
(1998) 08 PAT CK 0062

In the Patna High Court

Case No : Appeal from Original Decree No. 120 of 1998 (R)

Tatanagar Metal Industries

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 28-08-1998

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : (1999) 1 BLJR 30 : (1999) 1 PLJR 105

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prasun Kumar Deb, J.—This appeal has been preferred by the above-named plaintiff-appellant against the judgment and decree dated 13.5.1986 passed by the then 2nd Additional Subordinate Judge. Jamshedpur, in Money Suit No. 84/3 of 1979-86 by which the plaintiffs suit for realisation of Rs. 19,547.78 paise being the price of materials detailed in the Schedule of the plaint insured by the plaintiff with the defendant New India Assurance Co. Ltd., together with interest pendente lite and future and cost had been dismissed.

2. The plaintiff-appellant is a partnership firm which undertook some contract work of the Tisco Ltd. at Jamshedpur between the period from August, 1975 till October, 1977. According to the plaintiff, several materials including tools, welding machine required in the aforesaid contract job were kept inside the factory area of the Tisco Ltd. The plaintiff then made a proposal for insuring his materials, tools and machines etc., before the defendant Insurance Company. Such proposal was accepted and was issued of a policy being policy No. 536950113 dated 4.12.1976. As per the terms of the policy, the defendant agreed that if the property described in the policy or part thereof was lost or destroyed or damaged by theft or otherwise, the defendant would make good of the loss to the intrinsic value of the property so lost. The total sum assured was Rs. 20,000/-. The premium was also paid to the defendant on 4.12.1976.

According to the plaintiff, in the night of 2.9.1979, all the materials, tools and also the welding machine were removed by unknown thieves. The plaintiffs partner Karamchand lodged information with the police on the basis of which investigation was done but eventually the police closed investigation stating that the case was true but no clue was there. Information was also made to the Divisional Manager of the defendant-Company at Jamshedpur and a list of stolen articles were given to him. The plaintiff also submitted claim to the defendant Company for the loss suffered to the tune of Rs. 19,547.78 paise. The defendant Company deputed Surveyor to survey and assess the loss suffered by the plaintiff and then by letter dated 11.11.1978 repudiated the claim of the plaintiff on the ground that, the claim of the plaintiff was against the terms of the policy and while giving informations, the plaintiff firm played trick and fraud in giving false information, on the basis of which the policy was procured from the defendant Company. It was also mentioned that the fact of theft as alleged from the side of the plaintiff was not at all true. As the plaintiffs claims were repudiated, the present suit was filed for realisation of the amount together with interest, pendente lite and future and also the cost of the suit.

3. By filing written statement on 28.11.1980, the defendant contested the suit. In the pleadings, the defendant specifically denied that the plaintiff had got any godown wherein tools, building machines and materials were being kept. It was also denied that even if those tools etc., were being kept inside the factory area of Tisco Ltd. then such theft or loss ought to have been to the knowledge of the Tisco's Personnel but on enquiry it could be found that the Tisco had never been informed or recorded any such theft by the plaintiff Company. The Surveyor and the Assessor made all attempts to verify the fact of theft and the loss allegedly caused to the plaintiff from all corners, namely, the plaintiffs partner, Tisco Personnel and the Police authorities wherein the information was lodged but such enquiry revealed that no loss was suffered and even if it was suffered, the policy conditions did provide for any redressal of the grievance of the plaintiff when the plaintiff Company did not abide by the conditions mentioned in the policy and that false informations were supplied by the plaintiff while procuring the policy.

4. On the pleadings of the parties, following issues were framed after re-casting:

- (1) Is the suit as framed maintainable?
- (2) Has the plaintiff got any cause of action to bring this suit?
- (3) Is the suit barred by the principle of estoppel, waiver, acquiescence and law of limitation?
- (4) Is the suit barred under the Arbitration Act, 1940?
- (5) Is the suit barred u/s 69 of the Indian Partnership Act?
- (6) Is the plaintiff entitled to a decree for Rs. 19,547.78, as claimed by it?
- (7) To what relief or reliefs, if any, the plaintiff is entitled?

5. For and on behalf of the plaintiff, four witnesses have been examined including the partner of the plaintiff. On behalf of the defendant, one witness has been examined was assessor and Surveyor. Several documents in favour of the respective parties had also been exhibited in the case.

6. Except Issues Nos. 2, 6 and 7 which are the vital issues in the suit, all issues have been decided in favour of the plaintiff. It appears that although arbitration clause was there as per the terms of the policy but the same had not been pressed from the side of the defendant. The vital issues, namely. Issues Nos. 2, 6 and 7 have been decided against the defendant on the following grounds, namely:

(i) That the plaintiff had procured the insurance policy by suppression of vital facts.

(ii) That the policy conditions had not been fulfilled from the side of the plaintiff.

(iii) That the factum of theft and loss by the plaintiff could not be proved.

7. Before this appellate Court, submission of the learned Advocate appearing for and on behalf of the plaintiff-appellant is that the learned Court below had not construed the policy conditions in their proper perspective inasmuch as when the policy has been issued and as per the burglary policy, the defendant is bound to make good loss suffered by the plaintiff Company. The Surveyor's report discloses enquiries from many corners. None of those witnesses have been examined regarding the verification of the theft as claimed from the side of the plaintiff.

8. Mr. Shamim Akhtar, appearing for and on behalf of the respondent has controverted all the submissions made on behalf of the plaintiff-appellant by referring to the oral evidence and also the documents proved in the case.

9. Doubt has been created by the learned Court below and also by the learned Advocate appearing for the respondent regarding the procuring of the policy by the plaintiff at the fag end of his contract work. It is true that for one and half years when the contract work was being continued the plaintiff Company did not fell to get heir materials and tools insured on the burglary policy but only at the fag end of their contract work, they did so. Doubt has been created to the effect that only to lodge a claim just after payment of one premium by the plaintiff, such policy was procured. It was also pointed out by pointing out the declaration made by the plaintiff Company at the time of getting the policy to the effect that informations have been given wrongly and concealingly with obvious purpose. I am not much convinced with such submissions of the learned Advocate for the respondent or the doubts being raised from the side of the learned Court below. The plaintiff Company has got every right to get burglary policy at any time. It was the duty of the Insurance Company to get it satisfied at the time of issuance of policy and accepting of premium. Now it cannot lie in their mouth that the plaintiff Company initially had got bad intention for entering into the policy

agreement. So on this score, I am not inclined to accept the version of the learned Court below or the submissions made by Mr. Shamim Akhtar, for and on behalf of the respondents.

10. For such claim as made in the suit, it remains the bounden duty on the part of the insurer to prove the factum of loss, damage, theft/burglary. In the present case, from the very beginning, the defendant insure is suspecting and doubting about the claims being made from the side of the plaintiff-appellant. Regarding the factum of theft, except bald statement being made from the side of the plaintiff and a copy of the first information report being exhibited, nothing more has been proved from the side of the plaintiff-appellant. It was also contended that after investigation, final report has been submitted to the effect that no clue could be found. In that view of the matter, when from the defence side, report of the assessor/surveyor has been exhibited and the surveyor himself has come to the dock for subjecting to cross-examination from the side of the plaintiff-appellant, the plaintiffs side could not prove by any cogent evidence the factum of theft. Simple lodging of the first information report and after investigation, the same being ended in the final form, the burden heavily falls upon the insured to prove the factum of theft/damage. The Investigating agency was knocked by the surveyor as to how the investigation was done and how the factum of theft could be investigated but the investigation agency did not give any details except what they had stated in the final form. If the Investigating Officer could have been brought on the dock along with the case diary then perhaps the Court could have found out as to the veracity regarding theft but the plaintiffs side did not do that. The materials and machines were kept inside the factory belonging to the Tisco and according to the plaintiff, admittedly they had no watchman during the night hours. But the watchmen for the Tisco keep the factory site in constant vigil day and night. No Tisco personnel had been cited as a witness rather surveyor/assessor could make enquiry from them and get the document to the effect that no theft was even recorded in their records. Such heavy machines cannot be lifted by way of theft without the knowledge of the Security Personnel. This aspect of strong suspicion could not be set at rest from the side of the plaintiff-appellant. Thus, it has rightly been held by the learned Court below that the very basis of claim i.e., the factum of theft had not been proved from the side of the plaintiff-appellant.

11. Besides this, there are other findings also by the learned Court below regarding making of false declaration by the plaintiff-appellant while procuring the Insurance policy. For burglary policy, a godown is to be maintained but admittedly there was no godown and no watchman was kept in the night hours and the declarations given are contrary to what has been stated in the evidence from the plaintiffs side. Thus, it was held by the learned Court below as per Clause 5 of the policy that the plaintiff-appellant did not confirm with the terms and conditions of the policy and as such they are not entitled to get any redressal of claim. Leaving this point also for argument sake in favour of the plaintiff-appellant to the effect that the Insurance Policy was issued by the

defendant-respondent after getting verification of the declaration being made from the side of the plaintiff-appellant then also when the factum of theft could not be proved by the plaintiff-appellant by any cogent or reliable evidence, then the learned Court below has rightly dis-allowed the claim of the plaintiff. On independent scrutiny of the evidence adduced by the parties. I am totally inclined to the inference made by the learned Court below in the impugned judgment. Thus this appeal has got no force.

12. In the result, the appeal fails. The impugned judgment and decree is hereby confirmed and the defendant-respondent shall be entitled to cost all through-out, both in the suit or in the appeal.