

HON'BLE Smt. JUSTICE P.SREE SUDHA

APPEAL SUIT No.1703 of 2001

J U D G M E N T

1. This appeal is directed against the judgment and decree dated 29.01.2001 passed in O.S.No.9 of 1996 on the file of the learned Senior Civil Judge, Miryalguda, wherein and whereby the suit filed by the plaintiff is decreed with proportionate costs and interest thereon at 12% per annum.

2. The defendant is the appellant and the plaintiff is the respondent herein. The plaintiff filed a suit against the defendant for grant of compensation of Rs.5,44,000/- with interest thereon at 24% per annum from 14.05.1995 till the date of realisation.

3. The trial Court considering the evidence on record and also the arguments advanced by both the counsel granted decree in favour of the plaintiff for an amount of Rs.3,12,410/- with proportionate costs along with interest thereon at 12% per annum from the date of gales i.e. 14.05.1995 till the date of filing the suit i.e. 12.04.1996 and thereafter at 6% per annum on Rs.3,12,410/- till realisation and the rest of the claim was dismissed. The defendant was also directed to pay Rs.17,002/-

towards proportionate costs of the suit. Aggrieved by the said judgment and decree, the defendant in the suit i.e. The New India Assurance Company Limited, Nalgonda Branch, preferred this appeal.

4. Heard the learned counsel for the appellant-defendant and the learned counsel appearing for the respondent-plaintiff. Perused the record.

5. Learned counsel for the appellant-defendant would contend that the judgment of the trial Court is contrary to law and material on record and it erred in granting compensation at the rate of Rs.3,2,410/- without any basis and also erred in believing the evidence of P.Ws.1 to 6 and disbelieving the evidence of D.Ws.1 and 2. Learned counsel would also assert that the trial Court has not considered the insurance policy which is marked as Ex.B1 and the judgment under appeal is not in consideration of the conditions of policy. Learned counsel would also aver that the trial Court has not believed the report of the joint survey-Ex.B3, but believed the survey report-Ex.B2 and also the subject matter of the *lis* has to be referred to the Arbitrator as per the arbitration clause and lastly contended that the damages awarded by the trial Court are excessive, and

thus, prayed the Court to set aside the judgment and decree under appeal.

6. M/s.Miryalguda Groundnut Oil Mill represented by its Partner filed the suit against the Insurance Company seeking compensation. The plaintiff would submit that the firm was dealing in oil business and in that connection the firm obtained loan of Rs.8,05,000/- from the Andhra Pradesh State Financial Corporation (APSFC) at Nalgonda Branch for construction of building and erection of machinery and they were insured with the defendant Insurance Company bearing Policy No.161010602947 covering risk under the head Fire-Policy 'C' on 01.10.1994 and that the said policy is being renewed from time to time. The plaintiff would further submit that on 14.05.1995 there were heavy rains and gales and as a result of which the plaintiff sustained huge loss apart from several other business concerns - Electricity Board, Roads and Buildings Department and Telephones at Miryalaguda town. Immediately the plaintiff reported the matter to the APSFC and to the defendant. On 17.05.1995 the Insurance Company appointed the Surveyor by name R.L.N.Shastry and he visited the mill and recorded his findings for the purpose of assessing the loss caused to the building and machinery. Apart from the

Insurance Company's Surveyor, the plaintiff also appointed one Surveyor – V.Goverdhan, Junior Engineer in Nagarjuna Sagar Project at Miryalguda for assessment of damage caused to the building and machinery and the work-sheet submitted by him are also filed. The Surveyor sent a letter bearing No.NIA/1412/MGN dated 24.05.1995 to the plaintiff firm with a request to send certain papers and the plaintiff firm complied with the same on 02.06.1995 and also received acknowledgment. Later, the plaintiff firm waited for a period of five or six weeks and met the defendant and enquired as to what happened to the claim and upon which the Manager of the defendant informed that the Surveyor estimated the loss to an extent of Rs.3,10,000/- and also showed the report of the Surveyor to the plaintiff and hence the plaintiff requested the Manager of the defendant to grant the real loss of Rs.4,37,000/- sustained by it. Thereafter, the Manager of the defendant company sent a letter to the Surveyor seeking some more clarifications and also instructed the plaintiff to meet the Manager and accordingly, the plaintiff met with the Manager of the defendant company after one week, but he has not responded positively. The plaintiff would also assert that after three days the Manager of the defendant bank accompanied

with another Surveyor-Nageswara Rao visited the plaintiff firm to assess the loss. The plaintiff informed the joint surveyor that the damage to the machinery and building was taken place about two months back and he got it repaired by investing more than Rs.4,00,000/- as he could not run the firm without getting them repaired and he has obtained loan from SFC. The joint surveyor did not see the photographs shown by the plaintiff and did not even enquire with any of the neighbours and he was in the mill only for one hour and he informed to the plaintiff that he may get the claim of Rs.30,000/- towards damages. After visiting of the joint surveyor the plaintiff ventilated its grievance before the Senior Divisional Manager of the defendant company and he sent a reply asking the plaintiff to obtain a certificate from the Meteorological Department at Hyderabad confirming that there was heavy gale in Miryalaguda on 14.05.1995. On 2nd week of September, 1995 the Branch Manager of the defendant company sent a letter along with discharge voucher settling the loss at Rs.30,368/-. The plaintiff firm did not return the loss voucher as it wanted to contest the matter before the Court. The Branch Manager also sent another letter on 02.11.1995 instructing the plaintiff that if he fails to return the discharge voucher within fifteen days from the date of receipt of the said

letter, the claim of plaintiff firm will be treated as closed. The letter and voucher were filed by the plaintiff before the Court. On 28.02.1996 the plaintiff got issued a legal notice to the Branch Manager of the defendant company requesting for supply of copies of the report of the surveyors but in spite of receiving the notice the defendant company neither supplied the copies nor replied to the notice. APSFC also took a policy for an amount of Rs.8,50,000/- to protect its own interest over the loan amount and the policy was taken on its own accord without consulting the plaintiff firm. The plaintiff suffered loss of Rs.5,44,000/- towards damage to the plant and machinery including building Rs.4,37,000/- loss of Rs.45,000/- towards non-functioning of the mill during the period from 14.05.1995 to 30.06.1995 and loss caused to the groundnut stock due to the non-functioning of the mill is Rs.36,000/- along with the interest paid to the creditors at the rate of Rs.6,000/- and therefore the plaintiff filed the present suit for recovery of the aforesaid amounts.

7. The defendant in his written statement denied the contentions and submitted that the person who signed the plaint is not competent. Initially the surveyor was appointed to

conduct survey but he did not consider the following aspects while submitting the report:

- a) The policy issued is a fire-C with F.S.T. extension and the policy was not issued on re-instatement value clause. The surveyor has not applied the relevant depreciations and considered the loss on replacement value contrary to the agreed conditions of the policy.
- b) The surveyor has not given the dimensions of the building in the Mill premises and has not worked out the total value of the buildings. From the lay out planned it is noticed that total plinth area as per the dimensions of the different worked out at around 611 sq. meters. As such the total value is more than the value declared by the plaintiff on which basis the premium was calculated and collected. If the correct calculations are made there is an under insurance.
- c) Similarly the surveyor's assessment in case of under-insurance of the machinery does not give the details of all the machineries with reference to the same insured.

and as such another surveyor was appointed to assess the loss afresh and accordingly joint survey was conducted by both the surveyors. In the joint survey the repairs done to the plaintiff firm was also considered and the loss was rightly assessed for

an amount of Rs.30,368/- and thus the defendant company offered the said amount and stated that they are ready and willing to release the said amount on submission of the vouchers by the plaintiff. The defendant also stated that there is an arbitration clause in the policy and as such suit is not maintainable and moreover suit is to be filed in a Court having jurisdiction where the regional office is located and thus the Court has no territorial jurisdiction and further stated that the Court has no jurisdiction to award interest on unliquidated damages.

8. The plaintiff examined himself as P.W.1 and also examined the mechanic, mason, gumatha, hamali and an independent witness as P.Ws.2 to 6 on his behalf. He filed Exs.A1 to A19. The Branch Manager of the defendant company was examined as D.W.1 and he examined the first surveyor as D.W.2 and marked Exs.B1 to B6.

9. The plaintiff firm was registered by Registrar of the firms on 27.06.1991 and filed the Xerox copy of the acknowledgment dated 12.04.1996 and it clearly shows that the plaintiff is a registered partnership firm. They also filed the newspaper under Ex.A1 dated 16.05.1995 to prove the heavy gales in Miryalaguda

town on 14.05.1995 but the insurance company insisted the plaintiff to obtain a certified copy from the Metrological Department after conducting of the survey at a later date only to harass the plaintiff. The letter was also addressed under Ex.A6 on 26.07.1995 and when he approached the concerned office they stated that the barrow meter was taken away by somebody and they noticed it only on 06.05.1995 and to that effect they gave certificate. When there were no gales on 14.05.1995, the defendant would not have appointed the surveyor D.W.2 to proceed to the spot and estimate the damages. The Branch Manager in his evidence deposed that there was under insurance of the policy and as such in the event of loss the company pays rateable proportion of loss and as such they appointed a joint surveyor and rightly assessed the compensation as Rs.30,368/-. He also admitted that they have not filed the discrepancies found by the surveyors in the report of the D.W.2. D.W.2 in his evidence stated that he considered partial under insurance in respect of plant and machinery in his report Ex.B2 and the loss and damage assessed by him is correct. The joint surveyor has not collected the copy of the policy before proceeding to the plaintiff firm and he has not even collected the same from the head office before preparing the

report. In fact the said surveyor visited the places of damage for several times and submitted his report and that no report was reversed or required any joint survey. In this case only the defendant company wanted to have joint survey for the reasons best known to it. The photographs of the damaged plant and machinery were taken by the surveyor-D.W.2 and in his report he clearly stated that damage was caused to the machinery, walls, roofs etc., and the roof collapsed and the debris were lying throughout the plant and machinery and hence it is necessary to change some of the equipment of the machinery but the joint surveyor in his report stated that the damaged items can be replaced with minor repairs and gave report under Ex.P3.

10. The trial Court considering the entire evidence on record rightly arrived to the conclusion that the plaintiff is entitled to compensation of Rs.3,12,410/- as assessed by D.W.2 in his first survey report and granted the amount along with interest and it was also stated that the amount assessed by the surveyor is not disputed by the plaintiff firm and as such the matter cannot be referred to the arbitrator and the plaintiff rightly filed suit before the civil Court. It was also observed by the trial Court that if there are any irregularities in the procedural aspects by the

surveyors of the defendant company, P.W.1 cannot be penalised. Moreover, the defendant did not opt for any arbitrator and as such the plaintiff rightly approached the civil Court for redressal. The counsel for the insurance company would submit that the plaintiff is entitled for compensation at Rs.30,000/- and odd as per Ex.B3. The trial Court after analysing the entire evidence on record rightly arrived to the conclusion for grant of compensation to an extent of Rs.3,12,410/- and there is no infirmity in the judgment of the trial Court. Therefore, this Court finds no reason to interfere with the judgment of the trial Court.

11. In the result, the appeal merits no consideration and is dismissed with costs confirming the judgment of the trial Court.

12. Miscellaneous Petitions, if any, pending in this revision shall stand dismissed in the light of this final order.

P.SREE SUDHA, J.

22nd NOVEMBER, 2022.

PGS