HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.645 of 2008

JUDGMENT:

This appeal is filed by the defendant aggrieved by the judgment and decree, dated 17.01.2008, passed in O.S.No.08 of 2004 on the file of the II-Additional District Judge, Nalgonda at Suryapet.

2. Appellant herein is defendant and respondent herein is plaintiff in the suit. The parties will be referred to as arrayed before the trial Court.

3. The backdrop of the case leading to filing of this appeal is as under:

M/s Sri Naga Durga Silk Reeling Industry, Dorakunta (Plaintiff) filed the suit for recovery of policy amount of Rs.13,83,380/- from the New India Assurance Company Limited, Nalgonda (Defendant) with *pendente lite* and future interest at 9% per annum.

Brief averments of the plaint are as under:

The proprietor of the plaintiff industry, namely, Gangireddy Adinarayana Reddy ran the industry having purchased the land, building, plant and machinery in an auction held by the APSFC in the year 1997. Earlier the said industry was run by M/s Venkateswara Silk Reeling

Industry and as they fell in arrears of certain amounts to the APSFC, the said unit was seized under Section 29 of S.F.C. Act and sold it to the said G.Adinarayana Reddy. Later, the plaintiff took policy from the defendant for a sum of Rs.16,00,000/- with Policy No.1161010606186 valid for 12 months commencing from 31.10.1998 to 30.10.1999. The policy was for the coverage of any risk in respect of the building, machinery and accessories and stock of silk, yarn etc., and out of the said amount of Rs.16,00,000/-, Rs.12,00,000/- was towards building; Rs.3,00,000/- towards machinery and accessories and Rs.1,00,000/- towards stock

of silk, yarn etc., The plaintiff paid Rs.12,432/- towards premium. It is further stated that on 17.11.1998 at about 11.30 P.M. the factory premises caught fire due to some explosion, as a result of it, the building was collapsed, machinery and stocks were extensively damaged.

Thereafter, the plaintiff lodged a report before Kodad Rural Police Station and the police registered a case in Crime No.154 of 1998 for the offence punishable under Section 3 of the Indian Explosive Substances Act. However, the police filed a charge sheet against the proprietor of the plaintiff industry and four others for the offences punishable under Sections 3 and 5 of the I.E.S. Act. The proprietor of the plaintiff industry was confined in jail and after his release, he made a claim petition before the defendant company requesting to pay the policy amount. In the last week of September, 1999, the defendant sent a letter dated 02.03.1999 stating that the damage caused to the plaintiff's industry was not unforeseen and it was fraudulent and so the claim was

closed. Thereafter, the proprietor of the plaintiff industry was acquitted by the learned Assistant Sessions Judge, Suryapet, vide judgment dated 12.02.2002, passed in S.C.No.649 of 2000, and after his acquittal, he again approached the defendant along with a copy of the said judgment and requested the defendant to pay the policy amount. However, the defendant through a letter dated 04.06.2002 refused to pay the same stating that the claim was closed and no further correspondence is

entertained on the subject. It is further stated that refusal to pay the amount on the ground of fraud is arbitrary and illegal. The plaintiff got estimated the damage caused to the factory by an architect vide his report dated 30.11.1998. The loss sustained by the plaintiff was to a tune of Rs.10,52,000/- and since the defendant failed to pay the amount immediately after the claim, the plaintiff is also entitled to claim interest over the said amount at 9% per annum from

January 1999 to 30.06..2002 and thus the plaintiff is entitled to recover an amount of Rs.13,83,380/- from the defendant.

4. In the written statement, the defendant admitted with regard to the coverage of policy of the plaintiff from 31.10.1998 to 30.10.1998 and also the payment of premium amount. It is contended that the defendant had no knowledge about the criminal case against the plaintiff. After receipt of application of the plaintiff on 01.12.1996, the defendant deputed a Surveyor on 03.12.1998 to estimate the loss, who gave his report on 23.02.1999 stating that the loss was not genuine and it was due to wilful act by the insured. Basing on the said report, the defendant addressed a letter on 02.03.1999 stating that the company was unable to settle the claim as per the details of the Surveyor's report and the same was not claimed by the plaintiff. On 19.10.2000, the plaintiff gave a letter requesting to furnish a copy of the letter dated 02.03.1999 and accordingly the same was

furnished to the plaintiff and that the plaintiff failed to give information to the company immediately. It is further contended that on 19.11.1999, a news item was published in Eenadu and Vartha Telugh daily Newspapers that the plaintiff himself responsible for explosion in the factory. The plaintiff again gave a letter on 21.05.2002 by enclosing a copy of the judgment in S.C.No.649 of 2000 asking the reason as to why the claim was not settled. After going through the judgment and letter of the plaintiff, the defendant replied that the claim was closed as 'No Claim'. Therefore, it is prayed to dismiss the suit with exemplary costs as the plaintiff suppressed the real facts.

5. During trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and got marked Exs.A-1 to A-6. On behalf of the defendant, D.W.1 was examined and got marked Ex.B1.

6. The trial Court, after considering the entire evidence, both oral and documentary, and the respective

contentions of the learned Counsel appearing on either side, decreed the suit with costs for Rs.13,83,380/- with subsequent interest at 6% per annum on the principal amount of Rs.10,52,000/-

from the date of plaint till the date of realization.

7. Aggrieved by the aforesaid judgment and decree of the trial Court, the present appeal has been preferred by defendant, *inter alia,* contending that the claim was repudiated on 02.03.1999 itself and hence the suit is barred by limitation as it was filed on 23.09.2002. Merely because the copy of the letter dated 02.03.1999 was received on 19.10.2000, it will not save the limitation. As per the terms of the policy, in case of any disclaim, the suit has to be filed in 12 months. Since the plaintiff failed to file the suit within the stipulated time, the Insurance Company is not liable for any loss or damage. It is further contended that the entire claim

was made by playing fraud and mere acquittal of the plaintiff by the criminal Court in S.C.No.649 of 2000, is not sufficient to hold that there is no fraud played by the plaintiff on the Insurance Company. As per the decision of the Supreme Court in 2006 (1) IAC 260, the Insurance Company can appoint the Surveyor and can act upon irrespective of the investigation by the police. The trial Court failed to see that stock register was not filed and Sales clerk was not examined to prove the quantum. It is further contended that the Surveyor need not give any notice and even otherwise, when the Surveyor has inspected the premises itself is enough to say that the plaintiff has got notice of the survey. The trial Court failed to see that the amount cannot be fixed on the estimation and valuation certificate and that the plaintiff failed to prove the extent of loss caused due to the accident. The trial Court also failed to see that the claim of interest at 12% per annum on

Rs.10,52,000/- from January, 1999 to 30.06.2002 is incorrect. It is further contended that as per the terms of the policy, the insured has to inform as soon as possible about the alleged loss, but not later than seven days. Therefore, he requested the Court to set aside the impugned judgment of the trial Court.

8. Heard the learned Counsel appearing on either side and perused the entire material available on record.

9. The proprietor of the plaintiff industry, who was examined as P.W.1, filed his chief-examination affidavit reiterating the contents of the plaint. In the crossexamination, he admitted that he was in jail for about eight days. He also admitted that the accident took place on 17.11.1998 and he informed the same to the defendant on the next day morning by phone. He further stated that he intimated the accident to the defendant in writing on 30.11.1998. He denied the suggestion that after receipt of written intimation, the

Insurance Company deputed a Surveyor on 03.12.1998. He admitted that he got surveyed the loss by a private surveyor on 30.11.1998. It was suggested to him that to avoid his liability to S.F.C, he got created the accident and committed fraud and that the Insurance Company repudiated his claim basing on the report of the Surveyor, but he denied the same. It was also suggested to him that his claim was barred by limitation, but he denied the same.

10. One K.Chalapathi Rao, who worked as a Watchman in the plaintiff factory from June, 1997 to November, 1998, was examined as P.W.2 and he stated in his chief-examination that he along with his wife used to stay in the factory premises in a Shed and on 17.11.1998 at about 11 or 11.30 P.M. while they were sleeping, they heard a bomb sound and they woke up and found the building collapsing and that they went to Kodad at about 1.30 A.M. on the same

night and informed about the explosion to P.W.1 and P.W.1 came to the factory and saw the exploded premises. Thereafter, P.W.2 went to Rural Police Station, Kodad and reported the matter and that the police came to the factory premises in the early hours of 18.11.1998, conducted panchanama and examined him and his wife and recorded their statements. He further stated that the factory was exploded by some unknown miscreants, however, the police without proper verification arrested P.W.1 and after eight days he was released and that due to explosion, P.W.1 sustained huge loss. In the cross-examination, he stated that the factory ran for 1 ½ years and he informed the incident to the owner of the factory at Kodad in the night itself and that he gave evidence in criminal case. It was suggested to him that his owner and others arranged bombs and blasted the factory to avoid loan amount to S.F.C., but he denied the same.

11. P.W.3, who was running business under the name and style of 'Vasthu Nerman' at Kodad since 1987, stated in his evidence that he undertakes to value, estimate and planning of the buildings and constructions and that he is a recognized Valuer of the damaged structure. He further stated that at the request of P.W.1, he has inspected his damaged industry and building on 29.11.1998 and found the building collapsed due to some explosion and he has estimated the damage to a tune of Rs.9,52,000/- and issued Ex.A2/Valuation Certificate along with the estimation of the damaged parts to the plaintiff on 30.11.1998. In the cross-examination, he stated that he is having registration certificate on the subject and he inspected the premises about ten days after the accident and that he verified the quotations and bills in respect of machinery. He denied the suggestion that he gave Ex.A2 in order to help the plaintiff.

12. D.W.1, who is working as an Insurance Surveyor for the past 18 years, has stated in his evidence that, on 03.12.1998, defendant company deputed him to estimate the loss of plaintiff Industry and submit a report and accordingly he visited the Industry and found that the insured was not present and he failed to give any information regarding the loss and estimation. He made enquiries with the local people and also with the help of daily Telugu Newspapers, he came to know that the

plaintiff was arrested as he was the cause for the explosion of his own factory. He could not get any assistance from anybody and the factory was closed when he visited the premises and nobody was there to give any information and that basing on the local enquiries and with the help of paper news, he came to the conclusion that the loss was not genuine and it was due to willful act of the insured and accordingly he submitted his report on 23.02.1999. In the cross-

examination, he stated that he is a licensed surveyor, but he has not filed his license in the Court. He stated that on the oral instructions of the defendant company, he conducted the survey and in Ex.B1, he has not at all assessed the loss. He has issued a notice to P.W.1 in the month of January, 1999 and he has submitted the acknowledgment to the Insurance Company. Before conducting survey, he has not issued any notice to the plaintiff and nobody was present when he inspected the premises. He has not recorded the statements of neighbours and that he has not examined any newsagents of Eenadu and Vaartha. He prepared his report in the month of February, 1999. He has taken photographs of the collapsed building.

13. The Point that arises for consideration is whether the judgment of the trial Court is on proper appreciation of facts or not?

14. There is no dispute regarding the fact that the plaintiff Industry has obtained a "Fire Accident Policy" from the defendant company for one year commencing from 31.10.1998 to 30.10.1999 and paid the premium amount. The case of the plaintiff is that some miscreants have exploded his factory on the night of 17.11.1998, which was informed by his Watchman (P.W.2) and thereafter he lodged a complaint before the police, Kodad Rural Police Station and the same was registered as a case in Crime No.154 of 1998. He further stated that the police, without making proper investigation, filed charge sheet against the plaintiff and four others for the offences punishable under Sections 3 and 5 of Explosive Substances Act and the same was numbered as S.C.No.649 of 2000 and after conducting trial, the learned Assistant Sessions Judge, Suryapet, acquitted the plaintiff and others for the offences with which they were charged vide judgment dated 12.02.2002. On the other hand, the defendant contended that immediately after the knowledge of the accident, the

defendant company deputed D.W.1-Surveyor to estimate the loss of the plaintiff's industry, and accordingly, he visited the industry, inquired with the local people, verified the news items published in Eenadu and Vaartha, and submitted a report under Ex.B1 stating that the plaintiff alone exploded his own factory, and as such, the insurance company is not liable to pay the insurance amount.

15. In fact, the duty of the Surveyor is to assess the loss, but in Ex.B1/Survey report, he has not assessed the loss and simply he gave opinion that the plaintiff was responsible for

the fire accident. Learned Counsel for the appellant/defendant relied upon a decision of the Supreme Court in *Sonell Clocks and Gifts Ltd., Vs. New India Assurance Co. Ltd.,*[1], wherein it was held as under:

> "Suffice it to observe that Galada's case, (2016) 14 SCC 161, will be of no avail to the facts and circumstances of the present case. In this case, the event occurred on 04.08.2004, but intimation was given to the insurer only on 30.11.2004 after a gap of around

> 3 months 25 days. No explanation was offered for such a long gap much less plausible and satisfactory explanation. The stipulation in condition No.6 of the policy to forthwith give notice to the insurer is to facilitate the insurer to make a meaningful investigation into the cause of damage and nature of loss, if any. This Court in Parvesh Chander Chadha, MANU/SC/1343/2010, has held that it is the duty of insured to
> inform the loss forthwith after the incident."

16. Learned Counsel for the appellant/defendant contended that the defendant company can verify the cause

[1] 2018 ACJ 2672

of the blast by an independent inquiry through their surveyor, and as such, even if the plaintiff was acquitted in a criminal case, they are not liable to pay the compensation. The contention of the appellant's counsel is not at all sustainable because the surveyor (D.W.1) simply enquired the local people and relied upon the newspaper clippings and held that the plaintiff alone exploded the factory. Even the police registered a case against the plaintiff and others with the same suspicion. However, after conducting a fullfledged trial in S.C. No. 649 of 2000, the learned Assistant Sessions

Judge, Suryapet, acquitted the plaintiff and others, vide judgment dated 12.02.2002, as the plaintiff was not responsible for the fire accident. Once the plaintiff was acquitted by the Criminal Court, it cannot be said that the report of the Surveyor (D.W.1) under Ex.B1 stands on a higher footing than the judgment of the Criminal Court.

17. Learned Counsel for the appellant/defendant further argued that as per the terms of the policy, the insured has to inform as soon as possible about the alleged accident, but not later than 7 days. He further contended that the plaintiff gave information only after judgment of acquittal in S.C.No.649 of 2000 dated 12.02.2002 and thus the suit of the plaintiff is barred by limitation. From a perusal of the written statement filed by the defendant, it is clear that the defendant himself admitted that the application for claim was submitted by the plaintiff on 30.11.1998 with a delay of 12 days from the date of accident and the defendant

received the said application on 01.12.1998 and thereafter deputed the Surveyor on 03.12.1998 to estimate the loss. In fact, immediately after the fire accident, the plaintiff was confined in jail for seven days. The plaintiff, who was examined as P.W.1, in his cross-examination stated that the accident took place on 17.11.1998 and that he informed the same to the defendant on the next day of the accident by phone and also gave an application to the defendant in writing on 30.11.1998. As the plaintiff was confined in jail, he could not give the application for claim in writing immediately after the accident. Therefore, the delay in giving the application is not willful and it is beyond his control. Therefore, the argument of the learned Counsel for the appellant/defendant that the application for claim was not submitted by the plaintiff within seven days as per the terms of the policy is not tenable. Basing on Ex.B1-report of D.W.1/Surveyor

dated 23.02.1999, the claim of the plaintiff was repudiated by the defendant vide letter dated 02.03.1999. Thereafter, the plaintiff submitted another letter on 21.05.2002 to reconsider his claim by duly enclosing Ex.A5-certified copy of the judgment of acquittal passed in S.C.No.649 of 2000. However, the defendant has not considered the same vide Ex.A4-letter dated 04.06.2002, which reads as follows:

> "This has reference to your letter dated 14th May, 2002 and the same is received by us on 21st May 2002 in regard to your Fire Claim lodged in December, 1998 and in this connection, we have to state that we have already written a letter dated 2nd March, 1999 to you, wherein it has been clearly mentioned that the claim is closed as 'NO CLAIM' and no further correspondence is entertained on the subject."

18. D.W.1-Surveyor appointed by the defendant-Insurance company has not assessed the loss under Ex.B1Survey report. The plaintiff examined P.W.3, who is a recognized Valuer of the damaged structures etc., He stated that on the request of the plaintiff, he has inspected the damaged industry and building of the plaintiff on

29.11.1998 and assessed the damage to a tune of Rs.9,52,000/- for the building and machinery under Ex.A2Valuation Certificate. He stated that he was having registration certificate and that he verified the quotations and bills in respect of the machinery and assessed it properly. He further stated that he was running business under the name and style of 'Vasthu Nerman' at Kodad since 1987 and he undertakes to value, estimate and planning of the building and constructions and that he was a recognized Valuer of the damaged structures etc. Therefore, the damage assessed by P.W.3 under Ex.A2Valuation certificate was rightly considered by the trial Court for granting damages to the plaintiff. Though D.W.1Surveyor was deputed by the defendant on 03.12.1998 to estimate the loss and D.W.1 submitted his report on 23.02.1999, the defendant company has not paid

compensation to the plaintiff even after he approached the Court and as such the trial Court rightly granted interest as claimed by the plaintiff.

19. Admittedly, Ex.A1-Fire Accident Policy was in existence as on the date of accident and premium amount was paid by the plaintiff. Initially, the plaintiff was suspected for causing explosion to his own factory. However, he was acquitted in the criminal case after a fullfledged trial. But, the defendant company did not consider the same and they simply tried to avoid its liability to pay the compensation on one pretext or the other. The defendant company simply repudiated the claim on the ground that the plaintiff alone exploded his own factory and as such he played fraud upon the defendant company. As per the evidence of D.W.1 and Ex.B1-Surveyor report, it cannot be said that the plaintiff alone exploded the factory in order to get the insurance amount. As per Ex.A5judgment in

S.C.No.649 of 2000, it is evident that the plaintiff was not responsible for the fire accident. Further, the defendant-company should have deputed the Surveyor and got inspected the factory premises of the plaintiff immediately after the accident to know the exact loss or damage caused to the factory of the plaintiff, but they failed to do so and as such they cannot dispute Ex.A2-Valuation

Certificate issued by P.W.3.

20. In view of the foregoing reasons, I find that the trial Court, after evaluating the entire evidence both oral and documentary, rightly decreed the suit of the plaintiff.

21. However, the evidence of P.W.3-Recognized Valuer of the damaged structures etc., would disclose that the plaintiff sustained loss of **Rs.9,52,000/-** for the building and machinery under Ex.A2-Valuation Certificate dated

30.11.1998. But, in the plaint it was wrongly mentioned as Rs.10,52,000/- by the plaintiff and claimed interest at 9% per

annum on Rs.10,52,000/- from January, 1999 to 30.06.2002, and filed the suit for recovery of an amount of Rs.13,83,380/-. The trial Court also decreed the suit for an amount of Rs.13,83,380/- without applying its mind. Therefore, this Court finds that the judgment of the trial Court needs to be modified as under:

22. This Court is of the considered view that the loss sustained by the plaintiff was to a tune of Rs.9,52,000/- and he is also entitled to *pendente lite* interest at 9% per annum on the said amount from January, 1999 to 30.06.2002, which comes to Rs.2,99,880/-, and thus the plaintiff is entitled to recover an amount of Rs.9,52,000/- + Rs.2,99,880/- = Rs.12,51,880/-. Hence, the suit is decreed with costs for **Rs.12,51,880/-** with subsequent interest at 6% per annum on the principal amount of Rs.9,52,000/- from the date of plaint till the date of realization.

23. Accordingly, the Appeal Suit is dismissed with the above modification. There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE P.SREE SUDHA

06.10.2023 Gsn.