

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

FAT 667 OF 2002

**THE ORIENTAL INSURANCE COMPANY LIMITED
Vs.
MESSERS. R. R. ENTERPRISES**

For the appellant : **Mr. Rajdeep Bhattacharya, Adv.
Mr. Rajesh Singh, Adv.**
For the respondent : **Mr. Utpal Bose, Adv.
Mr. Arik Banerjee, Adv.**

Judgment on : **17.10.2023**

Prasenjit Biswas, J:-

1. The instant appeal has been preferred by the appellant/Insurance Company challenging the impugned judgment and decree dated 28.11.2001 passed by the learned Civil Judge (Senior Division), 5th Court at Alipore, South 24 Parganas, in connection with Money Suit No. 17 of 1989 whereby and where under, learned Trial Court decreed the suit in favour of the respondent (herein).

2. Being aggrieved by and dissatisfied with the impugned judgment and decree, the instant appeal has been preferred on behest of the appellant/Insurance Company.

3. The respondent/plaintiff knocked the door of the Court by filing a suit for realization of money amounting to Rs.33,97,025/- from the Insurance Company. Plaintiff is an importer of chick peas and other agricultural products and entered into a contract with M/S. Dipak Trading Co. of Singapore and M/s. Vaizogullari Tarinuranteri Tieared A.S. for shipment of for Turkish chick peas to India. For that reason, the respondent/plaintiff approached the Insurance Company/appellant for issuance of marine insurance covering the said goods and made a proposal on 22.05.1986 including therewith a cheque for appropriate amount of the premium. The appellant/Insurance Company accepted the proposal made by the appellant and agreed to cover the goods by issuing a Marine Insurance Policy.

4. Thereafter, the vessel M.V. Sea Cloud set sail with the cargo of the respondent from the port of Mersin, Turkey on 11.05.1986 but on the way it proceeded to the port of Beirut, some mechanical defect was cropped up and on reaching the port of Beirut the cargo was transhipped from M.V. Sea Cloud to M.V. Rama. As an explosion occurred in the said vessel M.V. Rama just shortly after sailing from the port of Beirut it sank in the sea with the cargo of the respondent/plaintiff.

5. On the basis of Marine Insurance Policy in respect of the Cargo the respondent/ plaintiff preferred its claim against the Insurance Company and furnished all documents in support of its claim. But surprisingly, the

appellant/Insurance Company sent a letter to the respondent denying its liability under the Marine Insurance Policy which was issued by it to the respondent on the ground that the respondent did not disclose the material facts. In reply to that respondent/plaintiff denied the allegations as made out by the appellant. As the appellant/Insurance Company did not act upon the request of the respondent, under compelling circumstances, this respondent took shelter of the Court of law and filed the instant suit praying for decree for the sum of Rs. 33,97,025 with interests.

6. The appellant/Insurance Company entered appearance in the Trial Court and filed written statement denying the allegations of the plaintiff. It is stated by the appellant of the Insurance Company that on or about 27.05.1986, the respondent proposed for obtaining insurance policy in respect of goods which he intended to import to India and, accordingly, premium was given to the appellant/Insurance company, who in turn issued cover note with a stipulation therein that the goods would be shipped as per Lloyd's register or equivalent class of vessels which must not be over 15 years. It is the stand point of the appellant/Insurance Company that the plaintiff did not inform the Insurance Company as to whether it complied the stipulation as made in the cover note of the insurance policy but on enquiry this appellant came to know that M.V. Sea Cloud was over 15 years old and was not in Lloyd's Register. It is further stated by the appellant/Insurance Company that it advised the respondent that the insurance policy could not be issued and the cover note has already issued by it would be cancelled.

7. In this case, one witness was examined in favour of the plaintiff as PW1 and one witness was examined in favour of defendant and some documents were exhibited in favour of both the parties.

8. Now, the moot question is that whether there was contract of marine insurance between the parties at the time of incident.

9. It is admitted by the appellant/Insurance Company that the respondent/plaintiff had made proposal for marine insurance policy but the point as taken by the appellant is that the accident took place before taking the insurance coverage. So, the Insurance Company is not liable to pay compensation to the respondent. It is also stand point of the appellant that although, initial cargo of the respondent was shipped through M.V. Sea Cloud but subsequently, cargo of the respondent was shipped to another vessel which suffered explosion and the entire ship with the cargo sank in the sea and as such the appellant is not liable to pay the claimed amount.

10. It is stated by the appellant by filing written statement that the respondent proposed for obtaining insurance policy and it was accepted by the Insurance Company/ Appellant and issued cover note with the stipulation that the cargo had to be shipped as per Lloyd's norms and although appellant was informed by the respondent about the shipment of the cargo but it never disclosed about the compliances of the stipulation. But at the time of giving evidence Dw1 admitted that there was a contract between the parties regarding insurance and policy number was allotted to the respondent and also admitted about the premium paid by the respondent. This witness further admitted that the plaintiff disclosed all the particulars i.e. articles, quantity of the goods and the name of the vessel, the port of

origin and port of termination. It is admitted by Dw1 that the insurance company agreed to cover the transit goods by issuance of insurance policy and cover note was issued in favour of the respondent.

11. So it is clear to us that the Insurance Company issued insurance policy to the respondent and accepted over age premium for the shipment and anything was not suppressed by the respondent. It further appears from exhibit 2 that money receipt was issued without any stipulation. At the time of giving deposition by DW1 this witness stated that the Insurance Company accepted the insurance coverage as per terms and conditions but it could not be able to show those terms and conditions. But one thing is clear that Exhibit 2 does not contain any terms and conditions and the appellant has failed to clear the said doubts. So, it goes to say that the respondent disclosed all the material facts and upon which the company/appellant being satisfied issued insurance policy. This witness also admitted that the respondent informed the insurance company about the incidence occurred as soon as it learnt of the matter.

12. Although, it is claimed by Dw1 that he could produce the insurance policy in the court but practically she did not do it. It further appears that the appellant was served with notice asking for the insurance policies issued to the respondent but it did not respond or comply with it which also creates doubts in our mind.

13. Exhibits 1/o to 1/e and exhibits 1 to 1/b which are the original bills and invoices reflect that the respondent paid for the cargo being the owner of it. At the time of giving evidence Dw1 admitted that there was contract between the parties regarding insurance and the company had allotted policy number to the respondent and this respondent also paid the premium to that insurance coverage. It is further

deposed by this witness that the respondent furnished all the particulars of the articles, the quantity of the goods, the name of the vessel, the port of origin and the port of termination and his company accepted the said proposal. So, there would be no question of suppression of information by the respondent regarding the age of the ship.

14. We may look into the section 59 of the Marine Insurance Act, 1963 which entails that-

“Where, by a peril insured against, the voyage is interrupted at intermediate port or place, under such circumstances as, a part from any special stipulation in the contract of affreightment to justify the master in landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment.”

15. In this case cargo was transmitted from vessel M.V. Sea Cloud to M.V. Rama and it was made due to mechanical problems afflicting to M.V. Sea Cloud and it cannot affect the respondent's claim. It is not the case of the appellant that cargo was lost due to the negligent acts of the respondent and if it claims so then it could be done by pressing the policies before the Court. It further appears from the materials on record that there was a valid contract of marine insurance between the parties which covered shipment by M.V. Sea Clouds. It is not the case of the parties that the loss of cargo was happened due to the negligent act of the respondent but the plea could be taken by the appellant/ Insurance Company by placing the policies before the Court. Dw1 stated in his evidence that he can produce the Insurance

Policy but he has not done so. So, the respondent had insurable interest in the cargo being the owner of the same. Accordingly, respondent/plaintiff is entitled to recover the amount from the appellant/Insurance Company.

16. So, we find that there is no error in the impugned judgment passed by the learned Trial Court and there is nothing to interfere it.

17. Accordingly, the instant appeal preferred by the appellant/the Oriental Insurance Company Ltd is hereby dismissed. However, there is no order as to costs.

18. The impugned judgment and decree dated- 28.11.2001 passed by the learned Trial Court passed in connection with Money Suit No. 17 of 1989 is hereby affirmed.

19. Connected applications if any are also hereby dismissed as disposed of accordingly.

20. The Appellant/Insurance Company is hereby directed to pay the entire decretal amount along with interest thereon at the rate as fixed by the learned Trial Court till realisation of the entire amount.

21. The entire exercise shall be completed within ninety days from the date of this order.

22. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

Later:

After the judgment is delivered in open Court, Ld. Advocate appearing for the appellant prays for stay of the operation of the impugned order.

We do not find any ground to stay the operation of impugned order.

Thus, the prayer is rejected.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)