
(1967) 10 SC CK 0024
In the Supreme Court Of India
Case No : Civil Appeal No. 142 of 1965

N.R. Srinivasa Iyer

APPELLANT

Vs

Vanguard Fire and Genl. Ins. Co. Ltd.

RESPONDENT

Date of Decision : 31-10-1967

Acts Referred:

Contract Act, 1872 — Section 151

Citation : (1967) ACJ 409

Hon'ble Judges : S.M. Sikri, J;J.M. Shelat, J;J.C. Shah, J

Bench : Full Bench

Advocate : Bishan Narain, for the Appellant; H.S. Dhir and Harbans Singh, for the Respondent

Judgement

J.C. Shah, J.—N.R. Srinivasa Iyer—hereinafter called 'the Plaintiff'—sued the Respondent Company in the Court of the Subordinate Judge, Trichur, for a decree for Rs. 7,000/- being the value of his motor-car which was destroyed by fire on July 10, 1953, when it was in the possession of the agent of the Respondent Company. The Trial Court decreed the Plaintiff's suit. In appeal to the High Court of Kerala the decree was reversed, and the Plaintiff's suit was dismissed. With special leave, the Plaintiff has appealed to this Court.

2. The Respondent Company which carries on the business of fire and general insurance insured the Plaintiff's motor-car No. TCO-1 against loss or damage under "a comprehensive policy" for the period March 1, 1952 to February 28, 1953. The relevant conditions of the policy were Conditions Nos. 3, 7 and 8:

(3) The Company may at its own option repair, reinstate or replace the motor-car or part thereof and/or its accessories or may pay in cash the amount of the loss or damage.

(7) All differences arising out of this policy shall 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 arbitrators one to be

appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the arbitrators do not agree, of an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

(8) The due observance and fulfillment of the terms, conditions and endorsements of this policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this policy." The motor-car of the Plaintiff was damaged in a road accident on December 21, 1952, and the Plaintiff claimed that since the damage was covered by the terms of the policy, the Respondent Company was bound either to repair, reinstate or replace the motor-car or the parts thereof or pay in cash the amount of the loss or damage, It was the Plaintiff's case that the Respondent Company, acting under the terms of the policy and in exercise of the option under Condition No. 3, undertook to get the car repaired in the workshop of Messrs. P.S.N. Motors Ltd., Trichur, to which workshop the motor-car was removed after the accident. Thereafter the motor-car was in the custody of Messrs. P.S.N. Motors Ltd. as an agent of the Respondent Company for effecting the necessary repairs at the cost of the Respondent Company and on July 10, 1953, in a fire which occurred in the workshop of Messrs. P.S.N. Motors Ltd., the motor-car was destroyed.

3. According to the Plaintiff the motorcar was in the possession and custody of Messrs. P.S.N. Motors Ltd. on behalf of the Respondent Company and was being repaired "at the sole responsibility of the Respondent company under its instructions and since the Respondent Company had entrusted the motor-car for repairs to a workshop in which several automobiles with inflammable materials like oil, petrol, tyres etc. were lying, without ascertaining whether the workshop was insured against fire and other risks, the Respondent Company was liable to make good the loss. The Plaintiff therefore claimed the value of the motor-car on the footing that the Respondent Company was a bailee of the motorcar and had failed to take such care thereof as a person of ordinary prudence would, under similar circumstances, take of his own property of the same quality and value as the motor-car bailed.

4. The Respondent Company denied the liability to make good the loss under the terms of the policy and also under the agreement of bailment set up by the Plaintiff. It was contended by the Respondent Company that the suit was not

maintainable, inasmuch as the Plaintiff had not conformed to Condition No. 7 of the policy. The Trial Court raised several issues on the pleadings, the following of which are material:

- (1) Whether the damaged car TCQ-1 was entrusted for repairs to Messrs. P.S.N. Motors Ltd., for and on behalf of the Defendant Company ?
- (2) Is the Defendant Company liable for the loss of the car by accident in the P.S.N. Motors Ltd. either under law or by the contract of insurance ?
- (3) Is this suit maintainable inasmuch as the Plaintiff has not conformed to the Condition No. 7 of the policy ?

The Trial Court held that the motor-car of the Plaintiff was entrusted to Messrs. P.S.N. Motors Ltd. for and on behalf of the Respondent Company and the Respondent Company was liable for the loss of the motor-car when lying in the workshop of Messrs. P.S.N. Motors Ltd. The Court further held that Condition No. 7 of the policy did not absolve the Respondent Company from liability to be sued since the Company had not applied for the stay of the suit. In the view of the Trial Court the Respondent Company was liable to restore the motor-car to the Plaintiff or pay its value, for it had exercised the option to get it repaired, and had entrusted it to a workshop without ascertaining whether it was insured against loss by fire.

5. Against the decree an appeal was preferred to the High Court of Kerala. In appeal, the High Court held that the suit was not maintainable because by the express terms of the Condition No. 7 of the policy, the making of an award was a condition precedent to any right of action against the Company, and the Plaintiff had not referred the dispute to arbitration. The High Court observed that it was open to the Court to dispense with Condition No. 7 of the policy, but no steps were taken by the Plaintiff to secure an order setting aside the Condition, and because of failure on the part of the Respondent Company to apply for stay of the suit, operation of that Condition was not excluded. The learned Judge accordingly reversed the decree passed by the Trial Court and dismissed the Plaintiff's suit. Against that decree, with special leave, the present appeal is preferred.

6. In our view, the High Court misconceived the nature of the dispute raised by the Plaintiff. It was the Plaintiff's case that the Respondent Company had exercised its option under Condition No. 3 of the policy to get the motor-car repaired at its cost and had taken possession of the motor car, as bailee for the purpose of getting it repaired. The motor-car was according to the Plaintiff, in the possession of an agent of the Respondent Company, and the Respondent Company was liable to make good the loss which arose out of their failure to take such care as is imposed by Section 151 of the Indian Contract Act upon it as bailee. This claim was denied by the Respondent Company and a clear issue in that behalf was raised. Under Condition No. 7 of the policy, a difference "arising out of the policy" must be referred to arbitration and an award of the arbitrator

obtained before a suit could be maintained in the civil Court. But Condition No. 7 has no operation in this case, since the difference between the Plaintiff and the Respondent Company arose not out of the policy, but out of the claim of the Plaintiff that the motor-car was delivered to the Respondent Company for repairs.

7. The liability of the Respondent Company to get the motor-car repaired was never in dispute: what was in dispute was the consequence of the steps taken for the purpose of satisfying that liability. The Plaintiff pleaded that the motor-car was entrusted to the Respondent Company for repairs, and on that account it became a bailee: the Respondent Company denied the bailment and pleaded that even as bailee it was not liable for the loss of the motor-car, because it is not shown to have failed in taking the degree of care which the law required it to take. The differences so formulated do not arise out of the policy they arise out of a transaction dehors the policy.

8. The approach of the High Court on the question whether the suit was maintainable because of Condition No. 7 is therefore erroneous. The Trial Court apparently held the bailment proved and also held that the Respondent Company had failed to take such care of the motor-car as the Respondent Company was as bailee bound to take. The High Court did not consider that question and reversed the decree passed by the Trial Court on a question which did not arise on the case of the Plaintiff.

9. We set aside the decree passed by the High Court and direct that the case be remanded to the High Court to deal with the following questions which arise in the appeal:

(1) Whether the Respondent Company was a bailee of the motor-car of the Plaintiff as alleged by the Plaintiff ?

(2) Whether the Respondent Company failed to take as much care of the motor-car as a person of ordinary prudence would in similar circumstances take of his own motor-car of the same quality and value ? and

(3) the value of the motor-car destroyed.

The High Court will proceed to hear and dispose of the appeal according to law. Costs of the appeal will be costs in the High Court.