

SUPREME COURT OF INDIA

M/s. Malnad Traders

Vs.

M/s. New India Assurance Co. Ltd.

C.A.No.362 of 2009

(Lokeshwar Singh Panta and B. Sudershan Reddy JJ.)

22.01.2009

JUDGMENT

B.Sudershan Reddy, J.

1. Leave granted.

2. This appeal is directed against the judgment and order of the High Court of Karnataka dated 17.8.2007 passed in RFA No. 959 of 2001 which was allowed in part reducing the amount of damages of Rs. 1,26,055.87 granted by the trial court to that of Rs. 48,556/- only with interest @ 6% from the date of suit till realization.

3. Brief facts needed for disposal of this appeal are as under:

4. The appellant - M/s. Malnad Traders (hereinafter referred to as "the appellant firm") is a registered partnership firm carrying on its business in Rice Mills and Oil Mills at Shimoga in various buildings, godowns and open yards. On 7.12.1982, the entire premises of the appellant firm including buildings, machineries, equipments and stocks in trade were insured with the respondent - M/s. New India Assurance Company Ltd. (hereinafter referred to as "the respondent company") under the fire insurance policy bearing No.1229400593. On 26.3.1983, there was a fire accident in the business premises of the appellant firm resulting in damage to the insured properties and as well as injuries to two of its employees. On 11.4.1983, a detailed report of the incident and extent of damages suffered was sent to the respondent company. After completing the formalities, the Surveyor of the respondent company inspected the premises and prepared a detailed report about the extent of damages caused to the properties of the appellant firm. Thereafter the appellant firm lodged its claim with the respondent company amounting to Rs. 3,33,056.87 as compensation for damages caused to its properties due to the fire accident along with documentary evidence. On failure of the respondent company in settling the claim, the appellant firm served a legal notice on 5.7.1984 which remained uncared for by the respondent company. Thereafter the appellant firm filed the suit bearing No. 61 of 1986 claiming inter alia an amount of Rs. 3,33,055.87 towards damages along with interest @

19.5% per annum before the Principal Civil Judge (Sr. Dn.) and C.J.M. at Shimoga. The Principal Civil Judge, Shimoga decreed the suit for a sum of Rs. 1,26,055.87 and awarded interest at 6% from the date of filing of the suit till realization. The respondent company being aggrieved by the same filed RFA No. 959 of 2001 before the High Court of Karnataka at Bangalore which was allowed in part reducing the amount of damages of Rs. 1,26,055.87 granted by the trial court to that of Rs. 48,556/- with interest @ 6% from the date of filing of the suit till realization. Hence this appeal.

5. We have heard the learned counsel for the appellant and perused the impugned judgment and the material made available on record. Despite service of notice none appeared on behalf of the respondent company.

6. Appearing on behalf of the appellant, Shri G.V.Chandrashekar, learned counsel submitted that the High Court has committed serious error in reducing the amount of damages without assigning any reason whatsoever. It was also submitted that the High Court was under an erroneous impression as if the appellant was seeking further enhancement of the claim and in the process made an observation commenting as if the appellant manipulated and altered the documentary evidence.

7. It is to be noted that both the courts concurrently found that the insurance coverage was in respect of entire premises and machinery installed therein and the policy was alive and in force on the date of fire accident. The appellate court even rejected the submission of the respondent company that the appellant under document Exhibit D-5 agreed to receive a sum of Rs. 21,440/- only in full and final settlement of the claims. The appellate court in this regard came to the conclusion that there was no proof of full and final settlement of claims in terms of document Exhibit D-5.

8. The damages claimed by the appellant firm were classified under the following heads:-

- “1. Damage to building.
2. Damage to machinery
3. Damage to electrical wiring.

In support of the claim the appellant firm relied on the documents viz. bills (Exhibit P-6 to Exhibit P-213) and also oral evidence of PW-2 to PW-9.”

9. PW-2 Ramachandrappa, a building contractor has been examined who stated in the evidence that a sum of Rs. 30,000/- was spent for purchase of materials and a sum of Rs. 5,000/- was paid for labour charges towards the civil works of the building. The learned trial court upon appreciation of the evidence allowed only a sum of Rs. 5,000/- towards labour charges and the amount spent towards purchase of building materials was disallowed for want of proof. The learned appellate court construed the finding of the trial court as if the appellant firm preferred appeal in that regard and in the process came to the

conclusion that there was no proof regarding the amount spent for purchase of materials. In fact, the trial court did not award any amount in that regard. The approach adopted by the appellate court is more or less similar in respect of all the issues.

10. The appellate court went on upholding the findings recorded by the trial court which actually were not in favour of the appellant firm. The whole approach adopted by the High Court was as if the appellant firm preferred the first appeal without any merit whatsoever. The first appeal, in fact, was preferred by the respondent company.

11. The appellate court having upheld and accepted the reasoning of the trial court without recording any reason whatsoever modified the amount of damages of Rs. 1,26,055.87 awarded by the trial court to that of Rs. 48,556/-.

12. A perusal of the trial court judgment discloses that it had not only taken note of oral evidence but of each and every document filed by the parties and recorded a specific finding in respect of each of the items. The trial court held that the appellant firm is not entitled to a sum of Rs. 2,07,000/- out of the total claim of Rs. 3,33,055.87 in the following manner:

13. For the aforesaid reasons, the appellant succeeds in this appeal. The impugned judgment of the High court made in RFA No. 959 of 2001 is set aside and the decree and judgment of the trial court is accordingly restored.

14. The appeal is, accordingly, allowed without any order as to costs.