

(1989) 03 KL CK 0048
In the High Court Of Kerala
Case No : A.S. 316 of 1986

United India Insurance Co. Ltd. and Another

APPELLANT

Vs

Andrew Vivera

RESPONDENT

Date of Decision : 17-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4
Marine Insurance Act, 1963 — Section 23

Citation : AIR 1990 Ker 139 : (1989) 66 CompCas 807 : (1989) 2 ILR (Ker) 482

Hon'ble Judges : Varghese Kalliath, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : P. Radhakrishnan, G. Krishnan and V.J. Mathew, for the Appellant; N. Viswanatha Iyer, K.S. Babu and A.T. James, for the Respondent

Final Decision : Dismissed

Judgement

Pareed Pillay, J.—Appellants are the defendants in O.S. 217 of 1983 of the Additional Sub-Court, Cochin. Respondent (plaintiff) filed the suit to recover a sum of Rs. 54,334/- being the amount due to him on account of damages caused to his fishing boat which was covered by an insurance policy. The learned Additional Sub Judge decreed the suit for the amount claimed with interest at 6% per annum from the date of suit till realisation and proportionate costs.

2. Plaintiff owned a fishing boat which was insured with the defendants. It is the case of the plaintiff that apart from the policy of insurance he had taken monsoon coverage in respect of the boat for one month. It is further stated that the boat was in good condition, that on 13-6-1981 the boat sailed from Cochin with the members of the crew, and that on 15-6-1981 plaintiff came to know that the boat which was drifted away by violent waves met with accident. Plaintiff sent notice claiming an amount of Rs.69,735/- as damages from the defendants. The surveyor who conducted the survey had auctioned the engine of the boat and it was purchased by the plaintiff for a sum of Rs. 15,401/-. Plaintiff claims the balance amount in the suit. Defendants filed written statement contending

inter alia that there was no policy for the monsoon coverage and hence they are not liable to pay any amount to the plaintiff.

3. The boat was insured against the total loss, salvage charges etc. The insurance policy has been marked as Ext. B-1. The laid up warrant clause states that the boat will have to be laid up from 1-6-1981 to 15-8-1981. Plaintiff says that he took up monsoon coverage for one month with effect from 12-6-1981 through Mr. Charles, the Development Officer. Plaintiff relies on Ext. A-5 to substantiate his contention that he had paid the amount to the Insurance Company for the monsoon coverage. Plaintiff contends that Charles came to his house on 12-6-1981 and apprised him of the desirability of having monsoon coverage, that he agreed to take monsoon coverage and that Rs. 150/- was paid as premium. Ext. A-5 is the receipt obtained by the plaintiff. This is dated 13-6-1981. Defendants denied Ext. A-5 and wanted that they should be absolved from any liability of paying the amount to the plaintiff.

4. Main contention of the defendants is that during the relevant period the boat was not having monsoon coverage policy as alleged in the plaint. Defendants contend that as no separate policy was produced by the plaintiff evidencing monsoon coverage it cannot be said that there was any acceptance of the premium so as to conclude any contract between the parties to cover any monsoon coverage policy.

5. The crucial question to be considered is whether there was any concluded contract between the parties with regard to monsoon coverage policy. P.W. 1 deposed that he paid the premium amount to Charles, the Development Officer and obtained Ext. A-3 receipt from the office of the defendants. Though P.W. 1 stated in his evidence about what had transpired on 12-6-1981 there is no cross-examination on that aspect of the matter. There is not even any suggestion in cross-examination that what has been stated by P.W. 1 with regard to what had transpired on 12-6-1981 is false. In the plaint itself sufficient details have been given with regard to Ext. A-5. In the written statement defendants only stated that there is no concluded contract to cover monsoon coverage and so they are not liable to the plaint claim. Nothing is stated denying the authenticity of Ext. A-5. In other words, defendants have not stated that Ext. A-5 is a bogus document. Nor do they have a case that it is invalid. For the first time in evidence, defendants contended that Ext. A-5 is the result of foul play. Defendants have also no case that Charles was not a competent officer to receive the premium. They have not adduced any evidence to prove that Ext. A-5 cannot be acted upon. It is also pertinent to note that the suit notice remained without any reply.

6. Order 6, Rule 4, C.P.C. provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. The position admits no doubt that

allegation of fraud, undue influence and coercion must be set forth in full particulars and not vaguely, The allegation must be fully stated so that the case be decided on the particulars pleaded. There cannot be any departure from what has been ordained under Order 6, Rule 4. Any allegation in a sweeping manner will hardly suffice for the Court to act. In *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, it is held as follows (at p. 283 of AIR) :--

"In cases of fraud, undue influence and coercion the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion."

It is trite law that where allegations are made in a vague and sweeping manner the Court cannot act on it for lack of specific pleadings even if the allegations are worded in a very assertive language. As Order 6, Rule 4 makes it incumbent upon a party to highlight all particulars necessary to substantiate the contentions regarding misrepresentation, fraud, breach of trust, wilful default or undue influence, a party cannot shirk that responsibility and shelve it to be adduced in evidence at a later stage. If the pleadings are vague and not specific no amount of evidence can salvage the position.

7. Ext. A-5 shows that Rs. 150/- was accepted in the office of the defendants on 13-6-1981. Ext. A-5 further shows that the amount was intended for monsoon coverage for one month with effect from 12-6-1981. As there is evidence to hold that Ext. A-5 was really issued from the office of the defendants and it is not proved to be a false spurious document the contention that it is not sufficient to cover the monsoon coverage policy is not tenable. Defendants have not made any effort to show that they never intended to accept monsoon coverage policy pursuant to Ext. A-5. No communication was ever addressed to the plaintiff indicating that Ext. A-5 is unacceptable. The very fact that the premium amount was accepted as per Ext. A-5 with the endorsement of monsoon coverage policy for one month with effect from 12-6-1981 would cut at the root of the defendants' case that there was no concluded contract between the parties. Learned Sub Judge has rightly held that Ext. A-5 amounts to an acceptance of the monsoon coverage policy by the defendants in favour of the plaintiff. There is hardly any evidence to hold that plaintiff was guilty of suppression of any material facts when the proposal was made. Nor is there any evidence to hold that the plaintiff committed any fraud upon the defendants. Section 23 of the Marine Insurance Act provides that a contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip, covering note or other customary memorandum of the contract, although it be unstamped. As Ext. A-5 shows that the amount of insurance was paid for the monsoon coverage

with effect from 12-6-1981 it is difficult to accept the contention of the defendants that the plaintiff is not entitled to claim the suit amount as no insurance policy as such was issued to him.

The learned Sub Judge was justified in decreeing the suit. We find no reason to interfere. The appeal is dismissed with costs.