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AS No. 128 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 20.04.2026**

**Pronounced on : 08.07.2026**

CORAM

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**AS No. 128 of 2013**

1. V. Parthasarathy (Deceased)

2. P.Venkateshwaralu

..Appellant(s)

Vs

1. M/s Tamil Nadu State  
Marketing Corporation Limited,  
CMDA Tower-II, 4<sup>th</sup> Floor, Gandhi Irwin  
Bridge Road, Egmore, Chennai – 600 008  
Rep.by Power Agent/Subrogee  
The Oriental Insurance Co., Ltd.,
2. The Oriental Insurance Co., Ltd.,  
Registered Office at Oriental House  
A-25/27, Asaf Ali Road,  
Delhi 110 002 and carrying on  
Business at Divisional Office No.VI  
Bali Towers, 1<sup>st</sup> floor,  
No.1, Abdul Razack Street,  
Saidapet, Chennai – 600 015  
Rep.by their Principal Officer/  
Senior Divisional Manager  
Shri A.Sampath
3. M/s.Velambigai Transport  
Carrying on business at  
No.4-A, Noombal Road,  
Velappanchavadi  
Chennai – 600 077.

..Respondent(s)



Appeal Suit filed under Section 96 of C.P.C., against the judgment and decree passed in O.S.No.9917 of 2010 dated 23.01.2013 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, decreeing the suit as against the appellant / 1<sup>st</sup> defendant.

For Appellant(s): Mr.S.Sadasharam

For Respondent(s): M/s. Nageswaran And Narichania  
(For R2)

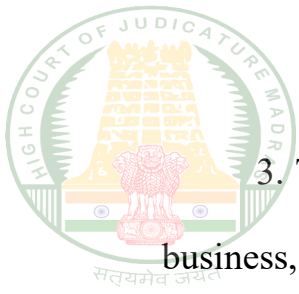
For R1 – No appearance

For R3 – Served – No appearance

### **JUDGMENT**

The present Appeal is filed against the judgment and decree passed in O.S.9917 of 2010 dated 23.01.2013 on the file of the learned XVII – Additional Judge, City Civil Court, Chennai decreeing the suit against the appellant/1<sup>st</sup> defendant and prays for setting aside.

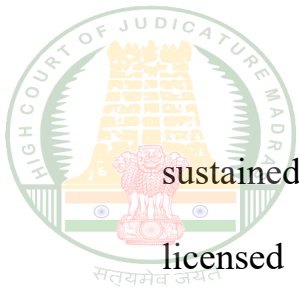
2. The plaintiffs instituted the suit for recovery of a sum of Rs.14,38,980/- together with interest at the rate of 12% per annum from the date of plaint till realisation, contending that the claim arose out of damage and short delivery of insured consignments during transit, constituting a commercial cause of action.



3. The plaintiffs' case, was that the first plaintiff, during the course of its business, purchased various varieties of Indian Made Foreign Liquor from M/s. Mohan Breweries and Distilleries Ltd. under Invoice Nos.16685018 and 16685019 dated 31.10.2005 for a total invoice value of Rs.17,77,812/-. According to the plaintiffs, the consignments were entrusted to the first defendant, who acted as a common carrier, safe transportation and delivery to the consignee, namely Tamil Nadu State Marketing Corporation Limited at Coimbatore. The first defendant acknowledged receipt of the consignments in good order and condition and issued Consignment Notes Nos.62536 and 62537 dated 31.10.2005 evidencing such entrustment.

4. The plaintiffs further contended that, during transit, the transport vehicle met with an accident resulting in extensive damage and shortage to the consignments. It was specifically pleaded that the first defendant failed to deliver the goods in the same condition in which they were entrusted and that the loss occurred solely due to the negligence, misfeasance, malfeasance and non-feasance on the part of the defendants, their servants and agents.

5. The plaintiffs further averred that, immediately after the accident, an independent licensed Surveyor and Loss Assessor, namely Mr.P.R.Mathiyazhagan, was appointed for conducting spot survey, who submitted a spot survey report dated 05.11.2005 detailing the extent of damage



sustained by the consignments. Subsequently, one Mr.S.Jefferson Dharmaraj, a licensed Insurance Surveyor, conducted a final survey and submitted detailed survey reports dated 23.11.2005 and 24.11.2005 assessing the loss under Invoice No.16685018 at Rs.7,55,892/- and under Invoice No.16685019 at Rs.6,85,568/-, aggregating to Rs.14,41,460/-.

6. The plaintiffs also pleaded that the first plaintiff prepared Goods Receipt Acknowledgments bearing G- 04025683 and G- 04025684 dated 09.11.2005, which were acknowledged by the driver of the transport vehicle, and that notice of loss was immediately issued to the first defendant under due acknowledgment. According to the plaintiffs, the first defendant also issued damage certificates dated 21.11.2005 acknowledging the occurrence of damage to the consignments during transit.

7. The further case of the plaintiffs was that the consignments had been insured with the second plaintiff-insurance company under Marine Transit Policy No.411600/M/21/543 covering transit risks. Pursuant to assessment of the loss by the licensed surveyor, the second plaintiff settled the insurance claim of the first plaintiff by indemnifying a sum of Rs.14,41,460/- towards the value of the damaged and short-delivered goods. Consequent upon such settlement, the first plaintiff executed a Letter of Subrogation and Special Power of Attorney dated 13.06.2007 in favour of the second plaintiff authorising it to



recover the loss amount from the carrier in accordance with Section 79 of the Marine Insurance Act.

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8. The plaintiffs further pleaded that the second plaintiff entrusted the recovery proceedings to its agents, namely M/s.V.N.C. Claims Consultancy, who lodged a formal claim with the first defendant by communication dated 10.09.2007. According to the plaintiffs, despite repeated reminders and exchange of correspondence, the first defendant failed to settle the claim and, on the contrary, refuse liability through its Advocate's reply dated 19.02.2008 on untenable grounds, thereby necessitating institution of the suit.

9. The first defendant filed a written statement denying averments in the plaint raising a principal defence that it was not a “ carrier” as alleged by the plaintiffs, but merely a commission agent or intermediary arranging transport vehicles for customers on commission basis. The first defendant contended that it neither took physical delivery of the consignments nor undertook actual carriage of the goods and, therefore, no liability could be upon it.

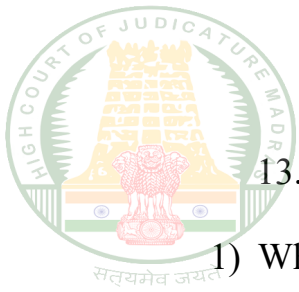
10. The first defendant further contended that the consignments were in fact transported through a third-party transporter, namely Velambigai Transport, by engaging vehicle bearing Registration No.TN38-T-4352 belonging to one Mr.Jayaraman. It was specifically pleaded that the first defendant had merely



arranged the said vehicle on the request of M/s.Mohan Breweries and Distilleries Limited and had no direct involvement in loading, handling or transportation of the consignments.

11. The first defendant also disputed its knowledge regarding the nature, quantity, value and condition of the consignments allegedly loaded into the vehicle and contended that the consignments were transported entirely at the “owner’s risk.” It was further contended that the accident occurred solely due to circumstances beyond the control of the carrier, and that the accident constituted an inevitable “act of God” for which no negligence or liability could be attributed to the carrier or its agents.

12. The first defendant specifically denied the allegations of negligence, misfeasance, malfeasance and non-feasance and further contended that the plaintiffs had failed to comply with the mandatory requirement under Section 10 of the Carriers Act by not issuing notice within the prescribed period. The first defendant therefore prayed for dismissal of the suit in entirety. Allegations of custody were denied. The vehicle is not owned by the defendant therefore there is no privity of contract between plaintiff and defendant. Defendants further contends claim raised by recovery agents vide letter dated 10.09.2007 was refuted through the defendants counsel letter dated 19.02.2008. M/s.Mohan Breweries and distillers wrongly and illegally withheld the bills.



13. On the basis of the above pleadings, the Trial Court framed the issues

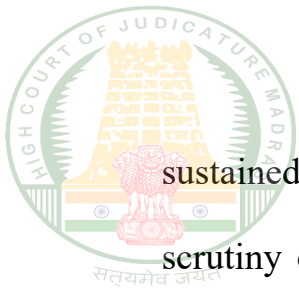
1) Whether the plaintiff is entitled to the suit claim Rs.14,38,980/- with interest at 12% p.a ?

2) To what relief the plaintiff is entitled to ?

14. To prove the case of the plaintiffs, PW1 and PW2 were examined and Ex.A1 to A24 were marked. On defendant side no witness was examined and no document was marked.

15. The Trial Court relying upon Exs.A2 and A3 invoices, Exs.A4 and A5 consignment notes and the transport permits marked as Exs.A6 and A7, and held that the said documents clearly established entrustment of the consignments with the first defendant for transportation from Chennai to Coimbatore. The Trial Court particularly observed that the consignment notes issued by the first defendant contained an undertaking to transport and deliver the consignments in the same condition in which they were entrusted.

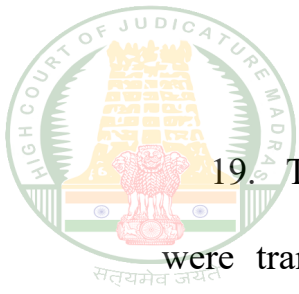
16. The Trial Court further considered the oral evidence of PW2, the independent licensed surveyor, who had conducted survey and submitted Exs.A13 and A14 final survey reports. The Trial Court also relied upon Ex.A8 spot survey report dated 05.11.2005, which disclosed that the consignments



sustained damage due to the accident at Thyagathuruvam village. Upon careful scrutiny of the oral evidence of PW2 and the survey reports, the Trial Court found no reason to disbelieve the quantum of loss assessed at Rs.7,55,892/- and Rs.6,85,568/- respectively under the two invoices.

17. The Trial Court further observed that the factum of accident was not disputed by the first defendant. The learned counsel for the first defendant, however, contended that the accident occurred solely due to an act of God and that there was no negligence on the part of the carrier. Rejecting the said contention, the Trial Court held that, in view of Section 9 of the Carriers Act, once loss or damage during transit was established, the plaintiffs were not required to independently prove negligence or criminal act on the part of the carrier.

18. The Trial Court thereafter dealt with the contention raised by the first defendant regarding non-compliance with Section 10 of the Carriers Act. The Trial Court referred to Ex.A11 notice dated 09.11.2005 issued by the first plaintiff immediately after the accident dated 03.11.2005 and observed that receipt of the said notice had not been disputed by the first defendant during cross-examination of PW1. Accordingly, the Trial Court held that the statutory requirement under Section 10 of the Carriers Act stood duly complied with.



19. The Trial Court further considered the defence that the consignments were transported only through the second defendant and not by the first defendant. Upon appreciation of Exs.A2 to A7 and Ex.A12 reply notice, the Trial Court found that the transport documents specifically disclosed the name of the transporter as “Southern Road Lines” and that there was absolutely no documentary evidence produced by the first defendant to establish that the second defendant alone undertook carriage of the consignments. The Trial Court also observed that even in Ex.A12 reply notice, the first defendant did not deny transportation of the consignments, but had only enclosed damage certificates acknowledging occurrence of damage.

20. The Trial Court further relied upon Exs.A9 and A10 goods receipts, Ex.A15 insurance claim form, Exs.A16 and A17 correspondence, Ex.A18 claim payment voucher, Ex.A19 Letter of Subrogation and Special Power of Attorney, Exs.A20 to A22 claim communications issued by VNC Claims Consultancy and Ex.A23 reply notice issued by the first defendant. The Trial Court also referred to Ex.A24, wherein it was specifically stated that the insurance claim of the first plaintiff had been settled by the second plaintiff under a transit risk insurance policy.



21. Upon cumulative consideration of the entire oral and documentary evidence, the Trial Court came to the conclusion that the plaintiffs had satisfactorily established the liability of the first defendant for the damage and shortage caused to the consignments during transit and that the first defendant had failed to adduce any evidence whatsoever to prove that the accident occurred solely due to an inevitable act of God.

22. The Trial Court further held that there was absolutely no material available on record to establish that the consignments were transported exclusively through the second defendant and, therefore, no liability could be fastened upon the second defendant. The Trial Court accordingly exonerated the second defendant from liability.

23. The Trial Court further held that, by virtue of Ex.A19 Letter of Subrogation and Special Power of Attorney executed by the first plaintiff after receipt of the insurance amount, the second plaintiff-insurance company became legally entitled to enforce the rights arising out of the contract of carriage and recover the amount from the carrier. The Trial Court also took note of the admitted fact that the second plaintiff had settled the claim of the first plaintiff for Rs.14,41,460/- towards the value of the damaged and short-delivered consignments.

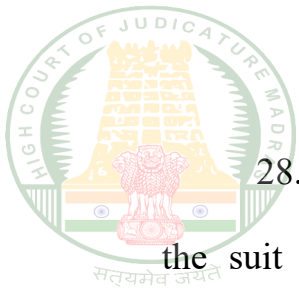


24. On the aforesaid findings, the Trial Court ultimately held that the second plaintiff was entitled to recover the suit claim of Rs.14,38,980/- from the first defendant together with interest at the rate of 12% per annum, the transaction being commercial in nature, and accordingly answered Issue No.1 in favour of the plaintiffs.

25. In view of the findings under Issue No.1, the Trial Court decreed the suit with costs insofar as the first defendant was liable to pay a sum of Rs.14,38,980/- to the second plaintiff together with interest at the rate of 12% per annum from the date of institution of the suit till the date of realisation. The Trial Court further held that, in the absence of any material establishing independent liability on the part of the second defendant, the suit as against the second defendant was liable to be dismissed and without costs.

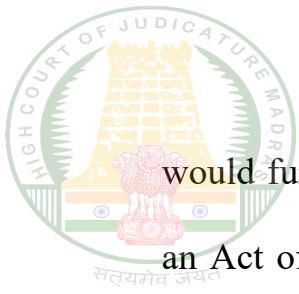
26. Aggrieved by the judgment and decree, the first defendant had approached this Court.

27. Heard Mr.S.Sadashram, learned counsel for the appellant and Mr.Nageswaran and Narichania, learned counsel for the second respondent.



28. The learned counsel appearing for the appellant would contend that the suit as framed by the plaintiffs, namely respondents 1 and 2, is not maintainable, as the consignor had not been made a necessary party to the suit, nor had the consignee has been examined as a witness in the suit to substantiate that the materials had been delivered by the consignor to be transported. He would further submit that the privity of contract is only between the appellant and the consignor and the consignee does not have any right under the consignment agreement, which had been overlooked by the trial Court. He would further submit that the agreement of insurance between respondents 1 and 2 relating to the insured goods is not binding upon the appellant and, hence, the claim for damages caused to the materials loaded in the lorry cannot be casted upon the appellant. He would further submit that the goods were transported at the risk of the consignor, who had not been made a party to the proceedings, and on that ground also, the suit framed against the appellant is not maintainable.

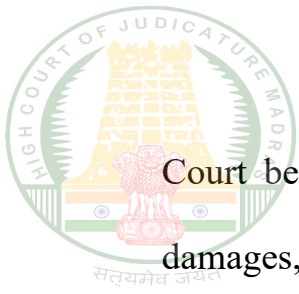
29. That apart, he would submit that the exhibits do not support the claim for damages and, at any rate, without prejudice to the submissions made earlier, he would submit that the damages that had been arrived at are wholly disproportionate. He would further submit that the witnesses, namely P.W.1 and P.W.2, are interested witnesses and the reports made by them cannot be held against the appellant for grant of the damages as arrived at by the trial Court. He



would further submit that the accident that had occurred, causing damage, was an Act of God and was not an accident that had been caused wilfully and, for that reason also, the appellant cannot be fastened with the liability to pay damages, which otherwise do not arise in view of the fact that the appellant was not a party to any of the agreements, namely, the agreement of sale between the consignor and the consignee and the agreement of insurance between respondents 1 and 2. Hence, he seeks the indulgence of this Court to set aside the judgment and decree of the Court below.

30. He had also relied upon the contention that such liability for damages cannot be fastened upon the appellant.

31. Countering his arguments, Mr. Nageswaran and Narichania, learned counsel appearing for the second respondent/Insurance Company, would submit that, admittedly, the goods were booked by the appellant and transported through the third respondent's lorry, which had been nominated by the appellant. He would submit that even in the written statement, the appellant had categorically admitted that he had only booked the consignment, which had been transported through the third respondent, and in that regard, even though the actual carrier was the third respondent, being the person who had appointed the said carrier, the appellant would be liable for the damages that had been caused to the goods which were transported. He would further submit that the



Court below had given a categorical finding with regard to the quantum of damages, which had remained unrebutted by any evidence on the side of the appellant. He would submit that the appellant had failed to lead any evidence nor had he appointed his own surveyor to survey the damages. He would further submit that the Court, on a thorough reading of Exs.A2 to A7 and also upon a reply under Ex.A12, had given a categorical finding that the appellant was the transporter and that the first defendant had failed to establish that the third respondent alone had undertaken the carriage of the consignments. When such conclusions had been arrived at by the Court below and the appellant had failed to lead any evidence whatsoever except filing the written statement disputing the claim, there is no necessity to interfere with the well-considered judgment and decree of the trial Court.

32. In support of his contention, he had also relied upon a Division Bench judgment of this Court in the case of ***Bond Food Products Private Limited and another Vs. M/s.Planters Airways Limited, reported in (2004) 2 L.W. 663***. He would submit that, in a similar case, the transporter of the goods had been held liable and, that too, in the absence of any evidence contrary to the evidence adduced in support of the claim for damages, a Division Bench of this Court had refused to interfere with the damages awarded by the Court below.



33. He had further relied upon a judgment in the case of *Nath Bros. Exim International Ltd. v. Best Roadways Ltd* reported in *2001 (1) LW 756* to contend that the expression "owner's risk", which had been heavily relied upon by the appellant, would not absolve the carrier of its liability when the goods were entrusted to the carrier for delivery. Admittedly, the goods were entrusted to the appellant, who had engaged the services of the third respondent. Hence, in that regard, he would submit that the appellant cannot absolve himself of the liability for the claim of damages for the goods that had been damaged in transit. Hence, he seeks dismissal of the appeal.

34. I have considered the submissions made by the learned counsel appearing on either side and perused the materials available on record.

35. The issues that arise for consideration are:

- a) Whether the Court below was right in holding that the appellant was liable to pay the damages suffered?
- b) Whether the damages that had been arrived at by the Court below are sustainable?

### **Issue No.1**

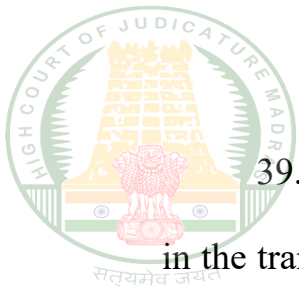
36. The primordial contention of the appellant is that the appellant had only booked the goods for transport from the consignor, who had not been made a party, to the first respondent, which had been insured with the second



respondent. It is his case that the goods were booked at the owner's risk by the consignor and that the consignor had not been made a party. It was his further contention that the appellant, neither being the carrier nor being the owner of the goods, cannot be held liable to pay the damages. It is his further contention that the goods were transported through the third respondent and, at utmost, the third respondent alone would be held liable for payment of the damages caused to the goods.

37. The Court below, noting Exs.A2 and A3, had noted that the name of the transporter/carrier had been mentioned as that of the appellant's transport concern. It had further noted that the appellant had not produced any documents to show that the third respondent had undertaken to transport the consignment to the first respondent's company. Only in the absence of any such documentary proof, the liability sought to be disowned by the appellant had been negated.

38. The further claim that the accident had taken place due to an Act of God was also held to be not substantiated. Further analysing Exs.A1 and A2, namely the invoices issued by the consignor to the first respondent, the name of the transporter had been shown as the appellant's transport concern. The appellant had also issued bills for the charges towards such consignment, which had been marked as Exs.A2, A3, A4 and A5.



39. The vehicle number which carried the goods had also been indicated in the transport permit issued by the Prohibition and Excise Department and the said exhibits had been issued to the transporter, which also indicated the number of the lorry as shown in the consignment note issued by the appellant. In such view of the matter, this Court is of the view that the appellant had agreed to transport the goods to be delivered to the first respondent. This is also corroborated by the policy of insurance issued by the second respondent, noting the name of the appellant to be the original carrier of the goods.

40. In such view of the matter, this Court do not find any infirmity or irregularity in the findings of the Court below in holding that the appellant is liable to pay the damages.

## **Issue No.2**

41. The case of the appellant is that the Court below had assessed the damages without properly appreciating the material evidence to substantiate the damages that had been sustained in the course of the transport. It is to be noted that the appellant had not led any evidence whatsoever to counter the claim for damages made by respondents 1 and 2 under Exs.A13 and A14, which had been substantiated through P.W.1 and P.W.2.



42. Ex.A12, namely the damage certificate issued by the appellant, had also been brought on record. The appellant had issued a certificate mentioning the number of broken bottles and missing bottles and had also given the number of cases that had actually been booked. It is also to be noted that the said certificate was issued without prejudice and without admission of liability in respect of the claim. To substantiate that the claim for damages had been excessive, the appellant had failed to lead any evidence whatsoever. Further, the appellant had also not appointed any surveyor on his side to survey the damages to counter Exs.A13 and A14 and discredit the evidence of P.W.1 and P.W.2.

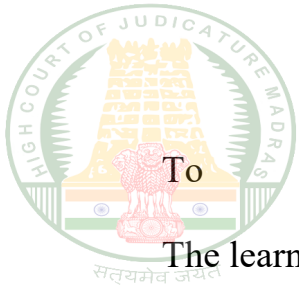
43. In that regard, this Court is of the view that the claim for damages has been substantiated and the quantification of damages by respondents 1 and 2 has also been substantiated.

44. For the aforesaid reasons, this Court do not find any merit in the appeal and, accordingly, the appeal suit stands dismissed. No costs.

**08-07-2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

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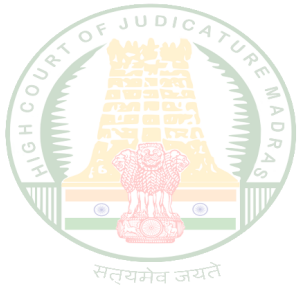
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To

The learned XVII Additional Judge,  
City Civil Court, Chennai

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**K.KUMARESH BABU, J.**

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