

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

RSA No.5095 of 2012 (O&M)

Date of decision : 12.02.2015

M/s Premier Transport Ltd. & another

...Appellants

Versus

M/s New India Assurance Co. Ltd. & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Balram Singh, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the respondent No.1.

AMIT RAWAL, J. (Oral)

This is a Regular Second Appeal at the instance of appellants-defendants No.1 & 1A against the judgment and decree of trial Court dated 17.12.2009, whereby the suit filed by the respondent-plaintiff for recovery of ₹1,96,476/- has been decreed by the trial Court and appeal filed against aforementioned judgment and decree by the appellants-defendants No.1 & 1A has been dismissed.

Mr. Balram Singh, learned counsel appearing on behalf of appellants-defendants in support of grounds of appeal has submitted that there was no negligence of transporter, much less, by driver. Respondent-plaintiff invoked the provision of Section 9 of the Goods Carrier Act, 1865 (hereinafter to be referred as the 'Act') and thus urged that both the Courts

below have committed illegality and perversity in decreeing the suit and dismissing the appeal. The Report of Surveyor also support the case of appellant.

Mr. Vinod Gupta, learned counsel appearing on behalf of respondent-plaintiff submits that Surveyor Report Ex.P3 does not support the case of the appellants-defendants and rather it supports the case of the Insurance Company. He relied upon para No.4 of the Report. For the sake of brevity, para No.4 is extracted herein as below:-

“4. THE ACCIDENT

The Preliminary Report of M/s Rakesh Narula & Co. has been received and nature of accident is described in detail. In brief the accident as reported is;

The F.F.C. were being transported in Truck/Trailor bearing No.HR-47/1821. On 18/07/99, this was moving on Taloda-Ankleshwar Road. A Truck had met with accident and was lying toppled. Another Truck was parked near this occupying the road and goods from accident truck were being transhipped. The above Trailor driver was moving from side, but the road soil collapsed and the vehicle capsized after breakage of wire ropes holding the coils, and resulting in the F.F. Elements falling in the side ditch.”

Perusal of para No.4 of the Surveyor Report it is revealed that the trailor driver was moving from the side but the road soil collapsed and resulting into capsizing of the vehicle which was carrying the FFE Coils and, accordingly, they were damaged.

I have heard learned counsel for the parties and perused the

impugned judgment and decree and as well as record of the trial Court.

I am of the view that appeal being devoid of merit & is liable to be dismissed.

From the perusal of para No.4 of the Surveyor report, it is manifest that truck was not driving on the road nor it has come on record that there was no road and instead of road it was soily road. Rather it has come on record that truck was moving from the side of the road and in the meantime the soil collapsed. Thus, the presumption is drawn that vehicle was not being driven on road. No evidence has been brought on record by the appellants-defendants to rebut the aforementioned report by leading the direct & cogent evidence. There is presumption of negligence, as mentioned in Section 9 of the Act, when there is loss or damage had taken place.

Both the Courts below have rendered a finding of fact and law, by relying upon oral and documentary evidence.

There is no illegality and perversity in the findings recorded by the Courts below which are based on the facts and law.

No substantial question of law arises for adjudication of the present appeal.

Accordingly, the present appeal is dismissed.

12.02.2015

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**(AMIT RAWAL)
JUDGE**