



S.A.No.206 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	22.09.2025
<i>Pronounced on</i>	28.11.2025

Coram:

The Honourable Mrs. Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.206 of 2023

L.Kamal Batcha (died)
Proprietor National Pharma Hospital
& Research Institute, Thanjavur.

- 1.Mohammed Sara
- 2.Ayesha Raja
- 3.Najima
- 4.Dr.K.Mujibur Rahman M.D.
- 5.Dr.Mohammed Ali M.D

..Appellants

versus

1.Fuji Films India Private Limited,
A Company registered under the
Companies Act and represented
by its Senior Executive, Customer
Support, Medical division.

2.M/s.Ultra Globe Systems,
Represented by its Maintenance
Manager.

.. Respondents



S.A.No.206 of 2023

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Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the decree and judgement dated 07.09.2022 made in A.S.No.35 of 2021 on the file of the learned XV Additional Judgment Judge, City Civil Court, Chennai, confirming the judgment and decree dated 11.12.2019 made in O.S. No. 4893 of 2017 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.J.Raja Kalifulla, Senior Advocate
for Mr. J.Jayendrkrishnan
For Respondents : Ms.Thangavadhana Balakrishnan
for R1 and R2

JUDGMENT

The above second appeal arises out of the judgment and decree dated 07.09.2022 made in A.S.No.35 of 2021 on the file of the learned XV Additional Judgment Judge, City Civil Court, Chennai, confirming the judgment and decree dated 11.12.2019 made in O.S. No. 4893 of 2017 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai.



S.A.No.206 of 2023

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2.The appellants are the legal heirs of the deceased original plaintiff.

The suit in O.S.No.4893 of 2017 was filed by the original plaintiff Kamal Batcha before XIV Assistant Judge, City Civil Court, Chennai.

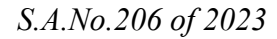
3.According to the deceased plaintiff, he was running a super speciality hospital in Tanjavur, under the name and style M/s.National Pharma Hospital and Research Institute, offering Superior health services to the public. In the course of his business an order was placed for purchasing one Fuji-X-ray CR machine model No.CR-IR 392 on 07.10.2014 vide purchase order NPH-R1-2014-2015 dated 07.10.2014, in pursuant to the 2nd defendant invoice in their reference UGS/NDK/FUJI/NPH & RI dated 07.10.2014 for Rs.5,25,000/-. The X-ray machine was installed by the 2nd defendant in the hospital premises on 28.10.2014. At the time of supplying the machine the 2nd defendant in the supporting documents had stated that the machine is covered by full warranty for a period of two years from the date of installation. The plaintiff has paid the entire cost for the X-ray machine and the accessories. While so, the X-ray machine suffered a snag



S.A.No.206 of 2023

WEB COPY

and did not work from 28.10.2015. In view of the warranty clause, the plaintiff sent an e-mail on 29.10.2015 and a letter to the defendants calling them to attend the defect. The 2nd defendant's technical staff from M/s.Vivid Health Care inspected the machine on 31.10.2015 and informed the plaintiff that repairs will be carried out immediately after getting the spare parts from their office. While so, the defendants in order to get over their latches forwarded email dated 04.11.2015 stating that the system failed because of electrical surges due to lightning and as per defendant's policy, the repair and replacement will not come under the warranty clause. But, there is no such reference in the defendant's field service report dated 31.10.2015 nor was there any electrical surges as alleged. After 31.10.2015 there was no inspection, either by the defendant's service personal or by any expert electrician. Without any expert opinion the defendant's have arrived at the said conclusion. The entire hospital premises is installed with lightning arrestor system and surge protector and servo stabilizer to protect against any electrical mishap. Hence, the chances of electrical damage due to lightning is completely ruled out. The plaintiff sent a detailed letter to the



4. On the other hand, the defendants resisted the claim of the plaintiff
g that the grievance of the plaintiff was immediately attended by
Vivid Health Services on the same day i.e., on 29.10.2015 which is



S.A.No.206 of 2023

WEB COPY

evident by the legal notice sent by the plaintiff. It is further submitted that the machine was delivered to one Vignesh, the Manager in the Plaintiff's hospital, who received all papers regarding the terms and conditions of the 2nd defendant with regard to the delivery of the machine. Therefore, the contention of the plaintiff that sufficient documents were not produced by the defendant is incorrect. It is submitted that the plaintiff failed to prove that the damage incurred was due to manufacturing defect to cover the warranty and that the warranty will not be applicable to power abnormalities like lightning strikes and improper grounding etc. the plaintiff failed to prove that the damage occurred due to manufacturing defect. It is further submitted that if it had been a manufacturing defect, it would not have been reflected in all the three machines supplied to the plaintiff's hospital and only due to high voltage supply occurred due to lightning simultaneously caused damages to all the three machines. Hence, prayed for dismissal of the suit.



S.A.No.206 of 2023

WEB COPY

5.The suit was dismissed by the trial Court. After disposal of the suit the plaintiff Kamal Batcha died. His legal heirs preferred the appeal suit in A.S.No.35 of 2021 before the XV Additional Judge, City Civil Court, Chennai. The first Appellate Court dismissed the appeal suit on 07.09.2022. Aggrieved by this, the above second appeal is filed.

6.At the time of admission, the following substantial questions of law were formulated for decision in the second appeal:

i. Were not the Courts below in error in construing vis major event as affecting the machinery supplied by the respondents when the respondents did not prove their defence?

ii. Were not the Courts below in error in establishing a nexus between the vis major events with a damage to certain machineries supplied by the respondents without any proof of the same?

Iii. Whether the Courts below are right in rejecting the claim for damages when the appellants/plaintiffs have established a delay of 28 days in repairing and restoring the X-Ray machine?



S.A.No.206 of 2023

WEB COPY

7.The learned counsel for the appellants would submit that there was inordinate and unexplained delay from the date of reporting on 29.10.2015 and date of inspection of the equipment on 31.10.2015 and the date when the repairs were carried out. In spite of repeated request and frequent reminders the quotation for spare parts was given only on 16.11.2015, which caused great hardship and financial loss to the plaintiff in running the hospital. He would further submit that the invoice of the defendants clearly provides, two years warranty for the above system. Moreover, the plaintiff is not bound by the defendants' self proclaimed policy and the defendants are bound by the warranty clause. The person from M/s. Vivid Health Care service agent of the defendants who inspected the damaged X-ray machine, gave a report under Ex.A.9 and in the inspection report marked as Ex.A5, there is no reference to lightning. Moreover, no expert examined the machine. While so, the defendants have come to the conclusion that the damage was caused due to lightning is unsustainable. The inspection report is based on mere assumption and presumption without obtaining any expert



S.A.No.206 of 2023

opinion. In the absence of any expert opinion, the findings of the Courts below that the damage caused to the X-ray machine was due to lightning is erroneous. The learned counsel relying on the judgment in ***Modern Insulators Ltd., vs. Oriental Co. Ltd.***, reported in (2000) 2 SCC 734 would submit that the insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material fact in their knowledge since the obligation of good faith applies to both equally. The learned counsel further referred to the judgment in ***Texmo Marketing Private Limited vs. Tata AIG General Insurance Co. Limited & Others*** reported in (2023) 1 SCC 428 and submitted that an exclusion clause in a contract of insurance has to be interpreted differently. Not only the onus but also the burden lies with the insurer when reliance is placed on such a clause. Therefore, the insurance contract by its very nature mandates disclosure of all material facts by both the parties, which in the present case was not done by the defendants. He would further submit that though an endeavour has been made on the side of the defendants that there has been lightning on the date of accident and the same is denied by the plaintiff, the

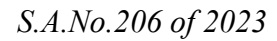


S.A.No.206 of 2023

WEB COPY

defendants ought to have examined a competent person from the Meteorological Department to speak about the alleged occurrence of lightning on the fateful day. To Support his contention, he has relied upon the judgment in the *Union of India & Another Vs. Bertine Jeanne Marie and 4 others* reported in *2010 SCC Online Madras 5656*. He would submit that even assuming that on the date of accident there was heavy rain and lightning, there is no independent evidence to show that only because of heavy rain and lightning, damage was caused to the machine. While so, the trial Court and the first Appellate Court erroneously dismissed the suit filed by the plaintiff which warrants interference by this Court.

8.On the other hand, the learned counsel for the respondents would submit that the Courts below have dismissed the suit and appeal on merits which calls for any interference by this Court. He would submit that the grievance of the plaintiff's was immediately attended by M/S.Vivid Health Services on the same day which was also admitted by the plaintiffs in his legal notice marked as Ex.A31. The machine was delivered to the Manager



11



S.A.No.206 of 2023

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claim is made for the death of a person due to collapse of a bus stand which is not applicable to the facts and circumstances of the present case. In the present case the damage was caused by high Voltage electricity passage through ethernet cable which could solely be caused only due to poor maintenance and handling of the machine by the plaintiff without proper stabilization of electricity or by lightning. He would further submit that the terms and conditions was duly handed over to the plaintiff's staff Vignesh at the time of delivering the machine and therefore, the authorities relied upon by the plaintiff, that all papers regarding terms and conditions ought to have been submitted by the defendants is not applicable to the facts of the present case. The plaintiff being well aware of the terms and conditions of the sale has approached the Court claiming damages by suppressing the terms and conditions issued by the defendants which had clearly stated that only manufacturing defects would be covered by warranty, is not entitled for the reliefs claimed in the suit. Hence, prayed for dismissal of the second appeal.

9.Heard on both sides and records perused.



S.A.No.206 of 2023

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10.First and foremost contention of the plaintiff is that as per the warranty clause in the invoice, the defendants are bound to bear the cost of repair and replacement of the parts and thus the plaintiff is not liable to pay any amount. Whereas, the contention of the defendants is that only the manufacturing defects is covered under warranty and that the documents submitted at the time of delivering the machine, to the plaintiff's staff Vignesh, the terms and conditions of warranty is clearly stipulated. Though, it is contended on the side of the plaintiff no such terms and conditions were submitted to the plaintiff at the time of delivering the machine, the plaintiff failed to examine the said Vignesh to speak about the receipt of the machine and the documents. He is alone competent to speak about the above facts. Therefore, the contention of the deceased plaintiff, being the proprietor of the Hospital and Research Institute that the machine was delivered with only two papers cannot be accepted.

11.Moreover, standard manufacturer warranties typically cover only manufacturing defects and problems arising from faulty materials or workmanship under normal use conditions. They generally do not cover



S.A.No.206 of 2023

damage from external factors, misuse, or normal wear and tear. A manufacturer's warranty is designed to ensure the product functions as intended due to the quality of its production. Warranties have specific exclusions, which commonly include accidental damage, misuse or abuse of the product, normal wear and tear, external environmental factors. For coverage beyond manufacturing defects, consumers can often purchase separate extended warranties or protection plans. It is always important to carefully read the specific terms and conditions of the products warranty to understand exactly what is covered. Upon perusal of the proforma invoice of the 2nd defendant marked as Ex.A3, it is simply stated that two years warranty for the above systems. The defendants would contend that the delivery of machines was done by it as per the terms and conditions of the contract and that the damage was caused only due to heavy rain and lightning and that there is no manufacturing defect to cover the warranty. While so, the burden is on the plaintiff to establish that the said damages was not due to any external factors and that it was a manufacturing defect. The suit being filed by the plaintiff, the onus of proving falls on the plaintiff



S.A.No.206 of 2023

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and not on the defendant. Therefore, the contention of the learned counsel for the appellants/plaintiffs that the respondents failed to prove that there was heavy rain and lightening on 08.10.2015 is unsustainable and the facts in the cited case *[2010 SCC Online 5656]* by the appellants/plaintiffs is not similar to the facts of the case on hand. In the cited case, the claim was due to collapse of a bus stand. The other authorities cited on the side of the appellants/plaintiffs *[(2002) 2 SCC 734; 2023 1 SCC 428]* are with regard to the insurers responsibility to disclose everything to the insured while signing contract. In the present case, the terms and conditions was handed over to the appellants' staff. This fact is not disproved by the appellants/plaintiffs. Moreover, it is the specific contention of the respondents that, they took immediate steps for replacement of the damaged parts, and that they have duly performed their duty and done their best to satisfy the appellants' Hospital. The learned counsel for the respondents would submit that Ex.A5, would establish the same, in which the plaintiffs have clearly stated about the high voltage passed through ethernet and date of inspection as 29.10.2015. The appellants/plaintiffs failed to prove their



S.A.No.206 of 2023

WEB COPY

case and justify their claim. Therefore, the Courts below have rightly dismissed the suit against the plaintiff, which warrants any interference by this Court. All the substantial questions of law are answered against the appellants/plaintiffs.

12.In the result,

(i) this second appeal stands dismissed. No costs.

(ii) the judgment and decree dated 07.09.2022 made in A.S.No.35 of 2021 on the file of the learned XV Additional Judgment Judge, City Civil Court, Chennai, confirming the judgment and decree dated 11.12.2019 made in O.S. No. 4893 of 2017 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai is upheld.

28.11.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order



S.A.No.206 of 2023

To

- 1.The XV Additional Judgment Judge, City Civil Court, Chennai,
- 2.The XIV Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court, Madras



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S.A.No.206 of 2023

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery judgment made in
Second Appeal No.206 of 2023**

28.11.2025