
(2014) 10 BOM CK 0093
In the Bombay High Court
Case No : First Appeal No. 113 of 1998

United India Insurance Co. Ltd.	Vs	APPELLANT
Manisha Enterprises		RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2014) 6 ABR 468 : (2014) 6 BomCR 15

Hon'ble Judges : M.T. Joshi, J

Bench : Single Bench

Advocate : A.B. Gatne, Advocate for the Appellant; A.B. Kadethankar, Advocate for the Respondent

Judgement

M.T. Joshi, J.—Heard.

2. Aggrieved by the decree directing the present appellant insurer to pay an amount of Rs. 9,23,003/- with interest @ 6% per annum from 21/4/1988 up to the date of filing of the suit towards the claim of fire insurance policy, the present appeal is preferred.

3. The respondent plaintiff came with the following case before the learned Joint Civil Judge Senior Division, Beed in Special Civil Suit no. 94 of 1991 :

That the plaintiff operates the proprietary concern which deals in all types of Televisions, Refrigerators , Air Coolers, Water Coolers etc. at Beed. In the month of November, 1987, he has obtained the fire insurance from the present appellant defendant insurer vide fire policy "B" for a period between 18/11/1987 to 18/11/1988. The risk was covered for Rs. 2,00,000/-. Thereafter, another policy "A" for covering the risk of Rs. 10,00,000/- was obtained for a period from 21/4/1988 to 20/4/1989. In the very night of obtaining of second of the policy i.e. on 21/4/1988, fire broke out in the shop of the plaintiff respondent and the claim for Rs. 14,00,000/- to Rs. 15,00,000/- was made. The Surveyor of the appellant insurer has assessed the loss to the tune of Rs. 11,14,415/-. The appellant insurance company however paid the amount of Rs. 1,91,412/- in

respect of the previous policy "B" only and refuted the claim in respect of subsequent policy on the ground that the respondent plaintiff failed to prove that the cover note of the said policy was validly obtained. Therefore, alleging that amount as claimed is willfully withheld by the appellant insurer, the suit came to be filed.

4. The appellant - insurer resisted the claim on the following grounds: -

That on 21/4/1998, no amount towards the premium was deposited. Even the proposal for issuing cover note was not received to the appellant's office. There was no authorization to any official or Agent to take new and different insurance policy for different amounts. No application for enhancement of the policy was made. As per the procedure the old policy was required to be cancelled and new policy was required to be obtained while the earlier policy was for covering the risk. The transaction was entered on 21/4/1988. In absence of the present plaintiff i.e. the proprietor of the shop his relative Radhesham Sarda and the Development Officer of the appellant insurer, namely, Shri Brijlal Malu, it was fraudulently shown that the policy for Rs. 10,00,000/- was taken. Antedated documents were prepared. Even the cheque was not deposited on 21/4/1988. As per the plaintiff himself in his absence his relative obtained fresh insurance on 21/4/1988 @ 4:00 pm. and in the same night, the fire has broken out. Therefore, claiming that fraud is attempted to be perpetrated on it, the appellant insurer wanted that the suit be dismissed.

5. Before the learned trial Court, the plaintiff examined himself supported by his relative i.e. P.W.2 Radhesham Sarda and the Surveyor P.W. 3 Rajendra Desai who has proved the survey report at Exhibit 112. From the side of the present appellant insurer the then Branch Manager of the appellant was examined.

6. The learned trial Court held that after issuing of cover note since the Surveyor who was on the panel of the present appellant insurer had surveyed the loss, it has been proved that the property as claimed by the said survey report was destroyed in the said incident. As regards the pleading of fraud, it was held that D.W.1 Ravindra Kulkarni himself admitted that the risk starts from the issuance of the cover note i.e. from 21/4/1988 and even before encashment of the cheque of premium guidance of the Head Office was sought and on the guidance of the Head Office, the cheque towards the premium was accepted in respect of the cover note. Further, in due course of time, after the incident, the policy of insurance was issued covering the risk of Rs. 10,00,000/- for the particular period. It was further found that though it is the case of the appellant insurer that while D.W.1 Ravindra Kulkarni the then Branch Manager was on leave, the Development Officer has colluded in the fraud, the said witness has admitted that he has not submitted any report about the collusion to the Head Office. Further, he has admitted during his cross - examination that the Regional Office had deputed Surveyors Gosavi Tadpole and Company and Shri Parab, retired Commissioner for investigation of the incident, however, those reports are not forthcoming. Therefore, according to the learned Judge the theory of fraud

appears to be a concocted story.

7. In the circumstances, the decree came to be passed.

8. Assailing these reasonings, Mr. A.B. Gatne, learned counsel for the appellant submitted as under: -

The plaintiff as well as his witness i.e. P.W.2 has admitted that the plaintiff was absent in the city on 21/4/1988 and in his absence, the relative has allegedly proposed for obtaining the fresh policy and accepted by the Development Officer. This exercise was carried when the Branch Manager was on leave and there was no formal proposal. Further, their evidence would show that the meeting between the Development Officer and the relative of the plaintiff was just a casual meeting and suddenly the insurance for Rs. 10,00,000/- was obtained by the relative. Further, P.W.2 the relative of the plaintiff in the cross -examination admits that while limited stock is kept in the shop where the fire has broken out, the substantial stocks remain in the godown which is beyond the octroi limits. In these circumstances, the relative has deposed that on the day of the incident itself, 85% of the goods that was gutted in the fire was brought in the shop without payment of octroi duty. When the questions were put as to whether there is any receipt of payment of octroi, these witnesses have brazenly stated that in collusion with the octroi authorities, the goods were imported without payment of octroi which should not have been accepted by the trial Court. He further submits that though P.W.3 Rajendra Desai is the Surveyor empanelled by the appellant, his report is not binding. In the circumstances, submitting that fraud cannot be proved by direct evidence, the circumstances, as detailed supra would clearly go to show that there was no contract between the appellant and the defendant on 21/4/1988 for fire insurance for Rs. 10,00,000/-.

9. On the other hand, Mr. Kadethankar, learned counsel for the respondent plaintiff submits that the panel surveyor of the appellant found that the property worth Rs. 14,00,000/- was gutted in the fire. Even the revenue authorities had independently taken the survey and corroborated this fact. After the incident, the Divisional Office of the appellant insurer directed for acceptance of the cheque and even policy was issued after six months and now the plea of fraud is being taken. Thus, the appellant is also making allegations against the Divisional Office. Further, though it is trying to belie the report of its own empanelled Surveyor, there is no reason to brush aside the independent panchanama drawn by the revenue authorities. In the circumstances, he submits that the appeal be dismissed.

10. On the basis of these submissions, following points arise for my determination: -

I) Whether the plaintiff has proved that he is entitled for the amount as claimed towards the policy of insurance of type "A"?

II) Whether the appellant proves that there was no legal contract of insurance

between the parties?

My finding to point no. (I) is in the affirmative and to point no. (II) is in the negative. The Appeal is therefore dismissed without any order as to costs for the reasons to follow.

REASONS

11. The entire record would show that the following suspicions are raised regarding the transaction :

i) That when the Development Officer of the appellant insurance company was on casual visit to the shop of the plaintiff / respondent, at that time, in his absence his relative P.W. 2 Radhesham Sarda had placed the proposal for having the next of the policy. It was accepted by the Development Officer on the same day when Branch Manager was on leave and in the very same night, the fire occurred.

ii) It was the normal practice of the respondent - plaintiff to keep his substantive stock in the godown beyond the territorial limits of the town. According to the plaintiff, however, on the very same day, these articles were brought into the shop by evading the octroi duty.

iii) The premium was paid by cheque and as such on the next day of the incident.

12. As against this, there is clear evidence of the following facts: -

i) That the Branch Manager did never inform in writing to his superior about the transaction though he suspected regarding its genuineness. The cheque was accepted by the appellant insurer and was also sent for encashment after the incident with the prior information to the superiors. Not only this, after six months of the incident, even the policy of insurance was issued.

ii) Approved Surveyor of the appellant had inspected the spot and found the damages as detailed in the claim. Independently, the revenue authorities also recorded panchanama (certified copy at Exhibit 76) and came to the same conclusion.

iii) The witness for the appellant has admitted that certain investigator was appointed, however, no investigation report is filed on record. Neither such investigator is examined.

iv) The plea of fraud is easy to make but very difficult to prove. Besides this, it is akin to a charge of the criminal offence though may have been made in a civil proceedings. It is therefore established principle of law that the said plea has to be proved beyond reasonable doubt. (See AIR 1941 93 (Privy Council)).

v) Here, in the present case, not only the evidence of the investigator is withheld, the Branch Manager even failed to intimate the alleged fraud noticed by him in writing at any point of time. Even after noticing the said transaction within 2 -3 days of the incident, the cheque was allowed to be encashed and after a period of six months, the policy of insurance was issued. In the circumstances,

there is not even preponderance of probability in favour of the appellant.

13. In that view of the matter, the reasoning of the learned trial Judge cannot be faulted with. The First Appeal is therefore dismissed without any order as to costs.