IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.198 and 130 of 2012

SA No.198 of 2012

M/s.Ashok Leyland Limited,
Foundry Division
Rep. By its Executive Director – HR
Ennore, Chennai – 600 058

.. Appellant/
Respondent/Defendant

Vs.

1. Ezhil Hopsital
Rep. By Partners

Dr. M.Mariappan (Deceased)

Dr.S.Selvasankari

Dr.A.Ezhil Malar

Dr.M.Priya
(Newly added Partners substituted as
Legal representatives of the deceased R1
Vide order of Court dated 25.03.2013 made in
MP Nos.1 & 1 / 2013 in S.A.No.198/2012 and
130 of 2012)

..1st Respondent / Appellant/
Plaintiff

2. The Oriental Insurance Co. Ltd.,
Divisional Office IX,
Apex Chambers II Floor,
No.20, Sir Thyagaraya Road,
T.Nagar, Chennai 600 017
Rep. By its Divisional Manager

..2nd Defendant / 2nd Respondent /
2nd Respondent

SA No.130 of 2012

The Oriental Insurance Co. Ltd.,
Divisional Office IX,
Apex Chambers II Floor,
No.20, Sir Thyagaraya Road,
T.Nagar, Chennai 600 017
Rep. By its Divisional Manager

... Appellant/ 2nd Respondent/
2nd Defendant

Vs.

1. Ezhil Hopsital
Rep. By Partners

Dr. M.Mariappan (Deceased)

Dr.S.Selvasankari

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(Newly added Partners substituted as
Legal representatives of the deceased R1
Vide order of Court dated 25.03.2013 made in
MP Nos.1 & 1 / 2013 in S.A.No.198/2012 and
130 of 2012)

..1st Respondent / Appellant/
Plaintiff

2. M/s.Ashok Leyland Limited,
(Hinduja Foundries Ltd.,)
Formerly known as Ennor Foundries Limited
Represented by its Executive Director – HR,
Ennore, Chennai 58
(Cause title Amendment vide order of
Court dated 26.04.2019 made in
CMP No.9894/2019 in SA No.130 of 2012) by
NSKJ

..2nd Respondent / 1st respondent /
1st defendant

Prayer in SA No.130 of 2012:Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree dated 12.04.2010 in A.S.No.81 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Chennai 600 001 and reversing the decree and judgement made in O.S.No.15 of 2007 dated 14.08.2008 on the file of VII Assistant Judge, City Civil Court, Chennai thus dismissing the suit with costs.

Prayer in SA No.198 of 2012:Second Appeal filed under section 100 of the Code of Civil Procedure to set aside the Judgement and decree dated 12.04.2010 in A.S.No.81 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court No.III), Chennai 600 001 inso far as it fasten the liability to pay the amounts decreed jointly and severally with the 2nd respondent insurance company and reverses the judgement and decree dated 14.08.2008 in O.S.No.15 of 2007 on the file of VII Assistant Judge, City Civil Court, Chennai.

For Appellant in SA No.198 of 2012	:	Mr. P.Raghunathan for Mr.T.S.Gopalan and Co.
For Appellant in SA No.130 of 2012		Mr.Nageswaran and Narichania
For Respondents in SA No.198 of 2012	:	Mr.N.Jayabalan for R1 Mr.Nageswaran for R2
For Respondnts in SA No.130 of 2012		Mr.N.Jayabalan for R1 Mr. P.Raghunathan for M/s.T.S.Gopalan & Co for R2

COMMON JUDGMENT

The issue involved in both the second appeals are common and hence, they are taken up together, heard and disposed of through this common judgment.

2. SA.No.130 of 2012 has been filed by the 2nd defendant and SA No.198 of 2012 has been filed by the 1st defendant.

3. The 1st respondent /plaintiff in both the second appeals filed a suit seeking for recovery of money with interest.

4. The case of the plaintiff is that they had extended their professional services to the 1st defendant company whereby they treated nearly 76 employees, who were referred by the 1st defendant as in-patients for various ailments for the

period from 25.08.2003 to 10.12.2003 and the 1st defendant undertook to bear all the medical expenses. Accordingly, treatment was given by the plaintiff hospital and bills were raised to the tune of Rs.7,58,876/-.

5. The further case of the plaintiff is that the 1st defendant paid only a sum of Rs.5,48,535/- to the plaintiff hospital through the 2nd defendant, which is the insurance company under the Group Insurance Mediclaim Policy. According to the plaintiff, the defendants did not pay the balance amount of Rs.2,11,840.35, inspite of several demands and request. Left with no other option, the suit was filed for recovery of the balance amount with interest.

6. The 1st defendant filed a written statement and took a stand that the plaintiff entered into an oral agreement with the medical officer of the 1st defendant company and agreed to give treatment for the employees and their spouses working in the 1st defendant company and who are covered by the Group Insurance Mediclaim policy. It was further stated that the 2nd defendant was settling the claims submitted by the employees after due verification on the basis of the bills raised by the plaintiff. It is further stated that the 2nd defendant was settling the bills depending upon the merits and de-merits of the claims as per the terms and conditions of the policy and the 1st defendant had no role to play in making the payment to the plaintiff. The 1st defendant has therefore taken a stand that there is no amount due and payable by them to the plaintiff and they have been informed by the 2nd defendant that there is no amount due and payable to the plaintiff hospital. Accordingly, the 1st defendant had sought for the dismissal of the suit.

7. The 2nd defendant filed a written statement and took a stand that they are not a necessary party in the suit and the liability of the 2nd defendant is subject to the terms and conditions of the mediclaim policy. It was further stated that whatever bills were recommended by the Doctor of the 1st defendant, was cleared as it is and there is no amount due and payable to the plaintiff. Therefore, the 2nd defendant had also sought for the dismissal of the suit.

8. The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence dismissed the suit by judgment and decree dated 14.08.2008. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.81 of 09 before the Additional District and Sessions Court (FTC III) and the Lower Appellate Court on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, allowed the appeal through a judgment and decree dated 12.04.2010 and thereby, the

judgement and decree of the Trial Court was set aside and the suit was decreed as prayed for. Aggrieved by the same, both the defendants have filed individual second appeals before this Court.

9. This Court framed the following substantial questions of law in both the second appeals :-

> "(1) Whether the parties to a Contract of Insurance, having accepted the terms of the policy, are bound by the terms and conditions incorporated in the policy?
>
> (2) Whether the burden of proof which lies on the plaintiff can be shifted to the defendant/appellant under Section 101 to 103 of the Evidence Act?
>
> (3) Whether the Court can presume the existence of certain facts contrary to the evidence available on record and Section 114 of the Evidence Act?
>
> (4) Any other substantial questions of law that arise during the course of Second Appeal?
>
> (5) Is the facts and circumstances of the case, after concluding that the 2nd respondent is liable to pay the full amount claimed by the 1st respondent under the Policy of Insurance should not the 1st Appellate Court have held that the 2nd respondent Insurance Company solely liable to pay the amounts billed by the 1st respondent?
>
> (6) In the facts and circumstances of the case, having regard to the nature of the Group-Mediclaim policy is the 1st Appellate Court justified in law in fastening the liability under the Group Medical Insurance Policy on the appellant also and holding the appellant jointly and severally liable with the insurance company to pay the bills raised by the 1st respondent Hospital?
>
> (7) Is not the entire arrangement between the appellant, its employees, the 1 st respondent Hospital and the 2nd respondent Insurance Company, a cashless Group Medical Insurance Scheme fastening no liability whatsoever on the appellant who merely acted for the benefit of its Employees?
>
> (8) In any event, having regard to the relationship between the 2nd respondent Insurance Company and the appellant is the 1st Appellate Court justified in law

in concluding that they were jointly and severally liable?

(9) Is the 1st Appellate Court justified in law in fastening any liability on the appellant, once it held that the 2nd respondent was liable to pay the full amount of claim made by the 1st respondent?

(10) Is not the conclusion of the 1st Appellate Court in holding the appellant liable without cogent or convincing reason perverse?

(11) Is the First Appellate Court justified in law in granting a decree against both the defendants, without specifying in the decree, whether both were jointly liable or severally liable or the appellant was liable as only a person interested under Section 63 of the Contract Act entitled to full reimbursement from the insurer?"

10. Heard the learned counsel for the appellant and the learned counsel for respondents and this Court has carefully perused the materials available on record and also the findings of both the Courts below.

11. The learned counsel for the Appellant appearing in S.A.No.198 of 2012 submitted that the 2nd defendant had settled all the claims under the policy in favour of the plaintiff and the same is evident from Exs.A20 to A26. It was further submitted that there was a duty cast upon the insurance company to scrutinize the claims and make payments towards genuine claims. The insurance company took into consideration the certificate given by the Doctor belonging to the 1st defendant company and settled the claims. It was submitted that the 1st defendant had nothing to do with the settlement of claims and even during the cross-examination, it was admitted by the officer belonging to the insurance company that in all cases where the doctor had recommended, the payments were made under the policy. The learned counsel therefore submitted that the Lower Appellate Court ought not to have put the burden on the 1st defendant to make the payments to the plaintiff hospital and if at all any payments are to be made, only the insurance company has to make the payments under the policy.

12. The learned counsel appearing on behalf of the appellant in SA No.130 of 2012 submitted that the parties have accepted the terms and conditions of the policy and they are bound by the same. Accordingly, there was sufficient documentary evidence marked as Ex.B1 to B53 to show that all the claims were settled. It was further submitted that the Lower Appellate Court

gave a wrong finding to the effect that the defendants have not discharged their burden under Section 101 to 103 of the Indian Evidence Act, when the documentary evidence proves otherwise.

13. The learned counsel for the 1st respondent / plaintiff submitted that the defendants were trying to pass the buck to each other and the plaintiff was not even given an opportunity to examine the doctor, who had scrutinized the bills and had modified or reduced the claims, which resulted in the short fall while settling the claims to the plaintiff hospital. The learned counsel submitted that the Lower Appellate Court had taken into consideration the evidence available on record and had come to a correct finding that the defendants must be held liable jointly and severally. The learned counsel therefore sought for the dismissal of both the second appeals.

14. In the present case, there is no dispute with regard to the fact that the 1st defendant company had taken a Group Mediclaim Policy for its employees and their spouses during the year 2003 - 2004 starting from 20.08.2003. Unfortunately, this policy has not even been marked at the time of trial. The Courts below therefore relied upon the stand taken in the written statement and the evidence of the witnesses, who spoke about the policy. On analyzing the same, the Courts below came to a conclusion that there was some oral understanding between the plaintiff and the 1st defendant company for giving treatment to the employees belonging to the 1st defendant company. The company undertook to settle the claim of the plaintiff hospital through the 2nd defendant insurance company on the basis of the mediclaim policy. The bills will be raised by the plaintiff company after giving treatment to the employees belonging to the 1st respondent company and it will be placed by the 1st defendant company before the 2nd defendant insurance company and the insurance company is supposed to settle the claims.

15. The grievance of the plaintiff company is that they had raised 137 bills towards giving treatment to 76 employees belonging to the 1st defendant company. However, the 1st defendant seems to have employed a Doctor named Dr.Benjamin, who was assigned the task of going through the bills and making his recommendation for the settlement of claims. According to the 1st defendant, if any exorbitant claims are made towards any unnecessary treatment, those claims were disallowed and accordingly, informed to the 2nd defendant insurance company. The 2nd defendant insurance company purely went by the recommendation made by Dr.Benjamin and settled the claims and they did not independently apply their mind on the claims made by the plaintiff company.

16. The Lower Appellate Court took into consideration the fact that there were materials produced by the 1st defendant to substantiate as to why any particular claim was considered to be exorbitant or any treatment that was given to a particular employee was considered to be not required. The only person, who could have spoken about this fact was Dr.Benjamin and he was never examined by the 1st defendant company. The Lower Appellate Court took into consideration the fact that the 1st defendant was not furnishing any particulars to the plaintiff company as to why certain claims were rejected and hence, the plaintiff company never had a chance to put forth their views or question the Doctor, who decided the claim for the 1st defendant company. In fact, the 1st appellate Court took into consideration the evidence adduced by the officer of the insurance company who specifically stated that the insurance company was not aware as to why the claim was reduced for certain bills and it was further stated that whatever was recommended by Dr.Benjamin, was settled without any questions being asked.

17. The Lower Appellate Court thereafter went into the issue of burden of proof. It took into consideration the 137 bills that were raised by the plaintiff hospital. There was no dispute that these bills were raised by the plaintiff. The only area of dispute was whether Dr.Benjamin belonging to the 1st defendant company was making his recommendations on the claims and in some cases rejecting or reducing the claims. There was no witness on the side of the defendants who will explain as to why a particular rejection or reduction was made from a claim. The best evidence that was available was from Dr.Benjamin and he was never put into the box and obviously, an adverse inference must be drawn against the 1st defendant company.

18. In the considered view of this Court, the plaintiff had discharged the burden of proof by filing the claims for the treatment given to the employees of the 1st defendant company. Certain claims were reduced / rejected and the reasons for doing so must be given by the 1st defendant. Hence, onus of proof is upon the 1st defendant to explain the same through the concerned Doctor. This onus has not been discharged by the 1st defendant. While considering the same, the Lower Appellate Court has rightly held that the Trial Court unnecessarily got into the nitty-gritees of analyzing the documents and finding out the basis of the rejection of the claims or the decision with regard to unnecessary treatment. Obiviously, the Trial Court was not a specialist in this and the Trial Court cannot try to substitute its views when the 1st defendant themselves did not come up with a proper explanation. In fact, the Trial Court was making random check on the bills that were raised by the plaintiff hospital and the Lower Appellate Court found this procedure adopted by the Trial Court

to be not in accordance with law. Therefore, the Lower Appellate Court rightly interfered with the findings of the Trial Court.

19. Insofar as the First three substantial questions of law framed by this Court is concerned, this Court holds that the parties are bound by the terms and conditions of the insurance policy and the plaintiff hospital had no privity of contract insofar as the policy is concerned and it was purely between the 1st and 2nd defendants alone. The plaintiff had discharged the burden of proof and it is the defendants who failed to discharge the onus of proof for the stand taken by them and that was rightly appreciated by the Lower Appellate Court. The Lower Appellate Court also did not render its findings based on any presumption. All these substantial questions of law are answered accordingly.

20. Insofar as the substantial questions of law 5 to 11 are concerned, this Court holds that the defendants are bound by the terms of Mediclaim policy. The claims raised by the hospital through the 1st defendant must be settled by the 2nd defendant insurance company. The 2nd defendant insurance company has taken a stand that whatever claims were cleared by the 1st defendant company was duly paid to the plaintiff company. The dispute is only insofar as the claims that were reduced or rejected by a doctor belonging to the 1st defendant company. This Court has already held that the 1st defendant company failed to discharge the onus as to why certain claims were not accepted or reduced and there was no opportunity for the plaintiff to cross-examine the concerned doctor who took the decision since the doctor was never put in the witness box. This in the light of the fact that the plaintiff had made specific pleadings and proved that they had given treatment for 76 employees belonging to the 1st defendant company and they had raised 137 bills in that regard. In view of the same, the Lower Appellate Court held that such rejection or reduction of certain claims was unsustainable. The consequent short fall arising there from must be necessarily settled to the plaintiff company. If the 1st defendant company had cleared the claims as it is, the 2nd defendant insurance company would have made the payment to the plaintiff company. The same is clear from the evidence of the official belonging to the insurance company. The short fall in the claims made by the plaintiff company was only due to the act of the 1st defendant company and therefore, the Lower Appellate Court was perfectly right in burdening the liability on both the defendants jointly and severally. By doing so, the 1st defendant must clear the claims wherever it has been reduced or rejected and place it before the 2nd defendant insurance company and the 2nd defendant insurance company must make the payments to the plaintiff company. To that extent, the liability is joint and several. The remaining substantial questions of law are answered

accordingly.

21. The upshot of the above discussion is that there is no ground to interfere with the judgment and decree of the Lower Appellate Court and the Lower Appellate Court has properly considered the oral and documentary evidence and also the findings of the Trial Court while allowing the appeal. All the substantial questions of law are answered against the appellants.

22. It is brought to the notice of this Court that the appellant in SA No.198 of 2012 was directed to deposit a sum of Rs.2,80,180/- to the credit of the suit, by an order dated 03.01.2012. This order was also complied with and this amount remains in the credit of the suit with accumulated interest. It is left open to the plaintiff hospital to withdraw this amount along with accumulated interest. The 1st defendant company is directed to give credit to the deposited amount along will accumulated interest and arrive at the balance amount that is payable to the plaintiff hospital. The balance amount shall be paid together with interest at the rate of 12% per annum from the date of the suit till the date of actual payment to the plaintiff hospital. It is left open to the 1st defendant company to raise the claim on the 2nd defendant insurance company for whatever amounts are settled to the plaintiff hospital apart from the amount that has already been settled by the 2nd defendant insurance company to the plaintiff hospital. On receipt of the claim, the 2nd defendant insurance company shall settle the amount to the 1st defendant company.

23. In the result, these second appeals are dismissed with costs and the above directions shall be complied with by the appellants.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge
(Fast Track Court No.III), Chennai 600 001

2. The VII Assistant Judge, City Civil Court, Chennai

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+2cc to Mr.Nageswaran and Narichania, Advocate,
S.R.No.17260&17261

+2cc to Mr.N.Jayabalan, Advocate, S.R.No.17691&17692

+1cc to Mr.T.S.Gopalan and Co, Advocate, S.R.No.17278

SA.No.198 and 130 of 2012

VBM(CO)
CT 18/05/2022