / Defendant

PRAYER: Appeal filed under Order 41 Rule 1 & 2 of the Civil Procedure Code, against the judgment and decree dated 16.04.2010 made in O.S.No.84 of 2004 on the file of the District Court, Kanyakumari at Nagercoil.

For Appellant : Mr.V.Nagarajan
For Respondent : Mr.E.Chandrasekaran

JUDGMENT

This appeal is directed against the judgment and decree dated 16.04.2010 passed in O.S.No.84 of 2004 on the file of the District Judge, Kanyakumari at Nagercoil. The plaintiff is the appellant herein. The suit was for recovery of Rs.5,67,600/- with 12 % interest per annum from the defendant insurer from the date of suit till the date of realization.

2. The case of the plaintiff is that he had insured his mechanized fishing vessel “St. Antony” with the defendant Insurance Company for a sum of Rs.5,00,000/-. The vessel capsized mid-sea on 03.09.1997 at about 5.30 a.m., at Chinnamuttom near Kanyakumari. The plaintiff is not an educated person. He was advised by one Maria John to inform the insurer that the accident had taken place near Kollam. This was because the said Maria John had frightened the appellant that since his vessel did not have license to conduct fishing operations near Kanyakumari, he may be penalized by the fisheries department. Therefore, the plaintiff erroneously informed the insurer that the mishap took place at Kollam. After receipt of the intimation, the insurer had deputed one T.S.Ramaswamy to conduct survey and assess the loss. The vessel was retrieved by spending about Rs.15,000/-. With the permission of the surveyor, the engine fitted in the vessel was sold for a sum of Rs.75,000/-. Even though the insurer was aware of all the facts, they repudiated the claim and issued Ex.A8- letter dated 08.11.1999 to that effect. The plaintiff thereupon issued Ex.A7 -suit notice dated 11.12.1999 calling upon the insurer to honor the claim. Since there was no response, he presented the plaint on 02.02.2000 as an indigent person. Later, it was numbered as O.S.No.84 of 2004. The defendant

filed written statement controverting the plaint averments.

3. The defendant pointed out that the plaintiff had suppressed the material facts and also furnished false information. Since in view of his conduct, the defendant rightly repudiated the claim, the defendant pressed for dismissal of the suit. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and three other witnesses on his side. Ex.A1 to Ex.A8 were marked. The defendant examined an official by name Sivakumar as D.W.1. The insurance policy was marked as Ex.B1. After a consideration of the evidence on record, the trial Court by the impugned judgment and decree dismissed the suit and questioning the same, this appeal has been filed.

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. The learned counsel pointed out that the insured vessel capsized in the mid-sea due to turbulent weather. The plaintiff of-course had given erroneous information as regards the site of accident. The plaintiff ought not to be penalised for the same. When the undisputed facts are that the vessel was insured by the defendant and when an accident had taken place, the defendant is obliged to honor the claim as per the terms of the insurance policy. He also would point out that based on the intimation given by the appellant, the defendant had deputed the surveyor who also surveyed the wreckage and assessed the loss. The said surveyor's report was deliberately suppressed by the defendant. The surveyor was also not examined. In fact, the plaintiff had filed I.A for production of the surveyor's report. Therefore, the trial Court ought to have drawn adverse inference against the defendant. The learned counsel submitted that on a overall consideration, the plaintiff ought not to be non-suited.

5. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.

6. I carefully considered the rival contentions and went through the evidence on record. The point for determination is whether the plaintiff had suppressed any material fact and if so, whether the trial Court was justified in non-suiting the plaintiff on that ground. There is no dispute that the plaintiff is the owner of the vessel by name “St. Antony” bearing Registration No.K.K.W.M.B.8-92. There is also no doubt that the vessel was insured by the appellant with the respondent insurance company as evidenced by Ex.B1. The only question is whether the insurer was justified in repudiating any claim vide Ex.A8, dated 08.11.1999.

7. As rightly pointed out by the learned counsel for the respondent, the contract of insurance requires “*uberrimae fidei*”.

In other words, the party to the contract must act with utmost bonafide. In the case on hand, I have no doubt whatsoever that accident had taken place and the boat had capsized. But then, the appellant ought to have fairly and frankly made a complete disclosure of all the relevant facts while making his claim. The appellant had taken inconsistent stand. The appellant had come out with two dates. At one place, he would state that the accident occurred on 03.09.1997. At another place, he would state that the accident occurred on 07.10.1997. Both the dates cannot go together. The site of accident is also different. Originally, he claimed that the accident took place in Kollam; later he stated that the accident had taken place at Chinnamuttom near Kanyakumari. When the appellant had come out with such contradictory versions, it is obvious that he had attempted to misrepresent the factual happenings.

8. A police complaint would be given whenever the accident takes place. Though the appellant would claim that he gave a police complaint, no such complaint was produced before the Court below. It is true that the insurer had not examined the surveyor nor produced the surveyor's report. There is some substance in the appellant's counsel's contention that an adverse inference has to be drawn against the defendant. But the appellant cannot hope to succeed on the strength of such drawal of adverse inference alone. The appellant had to basically establish his case. The defendant has also proved that after the vessel was retrieved, the vessel engine had been disposed of without the knowledge of the insurance company. The claim was repudiated for the following reasons:-

(1) That the suppression of the material fact about the retrieval and then selling of the engine of the vessel MFV St.Antony, without bring it to the knowledge/notice of the Insurance Company.

(2) That misrepresentation of the factual happenings of the events by stating that the event first took place at Quilon, but later on stating that the loss took place at Kanyakumari.

9. It has been convincingly established before the Court below that both the reasons are well founded. That is why, the trial Court dismissed the suit. No case has been made out for interfering with the well considered decision of the trial Court. I find no merit in the appeal. The appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The District Judge, Kanyakumari at Nagercoil.

2.The Section Officer,(2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.NAGARAJAN, Advocate (SR-27129[F] dated 24/08/2021)

A.S.(MD)No.115 of 2015
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KMV(CO)
KB(08.11.2021) 4P 5C