
(2005) 06 MAD CK 0033
In the Madras High Court
Case No : Civil Suit No. 746 of 1992

Sri Jaya Steels

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Companies Act, 1956 — Section 46, 46(2), 616
Marine Insurance Act, 1963 — Section 19, 20(1), 20(2), 20(3), 20(4)
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13

Citation : (2005) 06 MAD CK 0033

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : P. Mani, for the Appellant; King and Partridge, for the Respondent

Judgement

S. Ashok Kumar, J.—The plaintiff has filed the suit for the relief to direct the defendants to pay Rs. 1,83,70,456/= with subsequent interest

from the date of plaint till are of realisation at 18% per annum and to pay the cost of the suit.

2. The gist of the plaintiff's case is as follows:-

The plaintiff is a registered partnership firm. The second defendant is the Branch Manager of Aruppukottai Branch of the first defendant-Insurance

Company. The third defendant is the Divisional Manager of the first defendant-Insurance Company. The 4th defendant is the Regional Manger of

the first defendant-Insurance Company.

3. The plaintiff is engaged in acquiring old ships/vessels for the purpose of breaking and retrieving usable materials therefrom. The plaintiff has a

scrapping yard for the said purpose at Valinokkam, a coastal village in Ramanad District. The plaintiff is a registered ship breaker with the

canalising Agency, the Metal Scrap Trade Corporation, (MSTC) a government of India Enterprise. In the usual course of business, the plaintiff

was allotted the vessel ""M.V. Yak"" by MSTC, which was acquired by it from M/s. Zaide Shipping Inc., Liberia. The said vessel which was on

high seas was agreed to be sold for U.S.\$470,44.50 and was agreed to be delivered at Tuticorin not before 25.3.1989 and not later than

30.4.1989. The vessel was safely afloat and was sea worthy, port worthy and in tact. At the time of allotment MSTC fixed provisional price of the

vessel at Rs. 73,90,000/=, which was refixed at Rs. 75,18,775/= which has been paid by the plaintiff. The vessel arrived at Tuticorin outer port at

12.45 hours on 28.4.1989 and was anchored. The vessel was under cover of valid insurance till it arrived at Tuticorin. Notice of readiness was

served on the plaintiff stating that the vessel is ready for delivery in all respects along with the (a) Port-worthy certificate; (b) Certificate confirming

light displacement weight of the vessel as per stability book and capacity plan on board the vessel; (C) certificate confirming tools/materials on

board the vessel; (d) Certificate from local agent of the MSTC that there are no outstanding dues against the vessel at the time of delivery.

4. In terms of the allotment the ownership of the vessel is to pass on to the plaintiff from the MSTC only on the physical delivery of the vessel. The

Bill of Entry for the said vessel for home consumption was presented on 5.5.1989 and the officials of the Tuticorin Customs Collectorate boarded

and inspected the vessel on 9.5.1989. Seaworthiness certificate was also issued by the International Naval Surveyors Bureau, London on

9.5.1989 for the onward voyage of the vessel from Tuticorin to Valinokkam for beaching. On 4.5.1989, M/s. Ericson and Richards inspected the

vessel at 16.00 hours and issued their survey reports No. 29/1989 and 30/1989. On 19.5.1989, the Assistant Collector of Customs, Tuticorin

permitted the plaintiff to move the vessel from Tuticorin Harbour to Valinokkam for beaching on the plaintiff executing the prescribed bond. The

vessel was physically delivered at Tuticorin at 11.45 hrs on 24.5.1989 at Tuticorin Anchorage as per the Physical Delivery Certificate signed by

the Master of the Vessel and Mr. S. Ramamoorthy, Authorised representative of the plaintiff. Till delivery of the vessel the risk was that of the

seller and the risk and responsibility of the plaintiff herein commenced from physical delivery only.

5. Prior to this allotment of vessel, the plaintiff had acquired three vessels from MSTC for scrapping and had insured the vessels with various

insurance companies. The first defendant's branch at Aruppukottai is the second defendant herein. The then second defendant Branch Manager

Mr. V. Raghavan on coming to know of the allotment of the vessel, had been approaching the plaintiff, since middle of March 1989 and canvassed

for insurance coverage for the vessel.

6. On 24.5.1989 on a telephonic communication from its authorised representative, the plaintiff approached the second defendant over phone for

insurance coverage of the vessel for its voyage from Tuticorin to Valinokkam. The second defendant, Branch Manager of Aruppukottai Branch

contacted the Managing Partner of the plaintiff firm on 24.5.1989 at 11.30 hours personally in the premises of M/s. Govindaraja Textiles, in which

he is the Chief Executive. The entire file containing letter of allotment, terms and conditions of sale and purchase of the vessel, prescribed

certificates and correspondence relating to plaintiff's earlier approach for coverage with Oriental Insurance Company who initially required

particulars and subsequently expressed its inability to act speedily were placed before the said Branch Manager. The said Branch Manager who

had already contacted and secured prior concurrence of defendants 3 and 4 readily agreed to afford an all risk insurance coverage for the vessel

for its journey from Tuticorin to Valinokkam for beaching.

7. On being satisfied with the insurable interest of the plaintiff the second defendant accepted the proposal and undertook to cover the vessel from

all risks for its onward journey from Tuticorin to Valinokkam for beaching for and on behalf of the first defendant-insurer. All relevant and

necessary particulars regarding the subject matter of the insurance and the various perils and risks intended to be covered by a proper and valid

insurance were fully disclosed and discussed with the second defendant who had due prior consultation with its Regional Office, Divisional Office

and Head Office to ensure a proper and valid cover. The plaintiff did not withhold or suppress and did not fail to disclose any material and relevant

particulars to the defendant-insurer. The defendant-insurer had agreed to insure plaintiff's vessel from perils and risks involved in its contemplated

voyage from Tuticorin to Valinokkam. The second defendant also issued the

provisional premium receipt (PCY:92/1001/89), dated 24.5.1989 for acceptance of Rs. 24,416.70 for the due and proper insurance of the plaintiff's vessel and its voyage from perils and risks incidental thereto. The second defendant expressed its inability to issue Marine Policy for want of stamp to be affixed on the policy and assured to issue the same as and when the stamp intended were made available. But no proposal form was submitted or asked for from the plaintiff. At 12.00 noon on 24.5.1989 itself the second defendant branch of the first defendant-insurer issued a Marine Hull Cover Note No. 82577 covering the vessel for a value of Rs. 1 crore and for its voyage commencing from 12.00 hours on 24.5.1989 onwards on own power of the vessel from Tuticorin to Valinokkam for beaching and the risks incidental thereto. In terms of the said cover note issued on 24.5.1989 the vessel amongst others was insured against total and/or constructive total loss, subject to institute Clause Hulls as attached, including salvage charges incurred in preventing loss covered under the cover note by perils insured against. Thus a valid contract of Insurance has been entered into between the plaintiff and defendant-insurer against total or constructive total loss of the said vessel including salvage charges in preventing loss either total or partial covered by perils and risks insured against. On 24.5.1989 Seaworthiness Certificate was also issued and Port Clearance Certificate was also issued by the Customs for 72 hours. On 24.5.1989 the said vessel commenced its journey from Tuticorin. The Engine of the Vessel was started at 13.30 hours on 24.5.1989 and at 13.50 hours the vessel commenced heaving starboard anchor and at 14.20 hours starboard anchor aweigh, informed Pilot Station regarding departure of the vessel from Tuticorin Port and the vessel commenced its voyage with all its crew on board, as well as Capt. Selvaraj, who was engaged specially to assist beaching operations at Valinokkam. From the statement of facts recorded and maintained by the Master of the Vessel Capt. DRD Ratnayake for the period commencing from 11.45 hours onwards on 24.5.1989 to 26.5.1989 11.00 hours the vessel was found making way. Suddenly, the propeller of the vessel ceased to function when the vessel was proceeding near Vembar Coast, at 16.30 hours Master of the vessel took steps to reduce the drifting of the vessel towards shore by letting down the anchor from board of the Vessel, the vessel had

developed technical problems, when it was passing Vembar Coast as it got grounded on a sand bar, known as SHOL PATCH. On 25.5.1989,

the main Engine of the vessel was restarted at 1.30 hours and pitch was tried and still the vessel remained unmoved. All efforts taken by the crew

failed to move the vessel and hence at 12.30 hours the main engine was stopped. The vessel remain grounded and knocking against bank over

night with heavy seas knocking on side. All efforts taken by the Master of the vessel, the Marine Engineer and crew to restart the engine by

attending to the required repairs were futile. On 26.5.1989 the vessel developed crack and the engine room was flooded completely. On

26.5.1989 at 5.30 hours the Deputy Engineer reported that Tunnel was half full and the engine room was getting flooded due to leak and pumping

of water could not cope up with intake of sea water and the pump also got immersed and was under water and the Main engine room also

submerged in water at 7.00 hours. The vessel was ultimately abandoned by the crew on 26.5.1989 at 11.00 hours when the main engine was

submerged in 13 feet water. The plaintiff relies upon the statement of facts recorded by the Captain of the vessel to be read as part and parcel of

the plaint as to the movements of the vessel and occurrences that had taken place leading to abandonment of the vessel. The vessel moved from

Tuticorin Anchorage towards Valinokkam on its own power and it did not have any problem till it reached Vembar Coast which is 30 kilometers

away from Tuticorin. The plaintiff's representative who was stationed at Tuticorin had been following the movement of the vessel informed the

plaintiff about the said developments and the subsequent abandonment of the vessel by the crew. On 26.5.1989 itself the plaintiff put the

defendants on notice about the grounding of the vessel on a sand bar and all further developments that had taken place.

8. The crew members abandoned the vessel and he plaintiff had to arrange for safety of the vessel as the coastal area between Tuticorin and

Rameswaran is notorious for pirates. As there was an attempt to forcefully get on board of the vessel and remove the fixtures and valuables and

fittings by pirates, the plaintiff lodged a Police complaint with Sayalkudi Police station seeking protection of the vessel which is stranded off

Vembar Coast at a distance of 5 k.m., away from the sea shore. Even then, the pirates managed to get on board and committed theft of cabin

articles spares and movables and fixtures which were easily removable.

9. On 27.5.1989 the plaintiff requested the services of M/s. Seascan Services, Goa a reputed consulting surveyors for due and proper survey of

the stranded vessel. The first defendant-insurer also engaged the services of M/s. J.B. Boda Surveyors to conduct survey of the vessel on its behalf

in terms of the contractor of insurance and acting upon the contract of insurance between the plaintiff and the first defendant. The said J.B.Boda

Surveyors boarded the stranded vessel, made a perfunctory survey and hand submitted initial report to the insurer, the copy of which report has

neither been disclosed nor been furnished to the plaintiff so far by the insurer. But the letter of the first defendant's surveyors, dated 2.6.1989

states that their survey disclosed amongst others that the engine room of the stranded vessel in question was flooded and that the vessel could be

refloated after plugging the leakage, pumping out water and that the vessel could be beached at Vembar Coast. Under water inspection to assess

the damage caused to hull and for salvage of the vessel immediately was also advised. Acting on the instructions d of the said surveyors the plaintiff

enlisted expert assistance for underwater inspection. On 4.6.1989 expert divers from Tuticorin port trust at the instance of the plaintiff and on

payment of charges carried out underwater inspection to assess the damage caused to the Hull. The divers reported that the anchor of the vessel

has pierced the bottom of the vessel below the engine room resulting in a large hole, which in turn caused entry of sea water into the vessel. The

plaintiff also reminded the defendants 2 and 3 for the issue of Marine Policy as a cover note alone was issued on 24.5.1989. On 13.6.1989 the

plaintiff handed over the required certificates to J.B.Boda surveyors engaged the in the first defendant-insurer and held discussions at Madras for

undertaking salvage operations with four salvors in the immediate presence of Capt. Rajkumar of J.B.Boda Surveyors as the insurer's

representative.

10. M/s. J.B.Boda Surveyors who conducted the survey on the stranded vessel were on board of the vessel on 28.5.1989. According to the

preliminary inspection, the engine room of the vessel was flooded and it was suggested to plug leakages in the engine room, pump out water and lift

and float the vessel for the same being beached at Vembar for breaking up. The

plaintiff also engaged the services of Mr. V. Mathew of M/s.

Seascan services Pvt., Ltd., to assist them and to suggest ways and means for salvage of the vessel. J.B.Boda Surveyors as well as the

defendant's insurer without any reservation of insurer's liability required the plaintiff to undertake immediate salvage of the vessel.

11. The plaintiff addressed the 2nd and 3rd defendants on 10.6.1989, 13.6.1989 and on various other dates and also personally contacted the

Regional Manager and Deputy Manager in the Madurai Regional Office of the first defendant company to settle its claim for the total loss of the

vessel. The first defendant-insurer also deputed one Mr. T.S. Mahadevan, its official investigator to investigate the claim lodged by the plaintiff to

which investigator, the plaintiff furnished all the required information and documents as was required and demanded. As required by and only on

the assurance of the defendant-insurer, the plaintiff entered into negotiations for immediate salvage operations at Madras on 14.6.1989 and on the

advice of J.B.Boda Surveyors who is the representative of the first defendant engaged M/s. Madgavkar Salvage Company, Panjim Goa. A

salvage agreement was concluded and Salvors remuneration was agreed at Rs. 23 lakhs which negotiations took place on the active participation

of and in the immediate presence of Capt. Rajkumar of the said J.B.Boda Surveyors. In accordance with the established practice the plaintiff

irrevocably authorized the first defendant-insurer of the vessel to pay directly the salvage charges payable under the salvage agreement which

liability to pay arises only on successful completion of salvage operations and on the plaintiff taking repossession of the vessel. BY letter dated

26.6.1989 the 3rd defendant on the orders of the first defendant with reference to the communication already sent, required the plaintiff to

undertake salvage operations as if the vessel is uninsured and initiate necessary steps to reduce the loss, besides stating that the insurance liability

for such sue and labour as well as salvage charges that may be incurred would be assessed separately on the basis of the terms and conditions of

the policy. Thus the defendant-insurer who had accepted the underwriting of the vessel without any reservation cannot in law be allowed to retract.

Until this stage the defendant had unequivocally accepted the underwriting of the vessel under the cover note issued by the second defendant and

did not dispute the all risk insurance coverage of the vessel for its voyage from Tuticorin to Valinokkam and hence it is estopped from disputing the validity of the policy. On the said representation of the defendant and only at their behest the plaintiff who was made to believe of reimbursement of salvage expenses incurred considerable expenses towards salvage operations.

12. The plaintiff by communication dated 26.6.1989 called upon the first defendant to issue an irrevocable authorisation to pay salvage charges to the said salvors within 8 days of completion of salvage in terms of the concluded salvage agreement dated 23.6.1989. The plaintiff while referring to the salvage operations on 8.7.1989 required the 4th defendant to issue a letter of indemnity as the plaintiff was not in a position to furnish required Bank guarantee to salvors. By letters dated 8th, 9th, 10th, 11th, 12th, 13th and 17th July, 1989, the defendants were put on notice of the progress in salvage operations.

13. Curiously on 8.8.1989 the third defendant for obvious reasons and on the orders of the first defendant adopted a most unfair and uncooperative attitude and required the plaintiff themselves to furnish the bank guarantee for Rs. 23 lakhs towards salver's remuneration and insisted that the plaintiff has to make arrangements or Bank Guarantee. In the above circumstances, the plaintiff filed W.P.No:12400 of 1989 on the file of this court seeking for a direction to the first defendant to expeditiously process and settle the plaintiff's claim. The plaintiff also filed a WPMP to direct the first defendant to pay remuneration of the salvors. Notice of motion was ordered. After service of notice the first defendant filed a counter dated 10.11.1989 wherein the first defendant curiously for the first time disclosed that the claim of the plaintiff has been rejected on 30.10.1989 and that the plaintiff has to institute a suit to establish its claim. Thus the claim of the plaintiff was illegally repudiated for the first time in the counter filed in the said writ petition. Only after filing of the counter the first defendant caused the letter of repudiation dated 30.10.1989 through the third defendant. In the counter the defendant falsely suggested that there has been non disclosure of material facts by the plaintiff viz., the plaintiff's earlier approach to Oriental Insurance Company on 31.3.1989 itself for a Marine Policy which information was claimed to be material to the acceptance or otherwise of the proposal. This court by order

dated 15.12.1989 dismissed the writ petition without going into the merits and directed the plaintiff to seek relief before the appropriate forum as may be available in law. This court also made it clear that it has not decided the writ petition on merits and that the dismissal of the writ petition shall not in any way prejudice the rights of the plaintiff. The plaintiff through its advocate sent a letter on 8.11.1989 to arrange for payment of salvage charges of Rs. 23 lakhs. The first defendant admitted the issue of cover note, departure of the vessel from Tuticorin on 24.5.199 at 14.30 hours and it ran aground or stranded in its counter, for the first time suggested that the plaintiff has failed to disclose its earlier approach to Oriental Insurance company on 31.3.1989 for voyage of the very vessel and as if it is material circumstances for acceptance of the policy. Subsequently, the first defendant with a view to avoid its liability as insurer of the vessel had lodged a complaint before the Superintendent of Police, Special Police Establishment, Madras Branch and a case No. R.C.37/89 has been registered for alleged offences u/s 120-B read with section 420 IPC and Section 13(i)(d) of the Prevention of Corruption Act, 1988. A search warrant was issued on 21.8.1989 and a search was conducted in the plaintiff's premises and seized and took away the files containing original documents relating to purchase and insurance of the vessel, etc., and hence the plaintiff is not in a position to produce the original documents and is producing available documents. Only with a view to avoid its obligations undertaken under the Cover Note as insurer of the vessel, the first defendant-insurer has chosen to falsely implicate the plaintiff as well as its then Aruppukottai Branch Manager. The entire criminal complaint made by the defendant has been motivated, when factually there is no room for any complaint, much less criminal case being registered and investigated.

14. The defendants have illegally repudiated their liability on the erroneous assumption that the plaintiff has not disclosed its earlier approach to Oriental Insurance Company for coverage and that the same amounts to suppression and consequently the Insurance contract entered has been rendered void, which stand of the defendants is not only untenable but also contrary to law and facts. The second defendant was in possession of the information about the plaintiff's earlier approach for insurance cover with

Oriental Insurance company even at the first instance, which was disclosed by the plaintiff to the second defendant before the issuance of the cover note. Further the plaintiff had also disclosed its earlier approach to Mr. P.S. Mahadevan, the first defendant's investigator on 10.6.1989 itself about the plaintiff's approach to Oriental Insurance company and payment of deposit premium. With the full knowledge of the said information and without repudiating the plaintiff's claim at the earliest opportunity, the defendants encouraged and directed the plaintiff to undertake salvage operation and made the plaintiff to incur huge expenses by way of salvage charges and expenses to protect the first defendant's interest. By their own conduct the defendants have waived the right to question the alleged suppression of material information if any and the defendants are estopped by conduct from denying their liability undertake under the cover note. The defendants 1 to 4 by representations having made the plaintiff to undertake salvage operations not being incurred by plaintiff gratuitously and the defendants having enjoyed the benefits thereof available to make good or reimburse the salvage charges incurred by the plaintiff. The plaintiff is not guilty of non disclosure of material fact and such a false and incorrect imputations has been made by the defendant insurer falsely and belatedly with ulterior motive to avoid its liability. The entire correspondence that transpired between the plaintiff and Oriental Insurance Company was perused by the said Mr. V. Raghavan the then Branch Manager, the second defendant herein and factually nothing material at all has been concealed or suppressed by the plaintiff. At any rate on the date when the plaintiff approached Oriental Insurance Company, the delivery of the vessel having not been effected the plaintiff had no insurable interest at all at that relevant point of time, when it approached Oriental Insurance Company. As per the Marine Insurance, it is not necessary for the insured to disclose its prior approach to other insurer or that the coverage was not undertaken by another insurer. It is not open to the defendant insurer to avoid its obligations by suggesting alleged non disclosure on the part of the plaintiff when factually the plaintiff had placed the entire papers before the said second defendant. There has been neither a rejection nor a refusal to cover by Oriental Insurance Company.

15. The possession and ownership of the vessel was parted by MSTC and the physical delivery was taken by the plaintiff at 11.45 hours on

24.5.1989 and only from that hours the plaintiff has acquired the requisite insurable interest and accordingly the insurance of the vessel was

arranged and a cover note was issued on behalf of the first defendant at 12.00 hours on 24.5.1989 after receipt of premium of Rs. 24,4176.70.

Thus a valid consideration has been passed on from the insured to the insurer and the premium is the consideration which the insurer has received

in exchange for its undertaking to cover the vessel fro its journey and to pay the value of the vessel insured and salvage charges as well as the

vessel ran aground and salvage was not at all possible. The cover note issued by the defendant confirms and establishes a concluded contract of

insurance and as underwriters, the fist defendant is bound to discharge their obligation with respect to the claim of total loss of the vessel as well as

under sue and labour clause. The salvage operations were resorted to preserve the vessel from peril at sea and save it from sinking and very any

attempts have been made by the salvers. Every attempt was made by the plaintiff to refloat the vessel by plugging the holes, pumping out water and

lifting the vessel. Innumerable salvage operations undertaken by the said salvers at the expenses incurred by the plaintiff have failed and salvage

was proved to be impossible. The plaintiff also engaged one tug exclusively and retained it for a period of four months at Vembar Coast to pull the

vessel and beat it during high tides on Vembar coast as was advised by the expert Marine Salvors viz., M/s. Tony Fernandez of Bombay and Mr.

Anand Madgavkar of Panjim, Goa. All the repeated efforts and operations undertaken so far have failed and the vessel which ran aground could

neither be lifted nor moved towards the shore for beaching. For the said purpose the plaintiff has so far spent Rs. 72,00,874/= which expenses is

covered by proper vouchers. The plaintiff has so far realised scrap of the value of Rs. 40,000,583 from the vessel. After giving credit to the said

sum the plaintiff is entitled to recover Rs. 32,00,290/= under the sue and labour clause being the cost of the salvage operations. The plaintiff is

ready and willing to give credit to recovery or realisation that may be made in this behalf on any future as the plaintiff has already invited offers for

disposal of the remaining portion of the vessel as is where is. The first defendant is also entitled to recover Rs. 1,00,38,165/= being the total cost

of the vessel from the first defendant.

16. The grounding of the vessel is a peril insured against and the vessel has been lost totally as all reasonable attempts and salvage operations

undertaken so far by the plaintiff, its salvors and Marine Experts for salvaging the vessel have failed as the vessel has already broken into two

blocks. Further attempts to undertake salvage operations have been advised to be given up by experts as the cost of underwater cutting and

retrieving the material is uneconomical. The plaintiff has not undertaken salvage operations voluntarily, but it was undertaken as required by the

defendant in their letter dated 26.6.1989.

17. The first defendant as insurer is obliged to make good the entire loss sustained by the plaintiff as the insurer had an insurable interest in the

vessel at all relevant times and is liable to pay Rs. 1 crore being the total loss as assured and undertaken by them, besides Rs. 51,00,000/=

towards interest on Rs. 1 crore at 24% per annum from the date of accident to the date of plaint and till date of realisation. The plaintiff has actually

borrowed money from M/s. State Bank of India, Aruppukottai and M/s. Sundaram Finance and Sri Jayavilas Finance and invested the same in the

venture and in salvage operations. For the money so borrowed, the plaintiff had paid interest to bankers and other financiers. The defendants are

also liable to pay interest at 24% per annum on the sum of Rs. 32,00,291/= being the amount so far spent by the plaintiff over and above the sum

of Rs. 40,00,583/= realised by recovery of scrap under sue and labour clause from 30.10.1989 onwards till date of payment of the said sum. The

plaintiff has paid Rs. 75,18,775/= to MSTC, Rs. 25,19,390/= towards import and countervailing duty and Rs. 27,000/= towards handling charges

paid to Clearing Agents etc., and other charges and Rs. 5000/= towards salary for the crew who have been engaged specially to lead the vessel

from Tuticorin to Valinokkam, which amounts the plaintiff is entitled to be reimbursed by the defendants. Thus the defendants are liable to pay Rs.

1 crore as it is a total loss of the vessel, as the cost of the very vessel had factually exceeded Rs. 1,00,70,165/=. The cause of action for the suit

arose on 24.5.1989 partly at Aruppukottai when the plaintiff proposed an all risk Marine Insurance in respect of the Vessel M.V. Yak anchored at

Tuticorin outer Harbour, when the second defendant accepted and undertook the

insurance coverage of the vessel on behalf of the first defendant;
on 24.5.1989 when the plaintiff paid insurance premium; on 24.5.1989 when the second defendant issued cover note and undertook to indemnify
and keep indemnified the plaintiff in respect of all damages consequent to the voyage risks and all perils of the vessel, partly off Vembar coast on
24.5.199 when the risk contemplated eventualised, on 24.5.1989 when the vessel got grounded on a sand bar, on 26.5.1989 when the vessel was
abandoned by the crew, on 25.5.1989 partly at Aruppukottai, Virudhunagar and Madurai, partly at Madras when the plaintiff put the defendants 2
to 4 on notice, on 28.5.199 partly at Madras when the first defendant appointed Surveyors for processing the plaintiff's claim, partly at Madras on
2.6.1989 when the insurer's surveyor submitted report of inspection of the vessel, when the salvage contract was negotiated and concluded
between the plaintiff and the salvors at the instance of the first defendant at Madras, on 26.6.1989 partly at Madurai when the 4th defendant
required the plaintiff to preserve the vessel and if possible to refloat the vessel without repudiating the plaintiff's claim, on 8.7.1989 partly at
Madurai and Madras when the plaintiff demanded the defendants 1 to 4 to guarantee payment to the salvors; on 8.8.1989 partly at Madras and
Madurai when the defendants 3 and 4 declined to guarantee payment to the salvors and required the plaintiff to make the arrangements to provide
bank guarantee etc., etc., all within the jurisdiction of this court.

18. An application for leave to institute the above suit against the defendants 2 to 4 was ordered in Application No. 1018 of 1992 dated 6.3.1992.

The plaintiff values the suit claim as follows:-

- (1) Cost of purchase of the
Vessel Rs. 75,18,775.00
- (2) Clearing, handling charges
and crew salary Rs. 32,000.00
- (3) Customs duty paid for the
import of the vessel Rs. 25,19,390.00

Total Rs. 100,70,165.00

(4)ADD Interest at 18% on
Rs.100,70,165.00 from
24.5.1989 till date of plaint Rs. 51,00,000.00

Rs. 151,70,165.00

(5)Salvage charges and
incidental expenses incurred
by the plaintiff Rs.70,71,087.00
(6)18% interest on the loan
availed for undertaking salvage
operations from M/s.SRi Jaya
Vilas Finance etc., Aruppukottai
from 25.9.1990 to the date of
plaint Rs. 1,29,787.00

Total Rs.223,71,039.00

LESS value of recovery scrap
so far effected Rs. 40.00,583.00

Rs. 183,70,456.00

19. Thus the plaintiff claims Rs. 1,83,70,456/= with subsequent interest from the date of plaint till date of realisation at 18% per annum and for cost of the suit.

20. The first defendant has filed a detailed written statement which was adopted by defendants 2,3 and 4. The gist of the written statement filed by the first defendant-insurer is as follows:-

The suit is misconceived and unsustainable in law or on facts. The contract of insurance is vitiated in law and void, ab initio for various reasons. Mr.

Raghavan, the then Assistant Branch Manager not only issued a cover note unauthorisedly in violation of the departmental instructions of the

Insurance company, but also kept back the information about the issuance of the cover from the higher ups till the afternoon of 26.5.1989. He has

served as Assistant Branch Manager incharge of the said office at Aruppukottai from 10.12.1987 to 9.7.1989. The plaintiff firm had given a

requisition to him on 24.5.1989 requesting for issuance cover for the vessel M.V. Yak covering all the risks which the vessel might face while at

Tuticorin Port and during the voyage between Tuticorin and Valinokkam beaching yard. The value of the sum assured was at Rs. 1 crore and sea

worthiness of the ship was upto Valinokkam. A cheque dated 24.5.1989 drawn on State Bank of India, Aruppukottai was stated to be enclosed

along with the letter. But the cheque number and the amount were left blank in the said letter. It is therefore obvious that when the above letter

reached the hands of the second defendant the cheque in question was not enclosed as stated. Mr. Raghavan has worked out the premium at

0.25%-5% amounting to Rs. 23,750/= plus policy charges amounting to Rs. 666.70 totaling Rs. 24,416.70. A cover note NO. 82577 also

prepared favouring the plaintiff. The conditions applicable to the cover note were prepared in a separate sheet and appended to the cover note

duly signed by the second defendant. But, Mr. Raghavan has not obtained the proposal form for the issuance of Hull Insurance cover from the

plaintiff firm before the cover in question was issued even though there was good stock of requisite forms available in the office at Aruppukottai. It

is evident that Mr. Raghavan has connived with the plaintiff in issuing a cover note contrary to the rules and instructions and there was a conspiracy

between the plaintiff and Mr. Raghavan, the then Assistant Branch Manager of the defendant.

21. Inasmuch as Mr. Raghavan has issued the Hull Insurance Cover for the vessel M.V. Yak for the plaintiff on his own and without obtaining the

necessary proposal form as required, it is submitted the cover note is vitiated and no legal liability can be fastened on the insurance company. As

per the procedure prevalent in the defendant company the branch issuing the cover for huge amount covering large risk is required to send large

risk intimation on the preliminary advice of commitment on the very same day to the Regional/Divisional Office either by telegram or by

phonogram. This procedure is in vogue with a view to enable the higher authorities to make immediate arrangements for re-insurance. Any delay in

this regard will get such reinsurance arrangements upset. In the instant case Mr. Raghavan had sent large risk acceptance advice No. 1/89 on

25.5.1989 and that too by ordinary post deliberately. This was received by the defendant's Registered Office only on 29.5.1989. Though there is

no Telex facility at Aruppukottai office Mr. Raghavan could have utilized the telex facility at the Divisional Office at Virudhunagar which was a

close by. One Mr. Kanthimathi Nathan of Sivakasi branch was also contacted by Mr. Raghavan over phone on 26.5.1989 and discussed with him

regarding the arrangements to be made for a motor survey. Even at this point of time, Mr. Raghavan did not inform him of the insurance cover in

question that had been issued on 24.5.1989 itself. The said Kanthimathi Nathan came to know about the issuance of this cover only at 4.00 pm.,

from the Regional office. Thus, Mr. Raghavan has issued the cover in question on his own and in excess of his authority without the

approval/knowledge of his higher ups and that too without obtaining the requisite proposal form from the insured.

22. The acts of Mr. Raghavan taken cumulatively would reveal a deep rooted conspiracy between the plaintiff and the said official to defraud the

first defendant. In a Hull Insurance it is mandatory that a proposal form duly filled in is obtained from the insured before considering the issuance of

cover. As per the instructions contained in the manual any proposal for covering a vessel meant for scrapping should be duly forwarded to the

Head Office and then the Head Office will be expected to take up the matter with the Tariff Advisory Committee so far as fixing of the rate is

concerned. As far as acceptance is concerned, it is for the Hull Department in the Head Office to take a decision. Thus Mr. Raghavan has

committed gross violation of the conditions/stipulations as found in the manual for issuance of the insurance cover for the vessel meant for scrapping

in excess of his authority illegally exposing the first defendant to grave financial risk to the extent of Rs. 1 crore.

23. As per Section 19 of the Marine Insurance Act, 1963, a contract of Marine Insurance is a Contract based on utmost good faith and if the

utmost good faith is not observed by either party the same may be avoided by the other party. The said section also elaborates the duty of

disclosure by the assured in Section 20 and sub section 1 to 5 thereof. The assured must as per Sub section 1 of Section 20 disclose to the insurer

before the contract is concluded every material circumstance which is known to the insured. Thus if the assured fails to make the disclosure, the

insurer may avoid the contract. Therefore this defendant by virtue of Section 19 and 20 of the Marine Insurance Act, 1963 and in the light of the

circumstance viz., omissions on the part of Mr. Raghavan in getting the proposal form and a declaration and omission of the plaintiff firm in

suppressing material facts, the cover note issued by Mr. Raghavan is not valid and binding on the defendant-insurer.

24. On 7.4.1989 Mr. T.R. Kannan one of the partners of the plaintiff firm had sent a letter to Oriental Insurance Co. Ltd., along with a cheque for

Rs. 15,000/= drawn on State Bank of India, Aruppukottai stating that the amounts sent was advance premium for the cover note to be issued in

respect o the vessel M.V. Yak covering the risks while waiting at Tuticorin Port and during the voyage from Tuticorin to Valinokkam. The Oriental

Insurance Company asked for certain clarification/compliances/survey of the vessel through J.B.Boda. But for reasons best known, the plaintiff did

not provide the required particulars/queries to Oriental Insurance Company. Hitherto the said Oriental Insurance Company are the regular insurers

of the plaintiff. In the meanwhile the plaintiff approached the first defendant fraudulently suppressing the material facts that the plaintiff had

approached the Oriental Insurance Company for the voyage covers. Had the plaintiff disclosed its having approached the Oriental Insurance

company for the cover to be issued and that the said Oriental Insurance Company called for details, definitely the first defendant company would

have insisted on clarifications before considering for grant of cover for the vessel in question. The contract of insurance is therefore vitiated in law

and voidable at the instance of the defendant.

25. It is denied that the vessel was seaworthy or that it was under cover of a valid insurance till it arrived at Tuticorin. It is emphatically denied that

this defendant branch at Aruppukottai, through Mr. Raghavan, the then Branch Manager on coming to know of the allotment of the vessel had

been approaching the plaintiff since middle of March 1989 or that this defendant canvassed for insurance coverage of the vessel. It is not correct

that the entire file containing the letter of allotment, terms and conditions of sale, purchase of the vessel, prescribed certificates, correspondence

relating to plaintiff earlier approach for coverage with Oriental Insurance Company who initially required particulars and subsequently expressed

the inability to act speedily were placed before Mr. Raghavan. It is not admitted that Mr. Raghavan perused the entire file or that he had contacted

defendants 3 and 4 or that defendants 3 and 4 agreed to offer an all risk Insurance coverage for the vessel for its journey to Valinokkam for

beaching. Assuming it to be true, it would only go to confirm the conspiracy between him and the plaintiff to defraud the Insurance Company.

26. At no point of time, the concurrence of defendants 2 and 3 has been secured by Mr. Raghavan. The survey of the vessel through J.B.Boda

Surveyors which was required by the Oriental Insurance Company will have a direct bearing on the grant of insurance cover. The vessel was not

sea worthy and it was in unfit condition on 21.5.1989. The crew members aboard the vessel while at Tuticorin port were so much frightened about

the poor condition of the vessel. At one stage they even attempted to abandon the vessel and save their lives. Capt. Rajkumar, who had physically

boarded the vessel and conducted a survey on 22.6.1989 opined that the vessel was aground because of unsafe navigatory procedure such as

deficiency in voyage planning with regard to fitness of the vessel to carry out the sea passage of 50 mls under its own power under navigatory

control. The port signal station log book of the vessel at Tuticorin also reveals the extremely poor state of maintenance of the vessel. The alleged

sea worthiness certificate has been procured by dubious means to meet the requirements of Port Authority for clearance and it was not seaworthy

between 2.5.1989 and 24.5.1989. The alleged sea worthiness certificate is as a result of the conspiracy hatched by the plaintiff to enrich himself at

the expense of the first defendant.

27. It is denied that the plaintiff retained J.B.Boda Surveyors to conduct survey on its behalf as the insurer in terms of the contract of insurance and

acting on the contract of insurance between the plaintiff and this defendant. Such an allegation is mischievous and baseless. It is not correct to state

that the copy of the survey report has not been furnished to the plaintiff. It is denied that J.B.Boda and Surveyors conducted the survey on behalf

of the defendant, therefore it is not correct to state that J.B.Boda and Surveyors were surveyors of this defendant. On the contrary, they are

independent and licensed surveyors and their services are available for any interested party for a consideration. AS a matter of fact the plaintiff was

advised without prejudice to seek technical assistance of J.B. Bodoa to refloat the vessel since they had the necessary expertise in this regard. It is

denied that acting on J.B.Boda Surveyors who are the defendant's surveyors the plaintiff enlisted expert assistance for underwater inspection

regarding the fact that the expert divers from Tuticorin Port Trust carried out underwater inspection are matters within the knowledge of the plaintiff.

It is denied that the J.B.Boda were engaged by the 1st defendant. It is also denied that J.B.Boda surveyors are the insurer's representative. It is

customary to ask the insured to conduct a survey whenever a claim is received to assess the damage/quantify the loss in the event of the claim

being a valid one but such survey was made in routine course without prejudice to the defendant's rights and the plaintiff knew or must be deemed

to know that it does not amount to admission of the claim. The survey by J.B.Boda was only to assess the damage/quantify the loss and to suggest

measures to salvage/retrieve the vessel in the event of the claim being a valid one and it is always the custom and practice for an Insurance

company to have a survey done on receipt of a claim which is always without prejudice to their rights since the validity of the claim cannot be

judged at the time of receipt of the claim. The defendant is aware that the plaintiff admittedly entered the salvage agreement with the salvors and

according to the salvage agreement, the plaintiff had to execute a bank guarantee for Rs. 23 lakhs towards their remuneration, but they failed to

execute the bank guarantee.

28. It is denied that for obvious reasons and on the orders of this defendant the third defendant adopted a most unfair and uncooperative attitude.

As a matter of fact as per the salvor's agreement the plaintiff had to execute a Bank guarantee for Rs. 23 lakhs towards salvors remuneration.

Therefore there is no question of the plaintiff making a hue and cry that the third defendant on the orders of this defendant adopted an unfair and

uncooperative attitude. It is denied that this defendant in order to escape from the liability as insurer of the vessel and lodged a complaint with the Superintendent of Police, Special Branch. This defendant is not aware of the search and seizure obtained pursuant to the search warrant. It is denied that with a view to avoid its obligations undertaken under the cover note as insurer of the vessel this first defendant had chosen to falsely implicate the plaintiff as well as its then Aruppukkottai Branch Manager. Inasmuch as no complaint was lodged by this defendant there is no question of criminal complaint lodged by this defendant as motivated, but the fact remains that the plaintiff and Mr. Raghavan have acted in collusion to defraud the Insurance Company.

29. The repudiation is valid and legal. It is denied that the stand of the defendants is not only untenable but contrary to law and facts. The contention that the plaintiff had disclosed his earlier approach to the Oriental Insurance Company and payment of deposit premium to Mr. P.H. Mahadevan on 1.6.1989 is only an after thought. Therefore it does not lie in the mouth of the plaintiff to contend that with the full knowledge of the information and without repudiating the plaintiff's claim at the earliest opportunity these defendants encouraged and directed the plaintiff to undertake salvage operations and make the plaintiff to incur heavy expenses to protect the defendant's interest. It is denied by their overt conduct this defendant has waived its right to question the suppression of material information or that this defendant is estopped by conduct from denying its liability. The plaintiff was requested to seek the assistance of J.B.Boda to minimise the loss and to find out the extent of loss/damage so as to enable this defendant to consider whether the claim of the plaintiff is legal and valid. Therefore the question of invoking the provisions of unjust enrichment does not arise. AS a matter of fact, the defendants have not enjoyed any benefits. Apparently realising that the plaintiff would not succeed in getting a cover from Oriental Insurance company the plaintiff struck upon a plan to contact the defendant for such Insurance without disclosing its past conduct and that itself is a fraud committed on the defendant.

30. The full details regarding risk and perils were not furnished to this defendant by the plaintiff and the plaintiff is guilty of suppressions of material facts. It is denied that requisite insurable interest has been acquired by the

plaintiff on and from 11.45 hours on 24.5.1989 only or that accordingly insurance of the vessel was arranged and a cover was issued on behalf of the first defendant at 12.00 hours on 24.5.1989 after receipt of premium of Rs. 24,416.70. It is denied that a valid consideration has been passed on from the insured to the insurer and that premium is the consideration which the insurer has received in exchange for its undertaking to cover the vessel for its journey and to pay the value of the vessel insured and salvage charges as well as the vessel ran aground and salvage was not at all possible.

31. The contract of insurance is void ab initio since the plaintiff is not only guilty of suppression of material facts but also fraudulently induced Mr.

Raghavan to issue a cover note contrary to the rules and norms of the insurance company and also committed various culpable acts of omission

and commissions. Hence there is no question of a valid consideration being passed on from the plaintiff to the Insurer or that the premium is the

consideration which this defendant has received. It is denied that the cover note issued by this defendant confirms and establishes a concluded

contract of insurance and as underwriters this defendant is bound to discharge their obligation in respect of the claim of total loss of the vessel as

well as under sue and labour clause. It is for the plaintiff to prove that salvage operations were started to preserve the vessel from perils at sea and

save it from sinking or that very many attempts were made by the salvors. In fact, such acts are expected to be done by the insured as if a prudent

uninsured and that by itself does not clothe the plaintiff with any rights.

32. This defendant does not admit the plaintiff's detailed accounts in respect of salvage operations said to have been so far undertaken by the

plaintiff under the sue and labour clause. It is for the plaintiff to prove that he has realised a sum of Rs. 40,00,083/= or any other sum from the

vessel or that after giving credit to the said sum the plaintiff is entitled to recover a sum of Rs. 32,00,920/=. It is denied that the plaintiff is entitled to

recover Rs. 1,00,38,165/= or any other sum being total cost of the vessel from this defendant.

33. The plaintiff has miserably failed to execute the bank guarantee as a result of which the salvors had to abandon the salvage operations which

again resulted in the salvors abandoning of the vessel. Such acts constitute also

a breach of the conditions of the policy which would disentitle the plaintiff to any remedy as it is the duty and obligation of the insured to salvage the goods in order to minimise the loss if any subject to the validity of the policy. There is no valid contract of Insurance and hence there is no question of this defendant being liable for the loss said to have been sustained by the plaintiff in respect of the vessel in question. The defendant denies the claim of the plaintiff that this defendant as insurer has to make good the entire loss sustained by the plaintiff as claimed in the plaint. This defendant is not liable to pay interest as claimed by the plaintiff. The claim of the plaintiff are intentionally inflated and the plaintiff is guilty of making an exaggerated claim which would render the entire claim invalid.

34. The plaintiff has filed a reply statement to the written statement, gist of which is as follows:-

The first defendant is bound by the acts of the defendants 2 to 4 who are the officers of the first defendant company at various levels and it is not open to the first defendant to put forth a novel plea that the acts and functions of the 2nd defendant and also that of the defendants 3 and 4 are distinct or independent and that the first defendant is not bound by the acts functions or transactions or obligations undertaken by the other defendants or entered on behalf of the first defendant insurance company. In the absence of any public notice or such notification informing the insured like the plaintiff about the powers of restriction of authority or power of the second defendant, it is not open to the first defendant to disown the liability as insurer. Hitherto the first defendant has been undertaking marine insurance coverage as well as other irrespective of quantum or value of vessel or hull through the defendants 2 to 4 or that matters through all their branches. The first defendant is bound by the cover note issued by the 2nd defendant on behalf of the first defendant company in the usual course of business and the plea of restriction as to authority of a branch manager or his jurisdiction cannot be pleaded by the first defendant to avoid the liability in respect of contract of insurance. The suit claim is not against any individual person and the claim is as against the Insurance Company and its Managers in different category. Mr. Raghavan in his personal capacity is neither necessary nor a proper party to the suit. The first defendant is trying to rope in Mr. Raghavan in the suit with some

ulterior motive.

35. The Insurance coverage of the vessel for the particular voyage for scrapping issued by the second defendant on behalf of the first defendant in

the usual course of business cannot be avoided after collection of premium and issue of cover note merely because the vessel was being taken for

scrapping. There has been neither a concealment nor there has been any want of bona fide of faith in the plaintiff approaching the first defendant

insurer through the second defendant branch and all the plea raised in this behalf to avoid liability is legally unsustainable and will not be entertained

before a court of law. Merely because the plaintiff had approached Oriental Insurance Company prior to taking delivery of the vessel for insurance

coverage, and in the absence of rejection by the said insurance company to avoid the contract of insurance undertaken by it through the 2nd

defendant in the usual course of business as there is neither a concealment nor it is required or warranted to disclose about the earlier approach.

The plea put forward in this respect is ill-conceived and untenable. Previously the plaintiff company insured with the New India Assurance Co.

Ltd., and also Oriental Insurance Co., Ltd., The defendant company approached the plaintiff for business. Therefore, the plaintiff entered into a

contract with the defendant company. Therefore there is no question of concealment of facts arising in this case. The first defendant having

entertained the claim from the plaintiff without any demur and engaging Surveyors to survey the vessel after it ran aground is estopped from

disowning its liability on untenable pleas. It is not open to the first defendant to raise the plea of alleged violation of departmental instruction by the

2nd defendant, nor is it open to the first defendant to avoid the liability on the plea of belated intimation of coverage by the 2nd defendant. Mere

omission to set out the cheque number in the proposal letter will not vitiate the insurance coverage undertaken by the second defendant for and on

behalf of the first defendant insurer. It is incorrect and factually incorrect to contend that the cheque was not enclosed with the proposal letter and

the inference drawn by the first defendant is imaginary. Merely because the second defendant has not obtained the proposal in the format for

insurance of hull, if any, will not enable the first defendant to avoid its liability when a valid contract of Insurance has already been entered between

the plaintiff and the second defendant, the then Branch Manager of the first defendant company.

36. The plea that the 2nd defendant had connived with the plaintiff is denied as false, baseless and an after thought born out of frustration and

raised with a view to avoid the liability. The office procedure if any referred to and relied upon by the first defendant with respect to sending of

intimation, the preliminary advice of commitment for arranging reinsurance, cannot be a ground to avoid the liability, nor such a plea is legally

sustainable. The alleged lapses, if any, on the part of the 2nd defendant in sending such a delayed intimation by ordinary post or otherwise is not

admitted nor is it a valid ground to avoid the liability as an insurer. The further suggestion that the 2nd defendant had not even disclosed the

acceptance of proposal to the other defendants is also denied as false and an afterthought. The Customs Authority asked a Bill of Entry for Home

Consumption to the duty payable of Rs. 25,08,460/= and assessed the value of the vessel at Rs. 73,90,600/=. The surveyor inspected the ship

and issued a certificate on 24.5.1989 at about 10.00 hours that the condition of the Hull, machinery and equipment was in satisfactory condition

and that the ship can safely sail from Tuticorin Anchorage to the place of scrap yard at Valinokkam and further certified that the condition will

remain in force until 16 hours on 25.5.1989.

37. The plea that the 2nd defendant has issued the Cover Note on his own and in excess of his authority without the approval/knowledge of his

higher ups is also denied as untrue and incorrect and the same will not enable the 1st defendant to avoid the liability as a valid and a binding

contract of insurance has already been concluded. The alleged omission or commission will not disentitle the plaintiff from enforcing the validly

entered and concluded contract of insurance. The allegation of deep-rooted conspiracy to defraud the insurer is denied as untrue, false and

baseless. The plea of fraud and collusion raised by the 1st defendant is denied as baseless, false and imaginary. The interpretation placed on

Manual of Marine Hull and the plea that violation of such manual would be a valid ground to disown the liability under the Insurance cover is

unsustainable and misconceived. It is denied that the second defendant has violated the departmental manual or instructions and there is nothing to

vitiating the insurance coverage undertaken in respect of the vessel in question. The plea that the second defendant has exceeded his authority and acted illegally in exposing the first defendant to grave financial risk is factually untenable and devoid of merits and the same will not constitute a valid ground to avoid the liability under the policy. At any rate, it will not constitute a suppression of material or relevant fact and the first defendant is estopped from raising such a plea to avoid the liability.

38. The vessel sailed after obtaining necessary port clearance certificate in E.M. No. 208/24589. The Divisional Manager also in his letter dated 26.6.1989 admits the policy and directed to initiate necessary steps to reduce the loss. Therefore the defendants are estopped from raising the plea that the 2nd defendant had no power to accept the premium. If the vessel was not in a sail-worthy condition, the Port Trust Authority will not permit the vessel to sail to the breaking yard. The non-mentioning on the part of the plaintiff of earlier approach to Oriental Insurance company will not in any way vitiate the validly entered contract of insurance. The first defendant cannot avoid the same on any ground. The plaintiff reiterates that the then Branch Manager Mr. Raghavan perused the entire file, including the correspondence exchanged between the plaintiff and Oriental Insurance Company till 24.5.1989. The allegation of conspiracy suggested is denied as false, untrue, baseless and mischievous. The insurance contract has been concluded in the usual course and in the best interest of the 1st defendant company and premium amount is still being retained by the 1st defendant company. The allegation of fraud and connivance are also denied as mischievous, baseless and false. The vessel was seaworthy for the journey from Tuticorin to Valinokkam and the plea that the vessel ran aground because of unsafe navigatory procedure cannot be a ground to avoid the liability. The Seaworthiness certificate is true valid and genuine. It is the first defendant who had given a false complaint to avoid the liability and the plea to the contra is false. The first defendant is liable to pay the claim as prayed for and the attempts on the part of the first defendant to escape from the liability are liable to be rejected.

39. On the above pleadings the following issues were framed:-

1) Whether the plaintiff is entitled for a decree for Rs. 1,83,70,456/= with subsequent interest from the date of plaint till realisation at 18% per

annum?

2) Whether the contract of insurance what is found in the plaint is vitiated in law and void and inoperative?

3) Whether the policy is not supported by valid consideration?

4) Whether the policy is vitiated for want of proposal form?

5) Whether the insurance company has a right to repudiate the claim on the ground that the Branch Manager has no power to accept the premium

from the plaintiff?

6) Whether there was no valid insurance for the vessel in question at the time of sinking?

7) Whether it is not the duty of the defendant to indemnify the insured, particularly when the loss is admitted by the defendant in the written

statement?

8) To what relief the plaintiff is entitled to?

40. The following additional issues have been framed:-

1) Whether the substitution for the 2nd defendant the person who held that office in personal capacity is illegal?

2) Whether the plaintiff be compelled to sue against the person introduced by the 1st defendant by way of amending the written statement

particularly when the plaintiff is the dominis lites in the suit?

3) Whether the first defendant is estopped from avoiding the contract of insurance entered into with the plaintiff?

4) Whether the vessel was seaworthy on the date of incident?

41. On behalf of the plaintiff, P.W-1 has been examined and Exhibits P-1 to P-49 were marked. On behalf of the defendants, D.Ws-1 and 2 were

examined and Exhibits D-1 to D-11 were marked.

42. Issues Nos:1 to 8 and Additional Issues 1 to 3:

The plaintiff is engaged in acquiring of the ships/vessels for the purpose of breaking and retrieving usable materials therefrom for which purpose the

plaintiff has got an yard at Valinokkam, a coastal village at Ramanad District. There is no dispute that plaintiff is a registered ship breaker. In the

past the plaintiff has acquired vessels for the same purpose. There is no dispute that the vessel M.V. Yak was allotted to the plaintiff by Metal

Scrap Trade Corporation (MSTC) for a price of Rs. 75,18,775/= and the amount was paid by the plaintiff through a Demand Draft drawn from

State Bank of India, Aruppukottai. The vessel M.V. Yak arrived at Tuticorin outer Port at 12.45 hours on 28.4.1989 and was anchored. The

vessel was under cover of insurance till its arrival at Tuticorin. Notice of readiness was served on the plaintiff along with necessary certificates. As

per the allotment letter Ex.P.3, the ownership of the vessel would pass on to the plaintiff from MSTC on the physical delivery of the vessel. The Bill

of Entry filed by the plaintiff to the Customs on 5.5.1989 is Ex.P.5. Sea worthy certificate issued by the International Naval Survey Bureau,

London on 19.5.1989 for the onward voyage of the vessel from Tuticorin Port to Valinokkam, is Ex.P.6. The report of M/s. Ericson and Richards

who inspected the vessel at 16.00 hours is Ex.P.7. On 19.5.1989, the Assistant Collector of Customs, Tuticorin permitted the plaintiff to move the

vessel from Tuticorin Harbour to Valinokkam for breaking and the port clearance certificate dated 24.5.1989 is Ex.P.8. The vessel was physically

delivered at Tuticorin at 11.45 hours on 24.5.1989 at Tuticorin Anchorage as per the Physical Delivery Certificate which is marked as Ex.P.9,

which is signed by the master of the vessel and the representative of the plaintiff.

43. According to the plaintiff the second defendant, Branch Manager of the first defendant Aruppukottai Branch, approached the plaintiff for

coverage of the vessel for its voyage from Tuticorin to Valinokkam. On the same day, the provisional premium of Rs. 24,416.70 was paid to the

second defendant by the plaintiff himself by a cheque dated 24.5.1989 and the second defendant also issued a receipt for the payment of the said

sum and the receipt is marked as Ex.P.11. The cover note issued in No. 82577/89 by the second defendant is marked as Ex.P.10. The said

Marine Hull cover note covers the vessel for a value of Rs. 1 crore and the voyage commenced from 12.00 hours on 24.5.1989 on its own power

of the vessel from Tuticorin to Valinokkam for beaching.

44. The vessel commenced its voyage on 24.5.1989 from Tuticorin. The engine of the vessel was started at 13.50 hours on 24.5.1989. When the

vessel was proceeding to Valinokkam, near Vembar Coast the propeller of the vessel ceased to function. The Master of the vessel took sincere

efforts to reduce the drifting of the vessel towards shore by letting down the

anchor from the board of the vessel. The vessel had developed technical problems and it got grounded on a sand bar. In spite of all efforts, the vessel remained unmoved. At 12.30 hours on 25.5.1989 the marine engine was stopped. On 26.5.1989, the vessel developed crack and the engine room was flooded. The plaintiff intimated the fact of grounding of the vessel to the defendants by Ex.P.12, letter dated 26.5.1989. The efforts to pump out water from the engine room also did not succeed. Ultimately, the crew at 11.00 hours on 26.5.1989, abandoned the vessel.

45. The first defendant on being put on notice by the plaintiff engaged M/s. J.B.Boda Surveyors to survey the vessel on their behalf. The said surveyors filed their report (Ex.P.13) and expressed their opinion that the vessel could be refloated after plugging the leakage in the engine room and pumping out water and that the vessel can be moved and beached at Vembar for breaking. On the advice of the surveyors, the plaintiff arranged to carry out under water inspection to assess the extent of damage to the Hull. Accordingly, expert divers from Tuticorin inspected and found that the Hull was pierced by the anchor at the bottom of the vessel below the engine room and they submitted their report which is marked as Ex.P.14. The said report was handed over to the surveyors and the plaintiff held discussions for salvage operation. Though cover note was issued by the second defendant on payment of entire premium the original insurance policy was not issued since at the time of issuance of cover note necessary stamp papers were not available and according to the plaintiff the second defendant promised to issue the policy on a later date.

However, the policy was never issued in spite of repeated requests by the plaintiff. When the vessel was stranded and abandoned near Vembar coast the pirates have removed certain articles from the vessel which was also intimated by the plaintiffs by Ex.P.16, letter dated 13.6.1989. The first defendant appointed Mr. P.S. Mahadevan, a company investigator to look into the claim of the plaintiff. In the meantime, on the advice of M/s. J.B. Boda Surveyors, the plaintiff engaged M/s. Madgavkar Salvage Company, Panjim, Goa for immediate salvage operation. The cost of the salvage operation was fixed at Rs. 23 lakhs as per agreement under Ex.P.20. The third defendant by letter dated 26.6.1989 under Ex.P.23

requested the plaintiff to initiate salvage operation and pay salvage charges. Under Ex.P.30, dated 8.8.1989, the defendant addressed the plaintiff

insisting on the plaintiff to give the bank guarantee to the salvors. The first defendant by letter dated 10.10.1989, under Ex.P.39, rejected the claim

of the plaintiff for salvage remuneration and liability under the cover note. Factually the marine claim dated 26.3.1990 was rejected by the

defendant by letter dated 25.4.1990 under Ex.P.45 The plaintiff has also paid the customs duty as required by the Collector of Customs, Tuticorin.

46. The admitted facts are:

(1) The plaintiff was allotted the vessel M.V. Yak by MSTC.

(2) The vessel took its voyage on 25.4.1989 after a cover note was issued by the Branch Manager of the first defendant.

(3) On the same day the vessel struck against the sand bar 30 kilometers away from Tuticorin Port at a place near Vembar coast.

(4) In spite of efforts taken by the crew and the plaintiff the vessel could not be moved further and was ultimately abandoned.

(5) On intimation by the plaintiff, the first defendant engaged M/s. J.B.Boda Surveyors to survey the vessel and the plaintiff also engaged expert

divers for salvage operations

47. The contentions of the first defendant-insurer as has been adopted by the defendants 2 and 3 are (i) that the second defendant has no authority

to issue the cover note for the sum of Rs. 1 crore and the said cover note is beyond the authority of the second defendant; (ii) the plaintiff has

played a fraud in collusion with the second defendant in insuring the vessel; (iii) the vessel was not sea-worthy on the date when the voyage

commenced; (iv) there is no concluded contract since the original policy was not issued by the defendant; (v) there is suppression of material facts.

48. According to the defendants as per the departmental instructions the second defendant, the then Branch Manager had no power to issue a

cover note in a sum of Rs. 1 crore. The contention of the plaintiff is that the public are not warned about the power of the Branch Manager and

therefore the public dealing with the Branch offices are to assume that the Branch Manager issuing the cover note was authorised to do so. The

plaintiff in support of his contention relies upon the judgment reported in 1964 (1) All E.R 630 (Hely-Hutchinson v. Brayhead Ltd.,) wherein it is

held as follows:-

Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board

appoint one of their number to be managing director, they invest him not only with implied authority but also with ostensible authority to do all such

things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual

authority of a managing director. But sometimes ostensible authority exceeds actual authority. For instance when the board appoint the managing

director, they may expressly limit his authority by saying he is not to order goods worth more than 500 pounds without the sanction of the board.

In that case his actual authority is subject to 500 pounds limitation, but his ostensible authority includes all the usual authority of a managing

director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation. He may himself do the

holding out. Thus, if he orders goods worth 1000 pounds and signs himself "Managing Director for and on behalf of the company", the company is

bound to the order party who does not know of the 500 pounds limitation (see *British Thomson Houston Co. Ltd. v. Federal European Bank Ltd.*

All E.R.Rep.448 which was quoted for this purpose by Perarson L.J. In *Freeman Lackyer v. Buckhurst Park Properties (Mangal) Ltd.*, Even if

the other party happens himself to be a director of the company, nevertheless the company may be bound by the ostensible authority. Suppose the

managing director orders 1000 pounds worth of goods from a new director who has just joined the company and does not know of the 500

pounds limitation, not having studied the minute book, the company may yet be bound.

49. As far as this case is concerned, though the first defendant would contend that the Branch Manager had no authority to issue the cover note to

the value of Rs. 1 crore, there is no evidence let in on behalf of the defendants either by producing the departmental instruction or publication of

any notice which attract the attention of the public in general that the Branch Manager of Insurance Companies have no authority to issue a cover

note in respect of large sums. Therefore, the objection of the first defendant as regards the authority of the Branch Manager has to be rejected not

only on facts but also as per the conduct of the first defendant. If really, the second defendant had no authority to issue the cover note, the first

defendant ought to have outright rejected the claim of the plaintiff as soon as the first defendant and the defendants 2 and 3 are intimated about the

incident and stranding of the vessel. When the grounding of the vessel was intimated the first defendant, as per Ex.P.13 appointed M/s. J.B. Boda

Surveyors to conduct survey of the stranded vessel. In Ex.P.13, letter dated 2.6.1989, M/s. J.B. Boda Surveyors have informed that they have

been appointed by the first defendant to survey the stranded vessel.

50. In this connection it is useful to refer to Ex.P.23, wherein the Divisional Office of Virudhunagar by letter dated 26.6.1989 has accepted as

follows:-

We understand that the Vessel M.V. Yak insured with us vide our cover note No. 82577 date 24.5.1989 has run aground 5 miles off Vembar.

As the insured you are expected to act as if uninsured and initiate necessary steps to reduce loss In the event of a causality we would request you

to undertake immediate salvage operations. The insurer's liability for such sue and labour as well as salvage charges that may be incurred would be

assessed separately on the basis of the terms and conditions of the policy.

51. A copy of this letter has been sent to the Branch Office at Aruppukottai and Head Office at Madras. The issuance of Ex.P.23 is also admitted

by D.W.1. In fact in his evidence D.W.1 has stated that Ex.P.23 was signed by the Divisional Manager. For all the communications sent by the

plaintiff claiming issue of original policy, the defendants never took the objection that the second defendant-Branch Manager of Aruppukottai had

no authority to issue the cover note, nor did the first defendant ever made an allegation that the plaintiff had played a fraud in obtaining the cover

note.

52. In this connection it will be useful to refer to the counter affidavit filed by the first defendant in W.P. No. 12400 of 1989 wherein nowhere the

authority of the Branch Manager of Aruppukottai of the first defendant (D2) has ever been questioned and the present contention that the plaintiff

colluded and conspired with the second defendant Branch Manger in creating a cover note is also not mentioned. In fact, in the counter affidavit,

the issuance of the cover note has been admitted. The contention raised in the

counter affidavit was with regard to who should pay the salvage charges etc., Therefore, the contention of the first defendant that the second defendant, the then Branch Manager of Aruppukottai Branch of the first defendant had no authority to issue a Marine Cover Note for Rs. 1 crore and the further contention that the plaintiff colluded with the said Branch Manager in obtaining the cover note are only an afterthought. On the other hand, the first defendant has accepted the contract and has engaged M/s. J.B. Boda Surveyors for survey of the stranded vessel. If really, the second defendant had no authority to issue a cover note for Rs. 1 crore any prudent insurance company would have at the very first instance informed the claimant that the cover note has been issued by a person who has no authority and it is not binding upon them. On the other hand, in Ex.P.23, the Divisional Manager of the first defendant admits the insurance and issuance of cover note. In spite of repeated letters sent by the plaintiff, when a claim is made as early as on 26.5.1989, a reply has been sent by the third defendant on 30.10.1989 more than five months later rejecting the claim of the plaintiff. While rejecting the claim of the plaintiff, the third defendant has not assigned any reason. Therefore, the present contention that the second defendant had no authority to issue the cover note and the plaintiff has colluded with the second defendant in creating the cover note are to be rejected as afterthoughts. In fact, in the Criminal Case in C.C. No. 13 of 1995, on the file of the Principal Sessions Judge, (CBI Cases) Madurai, the plaintiff and its Managing Directors have been acquitted of the charges of conspiracy and cheating. The judgment is marked as Ex.P.48. In fact, the allegation of conspiracy with the second defendant Mr. Raghavan, the then Branch Manager has not been pleaded with necessary particulars. The written statement does not furnish the particulars of fraud and the allegations of fraud and conspiracy are made vaguely by the first defendant.

53. The next contention of the first defendant is that the non disclosure of material facts vitiate the contract of insurance. According to the first defendant, the plaintiff originally approached M/s. Oriental Insurance Company Ltd., seeking insurance cover and paid advance premium amount to that company. But the said Oriental Insurance Co. Ltd., asked for certain clarifications which were not furnished. These facts are material and

they were not disclosed to the first defendant at the time of proposal and the issuance of the cover note. The contention of the plaintiff is that the

plaintiff originally approached M/s. Oriental Insurance Co. Ltd. seeking insurance cover and even remitted advance premium of Rs. 15,000/= . A

perusal of Exs.D.4 to D.7 would show that the Insurance cover sought for by the plaintiff with the Oriental Insurance Company was ""Ship

Breaking Risk cover"" and for Voyage from Tuticorin to Valinokkam, whereas the insurance with the first defendant is one of Insurance of Marine

Hull. Thus, the cover asked for with the Oriental Insurance Company Ltd., is different from the suit insurance. According to the plaintiff, it is true

that they wanted to insure the vessel with M/s. Oriental Insurance Co. Ltd., since the said Oriental Insurance Company took a long time to issue

the policy they have given up their choice and in the meanwhile when the second defendant approached the plaintiff for insurance cover, they have

insured the vessel with the second defendant. The contention of the plaintiff that M/s. Oriental Insurance Company wanted long time for the policy

is mentioned in Ex.D.4 letter, produced by the first defendant itself wherein after asking certain particulars it is mentioned that ""now we understand

from our Regional Office that it may take a long time to issue the policy. Kindly furnish the above information"". This Letter (Ex.D.4) is dated

5.5.1989. Though advance premium of Rs. 15,000/= was paid on 7.4.1989 as seen from Ex.D.6, letters have been sent by Oriental Insurance

Company on 5.5.1989 and 26.5.1989, and in the letter dated 5.5.1989, it has been mentioned that it may take a long time to issue the policy.

Even as on 26.5.1989, M/s. Oriental Insurance company had been requesting the particulars from the plaintiff as seen from Ex.D.7. Since the

vessel had to take its journey on 24.5.1989 and since M/s. Oriental Insurance Company itself admitted by letter dated 5.5.1989 that it will take a

long time, for issue of the policy, it is quite natural that the plaintiff insured the vessel with the first defendant company to avoid the delay as an

alternative. In fact it is also admitted that Oriental Insurance Company has returned the advance premium.

54. According to the plaintiff, before issuing the cover note, the second defendant perused the entire file containing all the documents and records

which includes the plaintiff's earlier approach with M/s. Oriental Insurance Company. The second defendant was satisfied about the insurable

interest and therefore agreed and issued the cover note, Ex.P.10. In any of the letters viz., Ex.P.23 dated 26.6.1989, Ex.P.37, dated 4.10.1989

and Ex.P.39, dated 30.10.1989, the first defendant has never stated that the contract of insurance is vitiated by non disclosure of material facts.

Nowhere in the documents produced by the defendants, it could be seen that Oriental Insurance Company declined the proposal of the plaintiff as

admitted by D.W.1 in her evidence. A perusal of the records and the evidence of P.W.1 would show that it is the plaintiff who did not proceed

with the Oriental Insurance Company. Further, the plaintiff has also enclosed copies of the letter sent by Oriental Insurance Company to Mr. P.S.

Mahadevan, the investigator appointed by the first defendant to investigate the claim of the plaintiff.

55. In the field of insurance, there is always a competition. In this case when Oriental Insurance Company was delaying the process and the

second defendant, the then Branch Manager of the first defendant has volunteered to insure the vessel for which he has accepted the premium. The

advance premium which was paid by the plaintiff to M/s. Oriental Insurance Company was also returned, whereas the first defendant who received

the premium of Rs. 24,416.70 has retained the amount till this date and has failed to repay the premium amount paid by the plaintiff.

56. The next objection by the defendants is about the sea-worthiness of the vessel on the date of voyage. According to the defendants the vessel

which started its journey from Tuticorin Port towards Valinokkam was unfit for travel. But, on the other hand the plaintiff would contend that the

vessel was sea worthy to take a travel. The plaintiff would place reliance on Ex.P.6, a certificate issued by the International Naval Survey Bureau,

London, who have issued the seaworthiness certificate dated 9.5.1989, wherein it is stated that the vessel in question is sea worthy and can safely

sail from Tuticorin Anchorage to the place of scrap yard at Valinokkam. Further, in the said certificate, it is certified that the vessel has been duly

surveyed and the condition of the Hull, machinery and equipment were satisfactory and that the certificate will be in force until 16.00 hours on

25.5.1989. The above certificate has been issued at Tuticorin at 10.00 hours on 24.5.1989. In Ex.P.7, report submitted by M/s. Erickson and

Richards, Tuticorin, who are Engineer-Surveyors and consultants, they have concluded as follows:-

After our inspection of the vessel we now certify that in our opinion the Fish Factory Trawler M.V. Yak is suitable to remain safely afloat at any anchorage Tuticorin/Valinokkam during her lay up period awaiting to be scrapped. However, we strongly feel that to ensure safety, M.V. Yak should be beached at Valinokkam at the first available high tide.

57. Ex.P.8 is the Port Clearance letter issued by the Tuticorin Customs House for the voyage of the vessel from Tuticorin Port to Valinokkam for

beaching and scrapping. A perusal of Ex.P.9, physical delivery certificate of the vessel would show that sea worthiness certificate was produced

along with the delivery of the vessel. When the vessel got grounded on intimation by the plaintiff, the first defendant has engaged M/s. J.B.Boda

Surveyors Pvt. Ltd., and in their report dated 2.6.1989 they have stated that ""the vessel could be refloated after plugging the leakage in the Engine

room and pumping out the water. The vessel can be beached at Vembar for breaking up"". In their letter (Ex.P.13), they have not whispered about

the seaworthiness of the vessel and they have not even question about the same. On the other hand, they have opined that the vessel could be

refloated after plugging the leakage in the Engine room and pumping out the water and the vessel can be beached at Vembar for breaking up. If

really, the vessel was unseaworthy, M/s. J.B. Boda Surveyors appointed by the first defendant would not have given such an opinion.

58. In Ex.P.18, the plaintiff has confirmed the handing over of the sea worthiness certificate of the vessel along with other certificates to M/s. J.B.

Boda Surveyors appointed by the first defendant. According to the preliminary report of M/s. J.B. Boda Surveyors, the proximate cause of the

incident is attributed to the perils of the sea following engine failure. The evidence of D.W.2, Capt. Rajkumar that the grounding of the vessel was

due to negligence in navigation and navigational equipment is contrary to the preliminary report submitted by M/s. J.B. Boda Surveyors appointed

by the first defendant. The preliminary report, which is anterior in time indicates that the cause of the accident was due to perils of the sea.

Therefore the contention of the defendants that the vessel was un-seaworthy is also liable to be rejected. Additional Issue No. 4 is answered

accordingly.

59. The provisions of the Companies Act shall be applicable to Insurance

Companies as provided u/s 616 of the Companies Act, 1956. A

contract on behalf of a company can be made by any person acting under its authority, express or implied on behalf of the company and u/s 46(2)

of the Companies Act, a contract made according to the section shall bind the company. Section 46 of the Companies Act, 1956 read as follows:-

SECTION 46 Form of contracts:

(1) Contracts on behalf of a company may be made as follows:-

(a) A contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith, may

be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be

varied or discharged;

(b) A contract which if made between private persons, would by law be valid although made by Parol only and not reduced into writing, may be

made by Parol on behalf of the company by any person acting under its authority, express or implied and may in the same manner be varied or

discharged;

(2) A contract made according to this section shall bind the company.

60. As far as this case is concerned, the contract has been entered into between the plaintiff and the second defendant. The second defendant who

received the premium has issued the cover note Ex.P.10 and thus the contract is concluded between the plaintiff and the defendants. The second

defendant has acted on behalf of the first defendant company and therefore as per Section 46(2) of the Companies Act, 1956, the contract shall

bind the company. Accordingly, the contract of insurance is not vitiated in law and it is not void and inoperative. Since the plaintiff has paid the

necessary premium as requested by the second defendant, there is a valid consideration. Issues 2 and 3 are answered accordingly.

61. Though the first defendant-Insurance Company might have a right to repudiate the claim, it has not done so at the first instance. On the other

hand, it has accepted its liability and appointed a Surveyor to survey the damages caused to the vessel. Only at a later stage the first defendant

alleges that the claim is liable to be repudiated since the second defendant has no power to accept the premium, which is an after thought. The

plaintiff has proved that there was a valid insurance cover of the vessel at the time of sinking and the cover note is sufficient to cover the insurance.

According to the plaintiff, the policy was not issued for want of stamp paper and such a claim has not been disputed by documentary evidence by

the defendants. Therefore the absence of policy or proposal form are in no way helpful to the defendants in advancing their case. Thus there is a

valid insurance coverage of the vessel at the time of sinking and hence the defendants are liable to indemnify the loss incurred by the plaintiff.

Issues 4 to 7 are answered accordingly.

62. The contention of the defendant that the second defendant has committed fraud and therefore he should have been sued in person in his

personal capacity is also not sustainable. The second defendant has acted as a Branch Manager of the first defendant and the Insurance cover

issued by him has been recognised by the third defendant as seen from Ex.P.23, letter issued by the third defendant. The failure to issue original

policy by the defendants has been explained by the plaintiff that at the time of issuing the cover note stamps were not available and therefore the

policy was not issued. The failure to issue the original policy does not mean that there is no concluded contract between the parties. Issue of cover

note is sufficient proof of contract between the parties. It is also not necessary to compel the plaintiff to sue against the person introduced by the

first defendant. Additional Issues 1 and 2 are answered accordingly.

63. The claim of the plaintiff has to be admitted for the following reasons:-

(i) the cover note has been validly issued and premium received and still retained by the first defendant;

(ii) the first defendant appointed M/s. J.B. Boda Surveyors for investigation only because there is a valid insurance of contract;

(iii) the first defendant appointed Mr. P.S. Mahadevan, Investigator, because there is a valid insurance contract;

(iv) In Ex.P.23, the defendants accepted the insurance and there is a reference to the sue and labour, salvage charges; which means there is a valid

insurance contract;

(v) under Ex.P.37, the first defendant insisted the plaintiff to execute bank guarantee, which goes to show that there is a valid insurance contract;

(vi) no reason is assigned for rejecting the claim of the policy by the third

defendant.

64. The defendants have not seriously disputed the suit claim. The vessel has been insured for Rs. 1 crore for the total loss. According to the

plaintiff, he has paid Rs. 75,18,775/= to Metal Scrap Trading Company. The plaintiff has incurred expenses for clearing handling charges and for

crew salary at Rs. 32,000/=. The plaintiff has paid Customs duty of Rs. 25,19,390. Totally, the above three claims comes to Rs. 1,00,70,165/=

which the defendants are liable to indemnify. The plaintiff is also entitled to claim interest at the rate of 12%, instead of 18%, on Rs. 1,00,70,165/=

from 24.5.1989 till date of plaint. Issue No. 1 is answered accordingly.

65. As regards salvage operation charge and other incidental charges, it is claimed in the plaint that the plaintiff has incurred salvage expenses of

Rs. 70,71,087/=. But the salvage operation has been abandoned since no bank guarantee was furnished either by the plaintiff or by the defendants

for Rs. 23 lakhs. Captain T. Rajkumar in his evidence has stated that ""No cure No pay is the Internationally accepted practice which means

salvage remuneration could be paid only on the successful salvage operation. In this case, admittedly the salvage operation was not successful.

P.W.1 during cross examination has also admitted that they have not filed any bills for the amount of Rs. 70,71,087/=. Hence the claim for Rs.

70,71,087/= is rejected for want of proof. Consequently the claim for Rs. 1,29,787/= being the loss incurred by way of loan interest at the rate of

18% obtained for undertaking the salvage operations from 25.9.1990 till date of plaint is also liable to be rejected for want of proof.

66. The plaintiff claims that he has received Rs. 40,00,583/= from the scrap materials so far retrieved. Thus, the plaintiff is entitled for a sum of Rs.

1,00,70,165/= with interest at 12% from the date of coverage till date of plaint and 9% interest from the date of plaint till date of realisation after

deducting Rs. 40,00,483/=. The suit is decreed in the above manner with cost.