

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.1223 of 2012 (O&M)
Date of Decision: November 26, 2015.**

National Insurance Company Limited

.....APPELLANT.

VERSUS

M/s National Carriers and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashwani Talwar, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

2. This is regular Second Appeal against the concurrent judgments of Courts below, dismissing the suit filed by the plaintiff-appellant seeking recovery of ₹96,834/-.

3. The plaintiff-Insurance Company had insured the goods of Jamna Auto Industries Limited, being transported through National Carriers, defendant-respondent no.1. As per the plaintiff, the truck in which the material loaded by defendant no.2 was being carried, met with an accident near Kundli Barrier, Delhi and overturned, resulting in damage to the material to the tune of ₹73,638/-, which defendant no.2 claimed from the plaintiff. After including the amount of interest and other expenses, the plaintiff worked out the due amount as ₹96,834/-.

4. Both the Courts below dismissed the suit filed by the appellant-

plaintiff on the ground that it has failed to prove any negligence on the part of defendant no.1, its agent or driver in causing damage to the consignment/goods, delivered by defendant no.2. It also took note of the fact that the goods were being carried at owner's risk.

5. On perusal of the lower Courts record, it is evident that the truck carrying consignment had overturned when it was lying parked at Kundi barrier on the left side of the road. It was raining at that time and due to rainy water, the left side of the *kacha* portion of the road gave way, resulting in sinking of the earth below the truck, which overturned on the left side, causing damage to the boxes in which the material had been packed.

6. Both the Courts below have taken note of the fact that the plaintiff has failed to produce evidence on record to show that the loss was caused due to neglect on the part of the carrier. None of the witnesses examined by the plaintiff-appellant had stated that the carrier was negligent while carrying the goods. Even if term mentioned in Ex.P1 that the goods were being transported at owner's risk be ignored, still it does not make out a case that the accident was caused due to negligence on the part of the carrier under Section 8 of the Carriers Act, 1865.

7. On perusal of the paper book and record of Courts below, I find no legal or factual infirmity therein calling for any interference.

8. No substantial question of law requiring determination arises in this appeal, which has no merit.

9. Dismissed.

November 26, 2015.

Sachin M.

**(SURINDER GUPTA)
JUDGE**