
(1996) 08 MAD CK 0046
In the Madras High Court
Case No : C.S. No. 333 of 1983

Canara Bank and another

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Marine Insurance Act, 1906 — Section 57, 60
Partnership Act, 1932 — Section 69

Citation : (1998) 91 CompCas 385

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Advocate : C. Harikrishnan, for the Appellant; N. Balasubramanian, for the Respondent

Judgement

N. Arumugham J.

1. The suit against the defendant is to recover a sum of Rs. 3,66,830 with interest at 19.5 per cent. from the date of plaint with costs.

2. The brief facts of the case as gathered from the plaint are stated hereunder :

3. The first plaintiff is the nationalised banking institution which provided every financial assistance to the second plaintiff, a registered partnership

firm carrying on the business of running a boat engaged in fishing in the sea. The defendant, incorporated under the General Insurance Act, is an

insurance company in which, both the plaintiffs have taken an insurance policy for the fishing boat of the second plaintiff, which was named

Sealark-I. Thus, the second plaintiff is the customer of the first plaintiff who availed of various loan facilities and thereby purchased the mechanised

fishing boat by name Sealark, engaged in fishing off the east coast sea. The said vessel had been insured in order to protect the same with its

interest and damage to the vessel, if any happened, on April 12, 1979, through one Hemachandra Babu, an agent of the defendant, who provided all help and amenity to complete the insurance cover with the defendant. The first plaintiff then proposed and had the insurance completed with the help of its senior branch manager, Mr. Gurpur, and thus an insurance policy has been issued to the second plaintiff for its mechanised boat to the value of Rs. 2,35,000, to cover the period from April 12, 1979, to April 11, 1980. To issue the policy by the defendant a frank and full disclosure of all the materials and particulars with the signature of the plaintiffs has been provided to the defendant. Accordingly, the policy was renewed from April 12, 1980, to April 11, 1981. The various terms and conditions of the policy were prayed to be treated as part of this plaint. Pursuant to the terms of the policy, the defendant undertook to indemnify the plaintiff among other things to pay a sum of Rs. 2,35,000 in case of total loss of Sealark-I.

4. It was at this juncture, on the night of July 21, 1980, near Vallapallam on the Eastern sea, the vessel Sealark-I sank and whereupon a claim for total loss was duly made upon the defendant by the plaintiffs by furnishing all the information called for by the defendant. Despite repeated correspondence at the last the defendant had repudiated liability by its letter dated November 9, 1981, on the ground that the claim made was not bona fide and that it was the result of a wilful suppression of vital and material information with regard to the subject-matter of the policy and with regard to the alleged occurrence of loss and events that were stated to have followed. Denying the contention of the defendant, the plaintiffs' claim the insurance amount in a sum of Rs. 2,35,000 since the accident that happened to the fishing boat Sealark-I had resulted in total loss of the vessel as being the value of the insurance covered by the policy above referred to. Since the defendant had not complied with the lawful request of the plaintiffs in spite of the total loss of the vessel and the same had been insured for the above amount, special damages were claimed by the plaintiffs by way of interest on the said amount at the rate of 19.5 per cent. which is the bank rate being invoked.

5. A legal notice on January 7, 1983, was issued to the defendant demanding to pay the suit claim, which was received and acknowledged by him

but, however, the demand has not been complied with but a reply dated March 15, 1983, was given with incorrect and unsustainable contentions.

Adding the interest calculated till the date of filing the plaint at the above rate on the sum of Rs. 2,35,000, which accrues to Rs. 1,31,830 the suit is

laid for a total amount of Rs. 3,66,830 with subsequent interest at the same rate with costs on the basis of the above cause of action and

allegations.

6. The suit was resisted by filing a written statement on behalf of the defendant, in which, it was contended, inter alia, that in view of the second

plaintiff being claimed as a partnership firm not having been registered as provided by the law, the suit filed on its behalf is not at all maintainable by

virtue of section 69 of the Indian Partnership Act and that the business transaction, particularly, the availing of the credit facilities from the first

plaintiff by the second plaintiff is not admitted. However, the averments made in paragraph 4 of the plaint that the first plaintiff in order to protect its

interest and damage to the vessel by name Sealark-I had insured the same along with the second plaintiff with the defendant on April 12, 1979,

was admitted as substantially correct.

7. The role alleged to have been played by Hemachandra Babu claimed has been denied but, however, it was admitted that the said person was

working during the relevant time as an inspector of the defendant and that it was not (?) customary for the defendant to frequently contact the first

plaintiff through the agent, Hemachandra Babu, for finding out whether the first plaintiff required any insurance or not, and that it was not (?) quite

usual for Hemachandra Babu to call at the bank and that accordingly he was present whenever an occasion arose for the purpose of getting the

insurance and to fill up the proposal form. More specifically the defendant has refuted the allegation that the proposal form in the case of Sealark-I

was filled up by the said person and that the signature of the manager of the first plaintiff was obtained in the proposal form. It was stated further

that the details furnished in the proposal form submitted by the plaintiffs were mostly typewritten and that even the said answers found handwritten

were not filled up by Hemachandra Babu or by any person acting on behalf of the defendant. It has been contended further that the defendant

understands reliably that everything was done by the first plaintiff and that,

therefore, it is not correct to say that Hemachandra Babu acted as the agent of the defendant.

8. It was true that the defendant issued a marine hull policy for Rs. 2,35,000, but, however, the policy was issued in the manner above referred to

and the defendant admits further that the period of insurance cover initially granted under the policy above referred was from April 12, 1979, to

April 11, 1980, and was renewed from April 12, 1980, to April 11, 1981. It was specifically claimed on behalf of the defendant that

Hemachandra Babu acted not as the agent of the defendant but as the agent of the plaintiffs and that, therefore, the plaintiffs cannot avoid

responsibility for the incorrect answers given in the proposal form. In all, the defence forwarded is that there was no frank and full disclosure of the

facts leading to the insurance claimed by and on behalf of the plaintiffs with reference to the attendant circumstances at any point of time and that as

such, there was non-disclosure and misrepresentation of material facts, for which the plaintiffs had a duty to make a frank, voluntary and full

disclosure of material facts and circumstances in determining whether the risk intended to be covered was to be undertaken or not. In fact, it was

also contended that there was no need for the defendant to draw the attention of the plaintiffs to any particular question in the proposal form or ask

for any other details or information. The contract of insurance, according to the defendant being one made out of utmost good faith, since the

plaintiffs have failed to make the disclosure as above referred to after having suppressed the material aspects of the same, the policy issued to the

plaintiffs became voidable at the option of the defendant. Thus having pleaded, the defendant has justified the repudiation of its liability under the

policy.

9. Even on factual aspects, the defendant had admitted that the plaintiffs no doubt reported that the vessel Sealark-I sank on the night of July 21,

1980, near Vallapallam and consequently a claim was made for total loss but, however, the total loss of the vessel as claimed by the plaintiff was

denied for it was contended that the plaintiff is bound to prove that the vessel in question met with total loss and having not so done, the plaintiffs

have not taken the relevant steps to mitigate the damages and that, therefore, the plaintiffs are guilty of lapses and that even having reason to

believe that the plaintiffs' claim was not bona fide, the defendant claimed that an independent agency was appointed by him to probe into the

matter and found on such investigation and enquiry that vital information both with regard to the subject-matter of the policy and the alleged

occurrence of the loss of the vessel were withheld by the plaintiffs as evident from the detailed correspondence between the parties herein.

10. Thus, the main defence taken on behalf of the defendant is that factual aspect of the total loss of the vessel has been denied at one stage and at

another stage it has been contended that though the total loss was reported, the plaintiffs had failed to give a full and frank disclosure of the material

aspects and consequently, it resulted in the repudiation of the claim by the defendant. It was also contended that even granting without conceding

that the claim under the policy is tenable, the claim for interest is ill-founded and at the best, the concerned person is to be indemnified for the

actual loss of the subject-matter of the policy and nothing more and that besides there was no scope or provisions under the policy for payment of

interest at the rate claimed or at any other rate, the rate of interest claimed at 19.5 per cent. by way of special damages, is too high and cannot be

sustained. In other respects, the exchange of notice among the parties as claimed by the plaintiff was admitted. By taking the contentions above

referred to, the defendant denies its liability to pay the suit claim or any amount with or without interest and accordingly, he prays that the plaintiffs

are to be non-suited.

11. In the context of the above rival pleadings, this court by Venkataswami J., on September 27, 1984, has settled the following issues for trial :

1. Whether the plaintiffs' claim that the suit vessel sank near Vallapallam on the night of July 21, 1980, resulting in total loss is correct ?

2. Whether the defendant is liable to pay the suit claim ?

3. Whether the suit is not maintainable as contended by the defendant in para 4 of the written statement ?

4. Whether the defendant is right in repudiating liability under the policy ?

5. Whether the plaintiffs are entitled to claim interest ?

6. To what relief the plaintiffs are entitled ?

12. In substantiation of the plaintiffs' case, oral evidence was adduced by the plaintiff by examination of three witnesses, PWs. Nos. 1 to 3, and

through whom, exhibits ""P-1"" to ""P-47"" were marked, which are the following :

Exhibit ""P-1"" is the quotation for purchasing the boat dated September 5, 1975.

Exhibit ""P-2"" is the insurance policy dated April 12, 1979, issued by the U.I.I. Co. for insuring the boat Sealark.

Exhibit ""P-3"", dated April 11, 1980, is the renewed policy.

Exhibit ""P-4"", dated June 26, 1980, is the letter from the defendant for the revised premium.

Exhibit ""P-5"", dated July 22, 1980, is the copy of the complaint given to the police at Thalaignayiru.

Exhibit ""P-6"", dated July 23, 1980, is the copy of the complaint given to the Fisheries Department.

Exhibit ""P-7"", dated July 24, 1980, is the copy of the information claim addressed to the defendant.

Exhibit ""P-8"", dated July 28, 1980, is the letter issued by the surveyor appointed by the defendant, viz., J. B. Boda Marine and General Survey

Agencies Private Limited.

Exhibit ""P-9"", dated August 19, 1980, is the letter sent by the second plaintiff with the particulars to the surveyors.

Exhibit ""P-10"", dated September 4, 1980, is the letter addressed to the surveyor giving details regarding the receipts relating to the expenses for

the search of the boat.

Exhibit ""P-11"", dated December 5, 1980, is a reminder.

Exhibit ""P-12"", dated December 12, 1980, is the letter by the insurance company addressed to the surveyor.

Exhibit ""P-13"", dated December 20, 1980, is a reminder.

Exhibit ""P-14"", exhibit ""P-15"" and exhibit ""P-16"" are similar reminders dated January 5, 1981, January 20, 1981 and February 20, 1981,

respectively.

Exhibit ""P-17"", dated February 26, 1981, is the letter from one Mr. Veerasami, insurance company's investigator, addressed to V. Narayanan

(PW-1).

Exhibit ""P-18"", dated March 7, 1981, is the letter by Veerasami addressed to the manager of the bank.

Exhibit ""P-19"", dated March 9, 1981, is the letter by Veerasami addressed to PW-1.

Exhibit ""P-20"", dated March 12, 1981, is the reply by PW-1 to Veeraswamy.

Exhibit ""P-21"", dated March 17, 1981, is the letter from Veeraswamy addressed to PW-1.

Exhibit ""P-22"", dated March 19, 1981, is the letter by Veeraswamy addressed to the bank.

Exhibit ""P-23"", dated March 20, 1981, is the reminder sent by PW-1 to the insurance company.

Exhibit ""P-24"", dated March 21, 1981, is the letter from PW-1 to the investigator replying to his letter dated March 17, 1981.

Exhibit ""P-25"", dated April 5, 1981, is the reminder by PW-1.

Exhibit ""P-26"", dated April 10, 1981, is the copy of complaint given by PW-1 to Finance Minister, Government of India.

Exhibit ""P-27"", dated April 10, 1981, is the covering letter of exhibit ""P-26"".

Exhibit ""P-28"", dated April 20, 1981, is the reminder to United India Insurance Co. Ltd.

Exhibit ""P-29"", dated April 29, 1981, is the letter from Veeraswamy addressed to the bank.

Exhibit ""P-30"", dated May 5, 1981, is the reminder from PW-1 addressed to the United India Insurance Co. Ltd.

Exhibit ""P-31"" to exhibit ""P-40"" are the reminders dated May 7, 1981; May 7, 1981; May 20, 1981, June 5, 1981, June 20, 1981; July 20, 1981; August 20, 1981, August 25, 1981; September 26, 1981, and September 30, 1981, respectively.

Exhibit ""P-41"", dated November 9, 1981, is the letter from United India Insurance Company Ltd. addressed to the Canara Bank.

Exhibit ""P-42"", dated November 18, 1981, is the letter from PW-1 to the United India Insurance Co. Ltd.

Exhibit ""P-43"", dated November 18, 1981, is the letter from PW-1 to the United India Insurance Co. Ltd. regarding calling for a copy of the insurance policy.

Exhibit ""P-44"", dated December 12, 1981, is the letter from the defendant addressed to PW-1.

Exhibit ""P-45"", dated January 7, 1981, is the advocate's notice to the

defendant.

Exhibit ""P-46"", dated March 14, 1981, is the reply from the defendant's advocate addressed to the plaintiff's counsel.

Exhibit ""P-47"", dated March 15, 1981, is the acknowledgment of registration of firm.

13. Per contra, one Mr. Hemachandra Babu, was examined as DW-1 on behalf of the defendant and through whom exhibit ""D-1"", marine hull

proposal form dated April 12, 1979, alone has been marked as documentary evidence.

14. Findings on issues 1, 2 and 4 : In so far as the first issue is concerned it is noticed that both parties are relying upon their respective oral

evidence because it is based on factual aspects specifically pleaded, which I may consider a little later. In spotting the liability of the defendant or

the entitlement or the right to claim the amount under the cover of the policy, the respective adduced documentary evidence has to be considered

first. Exhibit ""P-1"", dated September 5, 1975, is the copy of the quotation for the purchase of the Sealark-I provided by Sea Crafts India on

September 5, 1975, which gives necessary details of the prices of the various components of the mechanised fishing boat involved in the present

suit. Exhibit ""P-2"" is the marine hull insurance policy issued by the defendant to the plaintiffs dated April 12, 1979. This document was admitted by

the defendant as having been issued by him for the suit vessel by name Sealark-I in favour of both the plaintiffs herein for the insured amount of Rs.

2,35,000 inherent with the conditions for the total loss, constructive total loss, salvage charges, issue and labour charges, partial loss, monsoon

warranty deletion, deletion, riot and strike cover and personal accidents for 6 crew members. Premium payable upon the said policy was fixed at

Rs. 11,181. This policy was found in force from April 12, 1979, to April 11, 1980. The further conditions agreed upon between the parties herein

have been specifically stipulated in the policy itself and since there was no dispute or controversy with regard to the policy, namely, exhibit ""P-2"", I

may extract the relevant conditions alone, which are as hereunder :

On Hull of Fibre Glass and Machinery and Fishing Gear of Fishing Trawler known as Sealark-I valued at Rs. 2,35,000, year of built 1976.

Length 10.5 metres with registered No. 7748/MPEDA/S/656/77, fitted with Ashok

Leyland water cooled engine No. 2769 and Gear Box No.

75162, Horse Power 67 hp.

15. Warranted vessel engaged in fishing and operations connected therewith on the coasts of Andhra Pradesh and Tamil Nadu (including

Pondicherry) up to Palk Strait and not beyond 50 nautical miles into the sea from shore.

16. Subject to institute fishing vessel clauses. Deductible 33-1/3 of the assessed loss or Rs. 1,000 each claim, whichever is higher.

17. Subject to agreed bank clause attached.

18. Subject to conditions and warranties as per schedule attached hereto.

19. Subject to premium instalment clause attached.

20. Subject to personal accident clause.

21. Including the riot and strike risks subject to the current strike clauses, hull time clause attached hereto and cancellation of cover clause.

22. Personal accident cover for unnamed persons including visitors to the vessel and crew limited to the certified capacity for Rs. 10,000 per head.

"Warranted vessel shall not be employed during adverse weather conditions notified by the concerned State Fisheries Department or

Meteorological Department or by the Port authorities and shall be safely anchored or moored or secured with proper watch and ward."

23. All the above said conditions are found uniformly in typing in the same pattern from the beginning till the end. I have been referring to this since

there was considerable speculation during the course of the trial while the plaintiffs' witnesses were examined and cross-examined. Underneath the

above conditions, the matter found in print reflects as hereunder :

"In witness whereof, this policy has been signed by the leading company for itself and as authorised agent for the other assurers named

hereinafter."

for UNITED INDIA INSURANCE CO. LTD.

24. One Mr. Hemachandra Babu has legibly subscribed his signature as ""authorised signatory"". At this juncture, it is pertinent to note that the

specific plea taken by the defendant that Hemachandra Babu, who subscribed his signature in the original insurance policy, exhibit ""P-2"", as the

authorised signatory was working under the defendant and that on that score, he

was not the agent of the defendant but the said Hemachandra Babu acted as the agent of the plaintiff. If the plea of the defendant that Hemachandra Babu acted as the agent of the plaintiffs is to be digested, then it becomes highly impossible to see that the said Hemachandra Babu representing the defendant company has signed the original policy not only as an authorised signatory but also as an authorised agent for the leading company, which is the defendant and, therefore, all the relevant pleas taken by the defendant in the written statement and before the box in this regard fall down to the ground. The resultant position is that the proposal was materialised to provide the insurance cover to the vessel Sealark-I in question in favour of both the plaintiffs under the various terms and conditions for the full amount of Rs. 2,35,000 under exhibit ""P-2"". As pleaded by the plaintiff, has been fully established by means of this document alone and the defence taken by the defendant has to be rejected. Exhibit ""P-3"" is the renewal of the insurance policy, admittedly by the defendant extending the insurance cover for one more year from April 12, 1980, to April 11, 1981. This document with reference to its contents also was not found to be in dispute or controversy among the parties herein. Exhibit ""P-4"" is the letter sent by the defendant to both the plaintiffs on June 26, 1980, claiming for the payment of the revised premium on the basis of exhibit ""P-2"" and exhibit ""P-3"". From the above documentary evidence, with this substantiation of the same by the oral evidence adduced by the plaintiff in the context of the non-denial of the same and admission by the defendant, I am fully satisfied to hold that the suit mechanised fishing boat by name Sealark-I purchased by the plaintiff was only insured by the plaintiffs with the defendant in case of total loss for the sum of Rs. 2,35,000 under the insurance policy covered from April 12, 1979, till April 11, 1981, as renewed with all the stipulated conditions and terms contained therein. It is, therefore, under the circumstances, to identify whether the plaintiffs have proved the loss of the vessel, total or partial, if any, to make the defendant liable in accordance with the agreed terms and conditions of the insurance policy, I have to assess the legal evidence adduced by and on behalf of the respective parties.

25. It was the consistent and definite case of the plaintiffs that the mechanised fishing boat covered under the insurance policy above referred to,

was engaged in fishing on the sea off the east coast of Andhra Pradesh and Tamil Nadu within its permitted limits and subsequently, due to the dearth of adequate quantity of fish, which is contemplated on the southern part of the east coast towards Thiruchendhur during the month of July, 1980, the vessel was moved by the second plaintiff and that during the said sojourn, on the night of July 21, 1980, it was claimed that there emerged out some snag in the vessel itself and it was attempted to be repaired and that even, thereafter, it became impossible to save it, but, however, resulted in the total sinking near a place called Vallapallam on the eastern sea resulting in the total loss of the vessel in question. The relevant plea taken in the plaint is at paragraph 7 which refers that the vessel Sealark-I was sunk on the night of July 21, 1980, near Vallapallam and consequently a claim for total loss was duly made by the plaintiffs by furnishing all the information called for by the defendant.

26. PW-1, Balu, the driver of the vessel in question on July 21, 1980, gave oral evidence that PW-2, Narayanan, was the owner of the vessel, which he drove at the relevant time, but, according to the plaintiffs' case, PW-2 is the partner and he got PW-1 engaged to drive the vehicle along with the help of one Muthu and Kannan on a monthly and daily wages. He spoke to the factum that due to the paucity of adequate fishing all along the east coast of Madras, he was instructed to move the suit mechanised boat towards the south, up to the destination of Thiruchendur, where it was stated, enough fishing catches were available and, accordingly, he had moved the suit boat during the month of July, 1980, with the help of Muthu and Kannan, the helper. He spoke to the facts in every detail including the good condition of the vessel when he started from the Madras coast in Tamil Nadu till it reached the place where it met with the accident on the night of July 21, 1980. According to him, the suit vessel in question was pressed into service in the east coast of Andhra Pradesh previously. He would claim that on the night of July 21, 1980, when he drove the boat in the eastern sea near the place called Vallapallam, which he came to know subsequently, a snag was found to have developed in the engine of the said boat, particularly, with the fan belt and when he along with others attempted to rectify it, he found through the bed of the engine sea water entering into the boat and gradually filling up the cabin of the engine room and consequently upon which, the engine of the

mechanised boat came to a total stand still and became out of order and that simultaneously the boat began to sink endangering the very life of the crew, including this witness, Muthu and Kannan and other persons and that consequently fearing for their life, with the empty cans meant for diesel, this witness along with the other crew jumped into the sea and swam for his life during the night hours. He would claim further that when he regained consciousness, he found himself lying on the sea-shore of a place called Vallapallam. So also was the position for the other members of the crew, for Muthu and Kannan in a different place on the same shore, followed by PW-1 reaching a nearby tea stall of the village situated on the main road at some distance and where from a telegram was given to the manager of the second plaintiff, who was stationed at Vedharanyam at that time and thus, the total loss of the vessel was informed to the manager of the second plaintiff and the plaintiff. Though searching questions were strenuously put to this witness and he was confronted during his cross-examination in its entire breadth and length, in my considered view, nothing has been elicited to suspect or discredit or eschew the oral evidence of PW-1. The details of the accident happened to the suit mechanised boat during the night of July 21, 1980, with every particular spoken to by this witness seems to have been quite natural, probable, convincing and above all more satisfactory. For the above said reasoning alone, I have to necessarily believe the oral version of PW-1 in its entirety. No doubt, he would admit that he had no valid licence to drive the vehicle but, however, he would claim that for the last several decades he is acquainted with driving of boats and that even on the date of giving evidence before the box he was working as a driver in a boat of a third party, under the original owner with whom he was employed. So also, on scrutinising the evidence of PW-2 by name Narayanan, partner of the second plaintiff, his portion of the oral claim renders all support to the claim made by the plaintiff and particularly, PW-1, that on the night of July 21, 1980, on the eastern sea, near Vallapallam in Tamil Nadu, the suit mechanised fishing boat Sealark-I had sunk, which resulted in the total loss.

27. He also spoke about the formation of the partnership business of the second plaintiff and its business transaction with the first plaintiff, the

insurance policy cover taken from the defendant by both the plaintiffs under exhibit ""P-2"" and the renewal under exhibit ""P-3"" and the total amount

for which the boat was insured at Rs. 2,35,000. He also spoke to the factum of the payment of the relevant and necessary premium for the insurance cover provided. He claimed the total loss of the vessel in question in an accident due to the defect that emerged without the fault of anyone as fully spoken by PW-1 and about the employment of PW-1 under the second plaintiff for such a long time. Above all, he would speak about the police complaint given under exhibit ""P-5"" and the necessary letter giving the information to the defendant with all details under exhibit P-7"". He would also claim the appointment of a marine and general survey agency, private in nature, by the defendant to assess and find out the total loss of the vessel under exhibit P-8 on July 28, 1980, and his response by way of reply providing all the information required by the independent surveyors. He has claimed further the expenses met by him for the searching of the boat on July 24, 1980, and all subsequent dates under exhibit P-10. He would speak about the reminder and all the letters addressed to the defendant, the letter communications covered under exhibits ""P-11"" to ""P-44"", evidencing the exchange of various letters, rejoinders and replies, confirming the claims made by the respective parties as taken in the pleadings in these proceedings. Exhibit ""P-45"" is the advocate's notice to the defendant on behalf of the plaintiffs and exhibit ""P-46"" is the reply given on behalf of the defendant. Exhibit ""P-47"" is the certified copy of the acknowledgment of registration of the firm from the Registrar of Firms dated March 15, 1984. Thus, on a careful scrutiny of the oral evidence given by PW-2, the partner of the second plaintiff, it is seen that his evidence is trustworthy, quit natural in its trend, convincing and as such, I am satisfied to believe it in toto, which in all goes to show the total substantiation of the claim made by PW-1, the driver of the vessel. Even for his portion of the evidence also, though strenuous attempts were made to elicit any discrepancy or contradictions during the cross-examination by searching questions, nothing tangible was elicited from this witness to suspect his version and thereby to eschew any portion of his oral testimony.

28. PW-3, Anantharaman, representing the first plaintiff renders all substantiation and corroboration to the claim of PW-1 and PW-2 and the pleadings by way of his oral testimony. He spoke in particular to the policy under exhibit ""P-2"" and the proposal form signed by his erstwhile senior

manager and the original policy issued by Hemachandra Babu, being an authorised agent of the defendant to cover the suit claim in its entirety, and

so also the necessary conditions incorporated in the policy. Even here, I find that nothing was made available to discredit his portion of the oral

evidence, which, on the other hand substantiates the claim of PW-1 and PW-2 in its entirety. It is, therefore, under the circumstances, I am fully

convinced with the proof offered by the plaintiff in establishing the suit claim against the defendant by adducing oral and documentary evidence in

conjunction with the respective pleas taken at the earliest point of time which goes to show that from the date of policy, namely, April 12, 1979,

onwards, till the date of filing the suit, relentless and persuasive legal steps known to the law, have been continuously taken by the plaintiffs to get

the benefits of the insurance policy upon the loss of the suit vessel, by name Sealark-I on the night of July 21, 1980, near Vallapallam on the

eastern sea, which resulted in the total loss and that a claim was made by the plaintiffs subsequently to the defendant company by furnishing all

information and necessary particulars to the private surveying agency appointed by making frank and full disclosure of the details for the same and

that the defendant had dodged and evaded the compliance with the lawful demand.

29. Contra evidence was let in through DW-1, Hemachandra Babu, the then employee of the defendant, in support of the plea taken in the written

statement, with the marking of the insurance proposal form under exhibit ""D-1"" reflecting exhibit ""P-2"", with regard to which, there was no

controversy among the parties herein as I have already observed. A perusal of the oral claim of DW-1, in my considered view, has not rendered

any help or assistance to improve the crest-fallen defence taken by the defendant. Having admitted the issuance of the policy under exhibit ""P-2

and exhibit ""D-1"" to the suit vessel in question to the plaintiffs, by name Sealark-I from April 12, 1979, onwards till April 12, 1981, as renewed

under exhibit ""P-3"", for the sum of Rs. 2,35,000 and having collected all the premiums for the maturity of the insurance policy, in the context of the

total loss occasioned by its sinking due to some defect in the mechanised boat itself on the night of July 21, 1980, and could not be rescued and

that aspect has been proved by the plaintiff, the repudiation made by the defendant as claimed was a mere slip slop and cannot at all be

countenanced by any court of law for the reason of its various terms and conditions agreed upon. The terms and conditions spelt out in the policy

itself speak for themselves elaborately in favour of the plaintiffs. All further reminders and letters sent by the plaintiff as required by the defendant

provided the necessary particulars, which proves the case of the plaintiff and the claim of the defendant otherwise as mere dodging and evasion.

Therefore, having gone through the admissions made by DW-1 and in the context of the various terms and conditions agreed in the insurance

policy, I am not inclined to attach any importance or legal credence to the pleadings taken on behalf of the defendant or the oral evidence adduced

through DW-1, which on the other hand is liable to be rejected in toto.

30. In this context, it has become necessary to quote section 57 of the Marine Insurance Act, 1906, which runs as follows :

Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably

deprived thereof, there is an actual total loss.

31. It has also become necessary to advert to section 60 of the Marine Insurance Act, which stands in the following terms :

Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on

account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure

which would exceed its value when the expenditure had been incurred.

32. In the light of the observation and discussion held by me above, the above section of law needs no more elaboration or discussion to the facts

of the instant case for the very simple reasoning that the whole established fact will come within the total ambit of sections 57 and 60 of the Marine

Insurance Act, above quoted.

33. In Life Insurance Corporation of India Vs. Baidyanath Singh and Others, , a Division Bench of the Patna High Court, had the occasion to

observe the following, while dealing with the scope of avoidance of the insurance policy :

... whenever the Corporation wants to question the correctness of any statement made in the proposal form, it has to prove three things, (i) that

the statement in question was in respect of material matter, or which was

suppressed was material to disclose, (ii) it was fraudulently made, and (iii)

the policy holder knew at the time of making it that such a statement was false or suppressed facts were material to be disclosed. If the three

conditions are fulfilled, in view of section 45 of the Insurance Act it is open to the Corporation to challenge the correctness of any such statement

made in the proposal form, and section 45 of the Insurance Act is not a bar This is based on the principle that a contract of life insurance is

uberrima fides and it is vitiated due to the non-disclosure and misrepresentation which are fraudulent in nature.

34. In importing the above ratio to the facts of the instant case, it is noticed that though the defendant has taken a plea of suppression of the

material facts generally and so scathingly, he has not brought his case within either of the three ingredients referred to above and for the said mere

reasoning, I am of the firm view, that it is not open to the defendant to repudiate the contract of the insurance policy. In fact, to say, there was no

suppression of material facts by and on behalf of the plaintiffs nor there was fraud or misrepresentation made by the plaintiffs as claimed by the

defendant. Mere suggestions put to the plaintiffs or their witnesses by and on behalf of the defendant during the box may not amount to compliance

with the above three ingredients as laid down by the learned judges of the Bench in the above referred to case law.

35. To the facts of the instant case, as culled out from the pleadings as well as the adduced legal evidence and to have a full adjudication of the

same, it is worthwhile and relevant to note the decision by a Division Bench of the Madhya Pradesh High Court in Bhagwani Bai Vs. Life

Insurance Corporation of India, Jabalpur, , while dealing with the non-disclosure of information u/s 45 of the Insurance Act, in the following words

(headnote) :

Non-disclosure of information about lapsed policies by assured has no bearing on risk undertaken by the insurer. It does not amount to fraudulent

misrepresentation since no undue advantage was sought to be derived by the assured by concealment of the fact. The Insurance Corporation

cannot avoid or repudiate the insurance policy on this ground.

The insurer cannot repudiate the liability by showing only some inaccuracy or falsity of statement nor can it avoid the policy for an immaterial

misrepresentation or even for a material misrepresentation which had no bearing on the risk. Similarly, mere non-disclosure of some immaterial

facts would not per se give right to rescission. In other words a misrepresentation would not ipso facto be a ground available to an aggrieved party

to avoid the contract unless it was found that the consent of the other party was secured by practising some deception. Thus, on every

misrepresentation or concealment of a fact a contract cannot be avoided merely on trivial and inconsequential mis-statement or non-disclosure.

36. If the observations made by the Division Bench of the Madhya Pradesh High Court in the above case are imported to the facts of the instant

case for its similarity and identical factual aspects, one hardly finds any adequacy of material in the adduced legal evidence depicting either

misrepresentation or suppression of any material facts except an irrelevant and the normal allowance of the minimal discrepancy in the oral claim of

the plaintiffs. With the result, the legal ratio enunciated in the above said case law totally runs counter to the defence taken in the instant case but,

however, at the same time, renders all support to the established case of the plaintiffs in full. Having thus considered the whole breadth and length

of the case on hand with adduced legal evidence and the relevant contentions made on behalf of the respective parties, I am satisfied to hold that

the suit vessel sank near Vallapallam on the night of July 21, 1980, resulting in the total loss is correct and that thereupon, the liability of the

defendant to pay the suit claim pursuant to the various terms and conditions agreed under the insurance policy covered under exhibit ""P-2"" and

exhibit ""P-3"" has been fully established and the defendant is liable to pay Rs. 2,35,000 in full to the plaintiffs and that the repudiation alleged by the

defendant is not correct and the defendant as such is not entitled to repudiate his own policy for having received frank and full disclosure of the

materials. Accordingly, I answer these three issues 1, 2 and 4 in favour of the plaintiffs and against the defendant.

37. Findings on issue No. 3 : Though a plea was taken in paragraph 4 of the written statement and this issue has been framed already for trial, it

appears that no attempt was taken by either of the parties to adduce any legal evidence in this regard. But however, an attempt was made by the

Bar on behalf of the defendant by placing reliance upon the decisions in Firm

Sitaram Agarwal Vs. Harnath and Another, Badrimal Ramcharan and Co. v. Gana Kaul and Sons, AIR 1971 J&K 109; Ram Kumar Shew Chandrai Vs. Dominion of India now The Union of India (UOI), . I am at every difficulty to see the relevancy of the same so as to apply to the facts of the instant case for the reason that they differ from the facts stated above. It is all well to note that though a registration certificate issued by the Registrar of Firms was filed under exhibit ""P-47"" by the plaintiffs to avoid the said plea of the maintainability of the suit, the said claim has not been controverted by and on behalf of the defendant in any mode or to any extent by raising such adequate suggestions or plea. Even so, section 69 of the Indian Partnership Act, cannot be made applicable to the facts of the instant case for the very reasoning that insurance policy under exhibits ""P-2"" and ""P-3"" were issued by the defendant admittedly in favour of the plaintiffs jointly and not to a separate individual partnership firm and that the bank, the first plaintiff being the creditor and subrogee of the second plaintiff is the prime party to file the suit and thereby establish their claim by adducing oral evidence and for the said reasonings it is not at all possible to hold that the present suit is one by the partnership firm alone, which is unregistered. Therefore, for the said reasoning alone, I find this issue also against the defendant and answer the same in favour of the plaintiffs to the effect that there is no legal bar at all to file the suit by virtue of section 69 of the Indian Partnership Act. Accordingly, I answer this issue in favour of the plaintiffs and against the defendant.

38. Findings on issue No. 5 : In adducing evidence with regard to this issue also, parties seem to have not evinced any interest in substantiation of their respective cases. However, it is well-settled by now that to claim for interest is not a matter of right and that the interest by way of damages cannot be awarded. But it is worthwhile to note that immediately after the total loss of the suit vessel in question had occurred, it has been duly reported to the police, the Fisheries Department and the insurance company by the plaintiffs by making the claim followed by more number of communications disclosing frank and full particulars. A number of letters making a demand claiming the full damages as covered under the policy was made and even, thereafter, the defendant seems to have taken an evasive stand all through and dragged the matter and finally repudiated the

claim made on behalf of the plaintiffs. The defendant ought to have considered the claim of the plaintiffs and settled at the earliest point of time as per the terms and conditions of the policy, but, however, by adopting one or the other mode, the defendant has delayed wantonly and finally repudiated and rescinded the policy. Though the policy of insurance was fully matured already and the claim was proved, since it was denied on the pretext of one or other ground, damages for the total loss became attributable to the defendant in full. But there was no evidence to sustain the plea for the payment of interest for the said damages at the quantum of interest claimed. For the said reasonings, I am not inclined to award the interest for the damages at the rate quantified and claimed in the plaint, but, however, in pursuance of the discretionary power vested with this court u/s 34 of the Code of Civil Procedure, interest for the insured amount of Rs. 2.35 lakhs at 12 per cent. per annum, which must be reasonable, from the date of plaint till the date of payment, is allowed. Accordingly, I answer this issue partly in favour of the plaintiffs and against the defendant.

39. In the result, for all the foregoing reasonings and findings, the suit of the plaintiffs is decreed accordingly with proportionate costs.