(2019) 02 DEL CK 0267

In the Delhi High Court

Case No : Regular First Appeal No. 132 Of 2019

Bajaj Allianz Genral Insurance Co Ltd — APPELLANT

Vs

Vijay Shah & Others — RESPONDENT

Date of Decision : 17-02-2019

Acts Referred:
Code Of Civil Procedure, 1908 — Section 96

Citation : (2019) 02 DEL CK 0267

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Neerja Sachdeva

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J

CM No. 7050/2019 (Exemption)

1. Exemption allowed subject to just exceptions. CM stands disposed of.

CM Nos. 7049/2019 (delay in filing) & 7052/2019 (delay in re-filing)

2. For the reasons stated in the applications, delays in filing and re-filing are condoned, subject to just exceptions.

CMs stand disposed of.

RFA No. 132/2019 & CM No. 7051/2019 (stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1/ insurance company in the suit impugning the Judgment of the trial court dated 29.01.2018 by which the trial court has decreed the suit filed by the plaintiff/insured for a sum of Rs. 7,64,440/- along with interest at 6% from the date of the decree till realization. The suit has been decreed on account of the insured goods having been lost during the course of transit/transportation, and during the currency period of the

insurance policy.

4. The facts of the case are that the respondent no. 1/plaintiff is carrying on business in the name and style of M/s Lucky Chemical Corporation. Respondent no. 1/plaintiff placed an order of supply of Industrial Solvent (Chemical) with the respondent no. 3/defendant no. 3. Respondent no. 3/Defendant no.3 supplied the material by raising Invoice No. 137 dated 16.05.2010 for a sum of Rs. 7,64,440/- and the material was given for transportation to respondent no. 2/ defendant no. 2/transporter. For the goods in question, and which were to be supplied by the respondent no. 3/defendant no. 3 from its premises at Bulandshehar in Uttar Pradesh to the premises of the respondent no. 1/plaintiff in Indore, an insurance policy bearing no. OG-11-2302-1005-00000012 was taken from the appellant/ defendant no.1 by making payment of the insurance premium of Rs. 13,236/- on 15.05.2010 in cash to the agent of the appellant/ defendant no. 1 namely, Mr. Mayur Pandiya. On the amount being paid in cash to the agent of the appellant/defendant no. 1 on 15.05.2010, the agent had executed the receipt for receiving of the insurance premium on the same date i.e. 15.05.2010. The appellant/defendant no. 1/insurance company by taking its own time on account of its own internal procedure, had issued the policy on 19.05.2010 for the period commencing from 18.05.2010 to 17.05.2011. The industrial solvent which was sold by the respondent no. 3/defendant no. 3 was transported through the transporter- respondent no. 2/defendant no. 2 under the GR No. 134 dated 16.05.2010. The journey of the transportation of the solvent was from Sikandrabad/Bulandshehar in Uttar Pradesh to Indore, Madhya Pradesh. After issuance of the insurance policy commencing from 18.05.2010, on 19.05.2010 the freight charges of Rs. 20,000/- were deposited through ICICI Bank in the account of the Tanker Broker, Mr. M. Ravinder Pratap Singh. Thereafter, the tanker moved to its destination i.e. to Indore. The respondent no. 3/ defendant no. 3 wrote a letter confirming that the tanker/vehicle was permitted to move at 7:30 PM on 19.05.2010. However, the tanker/vehicle never reached its destination. The respondent no. 1/plaintiff informed this factum to the transporter but no action was taken by the transporter and FIR No. 268/2010 was lodged at the Sikandrabad Police Station, however, neither the tanker nor the industrial solvent could be recovered. Respondent no. 1/plaintiff therefore lodged its claim with the appellant/defendant no. 1, but the appellant/defendant no. 1 refused to settle the claim despite the fact that the Investigation Report of its own Investigating Officer dated 03.09.2010 opined that the claim was genuine and should be paid.

5. The appellant/defendant no. 1 contested the suit and did not dispute the factum with respect to issuance of the policy having the validity period from 18.05.2010 to 17.05.2011. It was contended that the consignment had commenced its journey on 16.05.2010 at 2:40 PM from the premises of the respondent no. 3/defendant no. 3/seller. The appellant/defendant no. 1 denied that the respondent no. 1/plaintiff gave the payment of insurance premium in cash to the representative of the appellant/defendant no.1, Mr. Mayur Pandya on

15.05.2010. It was pleaded that the respondent no. 1/plaintiff got the insurance policy after the theft of the vehicle, and therefore, the claim was liable to be rejected.

6. The following issues were framed in the suit:

"1. Whether on the date of incident i.e. on 16.05.2010, there was any policy of defendant issued in favour of the plaintiff? OPP

2. Whether the plaintiff is entitled for the recovery of suit amount as prayed for? OPP

3. Whether the plaintiff is entitled for pendent-lite & future interest, as prayed for? OPP

4. Relief."

7. The documentary evidence proved by the parties is recorded in paras 7 and 8 of the impugned judgment, and these paras read as under:

"7. The plaintiff in order to establish its case examined himself as PW1 and tendered by way of affidavit as Ex.PW1/A and relied upon as follows:-

1. Copy of invoice dated 16.05.2010 is Ex.PW1/B.

2. Copy of insurance policy of the defendant no.1 is Ex.PW1/C (colly).

3. Copy of bill/receipt issued by the defendant no.3 is Ex.PW1/D.

4. Copy of intimation/acknowledgment regarding the advance payment of Rs. 20,000/- is Ex.PW1/E(colly).

5. Copy of letter issued by the defendant no. 3 is Ex.PW1/F.

6. Copy of letter sent to the defendant no. 2 is Ex.PW1/G.

7. Copy of FIR is Ex.PW1/H.

The plaintiff, thereafter, closed his evidence on 19.11.2015.

8. In defence, the defendant no.1 examined Ms. Yogita Sharma, Assistant Manager (Legal) who tendered evidence by way of affidavit Ex.DW1/A and also examined Sh. Habib Khan, proprietor of Galaxy Tracer & Recovery Consultants as DW2 who produced investigation report with respect to the vehicle no. UP-35H-3462, Policy no. OG-1-2302-1005-00000012, investigation report reference no. GTRC/2010-11/TRC/REP/14644 dated 03.09.2010 as Ex.DW2/1 (colly)."

8. The issue to be examined by this Court is that as to whether the loss was a during the currency of the policy i.e. whether the theft of the vehicle took place during the currency of the policy. In this regard, the trial court has rightly concluded that the vehicle and the goods therein, being the industrial solvent, were lost/stolen during currency of the policy. The trial court has noted that the

witness of the appellant/defendant no. 1, Ms. Yogita Sharma who deposed as DW-1, admitted that the premium of Rs. 13,237/- was received in cash, and the same was deposited with the appellant/defendant no. 1, and only thereafter, the policy was issued. The trial court also notes that the investigator of the appellant/ defendant no. 1 who deposed as DW-2 namely, Mr. Habib Khan, filed his report as Ex.DW2/1 (colly) categorically stating that the claim seems genuine, and therefore, the appellant/defendant no. 1 can pay the insured amount under the insurance policy. The receipt with respect to insurance premium was proved as Ex.PW1/C dated 15.05.2010 as issued by the representative Mr. Mayur Pandiya, and the trial court notes that the appellant/defendant no. 1 has filed no documents or any details of its accounts as to when this amount of insurance premium received by its representative on 15.05.2010 was deposited with the appellant/ defendant no. 1, and thereby raising a presumption that there is no falsehood in the fact that the insurance premium for the policy was actually received on 15.05.2010. The trial court has concluded that since the insurance premium was received on 15.05.2010, the insurance coverage starts from 15.05.2010 i.e. merely because there is a delay in issuance of the policy with currency of the same being from 18.05.2010 to 17.05.2011 would not mean that the loss of the goods would not be covered under the insurance policy. The relevant observations of the trial court in this regard are contained in paras 11.1 to 11.6 of the impugned judgment, and these paras read as under:

"11.1. In rebuttal, the defendant examined Ms. Yogita Sharma, Assistant Manager (Legal), Bajaj Allianz General Insurance Company as DW1 who made statement in accordance with the averments made in the written statement and stressed that the defendant no. 1 is not liable to pay any amount to the plaintiff as the insured consignment starting its journey prior to the commencement of risk under Insurance policy. This witness was cross-examined by the plaintiff and during cross-examination she admitted that policy was taken by the plaintiff from the defendant no. 1 and also admitted to be correct that premium of Rs.13,237/- for the policy has been deposited in Bajaj Allianz General Insurance Company Ltd. and the same has been deposited by the agent of Bajaj Allianz General Insurance Company Ltd.

11.2. DW2 Sh. Habib Khan produced the investigation report with respect to the vehicle no. UP-35H-3462, Policy no. OG-1-2302-1005-00000012, investigation report reference no. GTRC/2010-11/TRC/REP/14644 dated 03.09.2010 as Ex.DW2/1 (colly) and during cross-examination he stated that he has investigated the present case on the basis of requisite documents supplied by both the parties and further admitted to be correct that he has thoroughly investigated the matter with the consent of the defendant no. 1 and the plaintiff, however in his cross-examination he stated that he has not made any inquiry from Sh. Mayur Pandiya regarding the deposit of the premium amount but admitted to be correct that as per surveyor report Ex.DW2/1 and the police document Ex.PW1/C (colly), the premium amount is same i.e. Rs. 13,237/-. This witness further stated that it is correct that receipt Ex.PW1/C dated 15.05.2010 was issued/acknowledged by Sh. Mayur Pandiya who is representative of the defendant no. 1. He also stated that it is correct that as per his surveyor report Ex.DW2/1, after examination of the entire material, he has opined that the claim lodged by the plaintiff is correct. He has verified the claim bill Ex.DW2/P1 while preparing his surveyor report Ex.DW2/1. As per the documents, the premium amount was deposited by the plaintiff with the representative of the defendant no. 1 on 15.05.2010, however the policy was issued only on 18.05.2010.

11.3. From the careful scrutiny of the evidence adduced by the respective parties, it is evident that it is not disputed that the Marine Open Policy Ex.PW1/C as per the policy document issued on 19.05.2010 mentioned the period of insurance from 18.05.2010 to 17.05.2011 in the favour of the plaintiff. At this stage it is to be noted that in this policy document, the premium collection has been shown at Rs. 13,237/- and it mentions that the premium is collected vide Agent float (10012334). The plaintiff claims that one representative of the defendant no. 1 insurance company namely Sh. Mayur Pandiya collected the amount of insurance premium on 15.05.2010, therefore, the aforesaid insurance policy is to from that date and his risk after making payment of insurance premium is covered. It is also a matter of record that the consignment for which compensation is being sought started its travel time on 16.05.2010.

11.4. I have given careful consideration to the entire gamut of facts and find that the plaintiff has been able to discharge its initial onus by claiming that insurance premium was paid to the agent of the defendant no. 1 namely Sh. Mayur Pandiya. In the pleadings, the written statement the defendant no. 1 did not specifically deny its relation with the said person. If the facts put forth by the plaintiff were not acceptable to the defendant no. 1, then it was incumbent upon the defendant no. 1 to place on record as to how and by which mode the insurance premium was received by it and consequently policy was issued. There is stoic silence on the part of defendant no. 1 to establish any contrary fact that revealing as to when the insurance premium was received by it. In support of its claim that premium was paid on 15.05.2010, the plaintiff placed on record a voucher Ex.PW1/C (colly) containing the details of payment as well as signature of aforesaid Sh. Mayur Pandiya.

11.5. In totality of circumstances, there exists upon positive evidence produced by plaintiff demonstrating the flow of premium from his firm to the defendant no. 1 and on the other side there is a deafening silence on behalf of defendant no. 1 to show that how the premium has been received. The only an irresistible conclusion which can be drawn from these facts is that the premium has travelled on 15.05.2010 towards the defendant no. 1.

11.6 The coverage of insurance policy would commence from the time when the premium has been paid irrespective of the fact that issue of policy has been delayed by a day or two days. The witness of the defendant namely Yogita Sharma, appearing as DW1, admitted the receipt of premium by the defendant no. 1 through agent but nothing more was disclosed. The other witnesses of the defendant Sh. Habib Khan appearing as DW2, admitted to have submitted investigation report in cross-examination admitted the signature of Sh. Mayur Pandiya the representative of the defendant no. 1. This witness also admitted to have submitted a report that the claim is payable on merits. The plaintiff has established its claim that there exist insurance policy of the defendant no. 1 issued in favour of the plaintiff, so the plaintiff is entitled for the recovery of the suit amount from the defendant no. 1. Since the plaintiff is entitled for the recovery of the suit amount, the plaintiff is also entitled for pendent-lite and future interest @ 6% from the date of decree till the date of its realization. These issues are decided in favour of the plaintiff.

(Emphasis Supplied)

9. In my opinion, the trial court has rightly concluded against the appellant/ defendant no. 1, and has rightly decreed the suit for the insurance amount in favour of the respondent no. 1/plaintiff. In my opinion, it makes no difference if the invoice issued by the respondent no. 3/defendant no. 3/seller is dated 16.05.2010 inasmuch as the insurance receipt is dated 15.05.2010. Therefore, even if the journey commenced from 16.05.2010, as argued on behalf of the appellant/defendant no. 1, yet, the loss of the vehicle and the goods insured would be covered by the policy. In any case, since there is no specific date as to when the vehicle was lost/stolen, and therefore, the vehicle could have been lost even after on 18.05.2010, i.e. after the commencement of the policy date as stated in the policy itself, the appellant/defendant no. 1 therefore could not have disputed its liability under the policy, and this is all the more so because the investigator of the appellant/defendant no. 1 who filed his report as Ex.DW2/1 has specifically concluded that the claim was genuine and was payable.

10. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed. All pending applications are also disposed of.

