
(2014) 01 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4554 of 2013 (O and M)

United India Insurance Company Limited and Others

APPELLANT

Vs

M/s. Jindal Stainless Ltd.

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 01 P&H CK 0136

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Advocate : R.K. Bashamboo, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is defendants' second appeal challenging the judgment and decree of the Lower Appellate Court upholding the judgment and decree of the trial Court whereby suit of the plaintiff-respondent for recovery has been decreed. The plaintiff-respondent filed the instant suit for recovery on the averments that it was insured with the appellant-Company vide Cover Note No. 087763 dated 10.2.2000 and Machinery Insurance Policy No. 110404/44/05/290/2000 dated 27.3.2000 for a sum of Rs. 6,70,38,000/-for the period w.e.f. 10.2.2000 to 9.2.2001 against an annual premium of Rs. 3,89,114/- which was received by the appellant vide receipt No. 688298 at the time of issuance of the Cover Note dated 10.2.2000. The above said machinery sustained breakdown loss on 8.11.2000 which was reported to appellant No. 2 immediately and thereafter, the appellant appointed Surveyor and Loss Assessors to verify and assess the loss. Surveyor visited the premises of the plaintiff-respondent and identified the damaged pump and asked the plaintiff-respondent to dismantle the same and call for the surveyor for further looking into the damage. Thereafter, the plaintiff-respondent submitted the claim form and other documents required by the appellants but the claim was not settled. After persuasion the appellants paid an amount of Rs. 15 lacs only against a claim amount of Rs. 49,60,874/- on 23.10.2001 as part payment. Thereafter, the

appellants paid a sum of Rs. 17,78,238/- vide cheque dated 15.4.2002 despite the fact that their Surveyor had recommended a sum of Rs. 38,10,000/- in its favour. The appellants were requested to admit the genuine claim of the plaintiff-respondent and to make the payment but the appellants did not pay any heed to the request of the plaintiff-respondent. Hence, necessity arose to file the present suit.

2. Upon notice, the appellants contested the suit by filing written statement raising various preliminary objections. On merits, it was submitted that the plaintiff-respondent was not entitled to the relevant claim as per instructions of Tariff Advisory Committee. However, it was stated that the claim was processed and settled at a sum of Rs. 32,78,238/- which was duly received by the plaintiff-respondent in full and final settlement of their claim and nothing remains to be paid. It was further contended that the plaintiff had claimed a sum of Rs. 5,92,818/- towards charges paid by the supplier engineers. This amount was paid to the foreign supplier for erection work to the dismantling and to find out the actual damage work. These charges were incurred on foreign supplier engineers for expert advice and were not payable. As per terms and conditions of the insurance policy for covering of expenses of foreign personnel then additional cover has to be taken for an extra premium @ 5%. The expenses of foreign personnel also includes professional expertise charges. The Tariff Advisory Committee has introduced an endorsement in the month of August, 1988 for all types of imported machinery under policies for coverage of expenses of foreign personnel who visits India for repair and replacement in case of any claim under the Policies. It is further contended that in this particular case the foreign experts expenses are not covered as no additional premium was taken from the plaintiff for covering such expenses and thus, the claim of the plaintiff-respondent was not payable and suit was liable to be dismissed.

3. From the pleadings of the parties, the following issues were framed:

1. Whether the present suit has been filed by duly authorized person? OPP
2. Whether the plaintiff is entitled to recover an amount of Rs. 14,95,312/- along with future interest as prayed in the plaint? OPP
3. Whether the plaintiff has got no cause of action to file the present suit? OPD
4. Whether the plaintiff is estopped by its own act and conduct from filing the suit? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit has not been signed and verified as per law? OPD
7. Relief.

4. After hearing both the parties, the trial Court answered issues No. 1 and 2 in favour of the plaintiff-respondent and issues No. 3 to 6 were decided against the appellants and in view of the findings on various issues, the suit was decreed.

5. Aggrieved from the aforesaid judgment and decree of the trial Court, the appellants filed an appeal which was also dismissed. While dismissing the appeal, the First Appellate Court observed as under:

After having heard the rival contentions advanced by learned counsel for the parties and after going through the evidence led by both the parties before learned trial Court the case file/record of learned Trial Court and appeal file minutely, this Court is of the view that there is no illegality or error or law in the judgment and decree under challenge and the present appeal is liable to be dismissed for the reasons here-in-after recorded.

In the present case there is no dispute between the parties that the plaintiff company purchased one De-scaling Pump from M/s. Sterling SIHI GmbH, Germany, which was insured with the defendant No. 1 company through its branch vide Cover Note No. 087763 dated 10.2.2000 and Machinery Insurance Police No. 110404/44/05/290/2000 dated 27.3.2000 for a sum of Rs. 6,70,38,000/- for a period w.e.f. 10.2.2000 to 9.2.2011 (mid night) against annual premium of Rs. 3,89,114/-. It is also not disputed that the aforesaid sum of Rs. 3,89,114/- was received by the defendant company through its branch Manager, Hisar from the plaintiff vide receipt No. 688298 dated 11.2.2000 at the time of issuance of the Cover Note dated 10.2.2000. Admittedly, the insured machinery i.e., the Descaling Pump sustained breakdown loss on 8.11.2000 and the defendants appointed M/s. V.K. Kharbanda & Associates, New Delhi as surveyors and Loss Assessors, to verify and assess the loss who submitted their reports and a part payment of Rs. 15,00,000/- was made by the defendants vide Cheque No. 8880819 on account of loss and another part payment of Rs. 17,78,238/- was made by the defendants on 15.4.2002 vide cheque No. 584115 which was accepted by the plaintiff.

Admittedly, the dispute remains between the parties is as to whether an amount of Rs. 5,73,207/- alongwith interest (as awarded by learned trial Court) was/is liable to be paid by the defendants to the plaintiff or not.

Ld. Counsel for the plaintiff contended that the plaintiff-firm had to spend the aforesaid amount on account of payment made by the plaintiff company to the engineers of the foreign supplier of the machines for expert advice and the plaintiff firm is entitled to recover the same from the defendants as the machines were fully insured.

On the other hand the ld. counsel for the appellants-defendants contended that the plaintiff company is not entitled to recover the aforesaid amount from the defendants because the aforesaid amount was spent on foreign supplier engineer for expert advice and as per terms and conditions of insurance policy and as per the terms and conditions of Tariff Advisory Committee for covering for expenses of foreign personnels additional cover has to be taken as an extension @ 5% on selected sum insured. The plaintiff did not pay the additional premium @ 5% and accordingly the plaintiff is not entitled to recover the amount from the

defendants. Ld. counsel for the defendants relied upon documents Ex. D-3 and D-4 as well as Circular No. CHRC/ENGG./10/98-99 dated 24.8.1998 and the guidelines issued by the Tariff Advisory Committee on 11.9.2000 in support of his contentions.

But the aforesaid contentions so raised by Ld. counsel for the defendants are not sustainable. Admittedly the machineries were got insured by the plaintiff from the defendants vide Cover note No. 87763 dated 10.2.2000 and insurance policy was issued on 27.3.2000. Admittedly, the guidelines of Tariff Advisory Committee were issued on 11.9.2000 i.e. After issuance of insurance policy, mentioned above. There is nothing on record to suggest the guidelines issued by Tariff Advisory Committee dated 11.9.2000 have the retrospective effect. Therefore, the guidelines of Tariff Advisory Committee dated 11.9.2000 are not applicable on the case of the plaintiff.

Perusal of Ex. D3 reveals that it is a photocopy of letter allegedly issued by Head Office of United India Insurance Co. Ltd., Head Office, 24, Whites Road, Madras to Engineering Department Regional Office, Chandigarh and Ex. D-4 is the photocopy of letter allegedly issued by Regional Office, Chandigarh to the Department of Technical Engineering. But Ex. D-3 and Ex. D-4 have not been proved by the defendants as per the provisions of Indian Evidence Act. The said documents were exhibited by DW-1 Sh. Yashpal Miglani at the time of tendering his affidavit Ex. DW1 in his examination-in-chief. Original copies of Ex. D-3 and Ex. D-4 were not produced in the Court at the time of leading of evidence by defendants. It is well settled law that photocopy of the document is not sustainable. It is also well settled law that mere making a document as an exhibit does not dispose with its mode of proof. In such circumstances Ex. D-3 and Ex. D-4 cannot be read into evidence and no reliance can be placed upon these documents. Moreover, even if for the sake of argument Ex. D3 and Ex. D4 are considered as correct, even then the plaintiff is entitled to recover the aforesaid amount paid by the plaintiff company to the Engineers of Foreign Supplier for expert advice from the defendants. Perusal of insurance policy Ex. P-1 reveals that in the said policy it has not been mentioned that the plaintiff was under an obligation to pay additional 5% to cover the expenses incurred on foreign engineering. There is nothing on record to suggest that the defendants disclosed to the plaintiff at the time of inception of insurance of the insurance policy to pay additional 5% to cover the foreign expenses. DW-1 Yashpal Miglani has stated in his cross-examination that it is correct that nothing has been mentioned regarding the guidelines issued by Tariff Advisory Committee in the insurance policy. It is also correct that they did not inform the plaintiff regarding the guidelines of Tariff Advisory Committee in the written letter. DW-1 further stated that they disclosed this fact of plaintiff Company orally. But there is no cogent evidence on record to suggest that the defendants disclosed the aforesaid fact to the plaintiff company orally. It was the duty of the defendants to inform the plaintiff company regarding the guidelines of Tariff Advisory Committee. But no cogent evidence has been placed on record by the defendants to prove on

record the guidelines of Tariff Advisory Committee were disclosed by the defendants to the plaintiff at the time of issuance of cover note or insurance policy or prior to that. DW-1 Yashpal Miglani has stated in his cross-examination that he had not seen the guidelines of Tariff Advisory Committee. He did not go through the contents of the guidelines. In such circumstances, it is not established on record that the guidelines of Tariff Advisory Committee were ever disclosed by the defendants to the plaintiff.

In these circumstances and in view of the above discussions, this court is of the view that the plaintiff company is entitled to recover from the defendants the amount paid by the plaintiff company to the Engineers of Foreign Supplier for erection work for dismantling and to find out the actual damages work. Accordingly, Id. trial Court has rightly decreed the suit of the plaintiff and no ground is made out to set aside or modify the impugned judgment and decree dated 2.5.2009. Id. trial Court has also rightly directed the defendants to pay interest @ 9% per annum to the plaintiff on the decretal amount from the date of filing the suit till its actual realization and the said rate of interest is not on the higher side.

6. Still not satisfied, the defendants have filed the instant appeal challenging the judgments and decrees of the Courts below submitting that the following legal issues require consideration of this Court:

i. Whether the proposal form is part of the contract/policy and both the documents are required to be read together for deciding the liability of the insurer.

ii. Whether the judgment is perverse and wrong because of the non-reading and misreading of the documents duly proved on record.

7. In support of his case, learned counsel for the appellants has vehemently argued that the Courts below have failed to appreciate the fact that contract of insurance is binding on both the parties and the Courts below have erred while not appreciating the fact that the proposal form is an integral part of the policy and has to be read as to know the risk covered by such insurance policy. The details of the risk to be covered was submitted by the plaintiff-respondent and the premium was calculated on the basis of the details of risk as given in the proposal form. According to the counsel for the appellants, no premium was paid for foreign experts who came to India for repair of machinery. From the perusal of the said proposal form attached with the Insurance Policy (Ex. P1), it is very much clear that in the proposal form the expenses of the foreign experts were not got covered. It is their further case that the Courts below have failed to appreciate documents Ex. D3 and Ex. D4, according to which, 5% additional premium was to be paid to cover foreign expenses and thus, the judgments and decrees of the Courts below are liable to be set aside.

8. Further, according to the counsel for the appellants, the basis of the present policy of insurance is the proposal form. The plaintiff-respondent never wanted to

get the said risk covered and that is why they have not chosen to mention the same in the proposal form. It was the choice of the insured to get any risk covered by disclosing the same in the proposal form. Since this risk was not mentioned and there is nothing to hide from the plaintiff-respondent and thus, the risk, as claimed, was not covered under the Policy and therefore, was not payable.

9. I have heard learned counsel for the appellants and perused the impugned judgments and decrees of the Courts below. I have also perused the alleged proposal form attached with the Insurance Policy produced on record as Ex. P1 along with, details of equipments, plant and machineries to be insured under the said policy attached as Annexure A with the said policy.

10. According to the counsel for the appellants, the aforesaid Annexure-A as attached with the Insurance Policy Ex. P1 is the proposal form for the risk which have been covered under the said Insurance Policy. Admittedly, in the said details of the equipments, the equipment in question (De-scaling pump) has been included for the purpose of Insurance giving its costs which includes erected costs and the proposed sum. A foot note in the said details also points out that the proposed sum insured includes the total cost of equipment proposed under this Policy. This proposal form does indicate that cost of repair of such equipment is to be indemnified by the insurance. However, there is nothing to indicate that the risk of expenses to be spent on foreign experts in a case of damage is not covered. There is no such column in the said proposal form which has been printed and issued by the appellant-Insurance Company to indicate the choice of the insured making a distinction of accepting or a distinction from which it could be known to be insured that in case he wants to cover risk of such expenses under the Insurance cover, he has to pay the additional sum as claimed.

11. At this stage, it may also be noticed that admittedly the appellant-Insurance Company has indemnified the expenses covering the repair of the equipment in question and there is no exclusion clause in the Policy to indicate that the expenses incurred on repairs of an equipment which is covered under the Insurance Policy and have been paid to foreign experts shall not be reimbursable.

12. In view thereof, to argue that proposal form does not include the amount claimed is not sustainable. The guidelines issued by the Tariff Advisory Committee for payment of additional premium of 5% to make such amount payable were admittedly issued on 11.9.2000 i.e. After issuance of Insurance Policy.

13. It is not the case of the appellants that said guidelines can have the retrospective effect and therefore, the Courts below rightly held that the guidelines of the Tariff Advisory Committee are not applicable in the instant case. Moreover, the documents Ex. D3 and D4 cannot be read into evidence as the same have not been proved in accordance with law. Admittedly, the originals of these documents have not been placed on record and only photocopies have

been exhibited on record. The mere exhibition of documents does not dispense with the mode of its proof. The originals were not produced in the Court at the time of leading evidence.

14. Moreover, perusal of Insurance Policy Ex. P1 reveals that in the said Policy, it has not been mentioned that the respondent was under an obligation to pay additional 5% to cover the expenses incurred on foreign engineer experts. There is nothing on record to suggest that the appellants disclosed to the plaintiff-respondent at the time of issuance of Insurance Policy to pay additional 5% to cover the foreign expenses for repair. Moreover, there is nothing on record to suggest that even the guidelines issued by the Tariff Advisory Committee were ever brought to the notice of the plaintiff-respondent. Thus, in view of the aforesaid facts as established on record, this Court finds no fault with the findings recorded by the Courts below.

15. No substantial question of law, as raised, arises in this appeal. Dismissed.