
(2016) 12 KL CK 0060

In the High Court Of Kerala

Case No : A.S.No. 446 of 2000 (Against the Judgment and Decree Dated 19-11-1998 In OS 716 of 1993 of I Addl.Sub Court, Trivandrum)

National Insurance Co. Ltd.

APPELLANT

Vs

M/s. Pattu Agencies

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Citation : (2017) AIR(Kerala) 133 : (2017) 1 ILRKerala 853 : (2017) 1 KerLJ 666

Hon'ble Judges : Mr K.T. Sankaran and Mr P.D. Rajan, JJ.

Bench : Division Bench

Advocate : Sri. R.S. Kalkura, Advocate, for the Petitioner; Sri. P.R. Venketesh, Advocate, for the Respondent No. 1; Sri. M.P. Ramachandran Nair (Sr.), Advocate, for the Respondent No. 2

Final Decision : Partly Allowed

Judgement

K.T. Sankaran, J.—The first respondent in the appeal, M/s. Pattu Agencies, Kowdiar, Thiruvananthapuram, filed O.S.No.716 of 1993 against the appellants and the second respondent for realisation of a sum of Rs.15 lakhs covered by the fire insurance policy taken by the first respondent/plaintiff from the National Insurance Company Ltd. (appellant No.1). There was also a prayer for realisation of interest at 12% per annum from defendants 1 and 2. Alternatively, it was prayed that in case the court finds that defendants 1 and 2 are not liable for the plaint claim, the plaintiff may be allowed to recover and realise plaint amount with interest from the third defendant Central Bank of India. The trial court decreed the suit in part for realisation of an amount of Rs.11 lakhs in favour of the first respondent/plaintiff from the appellants (defendants 1 and 2) with interest at 6% per annum from the date of suit till realisation with proportionate costs. Defendants 1 and 2 challenged the judgment and decree of the trial court in this appeal.

2. Hereinafter the parties are referred to as per their rank in the trial court.

3. The case of the plaintiff is that M/s. Pattu Agencies, which is a proprietary concern, is engaged in the business as distributors of stationery and crockery items. Originally, the plaintiff was carrying on business in building T.C.4/1821 at Pandit's Colony, Kowdiar, Thiruvananthapuram till 1984. The business was being carried on with the financial assistance of the Central Bank of India, Rishimangalam Branch, the third defendant in the suit. The stock of goods of the plaintiff was insured with the third defendant and the policy was being renewed regularly. In 1984, the business premises of the plaintiff was shifted to T.C.4/1680 at Mummy's Colony (Iran compound), Kowdiar, Thiruvananthapuram. The change of address was duly informed to the third defendant and the third defendant promptly conveyed the change of address to the New India Assurance Company Ltd., who was the then insurer. Subsequently, the insurance policy was taken from the National Insurance Company Ltd. for the period from 25.3.1988 to 24.3.1989 and the stock-in-trade was insured with the first defendant for a sum of Rs.15 lakhs. While the insurance policy was in force, the premises where the goods of the plaintiff were kept, caught fire on account of lightning on the night of 13th/14th of April, 1988. As a result of the fire accident, the entire stock was destroyed and the plaintiff sustained loss of Rs.15 lakhs. The third defendant preferred a claim before the second defendant, Senior Divisional Manager of the first defendant, for disbursement of the insurance amount. Defendants 1 and 2 appointed surveyors to assess the damages caused to the stock in trade. However, the surveyors rejected claim of the plaintiff by letter dated 3.3.1989. Though no reasons were stated for rejection of the claim, the plaintiff was given to understand that it was because of the difference in door number of the building stated in the policy (clerical mistake crept in the policy). According to the plaintiff, in the earlier correspondence with defendants 1 and 2 and Government Departments, the fire affected location in the business premises has been correctly mentioned, but the claim was illegally rejected. The value of the stock as on 7.4.1988 was valued at Rs.16,06,907/- as per the statement furnished by the plaintiff to the third defendant Bank. However, the plaintiff limited the claim to Rs.15 lakhs, the amount covered by the policy. In spite of making repeated demands and issuance of a suit notice, defendants 1 and 2 did not disburse the policy claim. No reply notice was also sent by them. The insurance with the first defendant Company was effected through the third defendant Bank and the Bank, being custodian of the policy of insurance, was authorised to collect the amount covered by the policy as per the relevant clause appended to the policy. The plaintiff contended that in case defendants 1 and 2 are not found liable for the plaintiff claim, the plaintiff is entitled to recover the entire amount from the third defendant Bank.

4. Defendants 1 and 2, in their joint written statement, disputed the plaintiff claim. It was contended that the suit was not maintainable. Though insurance premium was being remitted by the third defendant at proper time, the change in address was never communicated by the third defendant to the Insurance Company. The policy was issued with respect to the business premises at Pandit's Colony and

not at Mummy's Colony. According to defendants 1 and 2, the suit is a collusive one by the plaintiff and the third defendant. The fire insurance policy was issued to the plaintiff for a particular godown bearing specific building number and if the accident took place in some other place, defendants 1 and 2 cannot be held responsible. It was admitted that defendants 1 and 2 had made correspondence with the plaintiff in the new address. That does not mean that the godown was shifted from the original place. The statement filed by the third defendant with respect to the stock in trade is liable to be rejected, since no commission was taken out by the plaintiff to assess the loss. The stock as on 7.4.1988 was not intimated to defendants 1 and 2. Defendants 1 and 2 are not liable to pay any compensation to the plaintiff. No case was registered by the police with respect to the fire accident. No reply was sent to the suit notice issued by the plaintiff since the case was false and it was devoid of any merit. The suit is liable to be dismissed with compensatory costs.

5. In the separate written statement filed by the third respondent, it was admitted that the business premises of the plaintiff was shifted from Pandit's Colony to Mummy's Colony with effect from 21.11.1984 and that fact was duly intimated by the third defendant to the then Insurance Company, namely, New India Assurance Company Ltd. by the letter dated 23.11.1984. However, in the subsequent insurance policies for the period from 9.8.1985 to 9.8.1986, the building number was mentioned as T.C.4/1821 at Pandit's Colony. That was an inadvertent mistake. On 25.3.1988, the third defendant insured the plaintiff's stock in trade with the first defendant company. The said stock in trade was that kept in T.C.No.4/1680 at Mummy's Colony. The Development Officer of the first defendant, namely, Sri. R.P. Nair, inspected the entire stock of the plaintiff, went through the prior policies issued by The New India Assurance Company Ltd. and issued the insurance policy for the period from 25.3.1988 to 24.3.1989. The Development Officer simply copied the door number of the premises from the earlier policies and thus a mistake was committed regarding door number. The fire accident on the night of 13th April, 1988 was admitted by the third defendant. It was stated that the fire accident is proved from the certificate dated 22.4.1988 issued by the Meteorological Department. The first defendant was duly informed by the third defendant about the fire accident. On getting information, the Inspector, Branch Manager and Divisional Manager of the first defendant Company at Thiruvananthapuram visited the site of the fire accident. The first defendant instructed their surveyors to visit the premises, namely, door No.4/1680, at Mummy's Colony for assessing the extent of damage to the insured goods after satisfying that the door number was mistakenly shown in the policy. The surveyors assessed the damage to the stock-in-trade and submitted their report on 1.6.1988. The Divisional Manager of the first defendant Company duly recommended for settling the claim. However, on 13.2.1989, the first defendant informed the plaintiff that the claim was not admissible. No reasons were stated for rejecting the claim. The first defendant is estopped from denying the plaintiff's claim merely on the basis of the mistake committed by the

Development Officer in noting the door number of the premises. The stock statement given by the plaintiff to the third defendant on 7.4.1988 was in conformity with the terms of sanctioning of loan. That shows that the plaintiff's stock was valued at Rs.16,06,907/- on that date. The third defendant is not answerable to the plaint claim.

6. Before the court below, the plaintiff was examined as PW1 and Exhibits A1 to A13 were marked. On the side of the defendants, D.Ws. 1 and 2 were examined and Exhibits B1 to B13 were marked.

7. On meticulously analysing the pleadings and the documentary and oral evidence in the case, the trial court came to the conclusion that rejection of the insurance claim was unsustainable. The court below decreed the suit for a sum of Rs.11 lakhs together with interest at 6% per annum from the date of suit till realisation with proportionate costs.

8. Defendants 1 and 2 raised a contention before the court below that the suit is not maintainable in view of the arbitration clause in Exhibit A1 insurance policy. Clause 13 of Exhibit A1 policy provides that "if any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall independently or all other questions be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two disinterested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party in accordance with the provision of the Arbitration Act 1940, as amended from time to time and for the time being in force." In clause 13, there are other stipulations also.

9. It is specifically provided in clause 13 itself thus : "It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the Company has disputed or not accepted liability under or in respect of this policy."

10. In view of the specific clause in the agreement that no difference or dispute shall be referable to arbitration, if the Company has disputed or not accepted liability and defendants 1 and 2 having disputed the liability, the dispute is not one that can be referred to arbitration, as rightly held by the court below.

11. It is not in dispute that the business establishment of the plaintiff was housed in T.C.4/1821 at Pandit's Colony. There is overwhelming evidence to show that the business was shifted to a new premises at T.C.4/1680 at Mummy's Colony from 1984 onwards. Exhibit A6 letter dated 22.11.1984 issued by the plaintiff to the third defendant is an intimation to the third defendant that the business has been shifted to T.C.4/1680. By Exhibit A7 letter dated 23rd November, 1984, the third defendant intimated the New India Assurance Company Ltd., the then insurer, that the premises had been shifted to T.C.4/1680. Exhibits A6 and A7 were not challenged in the cross examination of

PW1. D.Ws. 1 and 2 did not dispute the veracity of Exhibits A6 and A7. Exhibit A8 dated 24.10.1984 shows that the plaintiff requested to shift the telephone to the new residence. It has come out in evidence that the residence and the business premises of the plaintiff is in the same building, namely, T.C.4/1680. Exhibit A9 communication dated 8.10.1985 from the first defendant to the plaintiff shows the correct door number as T.C.4/1680. Thus it is clear that the business premises was shifted by the plaintiff from T.C.4/1821 to T.C.4/1680.

12. However, in Exhibit B7 proposal for fire insurance, the door number shown is T.C.4/1821. In Exhibit A1 policy also, the door number shown is the same. DW1, namely, Sri. R.P. Nair, admitted that Exhibit B7 is in his handwriting. He also admitted that the policy was issued on the basis of Exhibit B7. He also admitted that Exhibit B7 was prepared at the office of the third defendant Bank. The specific case of the plaintiff is that the forms were filled up by Sri. R.P. Nair and he copied the door number of the building from the insurance policies which were issued by the New India Assurance Company earlier. DW1 stated that what was insured was the goods. He also admitted that the surveyors appointed by the first defendant inspected the building T.C.4/1680. The evidence in the case would disclose that the surveyors inspected T.C.4/1680 and that exactly was the building in which the fire accident occurred. There is no case for defendants 1 and 2 that any fire accident occurred in T.C.4/1821.

13. Though Exhibit A10 suit notice was sent by the plaintiff, no reply was sent by defendants 1 and 2. The explanation offered by defendants 1 and 2 is that the claim was baseless and therefore, they did not send any reply. This explanation is quite unsustainable. It has also come out in evidence that even after shifting the business premises to T.C.4/1680, the plaintiff had remitted premium to the New India Assurance Company Ltd. and the number of the building noted was T.C.4/1821. It has also come out in evidence that the building in which the fire accident occurred is one Km. away from the old premises. At the time of the fire accident, the plaintiff and his family members were not available at the place as they had gone for a marriage at Kollam. After the incident, the landlord of the building informed the police as per Exhibit B8. The fire accident occurred due to lightning. Exhibit B11 issued by the meteorological department would show that there was lightning during the night on the fateful day.

14. The surveyors appointed by the first defendant inspected the building T.C.4/1680. They assessed the damage caused to the goods at Rs.9,60,000/-. The surveyors report shows that the fire accident occurred at T.C.4/1680 at Mummy's Colony.

15. D.W.2 is the Assistant Accountant of the third defendant Bank from 1984 September to 1988 July. He stated that the goods were hypothecated to the Bank and the plaintiff used to furnish stock statements every month. From 1984 onwards, the stock was insured. The proposal form would be brought from the Insurance Company and they would ask the details from the Bank and the party would sign. The policy would be issued thereafter.

16. The court below noticed that there is practically no dispute regarding the contention of the plaintiff that a fire accident occurred at the godown of the plaintiff having door No.4/1680 at Mummy's Colony.

17. In Exhibit A4 letter dated 3rd May, 1988 issued by the third defendant to the Divisional Manager of the first defendant, the relevant details with respect to the shifting of telephone, intimation given to the Sales Tax Department by the plaintiff, that the building T.C.4/1821 was occupied by one Udayabhanu after the plaintiff shifted from that building and all other relevant details have been shown. It is also stated in Exhibit A4 that the third defendant had given financial assistance to Pattu Agencies and their only godown is at T.C.4/1680.

18. From the evidence on record, the following facts are clear.

(i) Exhibit A1 insurance policy covers the period from 25.3.1988 to 24.3.1989.

(ii) The fire accident occurred on 13.4.1988.

(iii) Immediately after the incident, the owner of the building informed the police.

(iv) On the claim for insurance being made by the plaintiff, the first defendant appointed surveyors. They inspected the building T.C.4/1680.

(v) In the report of the surveyors (Exhibit B11), it is clearly stated that the fire accident occurred in the building T.C.4/1680. Exhibit B11 also shows that the plaintiff started the business under the name and style Pattu Agencies in T.C.4/1821 at Pandit's Colony. The report further shows that in October, 1984, the plaintiff shifted the business to T.C.4/1680 at Mummy's Colony.

(vi) The report shows that except some of the items stored in the garage in the ground floor and the items salvaged by the neighbours, the entire stock-in-trade was badly gutted in fire.

(vii) The surveyors assessed the loss at Rs.9,60,000/- after verifying the factual details and the relevant registers and documents.

19. Exhibit B7 proposal form for taking the policy was filled up in the handwriting of DW1 and it is admitted by him to be so. In that form, the building number was shown as T.C.4/1821 instead of T.C.4/1680. The mistake was copied in Exhibit A1 policy also. DW1 stated that there was no impediment in stating Exhibit A5 letter rejecting the claim that the claim was rejected on account of change of location of the business premises. The correspondence would also show that the third defendant Bank was making the claim on behalf of the plaintiff and that at no point of time, the first defendant raised a contention that because of the change of premises, the claim could not be granted. On the other hand, the first defendant appointed surveyors and they assessed the loss. Though the plaintiff sent Exhibit A10 suit notice to the first defendant, no reply was sent by the first defendant. The excuse for not replying to Exhibit A10 is quite unbelievable and unsustainable.

20. The learned counsel appearing for the appellants as well as the learned counsel appearing for the first respondent/ plaintiff cited several decisions in support of their respective contentions. We do not think it necessary to refer to all those decisions since many of them do not apply to the facts of the case or the question involved in the present case.

21. The learned counsel appearing for the appellants relied on certain passages at pages 13, 15, 107, 168, 181 and 586 of the General Principles of Insurance Law by E.R. Hardy Ivamy, Fourth Edition. The relevant passages in the book would show the following principles:

A description of the subject matter of insurance is necessary for three purposes.

(i) To identify the subject-matter.

(ii) To show the nature of the risk.

(iii) To define the risk.

If the subject-matter answers the description, but the description is ambiguous, being equally capable of being applied to a different subject-matter, the policy may be void for uncertainty. The description of the subject-matter, whether expressed in general or specific terms, may include a statement as to locality. Where the insurance is connected with a building, such a statement is a necessary part of the description for the purpose of identification. The building must be in the described locality if an accident happening there is to be covered. The proposal form when duly filled in and signed by the proposed assured and forwarded to the insurers, operates as a formal offer by the proposed assured to the insurers to enter into a contract of insurance. The proposal form shows the terms upon which he is willing to contract, and if the offer is accepted, he cannot insist upon having an insurance differing in its terms from those specified in the proposal. All facts are material which are, to the knowledge of the proposed assured, regarded by the insurers as material. A failure on the part of the assured to disclose a material fact within his actual or imputed knowledge renders the policy voidable at the option of the insurers.

22. Pages 585 and 586 of the General Principles of Insurance Law by Hardy Ivami reads as follows :

"The application of the doctrine of imputed knowledge is considerably affected by the existence of a written proposal, signed by the proposed assured. It is then a condition precedent to the validity of the policy that all material facts stated in the proposal should be accurately stated. If there is a mis-statement in the proposal but the agent is unaware of the true facts, the agent has no knowledge which can possibly be imputed to the insurers, and the mere fact that he transmits the proposal to the insurers does not prevent the policy from being avoided. The agent may, however, know the truth, and he may even be responsible for the mis-statement. It not unfrequently happens in practise that the answers are inaccurate, and it then becomes necessary to inquire how far

the fact that the answers, as they reach the insurers, are in the handwriting of their agent, affects the doctrine of imputed knowledge.

Upon this question two conflicting views have been held. According to the first view, which has been severely criticized, the knowledge of the agent, acquired during the negotiations, is imputed to the insurers, and the policy is accordingly valid, whether there was an omission or misstatement. According to the second view, the agent's knowledge is not imputed to the insurers, and they are entitled to avoid the policy on the ground that the duty of disclosure has not been discharged."

23. In *Maniluxmi Patel and another v. Hindusthan Co-operative Insurance Society Ltd. and another* : AIR 1962 Calcutta 625, it was held that the agent while filling in the proposal form was acting as the agent of the proposer and not as agent of the Company.

24. In Anson's Law of Contract 29th Edition at pages 334 and 335, the following passage occurs:

"(c) Duties of Disclosure giving rise to rescission

(i) Contracts of insurance

Before a contract of insurance is made, the intending assured is under an obligation to disclose to the insurer all material information affecting the risk. This duty to disclose is mutual and the insurer must also disclose all material information although disclosure by the insurer will in practice be rare because the material circumstances are normally known only to the intending assured. While the foundation of this obligation was in the past sometimes regarded as an implied term in the contract itself, the weight of modern authority is that the obligation, like the duty not to misrepresent, arises before the contract is made and is therefore non-contractual and probably based on equity's jurisdiction to prevent impropriety which in this context works on a principle of good faith. The difference may lie in different perceptions of the nature of an implied term:

"it is often said that a term is implied in a contract when in truth a positive rule of law is applied because of the category in which a particular contract falls".

If there has been non-disclosure by one party, whether the non-disclosure was fraudulent, negligent or wholly innocent, the other party is entitled to avoid the contract if it has been induced to enter into the policy on the relevant terms, but breach of the duty of disclosure does not of itself give rise to a claim for damages.

The principle of good faith also applies during the performance of an insurance contract, but at that stage its content is different. It is a duty of honesty and does not require the assured to reveal all facts which the insurer might have an interest in knowing."

25. In *Cheshire, Fifoot and Furmston's Law of Contract*, Fifteenth Edition at

pages 372 and 373, it is stated thus:

"In certain contracts where, from the very necessity of the case, one party alone possesses full knowledge of all the material facts, the law requires him to show uberrima fides. He must make full disclosure of all the material facts known to him, otherwise the contract may be rescinded. It is impracticable to give an exact list of these contracts, nor can it be said that the extent of the duty of disclosure is constant in each case."

"Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk."

"The question in each case is whether the fact would have been material in influencing the mind of a prudent insurer, not whether loss has resulted from the undisclosed fact."

26. Sri. P.R. Venkitesh, the learned counsel appearing for the first respondent, submitted that there is no allegation that either the plaintiff or the third defendant had any intention to cause loss to defendants 1 and 2 or to gain an advantage for the plaintiff and for that purpose, a wrong entry was made in the proposal form. There is no case for defendants 1 and 2 that there was any misrepresentation or fraud on the part of the plaintiff to cause loss to defendants 1 and 2. He submitted that Exhibit A9 shows that defendants 1 and 2 were aware of the details of the new premises in which the plaintiff shifted the business. The learned counsel relied on a passage at page 83 of the Modern Law of Insurance, Third Edition by Professor Andrew McGee, which reads as follows :

"Consequences of Non-Disclosure

5.46 The law is equally clear about the consequences of failure to disclose a material fact. Such failure makes the policy voidable at the instance of the insurer provided that the non-disclosure induced the insurer to enter into the contract. Before Pan Atlantic it had been assumed for at least two centuries that the question of inducement was irrelevant once materiality had been established. However, it is now clear that actual inducement must be shown. In Drake Insurance plc v. Provident Insurance plc (2003 EWHC 109 (Comm), (2003) 1 All ER (Comm) 759, (2003) Lloyd's Rep IR 781, Moore-Bick), it was said that the question was whether the insurer had been induced by the nondisclosure, not whether he would have imposed the same terms if other information which diminished the risk has also been available to him. It is submitted that the unusual case of non-disclosure of information reducing the risk is the only situation where this analysis can be sustained. Otherwise whether the insurer in fact made a different decision than he otherwise would have done must be the crucial question."

27. In Pan Atlantic Insurance Company Ltd. and another v. Pine Top Insurance Co. Ltd. (1994) 3 All ER 581, it was held that "for an insurer to be entitled to avoid a policy for misrepresentation or non-disclosure, not only did the

misrepresentation or non-disclosure have to be material but in addition it had to have induced the making of the policy on the relevant terms. Accordingly, an underwriter who was not induced by the misrepresentation or non-disclosure of a material fact to make the contract could not rely on the misrepresentation or non-disclosure to avoid the contract."

28. In A.S.No.1001 of 1998, M/s. Abdulla Ibrahim v. The United India Insurance Company Ltd., a Division Bench of this Court (Justice Kurian Joseph and Justice K.T.Sankaran) dealt with a similar case where due to fire accident, all the buildings in a street were destroyed. The suit filed by the appellant claiming insurance amount was dismissed on the ground that the plaintiff had shifted the stock-in-trade from T.C.39/5 and 39/6 to building No.T.C.39/4. As per the policy, the stock-in-trade was kept in building No.39/5 and 39/6. The Division Bench held :

"There cannot be any dispute to the fact that the loss of the textile goods on account of the fire, as far as the plaintiff is concerned, is in respect of the goods kept in building No.TC 39/4 of Chalai Bazaar. Room Nos.TC 39/5 and 39/6 were occupied by another textile business, namely, Gulshan Fabrics. True, at the time of the incident, it is in evidence that the stock-in-trade of the plaintiff was in building No.TC 39/4."

On those findings, the Division Bench allowed the appeal in part and the suit was decreed to a certain extent.

29. There is no case for defendants 1 and 2 that the plaintiff deliberately mentioned the building number as T.C.4/1821 at Pandit's Colony instead of T.C.4/1680 at Mummy's Colony. There is also no case for the Insurance Company (first defendant) that they were misled by the statement made by the plaintiff in Exhibit B7 proposal for fire insurance. There is also no case that the plaintiff intended to cause loss to the Insurance Company or to gain an undue advantage by showing the building number erroneously as T.C.4/1821. The evidence shows that the building number was copied from the policies taken by the plaintiff at an earlier point of time and that too from a different Insurance Company. It is admitted that Exhibit B7 proposal form was filled up by DW1, an officer of the Insurance Company. There are enough materials to show that the business was shifted to a new premises by the plaintiff in 1984 itself. There is overwhelming evidence to show that various authorities including the first defendant sent letters to the plaintiff in the address of the new premises where the fire accident occurred.

30. It is true that a policy can be avoided for misrepresentation or non-disclosure. However, the misrepresentation or non-disclosure should be a material one and it must have induced the Insurance Company to make the policy in favour of the insured. The non-disclosure or misrepresentation should have induced the insurer to enter into the contract. There must be a specific case that there was inducement to issue a policy relying on the facts disclosed by the

insurer and that there was non-disclosure or misrepresentation. The test is whether the insurer would have made a different decision had the facts been correctly disclosed. Had the insurer been induced to enter into the policy on certain relevant terms and for that purpose, fraudulent non-disclosure was made, the insurer can avoid the liability. An inadvertent mistake need not tilt the balance and it would not enable the insurer to avoid the contract. A circumstance would be material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk. The relevant question is whether the undisclosed fact would have been material in influencing the mind of a prudent insurer. In the present case, there was no misrepresentation or intentional non-disclosure. The mistake was unintentional. The mistake regarding the building number shown in the policy proposal was not aimed at causing any loss to the insurer or gaining an advantage to the insured.

31. For the aforesaid reasons, we do not find any ground justifying the rejection of the claim for the insurance amount under Exhibit A1 policy. The court below was right in holding that the plaintiff is entitled to get a decree against defendants 1 and 2. However, the court below was not justified in granting a decree for Rs.11 lakhs while the loss assessed by the assessors was only Rs.9,60,000/-. To that extent, the decree is liable to be modified.

32. Accordingly, the appeal is partly allowed and the decree passed by the court below is modified and reduced to a sum of Rs.9,60,000/-. The plaintiff would be entitled to interest and proportionate costs as decreed by the court below.