



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

**TUESDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX**

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

APPEAL SUIT NO: 193/2006

Between:

National Insurance Co. Ltd.,

...APPELLANT

AND

M/s Monalisa Emplorium and Others

...RESPONDENT(S)

Counsel for the Appellant:

1. VENKATESWARLU PALADUGU

Counsel for the Respondent(S):

1. P N MURTHY

2. CH SIVA REDDY

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

APPEAL SUIT No.193 of 2006

JUDGMENT:

This Appeal, under Section 96 of the Code of Civil Procedure [for short 'the C.P.C.'], is filed by the Appellant/defendant No.1 challenging the Decree and Judgment, dated 23.11.2005, in O.S.No.482 of 1996 passed by the learned III Additional Senior Civil Judge (Fast Track Court), Guntur [for short 'the trial Court'].

2. The appellant herein is the defendant No.1, the respondent No.1 herein is the plaintiff and the respondent No.2 herein is the defendant No.2 in O.S.No.482 of 1996.

3. Originally, the respondent No.1/plaintiff herein filed the suit in O.S.No.482 of 1996 against the defendants seeking for recovery of a sum of Rs.1,72,650/- towards damages from the defendants with future interest and costs.

4. Both parties in the Appeal will be referred to as they are arrayed before the trial Court.

5. The case of the plaintiff as per the plaint averments in O.S.No.482 of 1996, in brief, is as follows:

The plaintiff had been carrying on business in cloth under the name and style of 'Monolisa Emporium' and applied for financial assistance to the Swasakthi, Guntur as a un-employee graduate. The plaintiff pleaded that the

Swasakthi authorities recommended the defendant No.2 for sanction of loan to the plaintiff and subsequently, the defendant No.2 provided cash credit facility to the plaintiff with a meager capital and the plaintiff commenced his business. The plaintiff further pleaded that the defendant No.2 insisted the plaintiff that the stocks lying in the premises of the plaintiff should be insured against fire etc., and accordingly the stocks lying in the shop of the plaintiff were insured with the defendant No.1 for Rs.2,25,000/- under cover note No.68739, dated 27.11.1990, which is valid up to 26.11.1991 and paid a premium of Rs.609/-.

The plaintiff further pleaded that on 26.10.1991, some miscreants forcibly lifted the stock worth of Rs.1,25,000/- from the shop of the plaintiff, while the plaintiff was away and immediately, the said fact was informed to the defendant No.1 in his letter dated 27.10.1991 and the plaintiff also gave a complaint to the Pattabhipuram Police station. The plaintiff pleaded that the defendant No.2 failed to send a claim to the defendant No.1 immediately and the defendant No.1, who received the information of theft from the plaintiff on 28.10.1991, suppressed the fact. The plaintiff pleaded that he filed C.D.No.152/1993, on the file of the District Consumer Forum, Guntur and both the defendants contested the said complaint and the defendant No.1 filed his version in C.D.No.152/1993, on the file of the District Consumer Forum, Guntur, and repudiated the claim of the plaintiff. The plaintiff further pleaded that the District Consumer Forum, Guntur, while dismissing the complaint of

the plaintiff, opined that there are complicated questions of fact are involved and the plaintiff has to agitate his rights in Civil Court. Hence, the suit.

6. The case of the defendant No.1 as narrated in the written statement is as follows:

The plaintiff obtained Shop Keepers Insurance Policy from the defendant No.1 through the defendant No.2 on 27.11.1990, under a Cover Note No.68739 for a period of one year from 27.11.1990 to 26.11.1991. The defendant No.1 pleaded that the plaintiff approached the defendant No.2 through Swasakthi Authorities, Guntur, and the defendant No.2 sanctioned a loan of Rs.50,000/-, to the plaintiff for running cloth shop on his executing necessary documents as collateral security. The defendant No.1 further pleaded that the plaintiff failed to pay any amount on the credit bills to the dealers in spite of their demands. While so, the defendant No.2 intimated to the defendant No.1 in its letter dated 26.08.1992, about the theft occurred in the cloth shop of the plaintiff. The defendant No.1 pleaded that the theft occurred on 26.10.1991, and as per the term No.5 of the shopkeepers insurance policy:- 1) The insured shall upon the occurrence of any event giving rise or likely to give rise to a claim under the Policy- A) In the event of theft lodge forthwith complaint with the police and taken all practicable steps to apprehend the guilty person or persons and to recover the property lost, but the plaintiff did not inform the defendant No.1 about the theft or did not filed a claim form within 14 days or even after six months from the date of alleged theft.

The defendant No.1 further pleaded that the plaintiff never intimated to the defendant No.1 either on 27.10.1991 or on 25.10.1991 or on any other date about the alleged theft and that never requested the defendant No.1 to settle his claim. The defendant No.1 came to know about the claim of the plaintiff only through the letter of the defendant No.2 on 26.08.1992. The defendant No.1 further pleaded that the plaintiff filed a private complaint before the VI AMM Court, Guntur, and the Court directed the Police to investigate the case and the Police after investigation filed a final report stating that it is a false complaint and the Court closed the case on the basis of the final report. The defendant No.1 further pleaded that the plaintiff also filed a complaint before the Consumer Forum, Guntur in C.D.NO.152 of 1993, and the same was dismissed. The defendant No.1 pleaded that the defendant No.2 filed a suit in O.S.No.376 of 1993, against the plaintiff for recovery of a sum of Rs.81,550/- due from the plaintiff and as the defendant No.2 failed to succeed in the aforesaid suit, it colluded with the plaintiff and supporting the plaintiff by stating that the defendant No.1 is liable to pay damages to the plaintiff. Therefore, the defendant No.1 prayed to dismiss the suit with costs.

7. The case of the defendant No.2 as narrated in the written statement is as follows:

The application of the plaintiff was sponsored by Swasakthi, Guntur with Rs.15,000/- with margin money and ACC (hypothecation) limit of Rs.60,000/- was sanctioned and the plaintiff availed the same. The defendant No.2 pleaded that the wife of the plaintiff and two others were the guarantors to the

plaintiff and the plaintiff was irregular in maintaining the loan account and the stocks in the premises of the plaintiff were insured by the defendant No.1. The defendant No.2 further pleaded that it is the duty of the insured to put claim with the insurance company by producing reliable evidence for settlement of the claim and the plaintiff had intimated about the incident to the insurance company on 27.10.1991 and therefore the question of intimation by the defendant No.2 to the insurance company does not arise and it is for the insurance company to decide the matter whether to settle the claim or to repudiate the claim basing on the material furnished by the insured.

The defendant No.2 further pleaded that it has filed a suit in O.S.No.376 of 1993, on the file of the Additional Subordinate Court, Guntur against the plaintiff for recovery of amount due under loan account of plaintiff and the plaintiff discharged the loan amount on 12.08.1995. The defendant No.2 further pleaded that the wife of the plaintiff is having an account with the defendant No.2 and she was granted with cash credit loan and she filed O.P.No.14 of 1997, on the file of the District Consumer Forum, Guntur, against the defendant No.2 for deficiency of service at the instance of the plaintiff to harass the defendant No.2. Therefore, the defendant No.1 prayed to dismiss the suit with costs.

8. Based on the above pleadings, the trial Court framed the following issues:

1) *Whether the plaintiff is entitled for damages? and*

2) *To what relief?*

9. During the course of trial in the trial Court, on behalf of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A-1 to Ex.A-8 were marked. On behalf of the defendants, D.W.1 and D.W.2 were examined and Ex.B-1 to Ex.B-7 were marked.

10. After completion of the trial and on hearing the arguments of both sides, the trial Court *vide* its judgment, dated 23.11.2005, decreed the suit with costs against the defendant No.1 and dismissed the suit without costs against the defendant No.2, against which the present appeal is preferred by the appellant/defendant No.1 in the suit questioning the Decree and Judgment passed by the trial Court.

11. Heard Sri P.Ganesh, learned counsel, appearing on behalf of Sri Venkateswarulu Paladugu, learned Counsel for the appellant/defendant No.1, Sri P.N.Murthy, learned counsel for the respondent No.1 and Sri Ch.Siva Reddy, learned counsel for the respondent No.2.

12. Learned counsel for the appellant would contend that the trial Court failed to observe that the defendant No.1/appellant herein has rightly repudiated the claim of the plaintiff, since the claim of the plaintiff/Insured was not a genuine one. He would further contend that the policy issued by the appellant does not cover the risk of the stocks. Learned counsel for the appellant would further contend that the trial Court failed to observe that after a lapse of nine (09) months of occurrence only, the theft/burglary came to its

notice through a letter dated 26.08.1992, sent by the defendant No.2/the State Bank of Hyderabad, Guntur . He would further contend that the trial Court failed to observe that even assuming for a moment but not admitting that Anjaneyulu and Subramanyam have taken away the stock from the plaintiff's shop, the plaintiff has to take legal action against the said two persons Anjaneyulu and Subramanyam only, but not against the appellant herein as per the terms and conditions of the Shop Keepers Policy. He would further contend that the trial Court failed to appreciate the evidence on record in a proper manner and came to a wrong conclusion and decreed the suit against the appellant herein and that the decree and judgment passed by the trial Court against the appellant herein may be set aside by allowing the appeal filed by the defendant No.1/appellant.

13. Per contra, learned counsel for the respondent No.1/plaintiff would contend that on appreciation of entire evidence on record, the learned trial Judge rightly decreed the suit against the defendant No.1 and there is no need to interfere with the decree and judgment passed by the trial Court against the defendant No.1 and that the appeal may be dismissed.

14. Now, in deciding the present appeal, the points that arise for determination are as follows:

- 1) Whether the stocks lying in the shop of the plaintiff were insured with the defendant No.1 by the plaintiff? If so, whether the alleged**

offence complained by the plaintiff comes under the scope of coverage of the insurance policy?

2) Whether the plaintiff is entitled for the damages as sought for?

15. **Point No.1:**

Whether the stocks lying in the shop of the plaintiff were insured with the defendant No.1 by the plaintiff? If so, whether the alleged offence complained by the plaintiff comes under the scope of coverage of the insurance policy?

The undisputed facts of both the parties are that the plaintiff had been carrying out a business under the name and style of 'Monalisa Emporium', at Main Road, at Guntur, and he applied for financial assistance to the Swasakthi, Guntur, under an un-employee graduate and they have recommended the defendant No.2 for sanction of loan to the plaintiff and the State Bank of Hyderabad, Guntur Branch, have sanctioned the loan to the plaintiff. When the defendant No.2-Bank insisted the plaintiff that the stock lying in the premises of the plaintiff shop should be insured against the fire etc., accordingly the stocks lying in the shop were insured with the defendant No.1 by the plaintiff for a sum of Rs.2,25,000/- dated 27.11.1991, which is valid up to 26.11.1991. The above facts are undisputed by both the parties in the suit.

16. In order to prove the claim of the plaintiff, the plaintiff relied on his self-testimony as P.W.1 and also examined his wife as P.W.2, it is in the evidence

of the plaintiff that on 26.10.1991, at 12.30 noon, at broad day light, two persons have forcibly taken away the stock worth of Rs.1,25000/- from the shop in the presence of his wife, who is looking after the business in the shop during his temporary absence. P.W.1 further stated that on the very next day he got issued legal notices to both the defendants and also lodged a complaint before the Station House Officer, Pattabhipuram Police Station.

17. P.W.2 in none other than the wife of the plaintiff, even according to the case of the plaintiff, as on the date of the alleged incident, she is looking after the entire business of the plaintiff-shop and at that time the worker was also present. As per the evidence of P.W.2, on 26.10.1991, her husband went to Gurajala, to attend the cremation of his grandmother and she was looking after the business on that day, at about 12.30 noon, some miscreants came to their shop and stated that her husband has to discharge some debt and to that effect they have taken away the entire stock. She further deposed that if she resisted them, she has to bear the own consequences and also they have used some abusive language against her and that she could not resist them and they threatened and took away her stock. In cross-examination, she stated that the said two (02) persons who came to their shop are Subramanyam and M.S.R.Anjaneyulu and they have informed their names to her.

18. The evidences of P.W.1 and P.W.2 go to show that the entire incident had happened at broad day light, at 12.30 noon on 26.10.1991, in the shop premises of the plaintiff, which is situated at Brundavan Garden, a prime

locality at main road at Guntur. There is no whisper in the evidence of P.W.2 that whether she made minimum resistance to prevent the alleged offence, or she raised any cries to call the neighboring shop people of that locality. As per the own evidences of P.W.1 and P.W.2, their shop is situated at a prime locality at Guntur Town, at the main road at Brundavan Garden. It is the case of the plaintiff that on the very next day of incident, he lodged a complaint in the Pattabhipuram Police Station, and the Police did not taken any action and later he lodged a complaint before the Magistrate Court, Guntur, and the same was forwarded to the Pattabhipuram Police Station and the Police registered a case. No evidence is produced by the plaintiff to show that on the next date of alleged incident, he lodged a complaint in the Pattabhipuram Police Station, even as per Ex.A-4 First Information Report, the complaint was received by the Pattabhipuram Police on 21.08.1992. Therefore, no *prima facie* evidence is produced by the plaintiff to show that on the very next date of incident he lodged a complaint in the Pattabhipuram Police Station. At least, he has not summoned the Station House Officer of Pattabhipuram Police Station, to send for the General Diary of the Pattabhipuram Police Station, to show that he has lodged a complaint on the very next date of the incident.

19. The recitals in Ex.B-4 go to show that M.S.R.Anjaneyulu and Subramanyam are the business merchants of Chirala, came to their shop and informed to the P.W.2 at about 12.30 noon, at broad day light that her husband has to discharge some debt amount to them and asked her to pay the same, when she expressed her inability, they have forcibly taken away the

stock worth of Rs.1,25,000/- and handed over a Chit jointly to P.W.2 by showing that the stock removed by them is only to a tune of Rs.34,813/- and the plaintiff has to give a paltry sum Rs.5,000/- to their firm. Even as per the recitals of Ex.B-4, which is the complaint lodged by the plaintiff, the plaintiff has to discharge some amount to the said cloth merchants by names M.S.R.Anjaneyulu and Subramanyam.

20. The recitals in Ex.B-4/complaint lodged by the plaintiff together with the evidence of P.W.2 go to show that the plaintiff has to discharge some debt amount to M.S.R.Anjaneyulu and Subramanyam-cloth merchants, since, the plaintiff failed to discharge the said debt, they have taken away the unsold cloth in the shop of the plaintiff worth of Rs.34,813/-. The plaintiff contended that they have taken away the stock of Rs.1,25,000/- in the shop of the plaintiff on the date of alleged incident. To prove the same, no evidence is produced by the plaintiff, to show that the said M.S.R.Anjaneyulu and Subramanyam have taken away the stock worth of Rs.1,25,000/-. Except his oral statement, no inventory is filed by the plaintiff or the list of loss of the cloth with prices is also not filed by the plaintiff before the trial Court. Even as per the admitted case of the plaintiff, one of the worker was also present in the shop at that time.

21. According to P.W.2, only two persons by names M.S.R.Anjaneyulu and Subramanyam came to the shop of the plaintiff and have taken away the unsold cloth in the shop of the plaintiff, which is situated at Main road, at Brundavan Garden at Guntur, which is a busy locality and that too the alleged

incident had happened at a broad day light at 12.30 noon. If really the said two persons viz., M.S.R.Anjaneyulu and Subramanyam lifted the unsold the stock in the shop of the plaintiff highhandedly without the consent of P.W.2 and the worker, certainly they will make a minimum resistance, then the neighboring shop people will not keep quite and they will certainly prevent the said two persons viz., M.S.R.Anjaneyulu and Subramanyam. Moreover, to prove the alleged theft, except the wife of the plaintiff, no others were examined by the plaintiff. The plaintiff also failed to examine the worker who is present at the time of alleged incident and also failed to examine the neighboring shop people to prove the alleged incident said to have been happened on the date of alleged incident. As per the recitals of the complaint lodged by the plaintiff under Ex.B-4, one Siva Narayana, who is the worker, was also present in the shop and the Siva Narayana was also not examined as a witness by the plaintiff before the trial Court.

22. It was pleaded by the defendant No.1 in the written statement itself that no theft was occurred in the shop of the plaintiff. In the written statement, the defendant No.1 pleaded that the plaintiff purchased cloth on credit basis from One M/s Balaji Traders, Proprietor Anjaneyulu and M/s Raj Kamal Traders, Proprietor Subramanyam of Chirala and in spite of several demands made by them to clear of the credit bills, the plaintiff with a fraudulent intention evaded the payment of debt to the said two wholesale dealers of Chirala. The defendant No.1 further pleaded that the said M.S.R.Anjaneyulu and Subramanyam vexed with the attitude of the plaintiff came to the Guntur, to

the shop of the plaintiff on 26.10.1991, and demanded the plaintiff and his wife, who were present in the shop to pay the outstanding debts. The defendant No.1 further pleaded that when the plaintiff pleaded his inability to discharge, on the other hand asked them to take away their unsold stock, having said so, the plaintiff went away leaving the shop to his wife and therefore, the said two persons taken away the unsold stock with the consent of the plaintiff and his wife. In the case at hand, the plaintiff failed to prove the alleged theft said to have been happened in the shop by examining the worker Siva Narayana, who is present in the shop on that day and also failed to examine the neighboring shop people.

23. The evidence on record clearly goes to show that after referring the complaint by the Magistrate, the Police registered a case and took up the investigation and referred the said case was false and closed the same, the same is not specifically denied by the plaintiff. Admittedly, no protest petition is filed by the plaintiff for taking further action. The aforesaid series of events as stated *supra*, clearly go to show, P.W.2 being the wife of the plaintiff is nothing but a consenting party for lifting the clothes by M.S.R.Anjaneyulu and Subramanyam, because she has not made minimum resistance and she did not raised cries for objecting the acts of the said M.S.R.Anjaneyulu and Subramanyam. If she had really made any cries, certainly the neighboring shop people will not keep quite and they will come to prevent the alleged offence that too it was happened at a broad day light at 12.30 noon i.e. at the business hours. It seems that at the time of taking away the unsold by the said

two persons, no protest is made by either P.W.2 or the worker in the shop. It is not the case of the plaintiff that the said two persons viz., M.S.R.Anjaneyulu and Subramanyam came to the shop with weapons.

24. As stated *supra*, even as per the own case of the plaintiff, the entire alleged incident was happened at a broad day light at 12.30 noon, at Brundavan Gardens, at Guntur, which is a prime locality, number of persons would have gathered there at that time and witness the same, in such circumstances, the Police report ought to have been given immediately in the earliest point of time. The wife of the plaintiff did not gave any report immediately in the Pattabhipuram Police Station, which is situated within a distance of 2 to 3 Kms from the shop of the plaintiff. As noticed *supra*, no minimum resistance or no protest is made by P.W.2 or by her worker in the shop at the time of lifting the unsold stock by M.S.R.Anjaneyulu and Subramanyam. Therefore, it is evident that the wife of the plaintiff and the worker in the shop by name Siva Narayana, who were present at the shop of the plaintiff did not made any protest or resistance or did not raised any cries to call the neighboring shop people to prevent the offence. Therefore, the same does not come within the definition of 'Theft/Burglary' as stated by the plaintiff. Admittedly, no evidence is produced by the plaintiff to show that both the said two persons lifted the unsold stock forcibly. According to the plaintiff, a stock of Rs.1,25,000/- was lifted by the said M.S.R.Anjaneyulu and Subramanyam, as noticed *supra*, the stock inventory or the list of stock lost with price list is also not filed by the plaintiff.

25. It was contended by the learned counsel for the appellant that the plaintiff violated the terms and condition No.5 of the insurance policy in original of Ex.B-1, which is as follows:-

1. The insured shall upon the occurrence of any event giving rise or likely to give rise to a claim under the Policy.
 - a) In the event of theft lodge forthwith complaint with the police and taken all practicable steps to apprehend the guilty person or persons and to recover the property loss.
 - b) Give immediate notice thereof to the company and shall within 14 days thereafter furnish to the company at his own expense detailed particulars of the amount of the loss or damage together with such explanations and evidence to substantiate the claim as the company may reasonably require.

In the case at hand, it is the case of the plaintiff that on the very next date of the alleged incident i.e. on 27.10.1991, he lodged a complaint to the Station House Officer, Pattabhipuram Police Station. As notice *supra*, no evidence is produced by the plaintiff to show that he lodged a complaint on 27.10.1991. Even as per Ex.A-4 relied by the plaintiff, the Police received a complaint on 21.08.1992.

26. Learned counsel for the appellant contended that notice was not issued by the plaintiff within 14 days from the alleged offence to the defendant No.1/insurer. There is evidence on record under Ex.A-3 certificate of posting

to show that the plaintiff intimated the same to both the defendants on the very next day. Ex.A-3 reveals that the postal stamp is also affixed by the Postal Department on Ex.A-3. Therefore, the plaintiff has intimated the alleged incident to the insurer on the very next date of the alleged incident.

27. The case of the plaintiff is that the Police did not take any action after he lodging the complaint and that he presented a complaint before the Magistrate Court, Guntur in the year 1992, and the learned Magistrate, Guntur, referred the said complaint to the Police. It was contended by the learned counsel for the defendant No.1 that after completion of investigation, the Police referred the case as false in the year 1992 and the same is not denied by the plaintiff. It is not the case of the plaintiff that he filed a protest petition before the learned Magistrate to take further action. For the reasons best known to the plaintiff, he kept quiet and did not initiated any action till so far to take further steps on the final report filed by the Police. Therefore, it is evident that the plaintiff has not taken all steps to apprehend the guilty person/persons and to recover the property loss and he remained silent and that the plaintiff failed to comply the Condition No.5 (1) (a) of the terms and conditions of Ex.B-1 insurance policy.

28. The evidence on record clearly goes to show that the persons who had taken away the stock by names M.S.R.Anjaneyulu and Subramanyam are known person to the insured and the wife of the plaintiff and the worker, who present in the shop did not made any resistance or cries to prevent the alleged offence and the complaint lodged by the plaintiff is referred as false at

about more than twenty five (25) years ago by the Police, the plaintiff remained silent and did not taken any steps till today. The aforesaid series of events and the acts of the said two persons who came to the shop at broad day light at 12.30 noon, when the shop was kept open that too it is at a prime locality at Guntur, do not form a part of an act of Burglary or theft. Furthermore, the said act does not come within the scope of coverage of the insurance policy. As noticed *supra*, by the time of taking away the unsold stock by the said two persons viz., M.S.R.Anjaneyulu and Subramanyam, P.W.2 and the worker in the shop have not made any minimum protest or resistance to prevent the alleged offence. The insurer/appellant rightly repudiated the claim of the plaintiff and the plaintiff is not entitled to any claim from the appellant/insurance company.

Accordingly, the point No.1 is answered.

29. **Point No.2:-**

Whether the plaintiff is entitled for the damages as sought for?

In view of my findings in Point No.1, the plaintiff is not entitled to any damages from the defendant No.1 as ordered by the trial Court in its judgment dated 23.11.2005. The trial Court failed to appreciate the evidence in a proper manner and came to a wrong conclusion and decreed the suit against the defendant No.1 for a sum of Rs.1,72,650/- with interest and costs against the defendant No.1. Therefore, the said decree and judgment dated 23.11.2005 in

O.S.No.482 of 1996, passed by the learned III Additional Senior Civil Judge (Fast Track Court), Guntur, against the defendant No.1 is liable to be set aside.

30. In the result, the appeal is **allowed**. Consequently the suit in O.S.No.482 of 1996, on the file of the learned III Additional Senior Civil Judge (Fast Track Court), Guntur, is dismissed.

Pending applications, if any, shall stand closed. Each party do bear their own costs in the appeal.

V. GOPALA KRISHNA RAO, J.

Date: 10.03.2026

SRT