IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.490 of 2008

1.New India Assurance Company Limited,
No.5, Raja Mill Road,
Pollachi.

2.Manager,
The New India Assurance Company Limited,
No.5, Raja Mill Road,
Pollachi.

3.Divisional Manager,
The New India Assurance Company Limited,
Tiruppur Post Box No.47,
Kumaran Shopping Complex,
Kumaran Road, Tiruppur. ... Appellants

Versus

1.Gnanamani
Proprietrix, Janani Fibres,
Thulukkankadu Thottam, Vadasithur,
Pollachi Taluk.

2.Gunasekaran,
Branch Manager,
New India Assurance Company Limited,
No.5, Raja Mill Road,
Pollachi.

3.Saminathan,
Chartered Engineer, Surveyor and Loss Assessor,
Chokram, Race Course,
Coimbatore.

4.Secretary, Kinathukadavu Co-operative Primary Agriculture and Rural Development Bank,
Kinathukadavu,
Coimbatore.

5.Jagannathan, Manager,
Royal Sundaram Alliance Assurance Co.Ltd.,
No.46, Whites Road,
Royapettah,
Chennai. ... Respondents

Prayer : Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, to set aside the decree and Judgment dated 28th day of February, 2007, made in O.S.No.97 of 2004 on the file of Additional District and Sessions Court (Fast Track Court No.2), Coimbatore and be pleased to dismiss the said suit with Costs throughout.

For Appellants : Mr.K.Vinod
for Mr.S.Manohar since passed away

For Respondents
For R1 : Mr.T.P.Manoharan
for Mr.T.M. Naveen

For R2 to R5 : No appearance

JUDGMENT

A. The Appeal Suit :

This Appeal Suit is filed against the Judgment and Decree dated 28.02.2007 in O.S.No.97 of 2004 passed by the learned District and

Sessions Judge, Coimbatore, in and by which, the Trial Court partly decreed the suit for recovery for a sum of Rs.8,21,000/- for Rs.4,00,000/-. The Assurance Company, aggrieved by the partial decreeing of the suit, has filed this Appeal Suit.

B. Facts of the Case :

2.The factual matrix of this case is largely borne out by the communication and documents of either side relating to policy No.11/121201/05253 ***(Ex.A-1).*** The plaintiff's company is involved in the business of Coir manufacturing. By way of the said Insurance policy stated above, the Coir factory machinery including all electrical fittings, stocks of raw materials of Rs.1,15,000/-, finished products worth Rs.75,000/-, another set of finished products placed in the company godown worth separately another Rs.75,000/- were all insured by the first defendant/ Insurance Company by the said ***(Ex.A-1)*** fire policy "C" for the period from 04.07.1997. to 03.07.1998. On 29.09.1997, vide ***Ex.A-2,*** information was lodged by the plaintiff under Section 154 of Cr.P.C., in F.I.R.No.451 of 1997 stating that there was a fire accident on the previous day i.e., on 28.09.1997 at about 12.00 noon in the factory, by consequence of which, buildings, machineries, motors, stock and other goods and machines got damaged. Subsequently thereof, vide ***Ex.A-3,*** the plaintiff caused a letter dated 29.09.1997 to be sent to the defendant/Insurance Company, by which the fact about the incident was intimated to the defendant/ Insurance Company, duly mentioning the policy number and the damage that has happened. Pursuant to this, after three months on 13.12.1997, one *Swaminathan*, Surveyor, addressed to the plaintiff vide a letter/***Ex.A-4*** directing the plaintiff to submit some 12 documents mentioned thereunder for processing the claim. Subsequently vide, a communication/***Ex.A-5*** dated 22.12.1997, the particulars called for by the surveyor were furnished by the plaintiff and in respect of documents which were not in possession of the plaintiff, a reply was given in the same communication as to why those documents were not furnished. Thereafter, on 15.04.1998, the Surveyor vide communication ***Ex.A-6*** directed the plaintiffs to produce the repair estimate for the machineries, the stock register, and if the stock register is burnt, an explanation as to how it is possible that the stock register burned as the Office is not affected in the fire, and stating that no debris of the roof structure is noticed in the godown where finished products are stored and how the side wall in the rear side of the finished product room was not at all affected by the said fire. The explanation was given by the plaintiff vide letter/ ***Ex.A-7*** dated 17.04.1998. Thereafter, once again, a letter dated 03.06.1998 was issued with the very same contents as ***Ex.A-6*** and the said communication is marked as ***Ex.A-8***. Again vide a letter/ ***Ex.A-9*** dated 05.06.1998, the plaintiff replied by stating that "the plaintiff had already replied to the earlier letter". Thereafter, the plaintiff caused a legal notice/ ***Ex.A-10*** dated 25.07.1998 to the Insurance Company, the Manager and to the Surveyor. The acknowledgment letters for due receipt of the said notices are marked as ***Exs.A-11 to A-16***. Thereafter, vide Communication dated 25.08.1998, the appellant/Insurance Company repudiated the said claim stating that the fire accident seems to be artificial and intentional and several shortcomings and discrepancies were noted during the surveyor's personal visit and the same are all mentioned in detail in the letter of repudiation/***Ex.-.17***. A rejoinder notice***/Ex.A-18*** dated 30.03.1998 was also issued**.** The acknowledgments in respect thereof were marked as ***Ex.A-19 &A-20***. Once again vide ***Ex.A-21/***letter dated 08.09.1998, the appellant/ Insurance Company reiterated the decision to repudiate the claim. A reply notice/***Ex.A-22*** dated 07.05.1999 was issued to the Counsel for the Insurance Company. On 06.05.1998, the Kinathukadavu Co-

Operative Primary Agriculture and Rural Development Bank also wrote a communication/ ***Ex.A-23*** to the appellant Insurance company and enquired as to whether they are considering the Insurance claim. The demand notice for the balance due issued to the plaintiff by the said bank on 16.12.1998 was also marked as ***Ex.A-24*** and the passbook is marked as ***Ex.A-25*** and the receipt for payment of part the loan is marked as ***Ex.A-26***. After the above communication and exchange of notices, the plaintiff filed the present suit by filing original petition for leave to sue as an indigent person, which was granted and thereafter suit was taken on file as O.S.No.263 of 2001.

C. The Case of the Plaintiff :

3.It is the case of the plaintiff that the accident is duly covered under the policy. Though it was duly intimated, and immediately the surveyor had initially inspected the factory and had asked for all the particulars, thereafter, the surveyor had asked the plaintiff to bribe him and it is the plaintiff's claim that the claim was denied only because of the fact that the plaintiff had refused the demands for bribes and thereafter because of the said refusal to bribe the surveyor, the plaintiff was made to run pillar to post and ultimately after the plaintiff issued legal notice, and subsequent thereof the claim was repudiated. Therefore, the plaintiff claims that they are entitled to a sum of Rs.8,21,000/- as the maximum extent covered under the policy, even when, according to the plaintiff, the damages were much more.

D. The Case of the Defendant :

4.The suit was resisted by the first defendant/Insurance Company by way of filing a written statement. It is the case of the defendants that, by the inspection of surveyor, several facts had come to light. In view thereof, the defendant suspected that the day of accident being a Sunday and therefore there was no reason for the fire to have been caused by an electric short circuit as it would have been shut down on non working days and there is no occasion for the electric fire to have started naturally. Secondly, the electrical lines were not damaged. Thirdly, the consequences of a fire accident could not be found in certain portions of the building in a corroborating way to the plaintiff's claim and even certain PVC fittings were intact. The Machineries alone, showed symptoms of being caught in the fire, while the roof and other parts of the building were not commensurately damaged. The building consists of three parts. While there was no damage in the middle portion, the other two portions alone were shown to be damaged, which appears to be artificial and could not have happened in such a way because in the natural course, a fire would not spread in that manner. Therefore, pleading all the above, the appellant Insurance Company pleaded that the suit claim has therefore rightly been repudiated by them and resisted the plaintiff's claim. Another separate written statement was filed by the 6th defendant which was only the Co-operative Society, a proper party but not a necessary form of the party to the claim and contest.

E. The Issues:

5.On the strength of the said pleadings the trial Court had framed the following questions:-

"1.*Whether the plaintiff is entitled to the amount claimed?*

2.To what relief the plaintiff is entitled?"

F. The Trial & Findings :

6.On the said issues, the plaintiff examined herself as ***P.W.1*** and one *Valliyammal*, who was witness to the fire accident and had informed the fire authorities was examined as ***P.W.2***. On behalf of the plaintiffs, ***Exs.A-1 to A-26***, were marked. No evidence was let in by the defendants.

7.Thereafter, the trial Court proceeded to consider the case of the parties and by a Judgment dated 28.02.2007, the Trial Court found that, when the plaintiff has proved the basic facts as to the accident, loss, and intimation, no evidence has been let in by the Insurance Company in respect of various allegations mentioned in the repudiation order. However, the Trial Court held that the claim of the plaintiff, which is Rs.8,21,000/- as excessive and decreed the Suit by roughly taking into account 50% of the claim and decreed that the plaintiff be paid a sum of Rs. 4 lakhs with further interest rate of 12% per annum from 28.09.1997 till the date of realisation along with proportionate costs. Aggrieved by the same, the present Appeal Suit is filed before this Court.

G. The Submissions:

8.*Mr.K.Vinod*, learned Counsel for the appellant would submit that the appellant Insurance Company has duly and categorically pleaded in the written statement that the entire episode was not an accident but an artificial and staged one. On a perusal of the surveyor's report about various physical attributes said to have been caused by the said fire accident and on comparing them with the manner in which the plaintiff claims the fire to have spread, it is clear that the fire was stage managed by the plaintiff herself and it was not an accident at all. In that case, the policy claim cannot be entertained and therefore, the claim has been rightly repudiated by the Insurance Company. The learned counsel would further submit that on 26.02.2007, the matter was posted for defendant side evidence. On that day, plaintiff filed an application, to recall *P.W.1,* which was allowed and *P.W.1* was examined on the same day, and thereafter the matter was posted for defendant side evidence on 27.02.2007. Even though, the defendants witness was present in the Court on the said day, erroneously, the defendant's side evidence was closed. As a matter of fact, on the same day, I.A.No.146 of 2007, was filed. However, the said application was also dismissed and on the very next day i.e., on 28.02.2007, the Judgment was pronounced. Therefore, the entire excise was without the due and proper opportunity for the appellant/Insurance Company and therefore, the matter at the very least requires to be remanded back to the Trial Court for giving opportunity for the appellant/Insurance Company. In any event, the learned counsel would submit that, there was no proper evidence at all let in by the plaintiff, in respect of the quantum of damage and the Trial Court on presumptive basis, decreed the suit for 50% of the claim. The same is not based on any material facts or evidence and therefore, in that view of the matter also, the Judgment of the Trial Court is erroneous and therefore, prays that the Appeal Suit be allowed.

9.Per Contra, *Mr.T.P.Manoharan*, learned Senior Counsel, appearing on behalf of the first respondent would submit that, all along, the communication of the surveyor did not disclose that the entire claim is a bogus one or stage managed. As a matter of fact, one particular after the other was called for, and the matter was dragged on. Finally, only after the issue of legal notice, the order of repudiation was passed by the Insurance Company. Therefore, the same was not *bona-fide* and the appellant Insurance Company tried to find some reason or the other just in-order to escape from liability. The appellant/Insurance Company, after obtaining the premium and issuing the policy, cannot be permitted to wriggle out of their liability to the insured by way of a belated repudiation order. As a matter of fact, it is the specific case of the plaintiff that only for getting bribe money, the plaintiff's case was dragged on and when the plaintiff has got into the box and deposed to the said effect, when no evidence of rebuttal has been given by the defendant, the Trial Court was right in decreeing the Suit. The learned Senior counsel would further submit that the plaintiff has also filed the communications with the Surveyor and the break-up is also contained in the repudiation order itself and when due evidence has been let in by the plaintiff that she has suffered a loss of two lakhs in respect of the damage caused to the building including internal features and a sum of Rs.3,27,000/- towards damage to machineries and stocks and Rs.3,00,000/- towards the loss caused by the fire to the stocks and stocks in process of manufacturing as finished goods, the Trial Court, as a matter of fact, ought to have decreed the entire suit as prayed for. However, only 50% of the claim has been ordered and therefore, the Judgment and Decree does not call for any interference.

H. Points for Consideration:

10.Upon consideration of rival submissions on either side and a perusal of the material records of the case, the following points arise for consideration:-

> "1. *Whether the appellant Insurance Company was right in repudiating the claim ?*
>
> *2. Whether the plaintiff had proved about the quantum of loss and if so, whether the Trial Court's decree of awarding a sum of Rs.4 lakhs is in orders ?*
>
> *3. Whether the Trial Court was right in awarding 12 % interest on the award amount?"*

Question No.1

11.Firstly, the sequence of events, regarding the claim and communications are extracted supra in Paragraph No.1 onwards. It can be seen that the policy which is marked as ***Ex.A-1***, actually covers the peril of fire accident. The fire accident was reported on the very next day and as a matter of fact, *P.W.2* had deposed that, she noticed the fire when she happened to cross the building, and thereafter immediately intimated the fire to the Fire Service Department and it was only the Fire Service Department, who came in and extinguished the fire. To that extent, the fact that there was a fire in the plaintiff's premises is established. The only bone of the contention is that, whether the fire was stage managed or whether it could actually have been caused by electric short circuit as claimed by the plaintiff. In this regard, when the surveyor of the appellant / Insurance Company has inspected the premises as early as, on 13.09.1997 and 01.10.1997, and in the event when it is stage managed by the plaintiff herself, then that would even amount to criminal offence and immediately, the said matter should have been pursued further and it is least expected of the Insurance Company to have repudiated the claim immediately thereof. But, however, on 13.12.1997, as many as 10 documents including TNGST number, purchase & sales ledger and various other documents which point out towards assessing the quantum of damage was called for. This apart, when the plaintiff had given the documents for explanation in ***Ex.A-5*** and thereafter in ***Ex.A-6***, the repair estimation of the machineries is asked for. Similarly, if stocks are burnt, stock registers are directed to be produced. The only doubt is expressed in respect of the part of the claim by saying that no debris of roof structure is noticed in the finished product godown and doubt has also been expressed regarding the damages to the finished product room. Therefore, even going by the said communications, the surveyor at best, entertains doubts as to the part of the claim and does not act like the entire claim was held to be stage managed at the initial stage. This being the situation, after a period of more than a year, after receipt of the said legal notice/***Ex.A-10***, only on 25.08.1998, the order of repudiation has been made by the appellant company, and therefore, I am of the view that the delay in repudiating the claim causes serious doubts as to the claim of the appellant/Insurance Company.

11.1. This apart, when the plaintiff's case is that the concerned surveyor or some of the officials have been asking for a bribe and were delaying the matter, the action of the defendants in not adducing evidence in the suit assumes significance. In this regard, the contention of the learned counsel is that, no opportunity worth the name has been granted. On one single day, the matter was posted for the evidence of the defendant and it was closed and even the application for re-open was dismissed on the same day, and on the very next day the Judgment was pronounced.

11.2. As a matter of fact, from the records, it is found that the suit is dealt with in the manner as it is to be dealt with when the Trial is being taken up. It was taken up almost on day to day basis. A perusal of the order sheet revealed that, for the first time on 23.07.2007, the matter was posted for defendant side evidence. On that day, it was recorded as that the defendant was absent and at the request of the defendant side counsel, it was posted on 26.02.2007. On the second day, even though the matter was posted for defendant side evidence, the plaintiff filed re-open application to mark two documents, which was instantly allowed and those two documents are marked. However, even on that day, the order sheet records that the defendant witness was absent, and therefore, time for defendant evidence was extended and posted for third time on 27.02.2007. On 27.02.2007, the Trial Court had again recorded the defendant evidence as absent and therefore, the evidence was closed and the matter was posted for Judgment.

11.3. The learned counsel for the petitioner would further submit that the application was filed, for which also there is an endorsement in the order sheet that the said petition which was filed at 04.50.p.m., was also dealt with, and was dismissed at 05.00.p.m.. The swift and prompt disposal of the case by the Trial Court, should be the normal procedure and no exception could be taken for the said procedure, much less, it cannot be pointed out as an error. The matter when it is posted before Court for particular purpose, it is bound to happen on the day. Only these days, we, all the stake holders are not taking the daily orders seriously and the later inventions like ‘finally’, ‘last chance’ ‘no further adjournment’ etc., though have become order of the day, cannot become the rule of the day. Therefore, the contention of learned counsel that no opportunity has been given to the defendant to let in evidence stands rejected.

11.4. Therefore, in the teeth of the pleadings, oral evidence of *P.W.1 and P.W.2,* and the documents marked on behalf of the plaintiff, this question is answered by me in favour of the plaintiff and against the defendant/appellant that the appellant company was not justified in repudiating the claim under the ***Ex.A-1'***s policy.

Question No.2

12.The learned Counsel for the appellants taking this Court through paragraphs Nos.31 to 34 submitted that on presumptive basis the Trial Court has granted 50% of the claim. That appears to be correct. On a perusal of the material evidence on record, as extracted supra, the plaintiff has made his claim in respect of three heads. From the report of the Surveyor, asking for the repair charges for the machineries, it is clear that the machineries have been damaged. From ***Ex.A-2/***the First Information Report, the machineries which are damaged has also been clearly mentioned. It is the case of the plaintiff that the stock register was also burnt in the fire, but the plaintiff states that the room was full of stocks. The manner in which the fire has been broken up also presupposes the existence of considerable stock. *P.W.1* has also in her evidence spoken about the details as to the loss. In that view of the matter, even though, the plaintiff has not produced the actual repair statements, I hold that, a minimum of one lakh can be allowed on the said head. Similarly, even though the actual value of the machineries and accessories lost in the fire has not been proved by producing the respective bills for the purchase or examining the erstwhile witness towards the value of the machineries, even though, the maximum claim amount is Rs.3,21,000/-, considering the nature of the machineries and the communication of the Surveyor himself, I am of the view that a sum of Rs.2 lakhs can be quantified and allowed in respect of the said head. Similarly, even though, the plaintiff had claimed a sum of Rs.3 lakhs towards the stock, the manner in which the first portion of the building had burnt on fire is explained by the witness and also borne out in the documents. In that view of the matter, even considering that there should have been substantial quantity of stocks in the said room, even though the claim is made for Rs.3 lakhs, in the absence of more evidence as to the exact quantity , a bare minimum of Rs.1 lakh can be allowed on said claim. Therefore, no exception can be taken to the ultimate decision of Trial Court in allowing the claim of the plaintiff to the tune of Rs.4 lakhs. However, the amount has to be paid by the Insurance Company which is the first defendant and its Manager and Divisional Manager, who are the defendants Nos.2 & 4. The defendant No.3 is one *Gunasekaran*, the then Branch Manager in the individual capacity who has been added because the allegations of *mala-fide* were made against him. The defendant No.7 also is added in his individual capacity and hence cannot be mulcted with the liability to pay the decree amount. However, the decree amount has to be paid only by the defendants Nos.1, 2 & 4 and to the said extent the decree of the Trial Court requires modification. Accordingly, I answer this question.

<u>Question No.3:</u>

13.In this case, the Trial Court has awarded an interest of 12%. The learned counsel for the respondent plaintiff would submit that the transaction is commercial in nature and in view of efflux of time, unless the 12% is maintained, the plaintiff will be put to grave prejudice. Per contra, the learned Counsel for the appellant would submit that there was no discussion as to the rate of interest and it has been awarded as such. Considering the said submissions, firstly, it is to be noticed that there is no contractual interest in this matter. Secondly, even though the transaction is commercial in nature, taking into account the normal practice, the rate of interest is reduced from 12% to 9% per annum and accordingly this question is answered.

I. The Result:

14.In the result,

i) The Appeal Suit in A.S.490 of 2008 is partly allowed.

ii) The O.S.No.97 of 2004 on the file of the learned Additional District and Sessions Court (Fast Track Court No.II), Coimbatore, is decreed by directing the defendants 1, 2 & 4 to pay to the plaintiff a sum of Rs.4 Lakhs with further interest at a rate of 9% per annum., with effect from 28.09.1997 till the date of realization.

iii) It is represented that already 50% of the claim has been deposited and withdrawn by the Respondent No.1/plaintiff and the appellants shall accordingly calculate the balance and deposit the balance sum within a period of three months from today and on such deposit, the same shall be paid out to the plaintiff without insisting upon any formal application, only by verification of identity.

iv) There shall be no order to costs as far as this appeal suit is concerned.

09.11.2022

Index : yes/no
Speaking/ Non-Speaking order

Sma/klt

To

1.The Additional District and Sessions Court
(Fast Track Court No.II), Coimbatore.

2.The Section Officer, V.R.Section, High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

sma/klt

A.S.No.490 of 2008

09.11.2022