BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.1202 of 2004

1.Sankaralingam Pillai(Died) ...Appellants/ 1st Respondent/ Plaintiff

2.Kannammal
3.K.Radha
4.A.Ranji
5.K.Kailasam
6.K.Chitra
7.K.Radha
(Appellants 2 to 7 are brought on record as the LRs of the deceased sole appellant vide Court order dated 03.01.2017 in C.M.PNo.4900/05)

-Vs-

1.The National Insurance Company Limited,
through its Registered Office,
No.1, Midland Street,
Calcutta.

2.The Divisional Manager,
National Insurance Company Limited,

Tuticorin.

3.The Branch Manager,
National Insurance Company Limited,
Tuticorin. ...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 15.04.2002 passed in A.S.No.206 of 2001 by the Principal District Judge, Tuticorin, in reversing the judgment and decree, dated 22.09.2000 passed in O.S.No.166 of 1999 by the Principal District Munsif, Tuticorin,.

For Appellants : Mr.R.Rajaraman
For Respondents : No appearance
:

J U D G M E N T

Being aggrieved by the judgment and decree, dated 15/04/2002 passed in A.S.No.26 of 2001 by the Principal District Court, Thoothukudi, the plaintiff has preferred the second appeal.

2.Parties are indicated as per their litigative status and ranking referred before the trial Court.

3.The appellant/plaintiff filed a suit in O.S.No.166 of 1999 before the Principal District Munsif Court, Tuticorin, for declaration to declare that the Indemnity bond executed by him is not valid, unlawful and illegal and for costs.

4.According to the plaintiff, he is carrying on business at Tuticorin in exporting country drugs, such as Kandankathiri, Kannupillai and other country drugs. He used to procure those country drugs in and around Tuticorin and used to store them in the godown at Tuticorin, in order to export the same. For the said purpose, he has constructed a godown with asbestos sheets and bamboo mats. The plaintiff had obtained insurance policy in respect of the drugs against the loss of said drugs due to fire or other contingencies from the Tuticorin National Insurance Company

Branch. The Policy Number is 501205/11/31/96/005. During the subsistence of the Insurance Policy, the plaintiff suffered damages of the goods, because of the mischief arose out of the communal clash and fire at Tuticorin on 12.05.1996. Because of the communal clash his goods viz., country drugs stored in his godown burnt and he sustained loss to the tune of Rs.7,81,000/-. He gave an application to the Branch Office at Tuticorin to indemnify his loss of Rs.7,81,000/-. The Insurance Company assessed the loss at Rs.1,38,206/- only. He was informed that he had to execute an indemnity bond. Because the payment was delayed by the Insurance Company stating that the said amount would not be paid unless he executed an indemnity bond. Therefore, he executed the indemnity bond under coercion and he received an amount of Rs.1,38,206/- only. He has studied upto 7th standard. The plaintiff further states that he had applied to the Tamil Nadu Government seeking for damages caused to the country drugs kept in the godown during the communal riot. He never agreed to the terms. He is not aware of any such terms found in the indemnity bond that if he happened to receive compensation from the Government, he has to repay the money paid by the Insurance Company. Therefore, the said clause in the indemnity bond is against law and illegal and it is not enforceable. Hence, this suit.

5.Counteracting to the plaint details, the third defendant/the Insurance Company Branch Office would claim that besides admitting the Insurance policy taken by the plaintiff and the fact that the plaintiff suffered damages on account of the communal clashes and his godown was set fire by the rioters. The goods were insured for a sum of Rs.2,40,000/-. Rs.40,000/- for building and Rs. 2,00,000/- for the stock of drugs. After the receipt of the plaintiff's claim, the plaintiff's loss was assessed by the surveyor and it was quantified as Rs.1,38,206/-. In the meanwhile, the plaintiff had also made a claim before the Commission of Enquiry, which was appointed by the Government to enquire into the clashes and to ascertain the damages sustained by the individuals. The plaintiff had claimed their entire amount of Rs.7,80,000/- and on the completion of enquiry, the Commission recommended for the payment of compensation to the plaintiff. It was further claimed by the third defendant that the plaintiff can receive compensation for having sustained loss only once. The plaintiff is not entitled to claim damages from two sides, one from the Insurance Company and another from the Government. That necessitated the defendants to execute the indemnity bond, on 25.02.1998 and it was denied that the plaintiff executed an indemnity bond out of coercion and fear. The plaintiff signed the indemnity bond being fully aware of the contents. The indemnity bond executed by the plaintiff is a valid one and the plaintiff is bound by the said indemnity bond.

6.Based on the rival pleadings, the trial Court framed the following issues:

(1)Whether the plaintiff is entitled for the relief of declaration for the Policy No.501205/11/13/3100366 indemnity bond obtained by the defendant is not valid.

(2)To what other relief the plaintiff is entitled.

7.At trial, the plaintiff has examined himself as P.W.1 and indemnity bond obtained by the third defendant from the plaintiff, dated 25.02.1998 is Ex.A1. On the defendants' side, Officer of the third defendant, Insurance Company, has examined as D.W1(Thiru.Nagarajan). Exs.B1 to B5 were marked.

8.The trial Court, after evaluating the evidence, observed that for the insurance policy taken, the plaintiff had paid the premium amount and as per the terms of contract, the defendants are bound to indemnify the plaintiff, whereas, the Government has come forward to pay the compensation under the flood, communal riots and natural calamity. The trial Court ultimately concluded that based on the terms of contract, the Insurance Company is bound to pay the amount. Therefore, right to receive the insurance amount cannot be controlled by the suit bond and the defendants failed to prove that the indemnity bond is a valid document and ultimately granted the relief of declaration as prayed for by the plaintiff.

9.Aggrieved, the third defendant, National Insurance Company, Tuticorin Branch, preferred an appeal through its Branch Manager, before the Principal District Court, Tuticorin, in A.S.No.26 of 2001.

10.The first appellate Court, after evaluating the evidence, observed that the Government is going to pay only for the loss reported to have been sustained by the claimants as recommended by the Commission. It was further observed that the State is bound to pay the amount and the first appellate Court had concluded that the plaintiff cannot be permitted to get undue enrichment by getting both the amounts or by retaining the amount received from the Insurance Company, even after getting the amount from the Government as compensation and the appeal was allowed.

11.On receipt of notice none of the respondents/defendants neither appeared nor through their counsel.

12.The learned counsel Mr.R.Rajaraman, appearing for the appellants/plaintiffs would vehemently contend that as per the terms of the policy, as the plaintiff sustained loss because of the communal riot, as the Insurance policy was in force, the plaintiff was paid an amount of Rs.1,38,206/- as assessed by the Insurance Company. At the time of making payment, the plaintiff was compelled to sign in the indemnity bond to the effect that if the plaintiff receives compensation from the Government, he has to repay the amount received from the Insurance Company, which is not valid in law. It is his further argument that the insurer is bound by the terms of the contract and as such, as one of the contingency happened, based on the report of the loss assessor, the plaintiff was indemnified to the tune of Rs.

1,38,206/-. He would further contend that at the time of making payment, the plaintiff was forced to sign the indemnity bond in order to receive the insurance amount. Hence, the indemnity bond cannot be held to be valid and tainted with coercion. He would also further contend that the claim of the plaintiff was well received by the trial Court and the suit was decreed as prayed for. The first appellate Court has gone to the extent stating that when a natural calamity occurred, the State is bound to make good the loss suffered by the people and on that score, the person, who sustained loss, would get compensation from the Government on the one side and if he has taken insurance policy, he has also received the amount from the Insurance Company, thereby he gets two payments, which is not permitted in law and on the wrong indication allowed the appeal by dismissing the suit.

13.To buttress his arguments, the following judgment was referred to:

The Oriental Insurance Company Ltd.-Vs- Captain Ram Moorjani, reported in ***1999(2)ALL MR 608***, wherein the Bombay High Court in a case where the defendant a Pilot for Air India declared medically unfit due to coronoary artery disease, at the time of settlement of insurance claim, the insurance company asked for execution of indemnity bond to the effect that in case the defendant regained his flying license he will repay the insurance amount and it was held that such agreement had no statutory or contractual basis and was held to be executed under undue influence.

14.Heard the argument of the learned counsel Mr.R.Rajaraman, appearing for the appellant/plaintiff and perused the materials available on record.

15.Succinctly stated the facts are: the plaintiff, who had paid premium for the insurance policy taken from the third defendant/ Insurance Company and because of the communal riot, the country drugs, which were kept in the godown got burnt and the plaintiff sustained huge loss to the tune of Rs.7,80,000/- and he applied to the insurer to indemnify him. As a routine affair, the insurance Company responded to the claim of the plaintiff based on the report of loss assessor and paid an amount of Rs.1,38,206/- and the amount insured is Rs.2,40,000/-.

16.Based on the aforesaid submission, the following substantial questions of law arise for consideration:

> *(1)Whether the lower appellate Court is right in law in constructing the concept of undue enrichment while the plaintiff has received the compensation under the Insurance Policy?*
>
> *(2)Whether the lower appellate Court right in law in thinking that Ex.A6, the alleged Indemnity Bond is a valid document, binding on the appellant herein, in the absence of any clause in the contract of insurance entitling the respondents to the execution of an indemnity bond?*

17.The grievance of the plaintiff is that at the time of honouring his claim, he being illiterate, he was forced to execute an indemnity bond to the effect that if the Government pays compensation to the plaintiff, he has to repay the insurance amount received by him and the said indemnity bond is to be declared as invalid as his illiteracy was misused and out of his ignorance, he was forced to sign the indemnity bond which is not valid in the eye of law.

18.From the perusal of the pleadings as well as the evidence of P.W.1, it appears that the Insurance amount of Rs. 1,38,206/- was paid to the plaintiff and besides Ex.A1/indemnity bond was obtained by the Insurance Company. The stand of the Insurance Company is that on the one side, for the loss sustained by him he has received the insurance claim and on the other side, if at all the Government pays compensation to him, he is not permitted to receive dual payment and thereby, he was expected to return the amount paid by him from the insurer.

19.Such an indemnity bond/Ex.A1 is valid in law is the core question. As regards the coercion, Section 16 of the Indian Contract Act, deals with undue influence. In its application to contract the transaction which are procured as stated in Section 16 of the Indian Contract Act or to be treated as the contract is tainted by the exercise of undue influence.

20.Section 16 of the Indian Contract Act, 1872, is extracted hereunder:

> ***Undue influence-***. *(1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.*
>
> *(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—*

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

21.Originally, the doctrine of indue influence is a common law principle, which was evolved by the Courts of England for the purpose of granting protection against the transactions procured by the exercise of insidious forms of influence. This doctrine applies to acts of bounty and also to the other transactions in which, one party exercising his possession of dominance, thereby obtained an unfair advantage over the another.

22.The Sub-Section(1) of Section 16 of Indian Contract Act, lays down the principle as to what amounts to undue influence. Sub-Section(2) of Section 16, lays down under what circumstances presumption arise is explained. The condition for raising a rebuttable presumption that the transaction if it is procured by the exercise of undue influence, if a person is in a position to dominate the will of another based on the evidence adduced appears to be unconscionable. The burden of proving that the transaction was not induced by undue influence lies upon the person, who is in a position to dominate the will of other.

23.It is the evidence of P.W.1 that he was an illiterate and he was informed that if he does not execute the indemnity bond in question, he would not be paid the insurance amount and thereby, he was coerced. Whereas D.W.1/Insurance Officer has not admitted the contention of the plaintiff and it was his evidence that based on the insurance policy, he was paid the amount of Rs.1,38,206/- if he is paid compensation by the Government for the same loss in order to prevent the same, it necessitated the Insurance Company to procure the indemnity bond viz., Ex.A1, which is perfectly valid in the eye of law, as any person is not entitled for undue enrichment.

24.No doubt, the Insurance is a form of contract, which is governed by the terms of agreement. I am not convinced with the argument of the learned counsel for the appellant to the effect that Ex.A1 is procured under coercion from the plaintiff. Because if the stand taken by the plaintiff is accepted, then the contract entered into between the literate and illiterate would face the same problem.

25.Admittedly, the plaintiff has suffered loss due to communal riot that had taken place in Tuticorin where the country drugs stored in the godown was burnt due to fire. Of course, as per the liability clause, the plaintiff was paid an amount of Rs.1,38,206/- and the policy was taken for an amount of Rs.2,40,000/-. Now the question is, the indemnity bond procured by the third defendant from the plaintiff is valid or not. As per the terms of the contract, the third defendant/ Insurance Company, indemnified the plaintiff. Thereafter, the third defendant/Insurance company without any basis has obtained the indemnity bond. There is no consideration for the contract. Of course, if the plaintiff receives compensation from the Government based on its policy, admittedly, he would get payment once again. At the best, there can be a procedure in such cases, the Insurance Company may send a intimation to the Government on payment of Insurance claim. It is for the Government to take a call on that to pay the compensation considering the fact that the plaintiff has already received the amount. To put it otherwise, if the Government comes to the conclusion that, over and above the amount of insurance claim if the plaintiff has sustained loss accordingly, the compensation amount may be calculated and paid to him. Indemnity bond procured by the third defendant stating that he needs to repay the amount received from the insurance company, if he happens to receive the compensation from the Government is not sustainable in the eye of law and baseless and ultimately, the first appellate Court has given a wrong finding by holding that obtaining indemnity bond by the third defendant/Insurance Company is valid.

26.Based on the aforesaid discussion, the substantial questions of law are answered accordingly and the judgment and decree passed by the Principal District Court, Thoothukudi, in A.S.No.26 of 2001 are set aside. The suit in O.S.No.166 of 1999 is decreed. The second appeal stands allowed. No costs.

29.**11.2023**

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

1.The Principal District Munsif,
Tuticorin.

2.The Principal District Judge,
Tuticorin.

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

R. KALAIMATHI,J.

Ns

S.A.No.1202 of 2004

29.11.2023