



WEB COPY



A.S.Nos.107 of 2012 and 260 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2022

PRONOUNCED ON : 11.11.2022

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

AND

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.Nos.107 of 2012 and 260 of 2013

and

M.P.Nos.1 and 2 of 2012

A.S.No.107 of 2012:

M/s.National Insurance Company Ltd.,
Chennai Division IV,
No.169, Anna Salai,
Chennai – 600002.

... Appellant

Vs.

Prashant Tikmani
Proprietor,
M/s.Classic Cartons
No.14, M.T.H.Road,
Ambattur,
Chennai – 600 098.

... Respondent

Prayer: First Appeal is filed under Section 96, Order 41 Rule (1) of Civil Procedure Code, praying to set aside the decree and judgment of the II Fast Track City Civil Court dated 28.07.2011 passed in O.S.No.11049 of 2010.



WEB COPY



A.S.Nos.107 of 2012 and 260 of 2013

For Appellant : Mr.N.Venkatraman
for M/s.Nageswaran and Narichania

For Respondent : Mr.M.Arunkumar
for M/s.Sampathkumar and Associates

A.S.No.260 of 2013:

Prashant Tikmani,
Proprietor: M/s.Classic Cartons,
No.14, M.T.H.Road, Ambattur,
Chennai – 600 098.

... Appellant

Vs.

M/s.National Insurance Company Ltd.,
Chennai Division IV,
No.169, Anna Salai,
Chennai – 600002.

... Respondent

Prayer: First Appeal is filed under Section 96 of Civil Procedure Code, praying to set aside the judgment and decree dated 28.07.2011 made in O.S.No.11049 of 2010 on the file of II FTC, City Civil Court, Chennai in so far as the judgment and decree not granting interest as claimed in the suit and pendente lite and post decree interest at 6% instead of rate as claimed in the suit.

For Appellant : Mr.M.Arunkumar
for M/s.Sampathkumar and Associates

For Respondent : Mr.N.Venkatraman
for M/s.Nageswaran and Narichania

COMMON JUDGMENT



A.S.Nos.107 of 2012 and 260 of 2013

(Judgement of the Court was made by S.SOUNTHAR.J.,)

WEB COPY

The appeal in A.S.No.107 of 2012 has been filed by the defendant/insurance company challenging the decree passed by the Trial Court decreeing the suit in part by directing the appellant to pay a sum of Rs.18,04,012/- towards insurance claim made by the respondent/insured.

2. The appeal in A.S.No.260 of 2013 has been preferred by the plaintiff/insured aggrieved by the portion of the decree negating his claim for past interest from 01.04.2003 to the date of presentation of the plaint. The appellant also questioned the portion of the decree granting present interest at the rate of 6% instead of 12% as claimed by the appellant/plaintiff.

3. Since both the appeals are arising out of same suit filed by the defendant and plaintiff respectively, the appeals are taken together for disposal.



A.S.Nos.107 of 2012 and 260 of 2013

4. In these appeals, the defendant in the suit viz., insurance company is described as appellant. The plaintiff in the suit viz., insured is described as respondent. Therefore, in this judgment the expression 'Appellant' refers to appellant in A.S.No.107 of 2012 and the respondent in A.S.No.260 of 2013. Likewise the expression 'Respondent' means respondent in A.S.No.107 of 2012 and appellant in A.S.No.260 of 2013.

Plaint Averments:

5. The respondent/insured filed a suit for recovery of a sum of Rs.20,65,594/- from the appellant/insurance company based on the insurance claim. According to the plaint averments, the respondent was carrying on business in the manufacture of cartons. He insured his factory building, plant, machinery and stocks etc., with the appellant against perils of storm, cyclone, typhoon, tempest, hurricane, tornado, flood or inundation. The insurance policy period was from 17.02.2002 to 16.07.2003. According to the respondent, on the night of 9/10th November 2002, few roof sheets of the respondent's factory premises were blown away due to storm and



consequently, storm water seeped into the factory premises and damaged the stock stored in warehouse. The respondent informed the appellant/insurance company about the loss suffered by him and requested him for appointment of Surveyor to assess the loss. The respondent made a claim for Rs.19,96,051.34/- on 04.12.2002. Thereafter, the appellant appointed a Surveyor to inspect the premises and assess the loss. Subsequently, the appellant by its letter dated 23.12.2002 had chosen to close the claim of the respondent on the ground that the reason assigned for loss of stocks was not covered by the insurance policy. Therefore, the respondent by pointing out the certificate issued by the Meteorological Department that there was storm and heavy rain on the night of 9/10th November 2002 requested the appellant to reconsider its decision to reject the claim. It was also stated that the value of the damaged stocks were Rs.19,96,051.34, but the salvage was disposed by the respondent and the same fetched a sum of Rs.1,92,039/-. Therefore, the actual loss suffered by the respondent, according to the plaint averments was Rs.18,04,012.34/-. As the appellant failed to indemnify the loss within the reasonable time, the respondent claimed interest at the rate of 12% per annum from 01.04.2003 to the date of actual realisation. On these pleadings, the



A.S.Nos.107 of 2012 and 260 of 2013

respondent laid a suit for recovery of the above said amount based on insurance claim.

Averments in the Written Statement:

6. The appellant filed a written statement denying the allegations of the respondent that his stocks were damaged on the night of 9/10th November 2002 due to storm. The appellant specifically raised a plea that there was no storm on the night 9/10th November 2002 as claimed by the respondent and hence, the damage allegedly suffered by the respondent was not due to the insured peril. It was stated by the appellant in the written statement that even according to the letter written by the respondent dated 11.11.2002 on account of heavy rainfall few top sheets of their warehouse were blown away and there was no reference about the storm. It was also stated that even in the Fire Claim Form signed by the respondent dated 04.12.2022, it was mentioned that the top sheet of their shed was blown away by heavy rainfall. Therefore, it was case of the appellant that contrary to the initial letter and claim form deliberately in the plaint, the respondent had changed his version as if the loss



A.S.Nos.107 of 2012 and 260 of 2013

was due to storm so as to make illegal claim. It was also stated in the written statement that the Surveyor appointed by the appellant inspected the property and based on the physical features found thereon and report of the Meteorological Department, he concluded that there was no storm on the relevant night and consequently, the claim of the respondent was rejected on the ground that the alleged loss was not due to the insured peril. On these pleadings, the appellant sought for dismissal of the suit.

7. Before the Trial Court, the respondent was examined as PW.1 and on his behalf 25 documents were marked as Ex.A1 to Ex.A25. On behalf of the appellant, the Assistant Manager of the appellant/insurance company was examined as DW.1 and the Surveyor appointed by the appellant/insurance company on whose report the claim of the respondent was rejected by the appellant was examined DW.2. On behalf of the appellant, 8 documents were marked as Ex.B1 to Ex.B8.

8. On the basis of the oral and documentary evidence on record, the Trial Court came to the conclusion that at the relevant date there was a heavy



A.S.Nos.107 of 2012 and 260 of 2013

rain accompanied by wind and consequently, the roof of the respondent's factory got damaged and rain water seeped in. On such a factual finding, the Trial Court held that the respondent proved his entitlement to get his loss indemnified by the respondent under the insurance policy and decreed suit in part for a sum of Rs.18,04,012/- with interest at the rate of 6% from the date of presentation of the plaint till the date of realisation.

9. Aggrieved by the said decree, the appellant/insurance company has come up with this appeal in A.S.No.107 of 2012. The respondent on his part challenging the portion of the decree negating his claim for past interest and also seeking enhancement of the rate of interest in respect of the present interest, has filed A.S.No.260 of 2013.

10. The learned counsel for the appellant/insurance company submitted that the respondent/insured failed to prove on the night of 9/10th November-2002, there was a storm and as a result of which the roof of the respondent premises got damaged. The learned counsel by taking this Court to Ex.B3/first letter addressed by the respondent to the appellant and Ex.B4/insurance claim



A.S.Nos.107 of 2012 and 260 of 2013

form submitted that in both the documents respondent mentioned that the damage was only due to heavy rainfall and he never mentioned about the alleged storm. Therefore, it was the contention of the learned counsel for the appellant the averment in the plaint that at the relevant date there was a storm and consequently, top roof of the respondent's factory got damaged is nothing but an improved version invented for the purpose of the case. The learned counsel by taking this Court to the weather report of the Meteorological Department which was marked as Ex.B5 submitted that on the relevant dates viz., 09.11.2002 and 10.11.2002, the maximum wind speed was mentioned as 32 km per hour. He also by taking this Court to Ex.A5 another letter addressed by the Meteorological Department to the respondent, submitted as per the classification of wind speed mentioned at Ex.A5, only in cases where wind speed is between 62 km per hour to 82 km per hour it can be categorized as cyclonic storm. According to the learned counsel, as per Ex.B5/weather report, on the relevant date the maximum wind speed was only 32 km per hour, which cannot be classified technically as a storm. The learned counsel emphatically submitted that as per the survey report marked as Ex.B6, on inspection, the Surveyor found that the stocks were not damaged



A.S.Nos.107 of 2012 and 260 of 2013

due to any of the insured perils covered under standard fire policy. Therefore, the respondent is not entitled to pay any amount. Assailing the finding of the Trial Court that the appellant/insurance company honoured other claim of similar nature but refused to honour the claim of the respondent, the learned counsel said with regard to the fact of acceptance of similar claim by the appellant/insurance company absolutely there was no plea by the respondent and therefore, the respondent is not entitled to lead any evidence with regard to that fact without specific plea in support of it.

11. Per contra, the learned counsel for the respondent/insured submitted that as per Ex.A5/Meteorological Department report on 09.11.2002 the area in which the respondents factory situated received a rainfall of 81.8 MM and on 10.11.2002 recorded rainfall was 86.4 MM. The learned counsel by referring to the statement by the Meteorological Department in Ex.A5, submitted that on that date thunder storm activity with occurrence of storm with wind speed reaching 65 to 70 km per hour was possible. Hence, he submitted that the respondent proved the fact of storm activity on the relevant date. The learned counsel further submitted that the appellant themselves in

10/22



A.S.Nos.107 of 2012 and 260 of 2013

their letter dated 23.12.2002 marked as Ex.A6 mentioned that the standard fire policy which was taken by the respondent covers damage due to flood and inundation and the Surveyor in his report Ex.B6 concluded 25% to 40% of the total stocks in the godown were affected by seepage of water and therefore, even assuming there was no storm at the relevant point of time, the appellant/insurance company is liable to honour the claim of the respondent as the insurance policy covers damages due to storm and inundation. The learned counsel by relying on the judgment of the Hon'ble Apex Court reported in 2009 (4) CTC 779 (**New India Assurance Company Ltd., vs. Zuari Industries Ltd.**) submitted that any active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without intervention of any other force can be termed as proximate cause. The learned counsel by relying the decision of the Hon'ble Apex Court reported in *AIR 1997 SC 408 (United India Insurance Co. Ltd., vs. M/s.M.K.J. Corporation)* submitted that the respondent is entitled to interest at the rate of 12% and the Trial Court erred in granting present interest at the rate of 6%. The learned counsel also had taken us to the notification issued by the Insurance Regulatory and Development Authority dated 16.10.2002 and by



A.S.Nos.107 of 2012 and 260 of 2013

relying on Clause 9 (6) of the said regulation submitted that the insured is entitled to 2% above the bank rate on the sum payable by the insurance company in case insurance company failed to pay the amount within 7 days from the date of acceptance of offer for settlement by the insured.

12. On the basis of the pleadings, oral and documentary evidences available on record and contentions of the learned counsel, the following points are arising for consideration.

- (a) Whether the respondent/insured proved the occurrence of storm on the night of 9/10th November 2002 to sustain his claim under insurance policy.
- (b) Whether the appellant/insurance company is liable to honour the claim of the respondent for any loss due to flood and inundation.
- (c) Whether the respondent is entitled to past interest.
- (d) Whether the respondent is entitled to get enhanced present interest at the rate of 12% instead of 6%.



Points a and b:

WEB COPY 13. The respondent/insured has come to Court with specific pleading on 9/10th November 2002 there was a storm which had blown the roof sheets of the respondent factory and consequently, the rain water seeped into the respondent's premises and damaged the stocks stored in warehouse. Therefore, it is incumbent on the respondent to prove the alleged storm activity on the relevant night, damage to the roof and resultant loss. In order to prove storm on the relevant night the respondent relied on Ex.A5, letter from Meteorological Department. The perusal of the Ex.A5 would suggest that on the relevant dates viz., 09.11.2002 and 10.11.2002, Chennai Nungambakkam Observatory recorded rainfall of 81.88 MM and 86.4 MM respectively. It was also mentioned in that letter that wind speed reaching 65 to 70 kms per hour in and around the city was possible. In the column containing the classification of wind speed, it was mentioned that wind speed between 62 kms per hour to 82 kms per hour shall be categorized as Cyclonic Storm.



14. It is pertinent to note that the factory of the respondent is situated at Ambattur. Ex.A5 is relating to the weather observation recorded at Nungambakkam, Chennai. It is also useful to refer to the letter of the Meteorological Department dated 13.12.2002 addressed to DW.1/Surveyor which was marked as Ex.B5 wherein it was mentioned that the nearest Meteorological Observatory to the place of factory of the respondent was Chennai Nungambakkam Observatory. In Ex.B5, the maximum recorded wind speed on 09.11.2002 and 10.11.2002 was mentioned as 32 kms per hour. The wind speed of 32 kms per hour recorded on the relevant date cannot be termed as storm, even according to the respondent document namely Ex.A5. Therefore, the combined reading of Ex.A5 and Ex.B5 would suggest that there was no concrete evidence to support the plea of the respondent there was a storm on the relevant date.

15. Further, the Surveyor in his report noted that he could not see/locate any bolts/nuts/washers inside the godown or in the damaged roof portion. The Surveyor also noted that when he requested the insured to show some of the sheets blown away from the roof portion, the insured refused to comply with



his request.

WEB COPY

16. We have also perused the photographs annexed in the survey report, the same would suggest in the roof portion of the godown tin sheets got removed here and there. If the sheets blown away by the storm wind, blown away sheets should be available in the nearby vicinity. Further, the nuts and bolts which were used fasten the tin sheets on the roof should be available either in the roof itself or in the nearby places. The Surveyor specifically noted that he has not seen any nuts/bolts and blown away sheets. Therefore, removal of some of the sheets in the roof, cannot be termed as a result of damage caused by storm wind. Therefore, we come to the definite conclusion based on Ex.A5, Ex.B5, weather report and also survey report and his evidence as DW.1 that the respondent failed to prove the insured peril of storm activity and storm wind on the relevant night.

17. The next question arises for consideration would be whether the appellant is liable to pay damages if the loss occurred due to flood and inundation. As per Ex.A6/letter written by the appellant to the respondent the



A.S.Nos.107 of 2012 and 260 of 2013

policy covers damages due to flood and inundation. The respondent specifically pleaded in the plaint that the roof sheets of the respondent's factory was blown away due to storm and consequently, his stocks got damaged. It was not their case that the stocks were damaged due to flood and inundation caused by flood water. It was their specific case that due to heavy rainfall few sheets in roof were blown away and as a necessary consequence the rain water seeped in and stocks were damaged. There is no plea by the respondent/insured that due to heavy rainfall there was a flood in his area and flood water inundated their factory premises. Therefore, the contention of the learned counsel for the respondent that the policy covers damages due to flood and inundation and consequently, the appellant is liable to pay the claim, cannot be accepted.

18. When the respondent/insured comes to the Court with a specific pleading that his factory roof sheets were blown away by the storm and as a result the rain water seeped in to his godown unless the fact was established by cogent evidence, the respondent/insured is not entitled to sustain his claim for damages.



19. In view of the discussions made above, we come to a definite conclusion that the respondent/insured failed to establish his plea viz., the occurrence of storm on the relevant night and resultant damage to his factory roof.

20. The Trial Court while accepting the case of the respondent has stated that the appellant accepted similar claims by the other insured persons and therefore, the appellant is not justified in negating the claim of the respondent. When appellant's witness DW.1 was cross examined by the respondent regarding acceptance of the similar claim by the appellant/insurance company by other insured persons, it was denied by DW.1. Further, as rightly contended by the learned counsel for the appellant there was no plea by the respondent that the appellant honoured similar claims by other insured persons. Hence, he is not entitled to lead any evidence in that aspect. In the absence of plea and evidence to show similar claims were honored by the appellant/insurance company in respect of other insured persons, the Trial Court ought not to have granted decree in favour of the respondent. The Trial Court mainly relied on Ex.A25, a file relating to another



A.S.Nos.107 of 2012 and 260 of 2013

factory situated in the same place where claim for damages to their stocks due to flood water was allowed by the appellant/insurance company.

21. The perusal of Ex.A25 would make it clear that the claim was made by the insured in that case for damage to his stocks due to entry of flood water. As we discussed earlier in this case, the respondent specifically pleaded that the loss of his stocks occurred due to seepage of rain water from the roof damaged by storm. There is no plea by the respondent that surface flood water entered his premises due to heavy rain and caused inundation of the premises.

22. In the absence of the plea regarding the flood and inundation, as rightly contended by the learned counsel for the appellant, we are unable to accept the reasoning given by the Trial Court that due to Ex.A25, the claim of the respondent should also be accepted. Merely because the appellant/insurance company honored another claim by a different insured for a loss suffered by him due to flood, the present claim of the respondent based on the alleged storm also cannot be accepted. In view of the discussions



A.S.Nos.107 of 2012 and 260 of 2013

above, we set aside the findings of the Trial Court that the respondent is entitled to claim compensation from the appellant/insurer. The Points a and b are answered in favour of appellant.

Points: c and d:

23. In view of our findings in Points A and B, the respondent is not entitled to claim any amount from the appellant/insurance company as he failed to prove his specific plea of damage caused due to storm, question of payment of interest will not arise. Therefore, these two points are answered in favour of the appellant/insurance company and against the respondent/insured.

In nutshell:

- (a) The Appeal in A.S.No.107 of 2012 filed by the appellant/insurance company is allowed.
- (b) The Appeal in A.S.No.260 of 2013 filed by the respondent/insured stands dismissed.



A.S.Nos.107 of 2012 and 260 of 2013

WEB COPY

(c) The judgment and decree passed in O.S.No.11049 of 2010 on the file of the II Fast Track City Civil Court, is set aside and consequently, suit stands dismissed.

(d) In the facts and circumstances of the case, there shall be no order as to costs.

(c) Consequently, the connected miscellaneous petitions are closed.

(V.M.V.J) (S.S.J)
11.11.2022

Index : Yes / No
Speaking Order : Yes / No
dm



A.S.Nos.107 of 2012 and 260 of 2013

To

WEB CTS
The II Fast Track Court,
City Civil Court, Chennai.



WEB COPY



A.S.Nos.107 of 2012 and 260 of 2013

V.M.VELUMANI, J.
and
S.SOUNTHAR, J.

dm

Pre-delivery common judgment made in
A.S.Nos.107 of 2012 and 260 of 2013

11.11.2022