
(2007) 09 KL CK 0047
In the High Court Of Kerala
Case No : A.S. No. 402 of 1996

The New India Assurance Co. Ltd.

APPELLANT

Vs

C.A. Poly

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Citation : (2007) 09 KL CK 0047

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Thomas Mathew Nellimoottil, for the Appellant; S.V. Balakrishna Iyer, for the Respondent

Judgement

K. Padmanabhan Nair, J.—Defendants in O.S. No. 480/1993 on the file of the Additional Sub Court, North Paravur is the appellants. This appeal is filed against a decree for money passed by the trial court by which the appellants were directed to pay an amount of Rs. 50,000/- as damages to the respondents.

2. Short facts necessary for the disposal of the appeal are as follows: First respondent is the licensee of a shop by name "Ladies Corner and Foot Wear Trade" which was housed in a shop room situated within the Angamaly Municipality. Second respondent is the brother of first respondent. He was actually doing the business. Articles kept in the shop were insured with the appellants. On 8.9.1992 a fire broke out and the articles kept in the shop were damaged and lost due to fire. According to the respondents articles worth Rs. 2,40,000/- were kept inside the shop room and the entire articles were damaged. It was averred that respondents informed the appellants who deputed a surveyor and he prepared an estimate calculating the loss sustained to the respondent to the tune of Rs. 1,70,000/-. According to the respondents even that amount was not correct. It was averred that the appellants reduced the damages and fixed the same to Rs. 1,39,630/-. It was also averred that the amount was received by the respondents under protest. It was averred that in addition to the amount already paid an amount of Rs. 1,00,370/- is due to the

respondents. But they limited their claim to Rs. 50,000/-.

3. Appellants filed separate written statements. First appellant admitted the existence of valid policy. It also admitted the fact that the damages was caused on account of fire. It was contended that the contention of the respondents that they sustained damages to the tune of Rs. 2,40,000/- was false. It was admitted that initially damages was assessed to the tune of Rs. 1,70,000/-. Since that assessment was not correct another surveyor was deputed who fixed the loss to the tune of Rs. 1,39,630/-. It was averred that there was a subsisting attachment from a competent court on Rs. 70,000/- and deducting that amount Rs. 69,630/- was paid to the respondents. That amount was received by the respondents in full and final settlement and as such they are not entitled to claim any further amount. Second respondent adopted the contentions raised in the written statement of first respondent.

4. Court below found that the amount paid was not in full and final settlement of the claim and as such the respondents are entitled to get the amount claimed in the plaint.

5. The following questions of law arise for consideration in this appeal:

(1) Whether the quantum of damages/compensation claimed is correct?

(2) Whether the contention of the appellants that the respondents accepted the amount in full and final settlement is correct? 5. According to the respondents they sustained damages to the tune of Rs. 2,40,000/-. Even according to the appellants the surveyor who was initially deputed estimated the damages to the tune of Rs. 1,70,000/-. After two weeks another surveyor was deputed without notice to the respondents to re-determine the damages claimed. He re-determined the amount of damages to the tune of Rs. 1,39,630/-. According to the respondents the actual loss sustained was Rs. 2,40,000/-. Though it was contended that it was a false claim no evidence was adduced by the appellants to substantiate the actual damages sustained by the respondents. So even accepting the case of the appellants an amount of Rs. 1,70,201/- is due to the respondents. The trial court passed a decree for Rs. 50,000/-. The difference is less than Rs. 19,429/-. So I do not find any reason to hold that the amount claimed is not correct.

6. The main contention raised by the appellants is that the amount was received by the respondents in full and final settlement of the claim. In Ext.B2 letter dated 8.2.1993 the first respondent had only stated that in case satisfactory claim was paid to anyone of the respondents they will not make any further claim.

7. It is true that in Ext.B3 there was a statement to the effect that the claim was in full settlement. But it is to be noted that was a printed form. Even in that printed form there was no statement to the effect that it was in full and final settlement.

8. The word contained was only "in full settlement". After receipt of the amount

the respondents issued Ext.A1 notice without any delay. It is to be noted that in the plaint itself it was specifically averred that the amount was received not in full and final settlement of the claim. Second respondent gave evidence as PW1. The only question put to PW1 was that whether there was any document to show that the amount was received under protest. DW1 is an officer of the appellant company. In chief examination he had stated that the claim was settled with the knowledge and consent of the respondents and as such the company is not liable to pay any further amount. But during cross-examination he had admitted that he was not working in that office at the relevant period. Court below did not accept the contentions of the appellants that the amount was received in full and final settlement of the claim. In view of Ext.A1 notice issued by the respondents it is not possible to accept the contention of the appellants that the respondents received the amount under protest. So the finding of the court below that the respondents are entitled to get Rs. 50,000/- as damages is correct and does not call for any interference. Same is only to be confirmed. Court below had awarded interest at the rate of 12% per annum from the date of suit till realisation. But in view of the principle laid down in Central Bank of India Vs. Ravindra and Others, the respondents are entitled to get interest at the rate of 6% p.a. from the date of decree.

9. In the result, appeal is allowed in part. Finding of the court below that the respondents are entitled to get Rs. 50, 000/- as damages is confirmed. The interest awarded is modified and reduced to 6% per annum from the date of decree. Parties are directed to suffer their respective costs in this appeal.

10. C.M.P. No. 5126/1996 will stand dismissed.