IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM:

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

AND

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

O.S.A.No.286 of 2019

M/s.Tarapore & Co.,
Dhun Building, No.827, Anna Salai,
Chennai 600 002
Represented by its Partner
N.Radhakrishnan ...Appellant

Versus

United India Insurance Company Limited,
Represented by Senior Divisional Manager,
Division 15, Tarapore Towers,
7th Floor, No.826, Anna Salai,
Chennai – 600 002. ...Respondent

PRAYER: Appeal filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent to allow this appeal, set aside the order dated 10.06.2019 of the learned Judge in Civil Suit No. 440 of 2012.

For Appellant	:	M/s. Aditi Ashok for Mr. K.K.Muralitharan
For Respondent	:	Mr.Venkatraman for Mr. Nageswaran Narichanya

JUDGEMENT

(Judgement was delivered by **SUNDER MOHAN,J.)**

Challenging the Judgement passed by the learned single Judge in C.S.(Commercial Division) No.440 of 2012, dated 10.06.2019, the plaintiff has preferred the above appeal.

2.The case of the appellant in the suit was that they were in the business of executing Civil and Engineering construction work for Government and private organization. They were awarded a contract by TATA STEEL Limited for certain engineering works to be carried out at the TATA STEEL complex at Jamshedpur. They had purchased a crane for the purpose of executing the contract work at TATA STEEL Limited. The plaintiff took an Insurance Policy from the defendant for covering accidental damage to the crane and other incidents set out therein in the year 1999. It was their case that, even in the proposal, they had mentioned that the crane was to be deployed inside their own premises at Jamshedpur. The defendant issued a Policy and the Insurance policy was periodically renewed. On 14.06.2007, the crane met with an accident in the job site of the plaintiff's client and the plaintiff immediately addressed a letter to the defendant for spot survey. The defendant requested the plaintiff to submit the estimate of repairs and accordingly, the plaintiff appointed a Surveyor. Based on the Surveyor's report, the plaintiff claimed an amount of Rs.70,15,972/- (Rupees Seventy Lakhs Fifteen Thousand Nine Hundred and Seventy Two only) along with supporting documents. The defendant thereafter conducted a re-inspection of the crane at the site. Since there was no response from the defendant, the plaintiff sent periodical reminders. On 05.04.2011, the defendant, sent a letter rejecting the claim of the plaintiff in terms of Indian Motor Tariff (IMT-13) of the Policy conditions stating that the accident had taken place outside the plaintiff's own premises. It was the plaintiff's case that the policy covers the geographical area of the whole of India and no such restriction could be read into the contract. Their further claim was that the defendant, having initially accepted the entitlement of the plaintiff and having deputed its surveyors, ought not to have rejected the claim of the plaintiff.

3.The defendant's case in the written statement was that the claim was repudiated on 31.03.2011 and as per Condition No. 7, the plaintiff ought to have initiated action within 12 months to make a claim. It is the case of the defendant that IMT-13 of the policy conditions is very clear and the Company had availed the benefit of reduction in premium by stating that the usage of the crane was limited to own premises. Having taken advantage in the payment of premium, the plaintiff cannot state that the contract is to cover the entire geographical area of India. The defendant's further case was that the plaintiff had failed to establish that they were a registered Partnership Firm and that the person, who had signed and verified the same was competent to do so.

4.The plaintiff examined one witness on their side and marked Exs.P1 to P32. The defendant examined one witness on their side, however, no document was marked.

5.The only issue raised before the learned single Judge was that whether the plaintiff was entitled to insurance claim for the damage that happened to the crane in a third party premises. The learned Single Judge,

upon considering the evidence, both oral and documentary, and the arguments of the learned counsel on either side, held that the plaintiff's claim was unsustainable and no relief could be granted to them.

6.The learned Single Judge, after referring to the Indian Motor Tariff (IMT-13), observed that the crane was insured with the defendant with an assurance that it would be used in their own premises in order to avoid the higher payment of premium, as the usage of crane in the third party premises would cost an exorbitant premium. The learned Single Judge also observed that P.W.1, who was examined on the side of plaintiff, himself admitted that no prior intimation was given to the Insurance Company regarding the operation of the Crane in the address other than the one mentioned in the policy. The learned Single Judge accepted the respondent's/defendant's stand that the suit was barred by limitation, as it ought to have been filed within one year from repudiation. The repudiation letter was dated 31.03.2011 and the suit was filed on 04.04.2012. The learned Single Judge rejected the plaintiff's submission that the letter dated 31.03.2011, was mischievously pre-dated and that it was actually sent on 06.04.2011. The learned Single Judge observed that the plaintiff had not established the said fact of pre-dating by oral or documentary evidence. The learned single Judge also recorded the submission of the defendant that the plaintiff had not established that it was a registered partnership Firm. The learned Single Judge, however, did not render any finding, as the learned Judge dismissed the suit on the ground that the plaintiff had violated the terms and conditions of the Insurance Policy.

7.Heard the learned counsel for the appellant and the respondent.

8.The learned counsel for the appellant submitted that the plaintiff/appellant on several occasions through various correspondences had indicated that the crane was working at their Jamshedpur site i.e inside TATA STEEL Company and in support of their contentions relied upon Exs.P3, P4, and P5 documents. The learned counsel further submitted that Indian Motor Tariff (IMT-13) has to be interpreted in a purposive manner. The learned counsel submitted that the Insured's premises need not necessarily be a premises owned by the Insured and the only condition is that it must be used in a premises to which public have no right of access. The learned counsel further submitted that various correspondences, namely, Exs.P9, P10 and P11, would also show that the respondent/defendant intially gave an impression that they were considering their claim and they were estopped from repudiating the claim four years after it was made.

9. The learned counsel for the respondent submitted that the learned single Judge had elaborately considered the submissions of the appellant and rightly came to the conclusion that the appellant's claim is unsustainable in law.

10.After giving our anxious consideration to the submissions of the learned counsel on either side and the documents on record, we find that the main issue to be decided is whether IMT No.13 has been violated by the plaintiff. IMT No.13 is extracted hereunder for better appreciation :

IMT.13. USE OF VEHICLE WITHIN INSURED'S OWN PREMISES

> *"It is hereby understood and agreed that the insurer shall not be liable in respect of the vehicle insured while the*

vehicle is being used elsewhere than in the insured's premises except where the vehicle is specifically required for a mission to fight a fire.

For the purpose of this endorsement 'Use confined to own premises' shall mean use only on insured's premises to which public have no general right of access."

11.The above clause would make it very clear that the insurer, namely, the defendant, would not be liable if the vehicle is used in any place other than the insured's premises. We also find from Ex.P.6, the policy document, that the plaintiff had claimed a discount of nearly Rs.73,995/- (Rupees Seventy Three Thousand Nine Hundred and Ninety Five Only) by stating that the crane was limited to own premises. We are unable to accept the submissions of the appellant's counsel that own premises would include the premises of the plaintiff's clients as well and the only condition was that the public must have no right of access in the said premises. We find that, having claimed a discount in the premium amount by stating that it was limited to own premises, the plaintiff cannot now try to enlarge the policy condition to include their client's premises as well. For instance, if the plaintiff were to use the crane in the entire geographical area of India as stated in the plaint, there is no meaning to the words "limited to own premises" in Ex.P6. An insured, who has not claimed such a discount and an insured, who has claimed a discount would be placed in the same position if such an interpretation to the clause is given. That cannot be the interpretation given to the policy conditions. The other documents relied upon by the appellant to show that they had informed the respondent that the crane was meant to be used in their Jamshedpur site, cannot be read as part of the policy document. Further, the appellant's argument that the respondent is estopped, since they had visited and inspected the site and gave an impression that their claims would be considered, also cannot be accepted. No right accrued to the appellant merely because the respondent visited the site. Hence, we are of the view that the appellant/plaintiff has not established their case and they are not entitled to any relief.

12.We also find that the plaintiff has not established that it was a registered partnership firm and the signatory to the plaint was authorized by the other partners of the unregistered partnership. In this view of the matter also, the claim of the appellant has to fail.

13.We find no reason to interfere with the Judgement passed by the learned Single Judge in C.S.No.440 of 2012, dated 10.06.2019. Hence, the Original Side Appeal stands dismissed. No costs.

[M.D.J] [S.M.J]
05.07.2022

Index : Yes
Internet : Yes
Speaking/Non-Speaking orders
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and
SUNDER MOHAN,J.
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