

## United India Insurance Co. Ltd., Madras Vs M/s. Aman Singh Munshi Lal and others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 16, 1994

**Acts Referred:** Contract Act, 1872 " Section 126, 148  
Marine Insurance Act, 1963 " Section 1, 52, 53

**Citation:** AIR 1994 P&H 206 : (1996) 85 CompCas 644 : (1994) 107 PLR 293

**Hon'ble Judges:** S.P. Kurdukar, C.J; N.K. Sodhi, J

**Bench:** Division Bench

**Advocate:** R.C. Dogra and Mrs. Dogra, for the Appellant; V.K. Jain and J.L. Malhotra and Surya Kant, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

S.P. Kurdukar, C.J.

The United India Insurance Company, Ltd. (hereinafter referred to as "the Insurance Company") (originally

defendant No. 1), has filed this second appeal challenging the legality and correctness of the judgment and decree dated 4-10-1982 passed by the

learned District Judge, Hissar, in appeal confirming the judgment and decree dated 7-10-1980 in Civil Suit No. 59 of 25-1-1979/4-8-1978,

passed by the Sub Judge 1st Class, Hissar.

2. First respondent M/s. Aman Singh Munshi Lal, Bankers and Commission agent, a registered partnership firm, filed a suit against the appellant

and other three defendants (respondents Nos. 2 to 4), for recovery of Rs. 1,22,795.64. The suit came to be decreed against the appellant for

recovery of Rs. 98550.16. The suit against the other defendants was dismissed. The learned Sub Judge granted interest at the rate of 6% per

annum from the date of decree till its realization. The said decree came to be confirmed by the learned District Judge, Hissar.

3. A few facts which are necessary to consider the rival contentions may be summarised as under :

The first respondent (hereinafter referred to as "plaintiff"), a firm known as M/ s. Aman Singh Munshi Lal, was a registered partnership firm under

the Indian Partnership Act. This firm was registered on 3-12-1969 (See Exp. P2). The partners, who constituted the said firm were Prem Sagar,

Satya Bhama and Smt. Kailashwati. They were carrying on the business as bankers and commission agents at Hansi. Smt. Kailashwati, one of the

partners died on 18-5-1978. A new partnership firm came to be constituted vide partnership deed dated 23-5-1978, Exp. P1, and it is no more in

dispute that the said partnership firm is registered one and is carrying on the same business. On the death of Smt. Kailashwati, a new partner,

Ashok Kumar was brought in and he being a minor, under the new partnership, was to receive only profits. Under this new partnership deed, a

recital is incorporated that all rights and liabilities of the erstwhile partnership were taken over by this new partnership. It is this new partnership,

(the plaintiff), which has filed the present suit for recovery of Rs. 1,22,795.64 in respect of the losses sustained by erstwhile firm. Shri Prem Sagar

Jain, one of the partners of the existing firm, has filed this suit on behalf of the plaintiff-firm.

4. The appellant-defendant No.1, is the Insurance Company, and it is sued on the basis of an insurance note Exhibit P10, issued by defendant No.

2, who happened to be their agent at the relevant time. Defendant No. 3 is the Hansi Public Carrier Union, through whom the goods were

transported. Defendant No. 4 is the Milap Transport Roadways, Gaziabad, at whose god own, the goods were kept for further transportation and

to be handed over to M/s. Bihar Cotton Mills, Limited, Phulwari Sharif, Patna, the consignee.

5. According to the plaintiff-firm, on 21-10-1976 they had handed over 50 bales of pressed cotton H-14, selected iron bound to the Hansi Public

Carrier Union, defendant No. 3, to be carried to Phulwari Sharif. These bales were loaded in a truck owned by one Sunder Lal and were to be

unloaded at Gaziabad border. At Gaziabad, the goods were to be stored in the godown of M/s. Milap Transport Roadways, which would in its

turn carry the same to the consignee M/s. Bihar Cotton Mills Ltd. at Phulwari Sharif-Patna. According to the plaintiff, the goods were insured from

any loss by fire or otherwise during the transit. Insurance was done through Narinder Mohan Arya, defendant No. 2, at Hansi, for the value of Rs.

one lac and defendant No. 2 had issued marine cargo note No. 09643 dated 21-10-1976. The goods were then handed over to the Hansi Public

Carrier Union, to be carried to Gaziabad border and they accordingly reached Gaziabad safely. When the goods were stored in the godown of

M/s. Milap Transport Road ways, on 22-10-1976, at about 11.30 a.m. fire broke out in the said godown and as a result thereof the goods were

gutted. The plaintiff on coming to know of the damage to the goods due to fire, on 24-10-1976 gave telegram to the Insurance Company about

the destruction of the goods. The plaintiff-firm also submitted claim to the Insurance Company through its surveyor M/s. Digamber Lal Puri and

sons, who inspected the spot and submitted their report, Annexure P26, to the Insurance Company. Since, there was no reply from the Insurance

Company, a registered notice was sent. Yet, no reply was received from the Insurance Company and after expiry of about 6/7 months, the

Insurance Company disputed the claim of the plaintiff. It is in these circumstances that the plaintiff were required to file the suit for recovery of the

aforesaid amount.

6. The suit was mainly contested by the Insurance Company. According to them, the cover note Exhibit P10 is a fabricated document obtained by

the plaintiff in collusion with defendant No. 2. This cover note was brought into existence after the goods were destroyed by fire. The Insurance

Company also disputed the right of the existing firm to file the present suit. The defence appears to be that the suit could have been filed by the

partners of the erstwhile partnership firm and it could not have been filed by the newly constituted firm since the goods were destroyed during the

subsistence of the earlier partnership. The Insurance Company also disputed the jurisdiction of the Hissar Court to entertain the suit. According to

the Insurance Company, the claim laid by the plaintiff is false and the same be dismissed.

7. On the pleadings of the parties, the learned Sub Judge framed as many as 8 issues and held that the present partnership firm could file the

present suit. The learned Sub Judge held that the goods were insured vide insurance cover note. Exhibit P10, on 21-10-1976 and the claim of the

Insurance Company that it is a fabricated document was negated. The trial Judge further held that the Insurance Company is liable to pay the

damages sustained by the plaintiff, and accordingly, passed a decree for Rupees 98,550.16, with interest at the rate of 6% per cent per annum

from the date of decree till realization.

8. The Insurance Company filed an appeal to the District Court, whereas the plaintiff filed cross-objection as they were not satisfied with the rate

of interest. The learned District Judge vide his impugned judgment and decree dismissed the appeal filed by the Insurance Company as well as the

cross-objections of the plaintiff and confirmed the decree passed by the learned trial Judge. It is against these concurrent judgments and decrees of

the two courts below, that the Insurance Company has filed this second appeal.

9. Mr. R. C. Dogra, the learned counsel appearing for the Insurance Company, in support of this appeal, firstly urged that the present suit by the

new partnership firm is untenable inasmuch as they had no rights to file the same under the insurance cover note Exhibit P10. The contention

appears to be that the insurance cover note, Exhibit P10 was in favour of the earlier partnership firm and after dissolution of the said firm, on

account of death of one of the partners, on 18-5-1978, the new firm was constituted, and, therefore, the new firm has no right to institute the

present suit. Mr. Dogra urged that there is no assignment in favour of the plaintiff according to Sections 52 and 53 of the Marine Insurance Act,

1963, (for short "the 1963 Act"). As far as the first part of this argument is concerned, we see no substance because in the new registered

partnership deed dated 23-5-1978, there is a specific recital that the new partnership has taken over all rights and liabilities of the dissolved

partnership firm. In this view of the matter, the question of assignment of policy in terms of Sections 52 and 53 of the 1963 Act, does not arise.

The basic question is as to whether the provisions of the Marine Insurance Act 1963 would apply to the present case at all. No provision under

this Act was brought to our notice, which could cover the transportation of goods by road from Hansi to Gaziabad and thereafter to Phulwari

Sharif in Bihar. This argument is probably built up on the basis that the insurance cover note is on the printed form meant for Marine Insurance. It is

no doubt true that the insurance cover note is in the printed form of Marine insurance but the contents thereof clearly indicate that the goods were

to be transported from Hansi to Gaziabad by road and again by road to the consignee's destination at Phulwari Sharif. All details thereof have

been mentioned in the said cover note. The Insurance Company cannot now be permitted to urge that the said cover note was issued under the

1963 Act. No such contention was raised in the two Courts below. However, the contention as regards the insurance cover note Exhibit P10

being a fabricated document was raised and the same would be dealt with separately. The first contention of Mr. Dogra must, therefore, fail.

10. It was then contended by Mr. Dogra that the Insurance Company would be liable to pay the damages if the goods were destroyed/damaged

by fire, while in transit. Since the goods caught fire in the godown of M/s. Milap Transport the Insurance Company could not be held liable. In the

facts and circumstances of this case, the owner of the godown, would be liable for the loss sustained by the plaintiff. This submission again does

not appeal to us because in the insurance cover note, Exhibit P10, a route has been specifically mentioned upto Phulwari Sharif. The movements of

the goods have been completely set out in the insurance cover note Exhibit P10 and if that be so it would not be open to the Insurance Company

to take up such a plea to non-suit the plaintiff.

11. Mr. Dogra then argued that after the goods have been loaded in the truck from the place of the plaintiff it amounts to handing over the goods

unreservedly to a common carrier for delivery to the consignee; the plaintiff had lost the ownership of the goods and it is, therefore, the consignee

alone, who being the owner of the goods could claim damages. This submission is again devoid of any merit because the plaintiff had drawn a

hundi on consignee on Punjab National Bank and only on acceptance of hundi, the goods were to be handed over to the consignee. It must also be

stated that it was nobody's case at the trial nor any issue was sought before the learned Sub Judge that the transportation of the goods was

covered by the provisions of the Carriers Act, 1855. Mr. Dogra urged that it is the common carrier which carried the goods from the destination,

and, therefore, the plaintiff, if at all can claim any damages, the same can be claimed under the Carriers Act, 1865, against the common carrier. In

support of this contention, Mr. Dogra drew our attention to a decision of the Madras High Court in *Konda Rm. Eswara Iyer and Sons and Others*

*Vs. Madras Bangalore Transport Co. and Others*, , and a decision of this court in *Northern India Goods Transport Co. v. M/s. Guru Hosier*

*Factory Ludhiana AIR 1964 P&H 318*. This submission is totally devoid of any substance. Consequently, the decisions relied upon by Mr. Dogra

will have no application to the facts of the present case.

12. It was then vehemently argued by Mr. Dogra that the insurance cover note exhibit P10 is a fabricated document with the connivance of

defendant No. 2, who happened to be the agent of the Insurance Company. In support of this submission, he sought to rely upon an envelope

containing cover note Exhibit P10, bearing postal stamp dated 21-10-1976, and received by the Company's branch office at Sirsa, on 23-10-

1976. According to Mr. Dogra, the goods were loaded on 21-10-1976, in the evening and the insurance cover note was executed thereafter. It is

impossible to believe that the post office would be open in the evening to receive the envelope containing the insurance cover note. In this behalf he

also relied upon the evidence of defendant No. 2, Narinder Mohan Arya, the agent of the Insurance Company, who, in his evidence has stated that

he had sent the insurance cover note to the branch office at Sirsa on 22-10-1976. If defendant No. 2 had sent the envelope containing insurance

cover note to its branch office at Sirsa, on 22-10-1976, how could it bear the postal stamp dated 21-10-1976. This submission has been dealt

with by both the learned Judges of the Courts below in detail and they have come to the conclusion that the envelope bearing the postal stamp

dated 21-10-1976 was not referable to the insurance cover note Exhibit P10, but that was in respect of some other insurance cover notes. The

courts below have accepted the evidence of defendant No. 2 who had stated that he had sent the insurance cover note of the plaintiff to the branch

office at Sirsa on 22-10-1976. This finding of fact was reached by both the Courts below after careful consideration of oral and documentary

evidence on record, and in our opinion, the said finding cannot be assailed in the second appeal. Mr. Dogra also read out to us the relevant portion

from the evidence of defendant No. 2 as well as the plaintiff to contend that defendant No. 2 had played a fraud upon the Insurance Company,

which he had admitted, in the collateral departmental proceedings initiated against him by the Insurance Company. This aspect was also considered

by both the learned Judges of the Courts below and they have held that the statement made by defendant No. 2 in the Court is more consistent

with the facts and circumstances of the case, and, accordingly, held that defendant No. 2 had sent on 22-10-1976 the insurance cover note Exhibit

P10 to its branch office at Sirsa. It is also material to note that the Insurance Company had encashed the consolidated cheque sent by plaintiff

covering four cover notes on 25-10-1976. All these circumstances clearly negative the claim of the Insurance Company that the plaintiff in

collusion with defendant No. 2 had obtained the insurance cover note Exhibit P10 after the goods were gutted down.

13. Mr. Dogra while criticising the evidence of defendant No. 2 urged that his evidence be not accepted since he is proved to be lying in the Court.

The evidence of defendant No. 2 should be weighed in preponderance of probabilities. Defendant No. 2 has given two diametrically inconsistent

versions and, therefore, his evidence should be totally discarded and it must be held that the insurance cover note Exhibit P10 was prepared-after

the goods were burnt. In support of this submission, he relied upon a decision of the Supreme Court in Yeswant Deorao Deshmukh Vs.

Walchand Ramchand Kothari, . There can hardly be any dispute as regards the principle laid down by the Supreme Court. In the present case

before us, both the Courts below have believed the evidence of plaintiff and defendant No. 2 in regard to the issuance of the insurance cover note

and there is no reason to differ with the said finding.

14. It was lastly argued by Mr. Dogra that the learned Judges of the Courts below have passed the decree without recording a finding as to what

was the value of the burnt goods. He urged that the plaintiff-firm has led no evidence to substantiate the quantum of damages. The account books

which were produced were not proved because the writer has not been examined. This submission was examined by both the Courts below very

carefully and they have held that Prem Sagar PW 1, who is a partner of the plaintiff-firm has unmistakably deposed in his evidence that the account

books were written in his presence and he has testified the correctness thereof. Mr. Dogra drew our attention to the decision of this Court in Kaka

Ram Sohanlal and Others Vs. Firm Thakar Das Mathra Das and Others, . It is a finding of fact based on appreciation of oral and documentary

evidence. The Courts below have accepted the evidence of Prem Sagar and have given cogent reasons for accepting his evidence as truthful. It is

not possible to interfere with this finding of fact. There is no substance in this contention also.

15. After going through the judgments of the Courts below, we are satisfied that there is no merit in this second appeal and it deserves to be

dismissed. The appeal is accordingly dismissed with costs. Cross objections filed by the plaintiffs too stand dismissed with no order as to costs.

16. Appeal dismissed.