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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) 436 of 2008

IFFCO-TOKIO GENERAL INSURANCE CO. LTD.
& ANR.

..... Plaintiffs

Through: Mr. Ramesh Kumar, Advocate.

versus

DYNAMIC MOVERS PRIVATE LIMITED
Through: None.

..... Defendant

CORAM: JUSTICE S. MURALIDHAR

ORDER
09.07.2013

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1. Plaintiff No.1 Iffco-Tokio General Insurance Company Limited ('ITGICL') and Plaintiff No. 2 Maruti Udyog Limited ('MUL') have filed this suit against Dynamic Movers Private Limited ('DMPL') for recovery of a sum of Rs.98,65,588 together with *pendente lite* interest @ 18% per annum in favour of the Plaintiffs and against the Defendant.

2. It is stated that goods which are subject matter of the present suit are components for Maruti vehicles and were shipped by Suzuki Motor Corporation, Hamamatsu, Japan from Omaezaki Sea Port, Japan to Nhava Sheva Port, Maharashtra. Thereafter they were consigned to the Defendant

for delivery at the factory of MUL at Gurgaon. It is stated that MUL is the owner and consignee of the suit consignments for valuable considerations. The consignment comprised 30 packages containing 295 crates filled with the components for Maruti vehicles. They were consigned by MUL to the Defendant by Consignment Note No. 922 dated 9th March 2005. The transportation was to be carried out through a Trailer. It is stated that the consignment weighing 17.6 tons was in perfectly sound condition, wrapped externally with wood frame crates with fork lift runners on the bottom. The parts packed in cartons were placed in the crates which were covered by polythene sheets.

3. The defendant reported to MUL that the said Trailer met with an accident on 11th March 2005 at around 5 a.m. at about 10 Kms on Pali-Ajmer Highway near village Matth, Rajasthan resulting in damage to the consignment. ITGICL with whom MUL had insured the consignment was immediately informed. ITGICL then appointed a spot surveyor who inspected the damage and submitted spot surveyor report to ITGICL on 21st March 2005. The container was thereafter shifted by the Defendant to another Trailer and delivered at MUL on 22nd March 2005. The consignment was inspected by the final surveyor appointed by ITGICL in

the presence of representatives of the MUL on 23rd March 2005. The Defendant issued a damage certificate dated 23rd March 2005 to MUL that the consignment at the time of delivery for transportation was sound and was damaged on account of accident on route. The final surveyor assessed the loss suffered by MUL as Rs.57,59,818.65. Since part of the consignment was urgently required, MUL airlifted them to India thus incurring additional costs of Rs.11,49,101. The damage to the container was assessed at Rs.12,104. MUL thus suffered the total loss of Rs.69,21,024.

4. On 6th June 2005, MUL sent a notice of claim to the Defendant by way of registered post under Section 10 of the Carriers Act, 1865 demanding a sum of Rs.1.25 crores. This was duly served upon the Defendant. A further monetary claim by MUL was lodged with the Defendant by a notice dated 7th June 2006 for a sum of Rs.69,21,024 being the actual loss suffered by it. ITGICL on receipt of the surveyor report under the marine policy and the special contingency policy, approved the claims for an aggregate sum of Rs.69,21,024: Rs.57,59,819 towards the marine policy and Rs.11,61,024 towards the special contingency policy. These amounts were paid by ITGICL to MUL on 10th August 2005 and 9th June 2006 respectively. Upon receipt of the aforementioned payments, MUL executed and delivered a

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letter of subrogation-cum-Special Power of Attorney dated 19th October 2007 in favour of ITGICL. It is accordingly stated that ITGICL has subrogated the rights of MUL and is authorised by MUL to recover the sum of Rs.57,58,819 from the Defendant.

5. In para 20 it is stated that Plaintiff No. 1 and Plaintiff No. 2 is entitled to Rs.98,65,588 as per the following details:

(i)	Amount paid under the marine policy on 10.08.2005	Rs.57,59,819.00
(ii)	Interest thereon from 10.08.2005 to 15.02.2008	Rs.25,93,340.00
(iii)	Amount paid under the special contingency policy on 09.06.2006	Rs.11, 61, 205.00
(iv)	Interest thereon from 09.06.2006 to 15.02. 2008	Rs.3,51, 224.00
		Rs.98,65,588.00

6. The Plaintiff has filed documents in support of the plaint. The originals have been marked as exhibits.

7. Summons could not be served on the Defendant at the address originally stated in the memo of parties filed with the suit. The fresh address of Defendant was ascertained by the Plaintiff and the amended memo of parties was taken on record. On 25th August 2009 it was noted by the Court that the

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Defendant had not been appearing despite service. Fresh summons were issued to the Defendant on the said date. However, at this stage the Defendant could not be served despite the Plaintiffs taking appropriate steps. The Plaintiffs then filed IA No. 8350 of 2010 under Order V Rule 20 CPC for effecting service through publication. The application was allowed on 26th November 2010 by the Joint Registrar and the Defendant was permitted to be served through publication in 'The Statesman'. Proof of publication of the notice in the newspaper was filed by the Plaintiff as noted in the order dated 25th March 2011 of the Joint Registrar.

8. On 1st June 2012 when none appeared for the Defendant despite service through publication, the Defendant was proceeded against ex parte.

9. The Plaintiff has filed the affidavits of examination-in-chief of Mr. S.K. Chhabra, Vice President of ITGICL dated 23rd September 2011. The said affidavit has marked the Plaintiffs' documents as exhibits. This includes the original marine insurance certificate, the special contingency policy, the original of the consignment note, the original of the joint inspection report dated 23rd March 2005 (Ex. PW-1/6) and original damage certificate dated 25th March 2005 (Ex.PW 1/7). The original postal receipts by way of proof

of dispatch of the notices of claim dated 6th June 2005 and 7th June 2006 have been marked as exhibits PW-1/8 and PW-1/10 respectively.

10. Mr. Chhabra has proved the said affidavit by making a submission on oath on 1st March 2012. Mr. Shahnawaz Razvi, a Chartered Accountant and qualified Surveyor and Loss Assessor, who had conducted the spot survey in the present case, was examined as PW-2. Captain Manvender Singh, the second and final Surveyor and Loss Assessor has filed his affidavit by way of evidence by examination of chief dated 26th November 2012. He has marked his surveyor report dated 15th July 2005 as Ex. PW-3/1. He has proved his affidavit on 5th February 2013.

11. Mr. D.S. Kedia (PW-4) of MUL has filed his affidavit by way of examination in chief and has also proved it on 16th May 2013.

12. The Court is satisfied that the evidence produced by the Plaintiff proves its case and that it is entitled to the actual loss suffered by it in the sum of Rs.69,21,024 which amount was paid by Plaintiff No.1 to Plaintiff No.2. Since there is no agreed rate of interest as such the Court is not inclined to grant the Plaintiffs interest @ 18 % per annum. Interest on the sum of Rs.57,59,819 is granted at 12% simple interest per annum from 10th August

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2005 till 15th February 2008 and at 12% simple interest per annum on a sum of Rs.11,61,205 from 9th June 2006 till 15th February 2008. A decree in the aforementioned sums is passed in favour of the Plaintiff No.1 or Plaintiff No.2 and against the Defendant together with costs of Rs.20,000.

13. The decree sheet be drawn accordingly.



S. MURALIDHAR, J

JULY 09, 2013

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