

CASE NO.:
Appeal (civil) 803 of 2008

PETITIONER:
Sea Lark Fisheries

RESPONDENT:
United India Insurance Co. & Anr.

DATE OF JUDGMENT: 30/01/2008

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T

[Arising out of SLP (Civil) No. 4974 of 2006]

S.B. SINHA, J :

1. Leave granted.

2. Appellant was the owner of a Sea Vessel known as \021Sea Lark\022. The vessel was engaged for fishing purposes. Appellant obtained a loan from Canara Bank (Bank). At the time of sanction of loan, the Bank obtained an insurance policy from the respondent no. 1 in respect of the said vessel. It was insured on 12.04.1979 to cover the period from 12.04.1979 to 12.04.1980. It was later on renewed for the period 12.04.1980 and 11.04.1981. The vessel sunk on 21.07.1980. A claim was made in that behalf, which having been repudiated by the respondent No. 1, a civil suit marked as Suit No. 333 of 1983 was filed by the appellant and the Bank before the High Court of Judicature at Madras. Respondent no. 1 in its written statement inter alia contended that the vessel was not seaworthy.

Several issues were framed. Issues No. 2 and 4 which are relevant for our purpose are as under:

\0232. Whether the defendant is liable to pay the suit claim?

4. Whether the defendant is right in repudiating liability under the policy?\024

3. The suit was decreed by a learned Single Judge of the High Court inter alia on the premise that one Hemchandra Babu who was the agent of the insurer and who had filled in the form, kept blanks therein for which the Bank could not be held responsible. An appeal preferred by the respondent no. 1 against the said judgment, however, has been allowed by a Division Bench of the Madras High Court.

4. Appellant is, thus, before us.

5. Mr. Vipin Gogia, learned counsel appearing on behalf of the appellant, inter alia submitted that the Division Bench of the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the question as to whether the Master of the ship had the requisite qualification or not having not been raised in the written statement, the plaintiff- appellant did not have any opportunity to meet the same.

6. Mr. S.M. Suri, learned counsel appearing on behalf of Respondent No. 1, on the other hand, supported the judgment.

7. The question which arose for consideration in the suit as also before the Division Bench of the High Court was as to whether there had been

material suppression or mis-representation of facts, the relevant details whereof had not been furnished to the insurer. Admittedly, as against the column relating to particulars of Master and Crew, the following were required to be indicated:

\023Particulars of Master and Crew:-

1.(a) Is the vessel in charge of a qualified master?

(a) Yes

(b) State his qualifications

(b)\005

(c) How long has he been in your employ?

(c)\005

(d) Will he live abroad the Vessel

(d)\005

(e) If not incharge of a qualified Master state brief details of the person who will be in charge of the vessel\024

(e)\005

8. An application for insuring the vehicle was filed by the Bank. It supplied some information to the agent of the Insurer being one Hemchandra Babu. He examined himself as DW-1. It has been admitted by the Bank in its representation before the Chairman and the Managing Director of Respondent No. 1 \026 company that there had been some omissions; explanation, however, in respect thereof was sought to be furnished in the following terms:

\023Naturally this marine policy was also passed on to United India Insurance. The signed proposal form was handed over to the agent and in all occasions, he filled up the particulars himself and issued the policy. He is almost a daily visitor to our branch for his business. In this case, only that as the party was away from Madras, we suggested to accept the premium and issue the cover note and that we would give the proposal form as soon as party returned. However, as suggested by the agent, we signed the proposal to enable him to issue the policy on 12.4.79, so that there would be no break in insurance cover. Nothing was kept away from him\005\024

9. Any information which could be furnished by the Bank to the insurer was only on the basis of the information received by it from the appellant. The Bank could not have any independent information in that behalf. We have noticed hereinbefore that several columns which were material for the purpose of entering into a contract of insurance were left blank.

10. The Division Bench of the High Court has noticed Rule 31 of the Tamil Nadu Minor Ports Harbour Craft Rules, 1953 which mandates posting of a Master or Serang and one Engineer or Engine Driver in every mechanically propelled vessel, when used. The driver is required to possess a certificate of training issued by the Department of Fisheries. Rule 32 of the said Rules prescribes the method of obtaining a certificate of competency as Master or Serang. Not only did the proposal for insurance not contain the said details but also no evidence in that behalf was brought on records.

11. The submission of the learned counsel that the appellant was not allowed to furnish information cannot be accepted as such a plea was not raised in the plaint.

12. Mr. Gogia submitted that the survey conducted by the insurance company established that the vessel was seaworthy. The inspection report is dated 17.04.1980. A survey was conducted by a surveyor (we don't know at whose instance) on 25.11.1979 at 6 p.m. For what purpose such a survey was conducted is not known. Why a report was submitted after more than four months from the date of conducting the survey is also beyond our comprehension.

13. A marine insurance policy requires an implied warranty of seaworthiness as is evident from Sub-section (3) of Section 41 of the Marine Insurance Act, 1963 (for short 'the Act') which governs the terms of a contract of insurance. It may be true that the notice dated 9.11.1981 repudiating the claim did not contain any details in regard to the purported misrepresentation of material facts but the same was not decisive. It was for the plaintiff not only to plead but also establish that the vessel in question was seaworthy.

In the plaint, it was merely stated:

10. The plaintiffs had issued a notice through their counsel dated 7.1.1983 calling upon the defendant to make the payment. Though the said notice was received and acknowledged by the defendant, so far has not made any payment. On the other hand the defendant had sent a reply dated 15.3.83 raising incorrect and unsustainable contentions.

14. There is no averment even in the plaint that the vehicle was seaworthy. In its written statement, Respondent No. 1 stated:

The defendant submits that even the answers which are handwritten were not filled by Hemachandra Babu or any other person acting on behalf of the defendant.

15. Section 19 of the Act states that insurance is uberrimae fidei. Section 20 provides for disclosures by the assured. The question as to whether a particular circumstance which is not disclosed is material or not is essentially a question of fact. What facts need to be disclosed and what need not, have clearly been laid down in sub-sections (2) and (3) of Section 20 respectively.

Section 21 of the Act provides for the disclosure by an agent effecting the insurance. The Bank having acted as an agent, thus, had a responsibility to disclose all material facts. The insurance policy was marked as Ext. D-18. It was also referred to in the plaint. We have noticed heretofore the material part thereof.

16. The terms of the contract of insurance, thus, being governed by the provisions of a statute; non-disclosure of such material facts would render the policy repudiable. For this purpose, we may notice the depositions of DW-1, which are in questions and answers form, which read as under:

Q. See the particulars of Master and Crew.

Then there is a heading 'general'. Under the first heading, the answer to the question is 'Vessel in charge of qualified master' What is the answer?

A: Yes.

Q. Under the heading 'general' there are three questions. Was any information furnished to you with regard to the questions?

A: They have not furnished any information for the three questions.

Q. You said the proposal form was typed at your

office. Did you carry the information to your office?

A: I noted down the particulars in a paper and took them to the office.

Q. You would have had a discussion with the bank officials about what are the information required.

A: I have the proposal to them and whatever information they gave, I noted down in a paper.

Q. Do you have a paper in your possession?

A: No.

Q. How did you note the information given in the paper wise or generally?

A. Column-wise.

Q. You find at the top of the proposal \02310.05 Meters\024 has been mentioned. Is it correct?

A: Yes.

Q. When was this writing in \023ink\024 made?

A: After typing it, I took it back to the bank and asked them to check the information whether they are correct.\024

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Q. You got the name of the owner of the Board from the Bank either orally or in writing.

A: Orally.

By Counsel:

Q. Are you in the habit of accepting oral representation?

A: Yes

Q. So if my learned friend says that the insurance was issued only on the basis of the proposal is it incorrect.

A: No, it is not incorrect.

Q. Are you the accepting authority?

A: My branch manager is the accepting authority.

Q. What did you do after taking the proposal to the branch manager?

A: I showed the proposal to the Branch Manager and he asked me to issue the policy.\024

Thus, even according to DW-1, necessary particulars were not furnished to him by the plaintiff. How DW-1 could act upon the purported oral representation of the officers of the Bank is beyond anybody\022s comprehension. No reliance can, thus, be placed on his evidence.

17. Where there has been a suppression of fact, acceptance of the policy by an officer of the insurance company would not be binding on it. The Division Bench of the High Court, in our opinion, having regard to the statutory provisions, has rightly held that the plaintiff suppressed the material fact. Moreover, in view of the statutory rules, the court would have no other option but to hold that the vessel was not seaworthy.

18. For the reasons aforementioned, we are of the opinion that there is no infirmity in the impugned judgment. The appeal is dismissed. In the facts and circumstances of the case, however, there will be no order as to costs.