

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

C.C.C.A.No.98 of 1998

Judgment:

This appeal is preferred by the defendant against the judgment dated 11.05.1998 in O.S.No.908 of 1989 passed by learned Additional Judge, City Small Causes Court-cum-VI Additional Judge, C i t y Civil Court, Hyderabad.

2) The factual matrix of case is thus:

a) The first plaintiff carries on business in general insurance apart from other business activities. In the course of business it issued a marine policy to cover the transit risk in respect of suit consignments vide Lorry Receipt No.51181 dated 08.05.1986 and Lorry Receipt No.51211 dated 22.05.1986. The consignment consists of water treatment chemicals of 175 Carboys of total value of Rs.2,24,250/- was booked for transportation by road from Chennai to Hyderabad with the appellant/defendant by M/s.Chemicals Enterprises to be delivered to 2nd plaintiff. The said consignment was duly insured by the 2nd plaintiff with the 1st plaintiff. The consignment reached the destination on 03.07.1986 in a total damaged and short condition. As per plaintiffs, the said damage was occurred during the transit due to the negligence of the defendant and its employees. The defendant carrier issued a

certificate acknowledging the shortage and damage on 03.07.1986. According to the plaintiffs, the 2nd plaintiff preferred a claim on 04.07.1986 with the defendant but the defendant failed to settle the claim. The first plaintiff settled the claim of Rs.55,471/- and 2nd plaintiff executed a letter of Subrogation and Special Power of Attorney dated 03.07.1986 in favour of 1st plaintiff. Thus, according to the plaintiffs, defendant carrier is bound to pay the suit claim.

Hence, the suit.

b) The defendant opposed the suit mainly on the contentions firstly that the consignment was booked by M/s. Chemical Enterprises “at owner’s risk” and hence no liability can be fastened on ‘carrier’ and secondly, the shortage was occurred in the chemical due to defective packing by the consignor and therefore, there was negligence on the part of consignor due to which damage was occurred. The defendant further contended that damage certificate dated 03.07.1986 was issued as a mere certificate of witness on the strength of which plaintiff cannot lay any claim. Defendant thus prayed to dismiss the suit.

c) During trial, PW1 was examined and Exs.A1 to A11 were marked on behalf of plaintiffs. DW1 was examined and Exs.B1 to B4 were examined on behalf of defendant.

d) The trial Court on appreciation of facts and evidence ultimately decreed the suit for Rs.55,741/- with 18% p.a. interest from the date of OP till the date of decree and subsequent interest at the rate of 6% p.a. In the process, the trial Court did not agree with the contention of defendant that the defendant was not liable because consignment was booked “at owner’s risk”. The trial

Court relying upon the Division Bench judgment of this Court held that the carrier cannot repudiate its liability on that contention. So far as the contention of defendant that the consignor was responsible for the faulty packing is concerned, the trial Court held that DW1—the Manager admitted that he was not aware about the packing conditions of suit consignment and hence, he cannot say that the consignment was in a leaking condition or a poor packing condition and he also admitted that he do not know who was the booking clerk at the time of booking the consignment. The trial Court thus held that defendant failed to prove that consignment was packed in a bad condition.

Hence, the appeal.

3) The parties in the appeal are referred as they stood in the trial Court.

4) Heard arguments of Sri K.Srinivasa Murthy, learned counsel for appellant/defendant and Sri Kota Subba Rao, learned counsel for respondents/plaintiffs.

5) During the course of arguments, learned counsel for appellant fairly conceded that though the appellant/defendant filed appeal on several grounds including the ground of booking of the consignment at owner's risk, but the appellant is not insisting that ground in view of decision of Honourable Apex Court reported in

Nath Bros. Exim International Ltd. v. Best Roadways Ltd.^[1]

wherein it was held that even if the goods were booked with the carrier "at owner's risk" that would not exempt the carrier from his own negligence or that of his agent or servant and therefore, the appeal is mainly concentrated towards high rate of interest awarded by the trial Court and the same may be reduced to 6% throughout.

6) Learned counsel for respondents/plaintiffs while supporting the judgment left the rate of interest to the discretion of the Court.

7) Having regard to the above respective submissions, the point for determination in this appeal is:

“Whether 18% interest awarded by the trial Court from the date of suit till the date of decree is usurious and needs scale down?”

8) **POINT:** While carping the rate of interest awarded by the appellate Court as high side, learned counsel for appellant submitted that the suit transaction is not a commercial transaction, rather the contract between the parties is a service contract and therefore, trial Court having regard to this fact ought not to have awarded 18% interest which will be generally granted by the Courts in the case of commercial transactions. I find some force in the submission of learned counsel for appellant.

In a similar case, the Honourable Apex Court in a decision reported in ***M.K.J. Corporation v. The United India Insurance Company Limited***^[2] awarded interest @12% p.a. against the appellant/Insurance Company.

9) Having regard to it, the rate of interest issued by the trial Court is reduced from 18% to 12% p.a. from the date of suit till the date of decree. The subsequent interest shall be @ 6% p.a. from the date of decree till the date of realisation. This appeal is allowed to the limited extent, as stated supra. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 06.07.2015

Note: L.R. copy to be marked: Yes / No

Murthy

[\[1\]](#) 2000 (4) SCC 553

[\[2\]](#) AIR 1997 SC 408