

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.344 of 2015 : (A)

AND

R.S.A. No.348 of 2015 : (B)

In the matter of appeals under Section 100 of the Code of Civil Procedure.

In R.S.A. No.344 of 2015

Sebati Pradhan & Another* *Appellants

-versus-

***The Branch Manager,
Andhra Bank, Dhenkanal* *Respondent***

In R.S.A. No.348 of 2015

***The Branch Manager, Andhra
Bank, Dhenkanal Branch* *Appellant***

-versus-

Sebati Pradhan & Another* *Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

***For Appellant* - Mr.S.D.Das, Sr. Advocate
(In RSA No.344/2015)
Mr.A.K.Mishra-2, Advocate
(In RSA No.348/2015)**

***For Respondents* - Mr.A.K.Mishra-2, Advocate
(In RSA No.344/2015)
Mr.S.D.Das, Sr. Advocate
(In RSA No.348/2015)**

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 13.07.2022 : Date of judgment:20.10.2022

D.Dash,J. Sebati Pradhan, the widow of the of late Dayanidhi Pradhan and Sabitri Pradhan, the mother of Dayanidhi Pradhan, as the Plaintiffs,

have filed suit, i.e., C.S. No.208 of 2012 (18/2013) claiming a sum of Rs.1,00,000/- with pendente lite and future interest @ 15% from the Andhra bank arraigned as the sole Defendant therein. The suit came to be decided by the learned Additional Civil Judge (Sr. Division), Dhenkanal by judgment dated 06.02.2014 followed by the drawal of the decree on 17.02.2014. The said suit came to be decreed in part. The Defendant has been directed to pay a sum of Rs.50,000/- to the Plaintiffs within two months failing which to pay the same with interest 4% per annum.

Being aggrieved by the said judgment and decree, Sebati and Sabitri (Plaintiffs) filed Appeal under section 96 of the Code, which was numbered as RFA No.29 of 2014.

The Defendant too, being aggrieved by the said judgment and decree, also filed an Appeal under Section 96 of the Code, which was numbered as RFA No.23 of 2014. Both the Appeals came to be dismissed on the same day although by separate judgments followed by decrees.

In view of the above dismissal of the First Appeals, Sebati and Sabitri (Plaintiffs) have filed the Second Appeal as at (A) under section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), when the Andhra bank has filed Second Appeal as at (B).

Thus, both the Appeals, having arisen out of one suit wherein the Appellants of the Appeal as at (A) are the Plaintiffs and the Appellant as at (B) is the Defendant: those had been heard together for their disposal by this common judgment.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

Plaintiffs' case

3. The deceased Dayanidhi Pradhan had opened one savings account with Andhra Bank under the Scheme "Abhaya Gold" at its Dhenkanal Branch. He had made an initial deposit of Rs.500/- on 27.02.2008. The said account, being opened by deposit of initial cash of Rs.500/- by Dayanidhi; a sum of Rs.18/- was deducted towards the insurance premium and Rs.20/- was deducted towards service charge as required under the Scheme for having the insurance coverage of Rs.1,00,000/-. Dayanidhi died on 26.06.2009 in one of the shop rooms of the of the Indu Restaurant Bus Stand, Dhenkanal. The deceased was then engaged in preparation of sweets. In connection with the said death, Dhenkanal Town P.S. Case No.115 of 2009 under section 302 of the IPC was registered, which corresponds to G.R. Case No.509 of 20096 on the file of the learned S.D.J.M., Dhenakanal. Dayanidhi thus having died untimely, the Plaintiffs approached the Defendant for payment of a sum of Rs.1,00,000/- as per the assurance made under the Scheme under which the savings bank account, which had been opened by Dayanidhi. As no response was received from the Defendant-Bank, the Plaintiffs, serving notice through their lawyer, filed the suit.

4. The Defendant-Bank admitted the fact that deceased Dayanidhi had an account under Abhaya Scheme, i.e., Abhaya Savings Bank Plus in their Bank as opened on 27.02.2008 with an initial deposit of Rs.500/- . It is also admitted that there has been a deduction of a sum of Rs.18/- and Rs.20/- towards insurance premium and service charges respectively. It was, however, stated that Dayanidhi under the Scheme was having a coverage of payment of a sum of Rs.50,000/- for the accidental death taking place and not under the Scheme 'Abhaya Gold'. While admitting the death of Dayanidhi, it is, however, stated that

Dayanidhi being murdered and his death having taken place in that incident, the said eventuality of the death does not fall within the meaning of 'Accidental Death'. Therefore, it is stated that the Plaintiffs are not entitled to the claim. The Defendant-Bank has also raised the objection as to the maintainability of the suit without impleading Insurance Company as one of the Defendants and the liability of payment of said sum if at all ordered would not be shouldered by the Bank.

5. On the above rival pleadings, the Trial Court, having framed nine issues, has first of all taken up issue no.4 as to the non-joinder of necessary party as projected by the Defendant in asserting that the suit is not maintainable in the absence of said Insurance Company, being made a party therein for decision. This has been answered in saying that the suit, in the absence of Insurance Company, being arraigned as Defendant is competent.

The other two issues, i.e., issue nos.(iv) and (viii), which concern with the limitation in filing the suit and entitlement of the Plaintiff in getting their claim on account of death of Dayanidhi in the said incident have been answered in favour of the Plaintiffs. Then, coming to the next important issue as to if the death of Dayanidhi was accidental so as to be covered for the Insurance benefit as provided under the Scheme, the Trial Court has held that for the purpose of the claim and entitlement to the benefits under the Scheme under which the savings account had been opened by deceased Dayanidhi has to be taken as the Accidental Death. The Trial Court then having gone through the documentary evidence has held that under the Scheme, the death insurance coverage is Rs.50,000/- and not Rs.1,00,000/- as claimed by the Plaintiffs. Having recorded these answers, the Trial Court has decreed the suit.

6. The Plaintiffs, being aggrieved by part decree passed in the suit, having carried the First Appeal has been unsuccessful and so also the Defendant-Bank being aggrieved by the said decree, has failed in its attempt to wriggle out of the liability.

7. Mr.A.K.Mishra-2, learned counsel for the Appellant-Bank submitted that the Courts below have fallen in grave error in passing the decree in the suit filed by the Plaintiffs, who are the legal heirs of the Deceased-Dayanidhi, the savings bank account holder with the Defendant-Bank under that Scheme. According to him, in the absence of concerned Insurance Company, i.e., M/s.United Insurance Company Limited, who is a necessary party, the suit is bad in law and thus it ought to have been dismissed. He submitted that the said Insurance Company is a necessary party to the suit and the Courts below have gone wrong in saying that said Insurance Company is not a necessary party. Placing Ext.A, the certified copy of Andhra bank Manual of instructions issued by its Marketing Departments, he submitted that that deceased being murdered, the Courts below ought not to have held the death of the deceased to be accidental in ruling on the Plaintiffs entitlement to the sum assured. Therefore, he urged for admission of these two Appeals to answer the above as the substantial questions of law.

8. Mr.S.D.Das, learned Senior Advocate submitted that the Courts below are not correct in decreeing the suit in part entitling the Plaintiffs to the claim amount of Rs.50,000/- when admittedly the Scheme has a risk coverage of Rs.1,00,000/-. He submitted that the Courts below, for the purpose, ought not to have discarded (Ext.5) as Abhaya Gold Plus Savings Passbook and for the purpose, on the face of the document, i.e., Ext.5, no other evidence ought not to have been looked into by the

Courts below. He, therefore, urged for admission of the Appeal as at (A) to answer the above as the substantial question of law. He further submitted that the Courts below are right in holding that the Insurance Company is not a necessary party to the proceeding to the suit and according to him, the finding that Dayanidhi's death is an accidental one is well in order.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement as well as the evidence on record.

10. Admittedly, Dayanidhi had opened the Savings Bank Account with the Defendant-Bank. The said Savings Bank Account is claimed by the Plaintiffs in the plaint to be under the Scheme, "Abhay Gold"; whereas the Defendant-Bank in the written statement has stated that it is under 'Abhay Scheme'. In view of the above, when the Plaintiffs claimed that the account holder was having insurance coverage of Rs.1,00,000/-; the Defendant-Bank asserts that the insurance coverage for the account holder was Rs.50,000/- as it is not under Abhay Gold Scheme.

The Plaintiff No.1, who is the widow of account holder, has been examined as P.W.1. While stating that the account was under the Scheme, Abhay Gold, she states that the account holder had made the deposit of Rs.500/- on 27.02.2008, when an amount of Rs.18/- had been deducted towards Insurance Premium and Rs.20/- towards service charges. So, she states shows that the insurance coverage was for Rs.1,00,000/-. The witness examined from the side of the Defendant-Bank is its erstwhile Manager. It has been stated by him that said account carrying the number as indicated by P.W.1 is under Abhay Savings Scheme Plus. So, he states that the insurance coverage is for Rs.50,000/-. It is not in dispute that if

the Savings Account is established as under Abhay Gold Scheme, the coverage would stand at Rs.1,00,000/-. The Plaintiffs have not proved the savings passbook by saying that it had been submitted before the Bank at the time of advancement of the insurance claim. This has been falsified that under Ext.D, the letter of P.W.1 it has not so indicated therein that the original Passbook had been submitted and this letter being proved by D.W.1 bringing from proper custody, there is nothing to doubt. The certified copy of the statement of account and the Passbook opening form proved from the side of the Defendant-Bank vide Exts. B & C respectively have been admitted in evidence without objection, which go to show that the said account was under Abhay Savings Scheme Scheme (ASDP). In such state of affairs, one photocopy of a Passbook which is said to be the certified copy proved by the Plaintiffs and marked Ext.5 when seen, there someone's signature appears, purporting to be of the Bank Manager under a seal which too had not been proved from the side of the Plaintiffs that whose signature it is and how it was so obtained. The reliance is placed on the same wherein too there stands correction on certain material aspect particularly as to name of the Scheme, which remains unexplained. In that state of affairs, looking into the quantum of premium amount deducted and the initial deposit, it is seen that those are fitting to the Savings Bank Account under Abhay Savings Bank Scheme Plus. The Courts below thus are found to be right in accepting the case of the Defendant-Bank on that score that under that Scheme, the Savings Bank Account of Dayanidhi had been opened. Such findings have been concurrently returned by the Courts below and the above discussions when do not point out any perversity, the finding of the Court's below that the Insurance coverage is to the tune of Rs.50,000/- is not liable to be interfered with.

Therefore, the submission of the learned Senior Counsel for the Appellant in the Second Appeal as at “A” at the instance of the Plaintiffs finds the response that no such substantial question of law surfaces meriting admission of said Second Appeal as at “A”.

11. Now coming to the Second Appeal as at ‘B’ at the instance of the Defendant-Bank; it be first stated at the risk of repetition that Dayanidhi’s Savings Bank Account is as under Abhay Savings Bank Scheme Plus and the insurance coverage thereunder for the account holder stands at Rs.50,000/-.

The first question posed before the Court is as to whether the suit can proceed without the Insurance Company i.e. M/s. United India Insurance Company Limited a party to the same. It is not stated anywhere by the Defendant-Bank that except the Passbook, the Savings Account holder here Dayanidhi was also supplied with the Insurance Policy containing all such conditions including special conditions, if any. The Defendant-Bank is also not stating that at any given point of time, the account holder had been furnished or provided with the Insurance Policy and was apprised of its terms and conditions or any other document relating to the said Insurance Policy under any letter to Dayanidhi, the account holder.

The deceased account holder was a customer of the Defendant-Bank and thus it was for the Defendant-Bank to establish as to when it was so dispatched to the account holder (customer). The evidence of D.W. 1, the Bank Manager does not displace the burden which was cast on the Defendant No.1 whose customer, the deceased account holder was, of establishing that the said Insurance Policy containing all the direct terms and conditions including any such special conditions, if any, had actually been furnished to the deceased account holder namely,

Dayanidhi. When the Defendant-Bank now relies upon Ext.A, the certified copy of the Andhra Bank Manual of Instruction issued by the Marketing Department so as to say that the settlement of claims rests with the Insurance Company and the Bank takes no responsibility whatsoever in settlement of the claim by the Insurance Company, it has neither been pleaded nor proved that the said fact had been specifically brought to the notice of the deceased account holder either by way of letter from the Defendant-Bank or by sending the extract of that part of the Bank Manual under covering letter in bringing the same to the notice of the deceased account holder that in the matter of such claim, the same has to be worked out by the Insurance Company wherein the Bank has no role or responsibility much less to say the liability.

12. The Insurance coverage was governed by policy between the Defendant-Bank and the Insurance Company. So, the terms of the insurance covered have to be specifically communicated to the account holder. The account holder had not been put to notice of all those. The insistence on all such communication to the account holder is necessary because the policy was issued to the Bank by the Insurer and not the account holder. The Account holder is the beneficiary of the said policy.

In the present case, the Defendant-Bank did not even choose to defend the proceeding by applying before the Trial Court for a summon to be issued to the Insurance Company for production of its record in course of evidence which would have further clarified the matter thrown light on the subject. Thus, simply relying on what have been stated in the Bank's Manual, the Bank here in the case cannot escape from the liability when the fact remains that the Account holder has not obtained the Insurance Policy on his own but in view of his opening the Account with the Bank; the General Insurance Policy between the Bank and Insurance

Company has just come to be extended in its coverage for the Account holder.

13. The account holder Dayanidhi having opened the Savings Bank Account with the Defendant-Bank covered under Abhay Savings Bank Plus Scheme, he had made the initial deposit and the premium for insurance coverage has been deducted by the Bank from that for onward payment to the Insurance Company so as to get the benefit under the General Policy, it had with the Insurance Company extended to the Account holder. In the said Passbook, the terms and conditions (Rules of Business) had been noted which include the insurance risk covered, the name of the Insurance Company and more importantly, procedure for claim and also more importantly the clause as to the Exclusions of Insurance Policy. In the present case, the Plaintiff No.1 states to have submitted the claim to the Defendant-Bank which the Bank has proved through the letter received under Ext.D. Thus, this Court is of the considered view that here in the suit, the Insurance Company not being a party to the suit is not fatal to the suit so as to decide the entitlement of the Plaintiffs under the Scheme in which the Account had been opened and deposit made. The Defendant-Bank in shouldering the liability by making the payment of the amount under the Insurance Coverage has all the liberty to work out its remedy with the Insurance Company.

14. Next is the case of the Defendant-Bank that since the account holder has been murdered for which the criminal case has been instituted, the risk would not be covered. In this connection, the relevant clause in the Passbook being read, it is seen that the present case is not falling within the clause-(ii)(a) to (j) of clause-10 as being not entertainable in said eventually as to the cause of death.

15. For the aforesaid discussion and reasons, the submission of the learned counsel for the Appellant of the Second Appeal as at “B” that the Appeal merits admission to answer any such substantial question of law is rejected.

15. In the result, the Appeal as at ‘A’ stands dismissed without cost whereas the Appeal as at ‘B’ stands dismissed with cost throughout.

**(D. Dash),
Judge.**

Basu

