

(2010) 04 SHI CK 0111
In the High Court Of Himachal Pradesh

National Insurance Company Ltd.	Vs	APPELLANT
Shri Arun Chander Sood and Others		RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 3 ShimLC 268

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—This appeal by National Insurance Company, who was one of the defendant in the Civil Suit, is directed against the judgment dated 2.1.1997 of the learned District Judge (First Appellate Court), whereby appeal filed by the appellant-defendant against the decree dated 31.8.1988 of trial Court i.e. Sub Judge Ist Class, Rohru has been dismissed and the decree for a sum of Rs. 85,000/- passed against the appellant-defendant, has been upheld.

2. Facts that need to be noticed for the disposal of the appeal may be summed up thus.

3. Respondent Arun Chander Sood (hereinafter called "plaintiff") runs a business in the name and style of M/S Arun Traders in main bazaar, Rohru. He had some cash credit arrangement with United Commercial Bank, also a respondent herein. On account of the said arrangement, plaintiff Arun Traders had hypothecated his stock-in-trade with the said bank and, therefore, the bank used to get the stock-in-trade insured on year to year basis. In the year 1981-82, the stock-in-trade was insured with New India Insurance Company, for a sum of Rs. 50,000/- and a premium of Rs. 78/- had been paid. The policy expired on 18.5.1982. Thereafter, insurance was got done by the bank with the present appellant. The stock-in-trade was insured for Rs. 85000/- and a premium of Rs. 131/- was paid to defendant No. 4 Shri Mohan Lal Chauhan, Inspector of the appellantdefendant. The aforesaid amount of Rs. 131/- was paid to said defendant No. 4 along with the premium for insurance of goods of several other customers of the bank against a consolidated receipt Ext.P29. Respondent No. 4 Mohan Lal Chauhan

assured that policy/cover note would be sent to the bank later on. This transaction took place on 3.6.1982. On 14.6.1982, a fire broke out in Rohru Bazar. Shop of the plaintiff was completely gutted in that fire. He preferred insurance claim. That was dismissed by the defendant on the ground that his shop or the stock-in-trade had not been insured with it.

4. Plaintiff then filed a suit in the Court of Civil Judge, impleading Insurance Company, the bank and defendant No. 4, as defendants. The bank and its Manager, who too had been impleaded as defendants took the plea that they had paid a premium of Rs. 131/- to defendant No. 4 Mohan Lal Chauhan, who represented the defendant-appellant Insurance Company for insuring the stock-in-trade of the plaintiff. They pleaded that Insurance cover note was however, not issued and later on they came to know that the cover note had been issued initially in the name of M/S Arun Medical Hall and thereafter Amra Stores. Defendant-appellant denied that the stock-in-trade of the business of the plaintiff was insured with it as claimed by him and as alleged by the bank and its Manager in their written statements.

5. Trial Court concluded that even though the cover note Ex.P24 was not in the name of the respondent-plaintiff but from the entries in the books of the defendant bank it appeared that a premium of Rs. 131/- had been paid to the defendant-appellant company for the insurance of the goods of the plaintiff and that it also appeared from the evidence on record that M/S Amra Stores had not got the goods insured and, therefore, cover note Ex.P24 could not be said to have been issued in respect of any goods insured by Amra Stores, but it was relatable to the stock-in-trade of the plaintiff. Trial Court also concluded, on the basis of some oral testimony, that even though in Ex.P24 the amount insured was mentioned as Rs. 25,000/-, actually it was Rs. 85,000/-, because on the previous occasion the plaintiff had paid a premium of Rs. 78 only to get his goods insured for Rs. 50,000/-.

6. With the aforesaid findings, trial Court decreed the suit for a sum of Rs. 85,000/- in favour of the plaintiff and against the present appellant-defendant.

7. Appeal was filed by the appellant-defendant in this Court. That appeal was transferred to the Court of District Judge, because after the filing of appeal in this Court, pecuniary jurisdiction of the first Appellate Court stood enhanced. Learned District Judge has dismissed the appeal and upheld the decree of the learned trial Court.

8. This appeal was admitted on the following substantial question of law:

1. Whether the impugned judgment and decree is the result of complete misreading, misinterpretation as well as mis-appreciation of documents Ext. P24, the cover note with respect of M/s Amra Stores?

2. Whether the impugned judgment and decree could be passed by the learned District Judge when there is no evidence to either show that the goods of the

respondents were either insured or any cover note was issued in the name of M/s Arun Traders?

3. Whether the impugned judgment and decree is the result of complete misreading as well as mis appreciation of document Ext. DW1/A the report of Surinder Chaudhary, Ext.P6 and PW2/A the alleged affidavit dated 1st July, 1982 executed by PW2 namely shri Jagdish Kumar?

4. Whether the impugned judgment is the result of complete misreading as well as misappreciation of Ext.P29 to P31 as well as statements of PW2 Shri Jagdish Kumar?

5. Whether the impugned judgment and decree is the result of non-consideration of statements of DW 1 Surinder Kumar, DW2 Kiran Kumar and DW 3 B.M. Kaul?

9. I have heard the learned Counsel for the parties and gone through the record.

10. All the aforesaid substantial questions of law as a matter of fact, pertain to the interpretation of various documents proved by the parties and appreciation of evidence.

11. It is not in dispute that the plaintiffrespondent had been availing cash credit facility with United Commercial Bank, Rohru, impleaded as defendant in the main suit and the respondent in this appeal. Also, it is an admitted case of the parties that the stock-intrade of the plaintiff was hypothecated with the bank and the bank used to got it insured as it was the security for the over drawl of money from the cash credit limit account.

12. For the year 1981-82, the stock-in-trade was got insured by the bank with New India Insurance Company vide policy Ext.PW3/A for a sum of Rs. 50,000/- and a premium of Rs. 78/- had been paid @ 1.55 per thousand. A notice was received from the New Indian Insurance Company on the expiry of the policy Ext.PW3/A. That notice is Ext.P34. As per this notice, a premium of Rs. 282/- had been demanded for renewing the insurance of the stock for a sum of Rs. 50,000/-. The bank, according to its plea, got the stock-in-trade insured with the present appellant-defendant which is also a general Insurance Company and it paid a premium of Rs. 131/-.

13. DW3 C.M. Narang, Manager of the bank appeared as a witness. Though, he testified that a premium of Rs. 131/- had been paid for insuring the stock-in-trade of the plaintiff, to defendant No. 4 Mohan Lal Chauhan, an employee of the appellant-defendant, he did not say as to what was the insured amount. Trial Court and the first Appellate Court relied upon the testimony of PW3 Shri D.S. Thakur, an employee of New India Insurance Company to the effect that the premium for insuring the goods for Rs. 85,000/- could have been Rs. 131/-. I am of the considered view that on the basis of the statement of this witness the two Courts below could not have concluded that the amount of Rs. 131/- was for insuring the goods for Rs. 85,000/- because the very company of which DW3 Shri D.S. Thakur is an employee had demanded a premium of Rs. 282/- for

insuring the goods for Rs. 50,000/- vide Ext. P34.

14. According to the plaintiff, as also the bank, which got the stock-in-trade of the plaintiff insured, no insurance had been got done in respect of the stock-intrade of the M/S Amra Stores in whose name cover note Ext.P24 appears to have been issued. Trial Court and the first Appellate Court have concluded on the basis of the evidence and the pleadings of parties that Ext.P24 was wrongly issued in the name of M/S Amra Stores and that it should have been in the name of the M/S Arun Traders. The amount insured, per this cover note Ext.P24 is 25,000/- and not Rs. 85,000/-. Therefore, the two Courts below were not justified in coming to the conclusion that the stock-in-trade of the respondentplaintiff M/S Arun Traders had been insured for Rs. 85,000/-. This is especially so when New India Insurance Company, even after giving allowance for no claim, under the previous policy had demanded a premium of Rs. 282/- for insuring the goods for Rs. 50,000/- vide Ext. P34 for the year 1982-83.

15. I do not find any merit in the submission of learned Counsel for the appellant that there is absolutely no evidence in support of the findings of the two Courts below that the stock-in-trade of the plaintiff had been got insured on payment of premium of Rs. 131/- by the bank. Plaintiff and the bank led both affirmative and negative evidence to prove the plea that stock-in-trade of M/S Arun Trader had been got insured by the plaintiff. There is an entry in the account of Arun Traders maintained by the bank, indicating that a premium of Rs. 131/- had been paid to the appellant-defendant Insurance Company on account of insurance of the stock-in-trade for the year 1982. The entry is dated 3.6.1982. Its copy is Ext.P31. Also, there is no entry in the account of Amra Stores, who too had been availing cash credit limit during those days, meaning thereby that the stock-in-trade of the Amra Stores had not been got insured. When the plaintiff and the bank had led the evidence indicating that no premium for the insurance of stock-in-trade of the Amra Stores had been paid and that Rs. 131/- had been debited to the account of the plaintiff M/S Arun Traders, on account of premium paid to the appellant-defendant, it was almost obligatory for the defendant-appellant to have examined its employee, Mohan Lal Chauhan, to whom the premium had been paid against receipt Ext.P29. It chose not to examine him. Bank Manager DW3 C.M. Narang very categorically stated that a list of the customers of the bank whose stock-in-trade was to be insured, had been given to defendant Mohan Lal Chaunan along with the bank draft representing the consolidated amount of premium against receipt Ext. P29. That list was supposed to be with defendant No. 4 or appellant-defendant, under whom the defendant No. 4 was working as an Inspector, at the relevant time. That has not been produced by the appellant/ defendant or said Mohan Lal Chauhan.

16. In view of the above stated position, it cannot be said that the view taken by the two Courts below that cover note Ext.P24 pertains to the stock-in-trade of the respondent-plaintiff, is not possible from the evidence on record and this being a finding of fact, is not liable to be reversed in appeal.

17. In view of the above stated position, all the substantial questions of law are answered against the appellant-defendant. However, in view of the finding recorded hereinabove that the goods of the respondentplaintiff had been insured only for Rs. 25,000/-, decree of the trial Court as affirmed by the first Appellate Court is modified and instead of a decree for a sum of Rs. 85,000/-decree for a sum of Rs. 25,000/- only, is passed in favour of the respondent-plaintiff M/S Arun Traders and against the appellant-defendant.