HIGH COURT OF ANDHRA PRADESH

Date of Decision: June 25, 2024

Bench: Justice Venuthurumalli Gopala Krishna Rao

FIRST APPEAL NO: 813/2002

APPELLANT(S):

The Oriental Insurance Co. Ltd. & Another, Rep. by Divisional Manager/Authorised Signatory, Tanuku, Tanuku DMC

The Oriental Insurance Co. Ltd., Rep. by Branch Manager/Authorised Signatory, Near Deepak Lodge, Gudivada, Tanuku DMC

VERSUS

RESPONDENT:

M/S Tamanna Kameswara Rao, Prop. T. Rajarao, S/o Kameswara Rao, R/o Peda Veedhi, Bantumilli Road, Gudivada, GDMC

Legislation:

Section 151 of the Code of Civil Procedure, 1908 (CPC)

Subject: Appeal against the judgment and decree in O.S.No.52 of 1991 concerning a claim for recovery of insurance amount due to damages caused by a cyclone.

Headnotes:

Insurance Claim – Cyclone Damage – Appellants challenged the judgment awarding the respondent compensation for cyclone damage to stock insured under their policy – Trial Court had partially decreed the suit for Rs.1,01,091/- with 6% interest – Appellants argued damages should exclude verandah-stored stock not covered by policy and questioned privity of contract for interest – High Court upheld trial Court's findings, confirming insured damages and interest award [Paras 1-19].

Policy Coverage – Arbitration Clause – Dispute on policy's arbitration clause raised late at trial stage, not argued in appeal – Court found suit maintainable and arbitration clause non-restrictive for civil suit proceedings [Para 15].

Assessment of Damages – Court acknowledged surveyor's report estimating damages in mill area and verandah – Defendants failed to disprove surveyor's assessment or show policy exclusions – High Court affirmed trial Court's reliance on surveyor's report and granted damages accordingly [Paras 13-17].

Interest on Damages – Privity of Contract – Court rejected appellants' argument on lack of contract for interest – Trial Court's award of 6% interest from suit filing date upheld as reasonable and justifiable [Paras 18-19].

Decision – Appeal Dismissed – Judgment and decree of the trial Court affirmed – High Court upheld damages and interest awarded – Each party to bear their own costs [Para 19].

Referred Cases: None.

Representing Advocates:

For Appellant(s): S. Agastya Sharma

For Respondent(s): T. Lalith (Representing Turaga Sai Surya)

Order

The Court made the following:

This appeal is filed against the judgment and decree, dated 31-12-2001, in O.S.No.52 of 1991, passed by the learned Senior Civil Judge, Gudivada. The appellants are defendants 1 and 2 and the respondent is the plaintiff in the said suit.

2. For the sake of convenience, the parties herein will be referred to as arrayed before the trial Court.

3. The plaintiff in O.S.No.52 of 1991 before the trial Court filed the plaint with a prayer for recovery of Rs.1,28,025/- including Rs.12,025/- as interest at 12% per annum on Rs.1,16,000/- from 12-6-1990 to 23-4-1991 as damages of the property insured.

4. The brief averments in the plaint filed by the plaintiff are as follows: It is pleaded that the stock of paddy rice, broken rice, bran and gunny bags stored and kept lying in the rice mill premises of the plaintiff was insured by the 2nd defendant for Rs.4,00,000/- on 01-12-1989, covering additional risk of cyclone till 30-11-1990 and premium was paid to the agent of the defendants. On 09-5-1990, there was a cyclone and the defendants' surveyor estimated the damages at Rs.1,16,000/- and as the defendants offered to pay only a sum of Rs.28,053/-, the plaintiff refused to receive the same and filed the suit.

5. The brief averments in the written statement filed by the 2nd defendant, which was adopted by the 1st defendant, are as follows:

It is stated that there is an arbitration clause in the policy, that the plaintiff stored some stocks in the mill area and also in the verandah of the said rice mill, that the surveyor separately assessed the loss of property in the mill area at Rs.59,586/- and assessed the damages to the paddy etc., kept in the verandah at Rs.51,505/-, that the stock in verandah of the rice mill was not covered by the policy and rain water entered into the rice mill through ventilators without there being any damage to the ventilators or roof sheets and thus causing damage to the goods would not fall within the purview of the policy and that as a special case, they offered the plaintiff Rs.28,053/- and the plaintiff is not entitled to claim interest.

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

(1) Whether the plaintiff is entitled to claim damages ? If so, to what extent ?

(2) Whether the suit is not maintainable as there is non-compliance of the arbitration clause of the agreement between the parties ? and

(3) To what relief ?

7. During the course of trial, on behalf of the plaintiff, P.Ws.1 to 4 are examined and Exs.A-1 to A-14 are marked. On behalf of the defendants, D.W.1 is examined and Exs.B-1 to B-4 are marked.

8. After completion of the trial and hearing the arguments of both sides, the trial Court partly decreed the suit with proportionate costs for Rs.1,01,091/- with pending and future interest at 6% per annum on the above amount.

9. Heard Sri S. Agastya Sharma, learned counsel for the appellants and Sri T. Lalith, learned counsel representing Sri Turaga Sai Surya, learned counsel for the respondent.

10. The learned counsel for appellants would contend that though the surveyor specifically assessed loss of property in the mill area amounting to Rs.59,586/-, which is covered by the insurance policy, the trial Court granted more amount towards damages. He would further contend that the

finding of the trial Court that the plaintiff is entitled to claim damages as per the report of the surveyor deputed by the defendants themselves is contrary to law. The learned counsel for appellants further contend that there is no privity of contract for payment of interest on quantum of damages, but the trial Court granted interest at the rate of 6% per annum on the amount of Rs.1,01,091/- from the date of suit till the date of realization. He would further contend that the appeal may be allowed by setting aside the judgment and decree passed by the trial Court.

11. Per contra, the learned counsel for respondent would contend that on appreciation of the entire evidence on record, the learned trial Judge rightly decreed the suit and there is no need to interfere with the finding given by the learned trial Judge.

12. Now, the points for determination are:

(1) Whether the trial Court is justified in decreeing the suit for an amount of Rs.1,01,091/- against the defendants ? and

(2) To what extent ?

13. **Point No.1**:- Whether the trial Court is justified in decreeing the suit for an amount of Rs.1,01,091/- against the defendants ?

The case of the plaintiff is that the stock of paddy rice, broken rice, bran and gunny bags stored in the rice mill premises of the plaintiff, which were insured by the plaintiff with the 2nd defendant for an amount of Rs.4,00,000/- on 01-12-1989 covering additional risk of cyclone till 30-11-1990, the plaintiff also paid a premium to the defendants and the 2nd defendant issued a policy to that effect. The plaintiff further pleaded that on 09-5-1990, there was a cyclone and due to the said cyclone and heavy rains, the property of the plaintiff which was insured with the 2nd defendant was badly damaged and a surveyor was deputed by the 2nd defendant and he estimated the loss caused to the plaintiff and given a survey report to the defendants by assessing the loss and that the plaintiff is entitled to the suit claim.

14. It is not in dispute by the defendants that the stock of paddy rice, broken rice, bran and gunny bags which were stored in the rice mill premises of the plaintiff was insured with the 2nd defendant by the plaintiff, to that extent a premium was also paid by the plaintiff. It is an admitted fact that there was a cyclone with heavy rains on 09-5-1990 in coastal districts of Andhra Pradesh, due to that a loss was occurred to the properties of several

general public in the coastal districts of Andhra Pradesh and due to the said cyclone, the property of the plaintiff which was insured with the 2nd defendant was also damaged. It is not in dispute that after damage of the property of the plaintiff which was insured with the 2nd defendant, a surveyor was deputed by the defendants to estimate the damage and the surveyor visited the rice mill premises of the plaintiff and estimated the loss.

15. The material on record reveals that the appellants herein argued at the stage of arguments before the trial Court after 10 years of institution of the suit and that there was an arbitration clause in the policy and that the civil suit is not at all maintainable. The trial Court after giving cogent reasons held that the civil suit is maintainable. It was not agitated before this appellate Court that there was an arbitration clause in the policy and that the civil suit is not at all maintainable.

16. As stated supra, the property i.e. paddy rice, broken rice, bran and gunny bags stored in the rice mill premises of the plaintiff was insured with the 2nd defendant by the plaintiff under a policy, the defendants also filed claim forms and policy. It is not at all disputed by the defendants that the property of the plaintiff was insured with the defendants and the said property was also damaged in the cyclone with heavy rains which was occurred on 09-5-1990. The above facts are not at all disputed by the defendants. It is an admitted fact that after the cyclone with heavy rains happened on 09-5-1990, after damage with the property of the plaintiff in the said cyclone, a surveyor was deputed by the defendants themselves to estimate the loss of stock kept in the mill area at Rs.59,586/- and the loss of stock placed in the verandah at Rs.51,505/-, in total the surveyor estimated the loss of Rs.1,11,091/- minus excess applicable in 2.5% on Rs.4,00,000/- or Rs.10,000/- = Rs.1,01,091/-. It is not in dispute that the defendants did not pay the said amount to the plaintiff. It was agitated by the defendants that as per the policy, the risk was treated by them as first class thereby meaning that the stock in the verandah should not be covered for the purpose of assessing the loss and that if the policy is of second class, the stock in the verandah should be considered for the purpose of assessing the loss. D.W.1, who is working as an Assistant in the 2nd defendant insurance company, clearly made an admission in his evidence itself that there was no mention about the first class or second class either in the cover note Ex.A-2 or in the policy Ex.A-3. The fact remains that the appellants did not place any material on record to show that the plaintiff

has to pay excess amount of more than Rs.1,729/- for the 2nd category. In order to prove the case of the plaintiff, the plaintiff also relied on Ex.A-1 lease deed and also Ex.A-2 receipt and Ex.A-3 original policy said to have been issued by the defendants. Ex.A-3 clearly goes to show that the policy extends to cover additional risk of flood and cyclone, the same is not at all in dispute by the defendants. It is a fact that no instructions were given by the defendants to the surveyor prior to the visit of rice mill premises of the plaintiff to assess the damages of the property in the mill area only and the property stored in the verandah premises cannot be assessed towards computation of damage.

17. The learned counsel for appellants would contend that as the water entered through the ventilators without there being any damage to the ventilators or roof sheets to the rice mill of the plaintiff, they are not liable to pay any damages. Ex.B-1 is the survey report, which goes to show that the roof CGI sheets of the rice mill got damaged in view of the cyclone happened on 09-5-1990 and the surveyor also observed that there was one sheet joint uprooted and saw lot of water marks on the walls indicating that due to cyclone conditions, lot of water seeped into the mill area. Nothing was produced by the defendants to show that they have estimated the loss of property at the rate of Rs.28,053/- or less than Rs.1,01,091/- as estimated by the surveyor. Therefore, the trial Court rightly granted an amount of Rs.1,01,091/- to the plaintiff towards damages.

18. The learned counsel for appellants would contend that there is no privity of contract for payment of interest on quantum of damages and no notice was issued prior to institution of the suit. The material on record reveals that on 24-4-1991 the plaintiff herein filed the suit for making a claim. Ex.A-4 goes to show that on 04-4-1991 the plaintiff addressed a letter to the 1st defendant after his property was damaged by narrating the entire facts. The same is not at all disputed by the defendants. Admittedly, there is no privity of contract for payment of interest on quantum of damages.
The plaintiff herein claimed interest from 12-6-1990 till the date of realization and he also claimed an amount of Rs.1,16,000/-. Admittedly, the suit is filed on 24-4-1991. The trial Court by giving cogent reasons granted an amount of Rs.1,01,091/- to the plaintiff and the interest of 6% per annum was granted from the date of institution of the suit till the date of realization. Therefore, I do not find any illegality in the judgment and decree passed by the learned

trial Judge. The judgment and decree passed by the trial Court is perfectly sustainable under law and it requires no interference.

19. **Point No.2**:- To what extent ?

Resultantly, the appeal is dismissed confirming the judgment and decree dated 31-12-2001 in O.S.No.52 of 1991 passed by the learned Senior Civil Judge, Gudivada. Pending applications, if any, shall stand closed. Considering the circumstances of the case, I order each party to bear their own costs in this appeal.