(2002) 06 AP CK 0037

In the Andhra Pradesh High Court

Case No : Appeal No. 908 of 1995

Oriental Insurance Co. Ltd. and Another APPELLANT

Vs

Sakala Veera Bhadraiah and Co. and Another RESPONDENT

Date of Decision : 18-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27(1)

Citation : (2003) 1 ACC 118 : (2004) ACJ 1987 : (2002) 5 ALT 258 : (2002) 3 APLJ 312

Hon'ble Judges : Gopala Krishna Tamada, J;Bilal Nazki, J

Bench : Division Bench

Advocate : S. Ravi, for the Appellant; N. Suryanarayana Murthy and P.R. Prasad, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—This is an appeal filed by the defendants in O.S. No. 414 of 1987 against the judgment and decree dated 30.3.1995 passed by the Addl. Subordinate Judge, Guntur. The trial court decreed the suit in favour of the plaintiffs and directed the defendants to pay an amount of Rs. 54,39,207 with subsequent interest at the rate of 18 per cent per annum on the principal amount of Rs. 37,96,555 from the date of suit till the date of decree and thereafter at the rate of 6 per cent per annum from the date of decree till the date of realization. The defendants were also directed to pay the sum of Rs. 2,07,394 towards costs.

2. The suit was laid by the plaintiffs contending therein that the plaintiff No. 1 was a partnership firm registered under the Indian Partnership Act and was carrying on business in cotton and cottonseeds with a ginning and oil mill at Nagulapadu, Pedanandipadu Mandal, Ponnur DMC. Plaintiff No. 2 is Bank of Baroda carrying on business at its branches at Pedanandipadu and Guntur. The plaintiff No. 1 has an account with the plaintiff No. 2 at its branches at Pedanandipadu and Guntur. The amounts due and payable by the plaintiff No. 1

are credited to its account with the plaintiff No. 2 at its branches either at Pedanandipadu or at Guntur. It has been the practice and customary for all businessmen, either firms or companies, availing limits with banks to take insurance of their stocks and business premises or any other building and machinery in the joint names of themselves and their bankers. Plaintiff No. 1 had taken insurance policies from the defendant Nos. 1 and 2 and was also obtaining cover notes from time to time in the joint names of both the plaintiffs. The amounts due thereunder in case of liability are payable either to the plaintiff No. 1 or to the plaintiff No. 2. Therefore, plaintiff No. 2 also joined in filing the suit. Plaintiff No. 1 was constituted as a firm in the year 1973 and from 1974 onwards it was carrying on business in cotton at Nagulapadu and availing limits with the plaintiff No. 2. For about ten years it was covering its ginning mill as well as its stocks under insurance policies issued by the defendants in favour of both the plaintiffs by paying annually an average premium of about Rs. 2,00,000. For 10 years there was never an occasion for claiming any compensation. In the year 1982 plaintiff No. 1 started construction of a cottonseed oil mill on its premises and completed the same in the year 1984. It also obtained necessary electricity connection in May, 1984. For the year 1983-84 also plaintiffs obtained necessary insurance cover notes for ginning mill and stocks under seven different policies between 23.12.1983 and 21.7.1984 of a total value of Rs. 1,13,50,000. Policy for Rs. 3,50,000 was last taken on 21.7.1984 which was in respect of ginning mill and machinery. Depending upon the location of the stocks as well as the extent of the total value of the stocks, the plaintiffs were seeking transfer of policies and additional policies for further amounts. Any transfer sought by the plaintiffs has been always acceded to by the defendants with effect from the date of such request, although the communication thereof was sent on a later date. It has been an invariable practice of the defendants and other insurance companies to treat the transfers to be complete and effective from the date of request of customers. In respect of two transfers of policies, i.e., F/1898/83/28.12.1983 for Rs. 15,00,000 and F/152/84/10.1.1984 for Rs. 10,00,000 transfers were asked for by the plaintiffs by a letter of request given to the defendants. Inspections as usual and were treated to be effective accordingly. It was further contended that the oil mill was completed and production had started. Because of the value of the stocks held by the plaintiff No. 1 had gone up than the value, which was available to it under insurance coverage and since plaintiff No. 2 was always requiring the plaintiff No. 1 to cover all the properties inclusive of buildings and machinery and stocks, plaintiff No. 1 sought a policy of Rs. 15,00,000 in respect of the stocks and another policy of Rs. 50,00,000 in respect of the buildings and machinery of the oil mill from the defendants. The defendants'' Inspector who was stationed at Pedanandipadu informed the plaintiffs about the premium amounts of insurance policies for such coverage. Thereafter on 14.8.1984 plaintiff No. 1 issued two cheques in favour of defendant company for Rs. 5,201 and Rs. 18,406 towards premiums of the insurance policies. The cheques were accepted and two cover notes being cover note No. 91009/84 dated 14.8.1984 for Rs. 15,00,000 in respect of stocks and cover note No. 91062/84 dated

14.8.1984 for Rs. 50,00,000 in respect of buildings and machinery of cottonseed oil mill were issued in favour of the plaintiff Nos. 1 and 2 on behalf of defendant company. The cover notes had to be followed by insurance policies in due course. The insurance was thus full and complete and was effective after the cover notes were issued. Plaintiffs further contended that they had learnt that defendants had realized from the bankers the cheques, which were issued towards premium of the insurance. On 15.8.1984 fire broke out in the premises of plaintiff No. 1 which resulted in destruction of valuable stocks of cotton as well as buildings and machinery of ginning mill and also cottonseed oil mill. Stocks of cotton affected and destroyed in the fire accident included kappas, cotton lint, as well as fully pressed bales, etc. Besides, superstructure of cottonseed oil mill as well as machinery therein including oil section, decorticating section, deliberating section as also lathe room and godowns used for storage and expellers and motors were all affected and destroyed. All these items were duly covered under both the cover notes. All of them were pledged with plaintiff No. 2 in whose favour also plaintiff No. 1 had taken cover notes. By then the total coverage for stocks under insurance with the defendants was to the tune of Rs. 1,25,00,000 under various insurance policies and cover notes. Such coverage for buildings and machinery was to the tune of Rs. 53,50,000, in respect of buildings and machinery for ginning under one policy and buildings and machinery of oil mill under another cover note covering all risks of fire, riot, strike and malicious damage. According to the plaintiffs, the policies were in force as on 15.8.1984. The fire accident was immediately reported to the police and also to the defendants on the same day. Police investigated the cause of fire and found that the fire was due to accident and was not the result of any foul play. A certificate to this effect was also issued by the Superintendent of Police on 26.10.1984. Fire Officer, Guntur and his team who came to control the fire could not prevent the destruction. He also informed plaintiff No. 2 that the fire was the result of an accident and the damage caused to goods was of about Rs. 1,80,00,000. According to the plaintiffs'' information, the defendants were also informed that the fire was the result of accident only and it had resulted in loss to the plaintiffs. Defendants'' officers also visited the place of fire accident on the said day and succeeding days. The defendant insurance company also appointed its surveyors, Purnachandra Rao in the first instance and later Mehta and Padamse Surveyors Pvt. Ltd., Madras, to survey and assess the loss caused to the plaintiffs. Plaintiffs submitted to the defendants claim forms with all particulars in time and also furnished all necessary record and information from time to time. The surveyors assessed the value of damage to the buildings and machinery of cottonseed oil mill at Rs. 22,96,655. They also assessed the damage to the buildings and machinery of ginning at Rs. 1,46,875 and also to the stocks of the plaintiffs at Rs. 1,19,92,396.15. It was further contended that although the loss suffered by the plaintiff No. 1 was more than what was estimated by defendants, but to avoid delay in settlement of claim, plaintiffs agreed to the assessment of the defendants. Therefore, they signed a joint memo of assessment of loss. According to the plaintiffs, in view of the loss admittedly suffered by them, they were entitled to be paid with those amounts by defendants, but they did not settle the claim and delayed the settlement unreasonably for a long time. The fire accident had taken place on 15.8.1984 which had also engulfed adjacent buildings and stocks of adjoining premises of Pedanandipadu Cotton Press which were covered by other policies issued by the defendant company and the claims had been settled and paid. Stocks of third parties in both the premises were also engulfed and destroyed. Defendants without any reason also got an inquiry by C.B.I. who conducted investigation. This further delayed the settlement. According to the plaintiffs, there was no cause for suspicion or room for any doubt about the fire accident and insurance coverage. When the matter was not settled for a long time, plaintiff No. 1 filed a writ petition before the High Court against the insurance company for a direction to settle the claim. The High Court had directed the defendant company to settle all the claims within two months. Subsequent to the directions of the High Court defendant company chose to settle the claims partially. On 12.8.1986 it issued a cheque in favour of plaintiff No. 2 to the credit of plaintiff No. 1 for an amount of Rs. 90,29,784 only. The plaintiffs received the cheque under protest and without prejudice to their rights and claims for the balance of claim and interest. Defendants similarly paid to plaintiffs another amount of Rs. 6,86,110 on 10.3.1987 which was also received under protest. According to the plaintiffs, there was an outstanding balance of Rs. 24,04,286 payable to the plaintiffs with interest at 18 per cent per annum which was the minimum commercial rate of interest charged by banks and other financial institutions. Plaintiffs further contended that the defendants had not cared to specify the details of settled policies and the amounts paid thereunder. However, they had sent two letters dated 29.8.1986 under letter reference No. HRO/ Fire/40/86 wherein the defendants had chosen to repudiate its liability in respect of cover note No. 91009 which was for an amount of Rs. 15,00,000 stating that it was obtained on breach of utmost good faith. Another letter bearing reference No. HRO/ Fire/40/86 was also sent by the defendant company by which it had repudiated the claim under the cover note No. 91062 for Rs. 50,00,000 on the same ground. It was false to say that there was lack of good faith in obtaining cover notes. Insurance coverage was duly made by the defendant company in a bona fide manner and the aforesaid two cover notes issued by the defendant company in favour of the plaintiffs were valid and binding on them. The defendant company was bound to honour the claim and settle the claim of the plaintiffs. Since the plaintiffs and the defendants had mutually agreed to the assessment made by the surveyors in respect of the loss of buildings and machinery of cottonseed oil mill to the tune of Rs. 22,96,655, the defendants had to pay the said amount in settlement of its liability under cover note No. 91062. They further contended that out of the total agreed loss of stocks coming to Rs. 1,19,92,396.15 the amount received under protest towards such loss was only Rs. 95,88,000. Therefore, there was a balance of Rs. 24,04,000 and defendant company was liable to pay the said amount. They had claimed interest. The following amounts were claimed:

Amount of compensation payable under cover note No. 91062 towards loss of buildings and machinery of cottonseed oil mill Rs. 22,96,655 Interest thereon at 18 per cent from 1.1.1985 till 27.8.1987 Rs. 9,25,552 Total: Rs. 32,22,207 Amount of compensation payable under cover note No. 91009 towards loss of stocks Rs. 15,00,000 Interest thereon from 1.1.1985 till 27.8.1987 at the rate of 18 per cent Rs. 7,17,000 Total: Rs. 22,17,000 Grand Total: Rs. 54,39,207 3. In the written statement defendant No. 1 company stated that defendant No. 2 was not a necessary party to the suit. Plaintiff No. 1 had also no cause of action against the defendant No. 1 and the suit had been filed only to resort to chance litigation. It was further contended that mere issuance of a cover note by the local Inspector and the issuance of a cheque for the premium by the plaintiff No. 1 would not complete the contract in respect of the insurance coverage. Issuance of the policy would alone complete the contract and fix the liability. It was further contended that the Inspector Kotha Hanumantha Rao was a relative of Sakala Veerabhadraiah representing plaintiff No. 1 firm and for their mutual benefit they brought into existence two cover notes bearing Nos. 91062 and 91009 with antedate of 14.8.1984. There was no enforceable contract and the cover notes were issued with mala fide intention. The cheques issued for premium were also antedated. 15.8.1984 was a public holiday and 16.8.1984 was also a public holiday. The cover notes and the relative cheques were received by the defendant No. 1 at Guntur only on 17.8.1984. Even before they were received by defendant No. 1 at Guntur, fire accident was reported to have occurred on 15.8.1984. Message had been received by the defendant No. 1 about the fire accident even before he received the cover notes and the cheques. Inquiries of defendant No. 1 had revealed that the cover notes and the cheques were brought into existence after the fire accident occurred on 15.8.1984 with the help of Inspector Hanumantha Rao. It was further contended, "the scored out cover notes bearing the same date and word for word, letter for letter, syllable for syllable now passed into service except in respect of quantum of sum insured. These facts and the relative documents bear eloquent, unquestionable testimony of the fraud deliberately played by the plaintiffs and Insurance Inspector, otherwise Rs. 10,00,000 would not jump to Rs. 40,00,000 and then to Rs. 50,00,000 at the very moment. Similarly Rs. 3,00,000 would not jump into Rs. 15,00,000 at the same moment. The parties concerned are educated, experienced and, therefore, their documents themselves would and did show their fraudulent intentions and machinations and illegal greed to have undue enrichment". It was further contended that defendant No. 1 kept the Inspector under suspension and reported the matter for due investigation by the C.B.I. for necessary action. Apprehending that the investigation might expose the fraud played by the plaintiffs and Inspector Hanumantha Rao in respect of the suit claim, the plaintiffs rushed to the court with the suit. The suit was untenable and lack of good faith. The plaintiffs could not enrich themselves by playing fraud on the defendant by projecting antedate cover notes in respect of the value of goods and building. The relative cover notes do not present the correct position of the insurance coverage and they were deliberately brought into existence to have illegal gain at the expense of defendants. It was further contended, "cover note No. 91008 was prepared for Rs. 3,00,000 with date 14.8.1984 and it is scored out and cancelled without any obvious reason or tenable ground and for the same subject matter cover note No. 91009 with date 14.8.1984 for a sum of Rs. 15,00,000 was prepared. Similarly cover note No. 91061 with date 14.8.1984 in respect of the building for Rs. 10,00,000 written in letters and also put in figures and the 1st figure ''1'' was altered into ''4'' making it into Rs. 40,00,000 but the amount written in words continue to remain as Rs. 10,00,000 and greed knows no bounds. The plaintiff and the concerned Inspector brought into existence the cover note No. 91062 with date 14.8.1984 for Rs. 50,00,000 in respect of cover note No. 91009 and Rs. 10,00,000 to Rs. 50,00,000 in respect of cover note No. 91062 would bear ample testimony to the fraud played by the plaintiff in collusion with the Inspector locally stationed who is the relative of the plaintiff No. 1, who is the managing partner of the plaintiff No. 1 firm". It was further contended that plaintiffs had not chosen to mention any document showing the quantum of stock existing in the godown at the time of accident. Similarly, in respect of the building also the plaintiffs did not file any valuation certificate or extracts of the property demand register of the local authority. Therefore, the defendant had repudiated the plaintiffs claim. The defendant further contended that it was incorrect to say that the premium paid in respect of the said two cover notes was accepted, but relative receipts were issued specifically mentioning that the defendant received the premium without prejudice to the rights and contentions in the matter. The matter had stood only at the proposal stage and the proposals were also made mala fide after the fire accident antedating the cover notes and relative cheques. Coverage was not accepted and the policies were not issued because the cover notes and the cheques were received by the defendant two days after the fire accident and, therefore, the defendant was not liable to pay any amount to the plaintiffs.

4. On the basis of these pleadings, the following issues were framed by the trial court:

(1) Whether the suit is bad for misjoinder of parties?

(2) Whether the suit amount claimed is correct?

(3) Whether there was a concluded contract?

(4) Whether the plaintiff is entitled for the suit amount?

(5) To what relief?

5. On behalf of the plaintiffs three witnesses were examined and 20 documents were exhibited. On behalf of defendants DW 1 was examined and 13 documents were exhibited.

6. There was no evidence led on issue No. 1 and the issue No. 1 was accordingly decided in favour of the plaintiffs. Issue No. 3 was decided in favour of the plaintiffs as against the defendants. Issue Nos. 2 and 4 were taken together by

the trial court and they were also decided in favour of the plaintiffs as against the defendants. Eventually, a decree as prayed for was passed.

7. During the hearing of this appeal, this court felt that K. Hanumantha Rao, Inspector of Oriental Insurance Co. Ltd. at the relevant point of time was a material witness. Neither of the parties had chosen to examine him. Perhaps for obvious reasons the plaintiffs might have felt that he might make a statement which may go against them. The defendants might have felt in the same way. Therefore, in exercise of powers under Order 41, Rule 27 (1) (b) of Civil Procedure Code, we summoned K. Hanumantha Rao, Inspector of Oriental Insurance Co. Ltd. at the relevant point of time. He was examined on 5.11.2001 and 12.11.2001. Though the defendant No. 1 in his written statement had categorically stated that the suit was result of collusion between K. Hanumantha Rao and the plaintiffs, there was no issue framed by the trial court with respect to that contention. It was also specifically pleaded that the cover notes were antedated and were issued after the fire accident. There was no specific issue on this also. But we feel that the parties knew the respective claims of their opponents and the trial court has also dealt with such matters while deciding the issue Nos. 2 and 4. Therefore, we do not think that it would be necessary to remand the matter to the trial court. In addition, the statement of K. Hanumantha Rao has been recorded by this court. Therefore, if the issue relating to the alleged collusion between Kotha Hanumantha Rao and the plaintiffs and the issue relating to antedating of cover notes are settled in this court, it would not be prejudicial to either of the parties. In any case, these issues without having been framed have been considered by the trial court as well. For instance, the trial court in its judgment while deciding the issue No. 3 had specifically noted, "The defendants alleged that there is collusion between the plaintiff No. 1 and the Insurance Inspector because he is a distant relative. Distant relative is not a prohibition to issue cover notes. The same Inspector covered for plaintiff No. 1 several years and covered others also for crores without remark till then. The alleged charges, inquiry report against Insurance Inspector and dismissal was long after repudiation of claim in August, 1986 and filing of suit in 1987. No specific evidence oral or documentary adduced regarding fraud and collusion as alleged by defendant No. 1 company against the plaintiff No. 1 and the Insurance Inspector". So in these circumstances, two points which this court wants to frame to decide the appeal are:

(1) Whether there was collusion between the plaintiffs and K. Hanumantha Rao, Insurance Inspector?

(2) Whether the cover notes were issued after the fire accident?

8. Both these points are taken together. The facts relating to filing of the suit and the issuance of the insurance coverage have been dealt with while referring to the pleadings of the parties. PW 1 (Sakala Veerabhadraiah, the plaintiff No. 1), stated in his cross-examination, "the concerned Inspector K. Hanumantha Rao who issued cover note in this matter was stationed at Pedanandipadu since some

years. He is a distant relative of mine". When this Inspector K. Hanumantha Rao was examined by this court, he stated in his examination-in-chief that he had distant relationship with S. Veerabhadraiah, but in his cross-examination by appellants he admitted that he was married to the daughter of Mrs. S. Veerabhadraiah''s sister. In Indian social structure one''s sister''s son-in-law is not a distant relation by any stretch of imagination. Since S. Veerabhadraiah denied his close relationship with K. Hanumantha Rao as also K. Hanumantha Rao himself also tried to deny his close relationship with S. Veerabhadraiah in the first instance, therefore this is one of the suspicions which has to go against the plaintiffs-respondents.

9. Now coming to the main case, before issuing cover notes for which a claim has been preferred in the suit, the Inspector issued number of cover notes of which a reference was given while the pleadings were being mentioned. In his statement also Hanumantha Rao accepted that he issued cover notes and then cancelled them. He stated that first he prepared a cover note, the sum assured being Rs. 10,00,000. Therefore he advised the plaintiff that common policy had also to be taken for the premises. He was informed that godown was worth Rs. 10,00,000 and the other buildings and plant and machinery were worth Rs. 40,00,000. Exh. B-5 was in his handwriting. He stated that the amount shown is Rs. 10,00,000. The description of risk is, "superstructure of the buildings (double godown) and oil mill, buildings and plant and machinery, decorticating section of cottonseed, the crushing unit belonging to the insured''s premises of Nagulapadu near Pedanandipadu, Guntur and occupied..." He stated, "in Exh. B-5 I have overwritten Rs. 10,00,000 and made it Rs. 40,00,000. Exh. B-3 in O.S. No. 414 of 1987 is also in my handwriting. The sum assured is shown as Rs. 40,00,000. The description of the risk is identical with the description of the risk in Exh. B-5. In Exhs. B-3 and B-5 the sum assured in words read, ''Ten lakh'', the same is not altered Exh. B-1 in O.S. No. 414 of 1987 is the final cover note issued with respect to superstructure cottonseed oil mill, decorticating oil mill, etc. The risk covered in cancelled cover notes Exhs, B-3 and B-5 and the final cover note Exh. B-l in O.S. No. 414 of 1987 is one and the same. The description is given with more clarity in Exh. B-l". One fails to understand as to why three cover notes had to be prepared for the same cover of insurance. The description of the risk and the property is the same in all the three cover notes, but only the assured amounts were changed. In one of the cover notes the assured amount written in words remains the same, whereas only the figures were changed from Rs. 10,00,000 to Rs. 40,00,000, the 1st figure ''1'' was changed into ''4''. The alleged fire accident took place during the night of 14/15.8.1984. The cover notes were taken, according to the witness K. Hanumantha Rao, somewhere after 4 p.m. on 14.8.1984. Because of the suppression that plaintiff No. 1 was closely related to this witness and because of having prepared three cover notes on the same and cancelled two cover notes and also because of the fact that there was no proposal in writing as has been admitted by the witness from the party concerned, we are not convinced that these cover notes were taken in

good faith. We are fortified in our view by the judgment of the Supreme Court reported in Life Insurance Corporation of India Vs. Smt. G.M. Channabasemma, and the repudiation of the contract by the defendants could not be validated. The Supreme Court held:

"It is well settled that a contract of insurance is contract uberrima fides and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted."

10. There is an added circumstance also which weighs in favour of the defendants-appellants that there was no material shown to us as to what was the proof before the Insurance Inspector about the value of the building and machinery and the stocks. The value of the building and machinery and stocks was changed in the three cover notes almost around the same time by the plaintiff. Therefore, the plaintiff himself was not sure as to the value of the property that he was seeking the insurance for. The plaintiffs-respondents have referred to the following judgments:

The Indian Trade and General Insurance Co. Ltd. Vs. Bhailal Maneklal Desai, ; Svenska Handelsbanken v. Indian Charge Chrome, 1994 (1) ALT 37; General Assurance Society Ltd. v. Chandmull Jain, 1966 ACJ 267 (SC); Puthivapuravil Pocker and Others Vs. V. Khalid and Another, and Mina Kumari v. Bijoy Singh, AIR 1916 PC 238, but in view of our finding that there was strong probability towards the fact that the cover notes were prepared after the occurrence of fire accident, we do not intend to go to these decisions. However, the learned counsel for the plaintiffs-respondents submitted that, since the premium had been accepted by the defendants-appellants, therefore, it should be presumed that they had accepted their liability; The premium admittedly was received by the defendant company on 17.8.1984 and the fire accident had taken place between 14/15.8.1984. The cover notes were not at all in existence at the time the premium was received by the defendant company. Therefore, in our view, the acceptance of premium by the defendant company would not bind them in a policy which was result of collusion and fraud. The defendants had further stated that they had sent receipts to the plaintiffs in which they had stated that they were accepting the premium without prejudice to their rights. The plaintiffs did not produce the receipts before the court.

11. For the reasons given hereinabove, the appeal is allowed and the judgment and decree passed by the trial court are set aside. The plaintiffs'' suit is dismissed. No order as to costs.

