
(2005) 06 AP CK 0093
In the Andhra Pradesh High Court
Case No : AS No. 351 of 1995

Chekka Adinarayana and Another	Vs	APPELLANT
Oriental Fire and General Insurance Co. Ltd. and Others		RESPONDENT

Date of Decision : 16-06-2005

Acts Referred:

Contract Act, 1872 — Section 11
Marine Insurance Act, 1963 — Section 3, 64UM

Citation : (2005) 4 ACC 847 : (2005) 4 ALD 840 : (2005) 5 ALT 50

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, for the Appellant; Kota Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful plaintiffs in O.S. No. 117 of 1986 on the file of II Additional Subordinate Judge, Kakinada aggrieved by the judgment and decree made in the said suit dated 22-10-1992, preferred the present appeal.

2. The respondents/defendants are the Oriental Fire and General Insurance Co., Limited and others. The plaintiffs instituted the suit for recovery of an amount of Rs. 2,00,000/- towards an insurance claim, and for costs. The learned Judge recorded the evidence of PWs. 1 to 4 and DWs.1 to 3 and marked Exs.A1 to A5 and Exs.B1 to B23 and ultimately dismissed the suit. Aggrieved by the same, the appellants/ plaintiffs preferred the present appeal.

3. Sri M.S.R. Subrahmanyam, learned Counsel representing the appellants/ plaintiffs had taken this Court through the respective pleadings of the parties and the evidence available on record, and would contend that the insurance policy as such is not in controversy. The learned Counsel also would maintain that on the ground that the brother cannot represent the minors or the minors contract is void, the recovery of amount under the insurance policy cannot be negated. These grounds are unsustainable grounds. The learned Counsel also would

submit that in the light of the clear evidence available on record disbelieving the accident itself, as a question of fact, also cannot be sustained and the same has to be reversed in appeal. The learned Counsel had taken this Court through the evidence of PWs.1 to 4 and also DWs.1 to 3 and the documents available on record.

4. Per contra, Sri Kota Subba Rao, the learned Counsel representing the respondents/defendants would maintain that the evidence of PW.3 been well had appreciated and finding had been recorded. In the light of the same the very accident itself is doubtful. The learned Counsel also would maintain that even otherwise in view of Section 64-UM of the Marine Insurance Act, the report of the surveyor can be relied upon and the same was marked as Ex.B.22. Learned Counsel would also maintain that the report of the surveyor would go to show that the claim is a false claim, and there is no need to examine the surveyor, and it is suffice if the report is marked. Reliance was placed on a decision of this Court in Economic Roadways Corporation, Hyderabad v. National Insurance Company, Hyderabad and another, 2002 (1) LS 128, in this regard. The learned Counsel while further elaborating his submissions would maintain that in view of Section 3 of the Marine Insurance Act, the policy entered into is an agreement and hence Section 11 of the Indian Contract Act would be attracted and in this view of the matter also minors contract is void. On the strength of minors contract, the insurance claim cannot be enforced. The learned Counsel would submit that at any rate in the light of the findings recorded by the Trial Court, which are well considered findings on appreciation of both oral and documentary evidence, the same need not be disturbed in this appeal.

5. Heard both the Counsel and also perused the oral and documentary evidence available on record.

6. The parties would be referred to as plaintiffs and defendants hereinafter as shown in the original suit before the Trial Court for the purpose of convenience.

7. It was pleaded in the plaint that the plaintiffs are the owners of mechanized boat bearing No. KKD 774 which was registered at the Port Office Kakinada and it was insured with the defendant-company for an amount of Rs. 2,00,000/- and a provisional cover note and insurance policy with policy No. 4432/3/17/MH/106 were issued on 18-8-1980. When provisional cover note was issued, an amount of Rs. 2,985/- was collected towards premium, and thereafter, the plaintiffs are regularly paying the premium. The boat was being maintained in good condition by the plaintiffs. On 29-4-1981 while travelling was going on in the sea, flames developed suddenly in the engine room of the boat, as a result, the boat was completely burnt and sunk in the sea. The plaintiffs immediately informed the defendants about the same through telegrams. The surveyor appointed by the defendants conducted survey and also recorded evidence. But, as the defendants did not settle the plaintiffs claim, the plaintiffs got issued a notice dated 14-5-1983 to the defendants demanding immediate settlement of the claim. The defendants got issued a reply dated 7-7-1983 to the plaintiffs with false

allegations repudiating the plaintiffs claim. The defendants alleged in their reply dated 7-7-1983 that as plaintiffs were minors at the time of entering into the contract, the contract is void from its inception. The defendants, having entered into the contract with the knowledge that the plaintiffs were minors at the time of entering into the contract and having accepted the contract collected premium from the plaintiffs, now cannot contend that the contract is invalid. Any contract entered on behalf of minors for the benefit of minors is valid under law. As the defendants did not settle the claim, the plaintiffs wrote a letter on 24-1-1985 and sent all the documents to the concerned ministry of shipping in the Government of India. As the defendants did not settle the plaintiffs claim so far, they are constrained to file the suit for recovery of the amount covered by the insurance policy.

8. The second defendant filed written statement, which was adopted by defendants one and three. It was pleaded in the written statement that the plaintiffs have to establish that they are the owners of the boat and the same is registered with the port authorities. The boat was insured with the defendants company. But the insurance is subject to the fact that all material particulars are disclosed, and the insured acts bona fide and faithfully. In the first instance the defendants have no knowledge that the plaintiffs are minors at the time of contract. As the minors had no capacity to contract, the contract is void abinitio. It is perfectly open to the defendants to raise such a contention even after having accepted the contract, and collected premium from the plaintiffs. The reply, dated 7-7-1983 issued by the defendants repudiating the plaintiffs' claim, contains the correct state of facts. The plaintiffs are still minors and therefore they cannot independently lay the suit. The contract of insurance is a contract of Uberimafides of utmost good faith and any misrepresentation at the time of offer and acceptance or suppression of material facts result in discharging the insurance company from any liability. At the time of entering into the suit contract the material fact that the plaintiffs were minors was suppressed. As such, the contract is void abinitio and the defendants are discharged from the liability, if any.

It was also alleged in the written statement that the boat was involved in accident due to sudden flames and was completely burnt. On enquiry made by the defendant-company, it was found that the plaintiffs' claim is false and stage-managed to rob the insurance company and to illegally gain its expenses. The defendants learnt that the suit boat was not sea worthy at the time at which it was alleged to have been met with accident. Authorised driver was not operating at the time of the alleged accident and no accounts are produced to show that the boat went for fishing on that day. The various inconsistent statements made by Ch. Kameswara Rao on behalf of the plaintiffs and his henchmen, created great suspicion, and on investigation it was revealed that the theory of accident is stage-managed to make unlawful gain. Hence, the suit is barred by limitation and is not maintainable. This Court had no jurisdiction to entertain the suit and there was no cause of action for filing the suit.

9. On the strength of respective pleadings of the parties, the following issues were framed by the Trial Court.

1. Whether the accident on 29-4-1991 to the suit boat alleged by the plaintiffs is true?

2. Whether the suit boat was sea-worthy at the relevant period and whether the plaintiffs have obtained the permission of the port authorities for taking it for travelling and if not what consequences follows?

3. Whether the suit boat was driven by an authorized driver at the time of the alleged accident?

4. Whether the plaintiffs were minors at the time of entering into contract with the defendants and if so, what is the effect?

5. Whether the plaintiffs are entitled to the suit claim or to what amount?

6. To what relief?

10. The Assistant Divisional Manager of defendant-company was examined as DW.1, Pappu Bhaskara Rao, who was appointed as Surveyor with regard to the accident of the suit boat was examined as DW.2 and the then Development Officer in the defendants-company was examined as DW.3. PW.1- the brother of the plaintiffs" was examined. The then Lascar of the suit boat was examined as PW.2. PW.3 the alleged eyewitness to the accident and PW.4-the then driver of the suit boat were also examined. As already referred to supra Exs.A.1 to A.5 and Exs.B.1 to B.23 were marked and the learned Judge after recording the findings ultimately negated the claim and dismissed the suit.

11. In the light of the evidence available on record, the following points arise for consideration in the present appeal.

1. Whether appellants-plaintiffs are entitled to the suit claim in the facts and circumstances of the case?

2. Whether the findings recorded by the Trial Court in this regard suffer from any legal infirmity to be interfered with or the same are liable to be confirmed by this Court?

3. If so, to what relief the parties are entitled to?

12. Point Nos. 1 and 2: These points can be answered together. The evidence of PW.1 is that the plaintiffs are his brothers and he is looking after their affairs and his father is an illiterate. The plaintiffs were having a boat bearing No. KKD 774 and the boat was insured with the defendants company for Rs. 2,00,000/-. The boat was in a very good condition all the time. It was used for fishing. One Satyanarayanamurthy was the driver and there were four lascars on the boat. The boat was not in existence, as it was burnt in an accident at Bhairavapalem in the sea, in the year 1981. The burns arose from the engine. It was informed to him by the driver. The driver came to the shore on a country boat of Uppalanka

people. When the information was received, it was informed to the insurance people. The policy was surrendered to the Insurance Company and a claim was preferred. This witness was examined at length in relation to Exs.B.12 to B.21. This witness also deposed about the exhibits in "A" series. This witness was cross-examined at length relating to all the aspects. It is not in controversy that he is the brother of the minor plaintiffs and it is also not in serious controversy that the insurance policy was entered into with the defendants-company on behalf of minors only.

13. PW.2 is the lascar, who worked as a lascar on the suit boat along with others, deposed about the burning of the boat in the sea. They made their efforts to stop the fire, but, it was not controlled, and they all jumped into the sea and were rescued by the people of Uppalanka with their country boat. It was informed to the Surveyor of the insurance company. He further deposed that he affixed his thumb mark on the original of Ex.B.10. The boat was in a good condition when it was taken to the sea for fishing. This witness also cross-examined at length.

14. The next witness is PW.3. He had deposed that he knows about the burning of the boat about 9 years ago. They observed burning of the boat at a little distance and the crew of the boat under burns jumped into the sea and crying for help and they helped the crew by getting him into their boat and they take them into a little distance. This witness also deposed that he made a statement to the surveyor and Ex.B.13 is the Photostat copy of the Original statement given by him. This witness was cross- examined at length and no doubt he had denied the suggestions. This witness also deposed that he gave the names of Kalasies, who were rescued by him to the surveyor and the original of Ex.B.13.

15. PW.4 deposed that he worked as a driver on the suit boat. He also deposed about the burning of the boat in fire accident. This witness was also cross-examined.

16. The Assistant Divisional Manager of the defendant company was examined as DW.1. No doubt he has no personal knowledge about this case, but he has deposed basing on the record in relation to the suit boat. This witness deposed at length relating to the whole documentary evidence as per the records, and this witness was cross-examined at length.

17. DW.2 is the Marine Surveyor, who was appointed as surveyor with regard to the accident of the boat, Kakinada 774 and conducted an enquiry and submitted a report. In this process he recorded the statements. Ex.B.22 is the report given by him. Ex.B.2 was given by one Mr. Apparao, a surveyor of Kakinada. Exs.B.5, B.8, B.11, B.13, B.15 and B.17 and also Ex.B.2 were the statements given to him by the owner after getting the same recorded at the time of his enquiry. In his report he had directed the insurance company to direct a private investigator to conduct an enquiry into this matter. Exs.B.4, B.6 and B.7 were also given to him by the owner of the boat at the time of his enquiry. This witness was cross-examined at length.

18. DW.3 was the Branch Manager of the defendant-company at the relevant point of time, who deposed about the filing of the proposal form and Mr. Ch. Satyanarayana signed Ex.B.23 as a proposer and he submitted required information, but, he did not furnish the information about the owners of the boat were minors at that time. This witness specifically deposed that if the owners of the boat were minors at that time he would not have processed the same because minors would not have the contractual liability. This witness further deposed that Mr. Satyanarayana signed the application in Ex.B.23 as a proposer.

19. As can be seen from the evidence of DW.2 in relation to the same, there is yet another surveyor's report in respect of the suit boat in Ex.B.22 dated 4-9-1981 and this surveyor was not examined. Despite the non-examination of the surveyor, the report can be relied upon. For this proposition the learned Counsel representing the respondents placed reliance on the decision of the Division Bench in Economic Roadways Corporation, Hyderabad v. National Insurance Company, Hyderabad and another, (supra). In the light of the evidence available on record findings in detail had been recorded. There is no serious controversy that the plaintiffs were minors at the relevant point of time.

20. Section 3 of the Marine Insurance Act 1963 dealing with the Marine Insurance definition reads as under:

Marine Insurance Defined:-The contract of Marine Insurance is the agreement whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed against the Marine losses that is to say the losses incidental to marine adventure.

21. In view of the fact that Marine Insurance policy is an agreement it is needless to say that the provisions of the Indian Contract Act 1872 would be applicable.

22. Section 11 of the Indian Contract Act reads as under:

"Every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

23. There is no serious controversy relating to the aspect that a contract entered into by minors is void abinitio. The same is not enforceable. The learned Counsel for the respondents-company would also contend that inasmuch as in the case of an insurance policy, the same may have to be made in good faith. Since there is absence of good faith on the ground too the plaintiffs are bound to fail, especially in the light of the evidence of DW.3 who deposed that at the time of taking the proposal and signing the same it was never brought to the notice of the company that the plaintiffs were minors, and had it been known, the papers would not have been processed at all. This aspect is not in serious controversy. Hence, in the light of the same, the finding recorded by the Trial Court that the contract cannot be enforced, cannot be found fault within any way.

24. Apart from this aspect of the matter, the evidence of PW3 was disbelieved and it is needless to say that the other evidence, PWs 1, 2 and 4 are of interested witnesses. The only independent witness relating to the factum of the accident had been specifically disbelieved. The evidence of DW.2 is available on record. Apart from this aspect of the matter, Ex.B.22, the surveyors report was prepared by DW.2 and also Ex.B.2 Photostat copy of the report also is available on record where statements had been recorded and the claim was held to be a false claim. In the light of Ex.B.22 and Ex.B.2 and also the evidence of DW.2 findings had been recorded by the Trial Court. Apart from this aspect of the matter, the other documentary evidence Ex.A.1 to A.5 and Exs.B.1, B.3 to B.21 and B.23 also had been taken into consideration. The oral evidence available on record had been appreciated in detail and a finding of fact also had been recorded doubting the very occurrence itself. Even otherwise evidence adduced on behalf of the plaintiffs had been well considered, and the same was disbelieved. In the light of the reasons recorded in detail by the Trial Court on appreciation of both oral and documentary evidence, especially in the light of the survey reports Exs.B.2 and B.22 coupled with the evidence of DW.2 and also in the light of the clear evidence of DW.3, who deposed that the factum that the plaintiffs were minors at the relevant point of time had not been disclosed at the time of entering into the insurance contract or taking of the policy, there is lack of bona fides on the part of the plaintiffs.

25. Some contentions were advanced that the brother of the plaintiffs cannot represent the minors when the natural guardian the father is alive, Be that as it may, this aspect need not be (seriously) gone into in the light of the findings recorded by this Court, supra. On appreciation of the overall evidence available on record this Court is of the opinion that the findings recorded by the Trial Court cannot be found fault with in any way and the same are hereby confirmed.

26. Point No. 3: In the light of the findings recorded supra, the appeal is devoid of merit and the same shall stand dismissed. No order as to costs.