

R-26

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

+ RFA 584/2001

% 4th March, 2011

M/S. CARAVAN ROAD CARRIERS Appellant
Through: None.
VERSUS

NATIONAL INSURANCE CO.LTD. & ANR. Respondents
Through: None

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

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

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 17.1.2011. Today it is effective Item No. 8 on the Regular Board. Though it is 12.55 P.M no-one has appeared for the parties. I have, therefore, perused the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 29.03.2001 whereby the suit of the respondent No.1/Insurance Company/ plaintiff no.1/power of attorney holder of the respondent No. 2 M/s. Avery India Limited/plaintiff No. 2 was decreed against the appellant who was a common carrier.

3. The facts of the case are that the plaintiff No. 2/respondent No. 2/M/s. Avery India Limited gave a Weigh Bridge Model No. 5104 of the value of Rs.

RFA 584/2001

Page 1 of 5

3,82,381/- for transportation to the appellant/common carrier from Delhi to Gubbi (Karnataka) for delivery to one M/s. Thippeswamy Oil Extraction Pvt. Ltd. (Tumkel District). The machinery was insured with the respondent No.1/plaintiff No. 1 company. The machinery was being transported in 21 packages. There was theft of goods at Indore and for which an FIR No. 986/91 was lodged at P.S. Indore (M.P.) and the plaintiff No. 2 lodged its claim with the plaintiff No. 1 on 16.12.1991. The plaintiff No. 2/respondent No. 2 also lodged its claim with the appellant/defendant/common carrier vide letter dated 19.12.1991 (Ex. PW-1/3). Exhibit PW-1/3 is also admitted to be received by the defendant/appellant vide Ex.DW1/D dated 1.1.92. The respondent No. 1/insurance company appointed its surveyor and who assessed the loss at Rs. 3,24,674/- and which was settled with the respondent No. 2/plaintiff No. 2 on 18.5.1992 who accepted the amount in full and final consideration and executed a discharge voucher in favour of plaintiff No. 1/respondent No.1. The plaintiff No. 2/respondent No. 2 on receipt of the amount from plaintiff no.1/respondent no.1 executed a letter of subrogation and special power of attorney whereby the plaintiff No. 2/respondent No. 2 assigned, transferred and abandoned all their rights, title and beneficial interest in the insurance policy to the extent of amount settled in respect of subject matter insured including the right to recover the amount from the common carrier to the plaintiff No. 1./respondent No. 1. Since the appellant/defendant failed to pay the amount, the subject suit came to be filed for Rs. 4,12,336/- along with interest.

4. The appellant/defendant contested the suit on various grounds including of the suit being bad for mis-joinder and non-joinder of necessary

parties; that the suit of the plaintiff being time bared; that the suit of the plaintiff is not maintainable as no notice u/s. 10 of the Carriers Act, 1865 has been given; that the suit of the plaintiff Nos. 1 & 2 has been filed against the defendant in collusion with each other and that Delhi courts have no jurisdiction.

5. After the pleadings were complete, the trial court framed the following Issues:

- i. Whether the suit of the plaintiff is signed, verified and instituted by competent person? OPP.
- ii. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD.
- iii. Whether the suit is barred by time? OPD.
- iv. Whether the suit is bad for want of notice U/s 10 of Carriers Ac, if so its effect? OPD.
- v. Whether the suit of the Plaintiff is collusive, if so, its effect? OPD.
- vi. Whether this court has got territorial jurisdiction to entertain the present suit? OPP.
- vii. Whether the plaintiff is entitled to the suit amount as claimed in the plaint? OPP.
- viii. Whether the plaintiff is entitled to interest, if so, at what rate and for which period? OPP.
- ix. Relief.”

6. With regard to Issue No. 1, the trial court has rightly held that the suit was properly instituted as the power of attorney was exhibited as Ex. PW-1/1. The suit was held to be properly filed in view of the deposition of PW-1. No fault can be found with this finding. With regard to Issue No. 3, the trial court has held that the defendant was a partnership firm and which could be

sued in its name. This position is correct in law as per Order 30 CPC. The trial court has also held that the suit is filed within limitation because the loss by theft took place on 23.11.1991 and the suit was filed on 28.10.1993 and which was therefore well within limitation. With regard to the defence that no notice was served under Section 10 of the Carriers Act, the trial court has referred to the letter dated 19.12.1991 EX. PW-1/3 served by the plaintiff No.2/respondent no.2 upon the appellant/defendant for settlement of the claim. There was another notice dated 1.1.1992, Ex. PW-1/4, receipt of which was admitted in Ex. DW-1/D. The trial court has rightly held that the requirement of the Section 10 of the Carriers Act was complied with. The trial court has held that the suit was rightly filed in Delhi because the loss was caused to the plaintiff No. 1/respondent No. 1 at Delhi and the claim of the plaintiff No. 2 was lodged at Delhi. I may only state that dehors the findings and the conclusion of the trial court on the issue of territorial jurisdiction I hold that the courts at Delhi would have jurisdiction because the goods which were stolen were to be transported from Delhi to Gubbi (Karnataka) and therefore part of the cause of action did arise in Delhi.

7. I note that the trial court has granted pendente lite and future interest @ 18%. Considering the present economic scenario and the low interest regime prevailing, and also the long pendency of the litigation, it is a fit case where the rate of interest should be reduced from 18% per annum to 10% per annum simple. The Supreme Court has also in its recent chain of judgments held that that the high rates of interest should be reduced, especially, considering the long pendency of litigation. These judgments of the Supreme Court are ***Rajendra Construction Co. v. Maharashtra***

Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700 & Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 and State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC).

8. The appeal is therefore partially allowed and though the impugned judgment and decree on merits is sustained, however, the pendente lite and future rate of interest till realization of the decretal amount will be at 10% per annum simple. Parties are left to bear their own costs. Decree sheet be prepared. Trial court record be sent back.

March 4, 2011
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VALMIKI J. MEHTA, J.