

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.08 OF 2010

- 1. The Indian Oil Corporation Ltd. (Assam Oil Division),**
(through the Executive Director, A.O.D., Digboi, Assam)

- 2. The Deputy Manager (Marketing),**
Indian Oil Corporation Ltd. (Assam Oil Division),
Kunjaban Depot, P.O. Abhoynagar, Agartala, West Tripura

- 3. The Operation Officer,**
Indian Oil Corporation Ltd. (Assam Oil Division),
P.O. Dharmanagar, North Tripura

..... **Defendant-appellants**

Versus

- 1. Smt. Pallabi Roy,**
wife of late Rahul Roy

- 2. Sri Simak Roy,**
son of late Rahul Roy,
represented by his mother & natural guardian,
Smti Pallabi Roy, resident of 30, Akhaura Road, Agartala
 - Legal heirs of late Rahul Roy,
son of late Bhupendranath Roy,
M/S. Auto Mobile Enterprise,
P.O.L. Transporter, I.O.C. Ltd. (AOD),
30, Akhaura Road, P.O. Agartala,
P.S. West Agartala, District- West Tripura.

..... **Plaintiff-respondents**

- 3. M/S. G.C. Roy Chowdhury & Sons (Petrol Pump),**
Assam-Agartala Road, P.O. & P.S. Jirania,
District- West Tripura

..... **Proforma -respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the defendant-appellants : Mr. A. Lodh, Advocate

For the plaintiff-respondents : Mr. S.M. Chakraborty,
Senior Advocate
Mr. R.G. Chakraborty, Advocate
Mr. S. Bhattacharjee, Advocate

Date of hearing : 25.03.2015

Date of judgment & order : 08.05.2015

Whether fit for reporting :

Yes	No
	v

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC from the judgment and decree dated 21.12.2009 delivered in Money Appeal No.23 of 2006 by the Additional District Judge, West Tripura, Agartala, Court No.2. By the said judgment dated 21.12.2009, the judgment dated 25.04.2006 delivered in Money Suit No.23 of 2004 by the Civil Judge, Senior Division, West Tripura, Agartala, Court No.1 has been reversed and the suit has been decreed in favour of the plaintiff-respondents herein.

[2] The appeal has been admitted for hearing on the following substantial questions of law.

- (i) **Whether the learned first appellate court committed illegality by ignoring the admission made by the plaintiff regarding existence of a**

contract in connection with transportation of the petroleum products?

- (ii) Whether the learned first appellate court committed illegality by accepting the Ext.1-H inasmuch as the appellant was not a party to the said document?**
- (iii) Whether the learned first appellate court failed to properly appreciate the evidence on record.**

[3] The fact essentially required for appreciating the substantial questions of law may be introduced at the outset. The plaintiff, Sri Rahul Roy, since deceased, now represented by his legal heirs, the respondents in this appeal, was the transporter of the petroleum products alongwith L.P.G. and he had been engaged by the Indian Oil Corporation Ltd. (Assam Oil Division) in the year 1986. While functioning as the approved transporter of I.O.C. (A.O.D.), the original plaintiff got an order for transporting 12000 (twelve thousand) lts. of motor spirit, for short 'the M.S.', from the Dharmanagar Depot for two different destinations within West Tripura District i.e. one at Jirania and another for GREF Company at Lichubagan. The plaintiff was entrusted accordingly with the load of the said petroleum product (M.S.), on his truck bearing No. TRL-3592 and his representative proceeded for the destinations. The said truck (tanker) reached at Jirania and reported to the Depot of defendant No.4, M/S G.C. Roy Chowdhury & Sons. The seal of the tanker was broken and the defendant No.4 raised dispute as to the density of M.S. The loaded truck was detained by the defendant No.4 at Jirania. The incident of detention was brought to the notice of the plaintiff by his driver and

the plaintiff gathered from the driver that while loading the truck with M.S. from the stock point Nos.11 and 12 at the Dharmanagar depot, it was affected by accumulation of rain water and as a result the density of M.S. was disturbed. On this, the plaintiff wrote a letter to the defendant No.2 and other defendants, expressing his grievance. But the vehicle was detained at Jirania by the defendant No.4 and it was kept uncared in an abandoned condition. Time and again, the plaintiff made sincere efforts to get his vehicle released, but the defendants paid no heed for release of the vehicle for a pretty long time and, as a result, the vehicle got damaged and he suffered pecuniary loss for the unreasonable detention by the defendants, for no fault of the plaintiff.

[4] The said case of the plaintiff was however, disputed by the defendant Nos. 1, 2 and 3 by filing their written statement. The said defendants denied all other allegations categorically and admitted that the original plaintiff was transporting the petroleum products alongwith L.P.G. since 1986 and thus he gathered sufficient experience in this line. The plaintiff entered in an agreement with the answering defendant No.1 as per the open tender floated by the I.O.C. (A.O.D.) i.e., the defendant No.1. In terms of the agreement for transportation previously entered between the plaintiff and IOC (ADO), the original plaintiff agreed to transport 12000 lts. of M.S. from the Dharmanagar depot to two different places i.e. Jirania and Lichubagan under West Tripura district. It has been admitted that the load of petroleum products was carried by the truck bearing No. TRL-3592. After the loading of 12000 lts. of M.S., the representative of the original

plaintiff, the driver of the vehicle, was given specific direction to deliver 8000 lts. to the defendant No.4 and 4000 lts. to G.R.E.F. at Lichubagan. The said load was given on 06.08.2003. The defendant No.3, the appellant No.3 herein, handed over delivery note alongwith all papers to the driver after sealing the oil tanker. The loaded tank reached at Jirania depot of the defendant No.4 with M.S. and after breaking the seal it was found that the density was varying and the quality of M.S. was not upto the mark. The density was checked by the defendant No.2, the appellant No.2 herein, while loading the vehicle.

[5] The defendants have asserted in the written statement that:

" Due to the fault of the driver the density of the M.S. was disturbed and while loading at Dharmanagar Depot the density of M.S. was correct and the driver being satisfied, took the load but at Jirania Depot it was detected the quality of the density of the M.S. was not upto the mark and defendant No.4 checked the density of the M.S. Thereafter samples were sent by defendant No.2 to the concerned Laboratories for examination and found the density of the M.S. was varying with the petrol products kept at the depot at Dharmanagar which does not match with the density of the M.S. kept in the depot at Jirania. The plaintiff without reporting the matter to the Dharmanagar depot, kept the vehicle at Jirania in the Depot of defendant No.4 for which the defendants are not at all liable for any compensation as prayed for."

[6] The defendant No.4 has also separately filed the written statement, supporting the written statements of the defendant Nos. 1, 2 and 3. In addition, it has been asserted that when the density of M.S. was detected at Jirania depot by the defendant No.4, it was brought to the notice of the other defendants and after the laboratory examination it was found that the density did not match with the

density of M.S. delivered from Dharmanagar depot. The plaintiff, instead of reporting the matter with the Dharmanagar depot, kept the vehicle with the load at Jirania depot at his risk and in spite of instruction, the plaintiff did not report to the Dharmanagar depot. For which, neither the defendant No.4 nor the other defendants cannot be made liable to pay any compensation. Hence, the suit of the plaintiff is required to be dismissed with cost.

[7] The principal issue that has been formulated based on the pleadings is as follows:

“Whether the plaintiff is entitled to get compensation as prayed for?”

[8] From scrutiny of records it appears that plaintiff examined two witnesses and adduced 17 documentary evidence (Ext.1 to Ext.17) and the defendants produced three defence witnesses besides submitting documentary evidence (Ext.A to Ext.G). After appreciating the evidence, the trial court returned the following observation :

“Learned Senior counsel Mr. S.M. Chakraborty, for the plaintiff, raised one question basing on Exhibit 1, that even though load was taken by his tanker as per the previous agreement which was not in force at the relevant time for which the plaintiff cannot be held liable as per the previous agreement marked Ext.17, as the terms of agreement was not in force nor extended beyond 31st May, 2003, as per Ext.1. But the carriage of the M.S. was made on 6.8.03 long after the expiry of the agreement for which he is not liable as per the previous terms of agreement marked Ext.17. The said P.W.1 in his cross examination clearly stated that the articles were carried by the driver as per his instruction on good faith as per terms of the previous contract, as such the allegation of the plaintiff that the terms and conditions of the previous contract will not be applicable are not correct. Besides, it appears from Ext.6, letter issued by defendant No.3 from Dharmanagar Depot requesting the

plaintiff to send the tanker along with the driver to Dharmanagar for taking back the articles after sample testing but it was not done. Rather, the plaintiff by sending several letters, was hammering only on one point that he was not liable for variation of the density of the M.S. as the M.S. was loaded from the stock point No.11 which was affected by rain water. It further appears from the Ext. 9 that Deputy Manager on behalf of the defendant No.1 also requested the plaintiff to send the petrol products along with the tanker to Dharmanagar for return but the plaintiff did not send the vehicle, rather, kept the vehicle at the site of the defendant No.4 for indefinite period causing loss of the products. Lastly the defendant No.3 by sending a telegram on 31.10.03 marked Ext.12 and 13 respectively, requested the plaintiff to return the products along with the vehicle to the Dharmanagar Depot but the said request was also not acceded to by the plaintiff."

[9] Based on the said finding, the suit was dismissed with definite observation that the plaintiff at his own risk kept the vehicle at the site of the defendant No.4 uncared for and sustained loss, if any, for his own fault for which, the defendants cannot be held liable and for that reason he cannot claim compensation for damages that he had sustained. For purpose of reference, the relevant part of the cross-examination of the original plaintiff namely Sri Rahul Roy, may be extracted:

"For the last 15 years I am carrying on business as a transport contractor with defdt.No.1. As per my standing instruction my driver placed the Tanker No. TRL-3592 on 6-8-03 before the defdt. No.3 seeking load for Petroleum products for the purpose of transportation. At that time I had no any valid contract with Defdt. No.1. At the relevant time of carriage there was no terms and conditions, but I had to carry the load as per the previous terms and conditions. At the time of transport only my driver was in my vehicle to take the petroleum products from the defdt. No.3 and brought the same from Defdt. No.4 and I was not present at that time."

He has further admitted in the cross-examination that,

“Defdt. No.3 by sending letters, telegram etc. on different occasions requested me to bring the vehicle in question at Dharmanagar, but I did not place it as the said letter did not contain any terms for payment towards back journey and they also refused to pay.” [Emphasis supplied]

[10] The appellate court determined the following points for deciding the appeal on merit :

“Whether the loss sustained by the plaintiff-appellant was because of his own fault, in other words, whether the findings of the learned court below to that effect was justified?”

While appreciating the said question, the appellate court has returned the following finding :

“The agreement between the Indian Oil Corporation Ltd. and the appellant was completed after the products were transported from Dharmanagar to Agartala(Jirania). A further proposal/instruction/ direction for return back of the products to Dharmanagar Depot is fresh one and one-sided and if not accepted by the plaintiff-appellant, it cannot bind himself. The proposal initiated by the Indian Oil Corporation Ltd. for return of the products to Dharmanagar Depot was a fresh proposal accrues after the refusal of the acceptance of the products by respondent No.4 and the proposal remained in the form of a proposal and unless accepted by the other side, cannot be termed to a valid contract/agreement. It is needless to say that under the Contract Act proposal when accepted becomes agreement. Therefore, it can very safely hold that there was no contract/agreement between the parties for returning back of the products to Dharmanagar Depot merely because the transporter carried the products up to Jirania on the basis of an agreement, he cannot be bind down on any fresh proposal unless agreed thereto. The argument that the plaintiff-appellant shown adamant attitude cannot make himself responsible as he has not entered into any fresh agreement to the effect that in the even of failure of effecting delivery of the products he shall get back the products to Dharmanagar Depot.. As there was no contractual obligation on the part of the plaintiff-appellant, he was at liberty to show adamancy or whatever stands he likes to take. That there was no agreement to get back the products to Dharmanagar in case of non delivery is implicit from the fresh

instruction/request/ direction/proposal made by the Indian Oil Corporation requiring the plaintiff-appellant to come back with the products to Dharmanagar.”

[11] It has been also contended by the respondents that approximate 11(eleven) tankers containing products from the same depot on the same date were dispatched but there was no allegation from any corner, except that of the respondent No.4, which categorically shows that the products dispatched by the Indian Oil Corporation Ltd. from the Dharmanagar depot, there was no wrong in the density of the product. It further implies that the products were mishandled on the way from Dharmanagar to Jirania. Such contention, according to the respondents, does not carry any force. Mere assertion or presumption of mishandling is not sufficient inasmuch as seals of the tanker were found intact and there had been no allegation of tampering with the seals. Further, the scientific proof is not on record to establish the fact that other 11(eleven) tankers’ products were good in quality. Unless the scientific proof is adduced to the satisfaction of the Court, there is no scope to hold that products were of different density, as the products were filled in the tankers from the same point. The Court is not in a position to hold that merely because the products were sent from same point there cannot be inferior density when tested in a particular point.

[12] Mr. S.M. Chakraborty, learned senior counsel has submitted that had the products of other 11(eleven) tankers been supplied from the top level of the products in the point and the tanker

of the plaintiff-appellant was filled in, from the product lying bottom of the point there is likelihood of incorrect density. However, this submission of the learned senior counsel is also not supported by any scientific proof. As such the court is also not in a position to accept the same as authentic. Be that as it may, as already noted above that there is no foundation to hold the plaintiff liable as to the density of the product.

[13] Mr. A. Lodh, learned counsel appearing for the appellants, at the outset has referred to the previous contract (Ext.17), which the plaintiff himself has admitted that the said contract was in force. In the Clause-17 of the said contract it has been provided as under:

"The contractors shall also be responsible for safe conduct of supplies in transit. If at any time, the product is found contaminated during the transit and/or at the time of delivery to the consignee, the Corporation shall have absolute discretion to take back the product or to refuse taking back of such products and in case of such contaminated stock, the Corporation shall be at liberty to debit the contractor the cost of product plus a sum equivalent to the cost of product and damage. That is to say that the contractors shall be responsible to pay to the Corporation a sum equivalent to the double of the cost of such product."

Mr. Lodh, learned counsel, has submitted that in view of the above clause, the Corporation "shall have absolute discretion to take back the product". All the instructions as admitted by the plaintiff directed the plaintiff to take back the product to the Dharmanagar depot. As such, the finding that has been returned by the first appellate court emanates absolutely from misreading of the clause 17,

as aforementioned, which was in force at the relevant time of transit and hence cannot be sustained.

[14] Mr. S.M. Chakraborty, learned senior counsel appearing for the respondents, has submitted that there is no infirmity in the impugned judgment, inasmuch as that there was no stipulation as to reimbursement of the cost that would have incurred in the return journey to the Dharmanagar depot. It was the obligation of the appellant to release the vehicle by shifting the petroleum product (M.S.) from the vehicle of the original plaintiff to any other tanker. There is no provision in the agreement/contract as to reimbursement of the cost for the return journey.

[15] The issue is not complex. If the admission made by the original plaintiff in his cross-examination is appreciated, there cannot be denial that the plaintiff admitted that the contract (Exbt.17) was in force during the relevant transit and as such the terms and conditions of that contract were binding on the parties.

Exbt.1, according to the court, cannot have any relevance in the matter, inasmuch as it is the formal renewal of the contract with effect from 30.04.2004 whereas the transit commenced on 06.08.2003. From the cross-examination of the original plaintiff (PW 1) it has transpired that the previous contract was in force at the time of transit under reference.

[16] Therefore, this court does not have any hesitation to observe that the finding as returned by the first appellate court by the

impugned judgment is perverse and cannot be sustained. Hence, the impugned judgment and decree dated 21.12.2009 are set aside.

[17] As consequence thereof the suit is dismissed.

[18] In the result this appeal stands allowed. Draw the decree accordingly.

Send down the LCRs forthwith.

JUDGE