

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 11.2.2009
Date of Order: 18th March, 2009

IA No. 11451/2007 in CS(OS) No. 2106/2006

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18.3.2009

National Insurance Co. Ltd. & Anr. ... Plaintiffs

Through: Ms. Shantha Devi Raman, Advocate

Versus

M/s Pahlad Tempo Service & Anr. ... Defendants

Through: Mr. R.Dagar, Advocate for D-1

JUSTICE SHIV NARAYAN DHINGRA

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

ORDER

Plaintiffs have made this application under Order 12 Rule 6 CPC for passing a decree on the basis of admissions made by the defendant.

2. Brief facts relevant for deciding this application are that the plaintiffs filed a suit for recovery of Rs.27,81,519/- from the defendants under Section 8 of the Carriers Act, 1865. Plaintiff No.1 is the Insurance Company and Plaintiff No. 2 is the party who booked its goods with defendant no.1 through defendant no.2. The goods were to be transported by defendant no.1 from IGI Airport to Okhla Industrial Area warehouse/godown of plaintiff no.2. The consignment was loaded in the truck of

defendant no.1 bearing registration no. HR-38D-3370. The truck arrived at the warehouse of plaintiff no.2 at about 2.30 a.m. in the night of 2.11.2003. As per the version of driver of plaintiff no.2, in the FIR lodged by him, due to non-availability of plaintiff no.2's labour, he parked the loaded truck containing 43 rolls of cotton fabric near the premises of factory of plaintiff no.2 and he went to sleep in the front cabin of the truck. Helper of the truck slept on the loaded goods itself. Thereafter, he heard some noise and came down to see and found that 2-3 persons had lodged a TATA 407 behind the truck and after cutting the knots of rope (*rassa*) they were removing the cotton rolls from the truck. On seeing this, he made noise, the guard of plaintiff no.2 company also came to the gate and on hearing noise, the thieves ran away along with the stolen material and their tempo. On checking, it was found that 11 out of 43 cotton fabric rolls had been stolen. He gave a telephone call to his owner and also called 100. FIR No. 581/03 at PS Okhla Industrial Area was lodged of this theft under Section 379 of IPC on the basis of statement of the truck driver. Remaining cotton rolls were delivered to plaintiff no.2. Plaintiff no.2 obtained a shortage certificate from defendant no.1 showing that the delivery given to plaintiff no.2 was short of 11 cotton rolls. The shortage certificate is dated 22.12.2003. This shortage certificate shows that the 11 short delivered boxes contained 10592.60 yards of cotton printed fabric. The shortage certificate also shows that the goods were transported by defendant no.1 vide GR No. 1652 dated 1.11.2003. Since plaintiff no. 2 had insured its goods with plaintiff no.1, plaintiff no. 2 lodged a claim with plaintiff no.1. A survey was conducted by plaintiff no.1 and after verifying that the goods were short supplied and had been stolen, the claim of plaintiff no. 2 for a sum of Rs. 19,50,100/- and Rs. 8,715/- towards surveyor charges was approved by the plaintiff no. 1.

3. Plaintiff no.2, who was also entitled to claim loss of short supplied material from defendant no. 1 had served a notice dated 6.1.2004 on defendant no. 1 calling upon defendant no. 1 to pay sum of Rs.19,50,100/- being the loss suffered by plaintiff no.2. It was specifically stated in the notice that this formal claim was being lodged with the defendant no.1 because of short delivery of material in view of short delivery certificate issued by defendant no.1. After receiving insurance amount from plaintiff no.1, plaintiff no.2 executed a special power of attorney in favour of plaintiff no. 1 giving authority to plaintiff no.1 to recover this amount from defendant no. 1 and to receive this amount. Plaintiff no. 2 also issued subrogation/transfer of accountable rights and interests against defendant no.1 to plaintiff no.1.

4. Plaintiff no.1 and 2 have jointly filed this suit against defendant no.1 for recovery of the loss suffered by plaintiff no.2 under the Carriers Act. Since plaintiff no.2 had given power of attorney in favour of plaintiff no. 1, the suit on behalf of plaintiff no.2 is signed and verified by plaintiff no.1.

5. In the WS, defendant no.1 has not denied that it had transported the goods from the Airport to warehouse/godown of plaintiff no.2. The incident of theft has not been denied, lodging of FIR has not been denied, the issuance of short delivery certificate has not been denied receipt of notice dated 6.1.2004 from plaintiff no.2 has not been denied. Thus, the factual position in respect of suit as pleaded by the plaintiff has not been denied by the defendant no.1. The stand of defendant no.1 in the WS is that the notice of loss or injury required to be given within six months by plaintiff no.2, in terms of Section 10 of the Carriers Act, had not been served upon defendant no.1. Although it is not denied that the notice dated 6.1.2004 was served, but it is contended

that this was not the requisite notice under Section 10 of the Carriers Act. The other plea taken is that the driver of the defendant no.2, reached at plaintiff's no.2 premises at night around 2.30 a.m. carrying the assignment informed the plaintiff no.2 regarding his arrival and employees of plaintiff no. 2 at that time told him that labour was not available to unload the consignment and directed the driver to park the truck adjacent to the boundary of the premises. Thus, practically defendant no. 2 had delivered the goods and the consignment had reached in the custody of defendant no.2. There was no liability of defendant no.1. The theft, if any, had taken place after the delivery of the goods to plaintiff no.2.

6. In view of the admission of the facts by defendant no. 1, plaintiffs have preferred this application under Order 12 Rule 6 CPC for passing a decree on the basis of admissions. The application is opposed by the defendant no. 1 on the ground that in view of stand taken by the defendant no. 1 regarding reaching of the truck on the site and non-availability of labour, there was no admission on the part of the defendant no. 1 regarding theft having taken place when the goods were in custody of defendant no.1 and therefore the application was liable to be dismissed.

7. I consider that where the basic facts and the documents are admitted and only their implications are sought to be argued in a different manner, the Court can hear arguments of the parties on the implications of admitted facts and documents and can pass a decree on the basis of admissions if made by the party. The object of Order 12 Rule 6 CPC is to enable the party to obtain a speedy judgment at least to the extent of relief to which there are admissions in the documents or in the pleadings. The Court cannot unduly narrow down the meaning of this rule merely because the defendant gives

a different interpretation to the documents than what law permits. The Court can hear the arguments on the issue of the interpretation of documents and give its finding on the implications of such documents in view of the settled law. Thus, irrespective of the fact that the defendant though admits the documents and the basic facts but does not admit the claim directly, the Court can pass a decree under Order 12 Rule 6 CPC if it finds there were sufficient admissions by way of pleadings and documents.

8. In the present case, the defendant no.1 has not denied issuance of short delivery certificate. If the defendant no. 1 had the stand that it had already delivered the goods and the theft had taken place after the delivery of goods, defendant no. 1 would not have issued a short delivery certificate. The very fact that the short delivery certificate was issued by defendant no. 1 showing that it had delivered 11 rolls of cotton fabric short to plaintiff no. 2 implies that the theft had taken place when the goods were in custody of defendant no.1 and the custody of goods had not passed over to plaintiff no. 2. Merely reaching of the truck at the factory gate of plaintiff no. 2 would not amount to delivery of goods to plaintiff no.2. The delivery of goods takes place only when the goods are physically handed over by the carrier and receipt is signed. Once the goods got handed over and the the custody of goods had passed from defendant no.1 to plaintiff no.2 then only the delivery could have got completed. If the goods had not been handed over and remained in the custody of defendant no.1, for whatsoever reason, defendant no.1, as a carrier would be liable under the Carriers Act.

9. Section 9 of the Carriers Act specifically provides that in any suit brought against the common carrier for loss or damages or non delivery of goods entrusted to the carrier it was not necessary for the plaintiff to bring that such loss or damage or non

delivery was owing to the negligence or criminal act of the carrier, his servant or agent. What is required to be proved is only non delivery or loss or damages. In this case, the non delivery is an admitted fact in view of issuance of short delivery certificate by defendant no. 1. Section 8 specifically provides that every common carrier shall be liable to the owner for loss or damage to any property delivered to such carrier to be carried, where such loss or damage had arisen from the criminal act of the carrier or any of his agents or servants and the carrier shall also liable to the owner for the loss or damage of any property where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants. The only exception is force majeure. In Patel Roadways v. Birla Yamaha 2000 4 SCC 91 Supreme Court had observed as under:

47. From the conspectus of views taken in the decisions of different High Courts noted above it is clear that the liability of a common carrier under the Carriers Act is that of an insurer. This position is made further clear by the provision in Section 9, in which it is specifically laid down that in a case of claim of damage for loss to or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence. Even assuming that the general principle in cases of tortious liability is that the party who alleges negligence against the other must prove the same, the said principle has no application to a case covered under the Carriers Act. This is also the position notwithstanding a special contract between the parties. These principles have held the field over a considerable length of time and have been crystallized into an accepted position of law. No good reason has been brought to our notice to persuade us to make a departure from the accepted position. Therefore, we reiterate the position of law noticed above. The consequential position that follows is that the contention of Shri Ashok Desai, learned Senior Counsel that the respondents herein having failed to establish negligence on the part of the appellant, their claim for damages should be rejected, cannot be accepted.

10. Thus, it is clear that plaintiffs have not to prove any negligence, the plaintiffs have only to prove loss of the goods or non delivery which stands admitted by defendant no.1. Under these circumstances, I consider that admissions in this case were clear and categorical and the plaintiffs are entitled to a decree of Rs. 19,50,100/- which was the value of the goods lost and interest thereon @ 6% p.a. The plaintiffs are not entitled to recover Rs.8,715/- i.e. the charges towards surveyor.

11. The suit of the plaintiffs is therefore decreed for sum of Rs.19,50,100/- with 6% interest thereon from 6.1.2004 till the recovery. The plaintiffs shall be entitled to proportionate Court fee and other cost of the suit.

March 18, 2009
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SHIV NARAYAN DHINGRA, J.