
(2009) 10 OHC CK 0082
In the Orissa High Court

National Insurance Co. Ltd.		APPELLANT
	Vs	
R.S. Printers and Another		RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Citation : (2010) 109 CLT 710 : (2010) 1 OLR 832 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Das, J.—This appeal has been preferred by the Defendant No. 1-National Insurance Co. Ltd. against the Judgment & decree dated 20.11.1999 passed in Money Suit No. 605 of 1988 by the 1st Addl. Civil Judge (Senior Division), Cuttack. The Plaintiff -Respondent No. 1 filed a suit for recovery of the amount of Rs. 1,41,715 along with interest at the rate of 18% per annum & damages at the rate of Rs. 100 per day from the Defendant No. 1 Appellant on the ground that the go-down of the Plaintiff was duly insured by the Defendant No. 1 under two separate burglary policies, which were valid for a period from 25.2.1985 to 24.2.1986 for Rs. 2,50,000 on 24.5.1985. A theft was committed in the business premises i.e. go-down of the Plaintiff & the materials worth lacks of rupees were stolen by breaking open the lock & door. This fact was intimated to the police on the next morning on which Mangalabag P.S. Case No. 271(24)/85 was registered. After investigation, a final report was submitted reporting the case to be true but no clue & the same was accepted by the Learned S.D.J.M. by his Order Dated 4.3.1986. The fact of theft was also reported to the Defendant No. 1-Appellant & the claim was lodged on 25.7.1985, on the basis of which a Surveyor was also engaged by the Defendant No. 1- Appellant. As the claim was not settled, notice was issued by the Plaintiff-Respondent No. 1-insured & the Appellant informed the Plaintiff-Respondent No. 1 on 31.12.1987 that the claim has been repudiated as "no claim". In spite of an objection raised to the said repudiation before the Regional Manager of the Appellant as no action was taken, a further notice was

issued to the Appellant, which yielded no result. The Plaintiff being compelled filed a suit for recovery of the said amount.

2. A stand was taken by the Defendant No. 1-Appellant that even though burglary policies have been issued for Rs. 2,00,000 in favour of the Plaintiff, the Plaintiff falsely lodged a complaint before the police though no such burglary has taken place in the night of 24.5.1985. It was stated in the written statement that the claim was lodged on 4.6.1985 & the Plaintiff intimated regarding shifting of the go-down on 17.6.1985 which act is contrary to the terms & conditions of the policy & the Plaintiff did not take any precautionary measures for protection of the property. Notice of burglary is not given immediately. The alleged claim lodged by the Plaintiff was not complete in all respect. The Plaintiff also did not co-operate with the Surveyor by producing necessary papers for which the Surveyor reported on 26.8.1987 that the alleged burglary is false & has been stage managed for undue gain as well as the claim is exaggerated, unbelievable & the documents, such as, stock register, voucher are false & concocted.

3. The Learned Trial Court framed as many as ten issues. The following findings of the fact have been recorded by the Learned Trial Court.

1. The Surveyor is not the Investigating Agency whose duty was only to aid the Insurance Company to ascertain the loss & his opinion cannot be made the basis to conclude that no theft was committed. Basing on the submission of the final report, it can be safely concluded that theft was committed in the go-down of the Plaintiff.

2. The Plaintiff had sufficient stock as claimed by him amounting to Rs. 1,41,715.

3. The suit is maintainable to the extent of the amount claimed before the Insurance Company & the Plaintiff is entitled to a decree of Rs. 1,41,715 with interest at the rate of 18% per annum from the date of filing of the suit till the date of realization but is not entitled to any Damages as claimed.

4. Mr. S.D. Das, Learned senior Counsel appearing for the Appellant vehemently urged that the Learned Court below having held in paragraph-9 of the Judgment that it is not possible to remove huge quantity of materials without any help of a carriage, has not given any importance to such finding while holding that the burglary, in fact, took place in the go-down of the Plaintiff. As such, according to Mr. Das, the said finding is unsustainable. He further submits that the go-down being situated in a populated. Muslim Basti in the heart of Cuttack town & the alleged date of occurrence being a day of "Roza" for the Muslims, the Learned Court below should have casted a doubt on the Plaintiffs case. He further submitted that the Trial Court has committed gross illegality in not accepting the Surveyor's report about the alleged burglary & it could not have passed the Judgment on the basis of the investigation report submitted in the criminal case.

5. Learned Counsel for the Respondents, however, on the contrary, submitted that the Trial Court after discussing in threadbare materials brought before it has

rightly concluded that a burglary was committed in the go-down of the Plaintiff & the allegation of the Insurance Company that the Plaintiff did not co-operate with the Surveyor is not correct as well as the Learned Trial Court has, on discussion of the evidence, come to a conclusion that there was sufficient stock in the go-down of the Plaintiff covering the claim as made by it.

6. Issuance of burglary policies is not disputed by the Appellant. The sole defence, therefore, taken is that there was no burglary in the go-down of the Plaintiff. In support of such plea, the Appellant-Defendant No. 1 has exhibited the letters dated 4.6.1986 & 23.6.1986, a report of the Chartered Accountant, the final report notice, order in G.R. Case No. 1291 of 1995 of S.D.J.M., Sadar, Cuttack & a Photograph along with other correspondences, which have been marked as Exts. 1 to 41.

7. On analyzing the documents in detail, the Learned Court below has come to the above findings while decreeing the suit of the Plaintiff. I have perused the materials & evidence produced before the Court below. This being a civil suit, it is not required for the Plaintiff to prove beyond reasonable doubt that the burglary took place in his go-down & the case is to be decided on preponderance of probabilities. The materials produced by the Plaintiff clearly support his case & the conclusions arrived at by the Trial Court on such materials cannot be found fault with. I, therefore, find no merit in this appeal, which is accordingly dismissed, but in the circumstances, without cost.

8. The amount of Rs. 6,20,003 deposited before this Court pursuant to the Order Dated 16.3.2007 passed in this appeal along with accrued interest thereon shall be disbursed in favour of the Plaintiff by the registry, which shall be construed to be in full" & final satisfaction of the decree. The Execution Case No. 31 of 2006 pending before the Learned Civil Judge (Senior Division), 1st Court, Cuttack, further proceeding of which was stayed by Order Dated 27.4.2007, shall be dropped by recording that the decree has been fully & finally satisfied.