

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

RSA No.4902 of 2014

Date of decision: 16th February, 2015

Shri Balaji Roadways India Ltd.

... Appellant

Versus

United India Insurance Co. Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.S. Chatrath, Advocate
for the appellant.

FATEH DEEP SINGH, J.

This is an appeal against consecutive findings dated 03.10.2011 and 31.03.2014 of the learned Civil Judge (Jr. Divn.), Ludhiana and learned Additional District Judge, Ludhiana decreeing the suit of the plaintiff United India Insurance Co. Ltd. (in short, 'the insurer') and dismissing the appeal of the appellant.

It is proven case that plaintiff No.2 M/s Kay Jain Hosiery INC dispatched a consignment of readymade garments to M/s Saleh Abdullah Bawareth EST, Post Box No.18119, Jeddah, Saudi Arabia vide invoice No.KJH/1504/2002-2003 dated 10.04.2002 with the value

of 41400 US Dollars and which consignment was dispatched through defendant-appellant Shri Balaji Roadways (India) Ltd. vide GR No.97252 dated 10.04.2002 to Mumbai for safe carriage and delivery at the shipping agent of plaintiff No.2. Since the consignment was duly insured with plaintiff No.1 the insurer, and which had obtained as per the procedure letter of subrogation and special power of attorney from plaintiff No.2 however, the goods were short delivered at the destination which was confirmed by the defendants vide their certificate dated 02.05.2002. The insurer having paid a sum of ₹72,864 being the price of the lost goods filed the suit for recovery of this amount from the carrier and which stood decreed along with interest @ 9% p.a.

Though Mr. S.S. Chatrath, Advocate representing the appellant has sought to rake up the plea that no loss has accrued and has even gone to the extent of denying issuance of shortage certificate by the appellant and rather has sought to deviate by taking a plea that neither the loss nor damage for short delivery was due to any cause or criminal act of the carrier or of its servants or agents or that there was specific stipulation limiting the transport of the goods at owner's own risk and that there was a cap on liability of the carrier. It is invariably an admission by the appellant having acted as a carrier for the delivery of consignment in question and which as per their own certificate was found to be short delivered.

The provisions of Sections 8 and 9 of the Carriers Act, 1865 clearly embody that in a suit for damage for short delivery

against common carrier, the plaintiff need not prove any negligence and is thus, absolutely free from the burden of proving that short delivery was caused in consequence thereof owing to any cause or criminal act on the part of the defendant. It needs to be appreciated that all that the plaintiff has to prove in a case of short delivery is the factum of short delivery and the presumption of negligence on the part of the carrier being a rebuttable presumption thus, it is for the common carrier to rebut such a presumption and if he fails to do so leads to the decreeing of the suit.

In the present case there is a categorical finding returned by the courts below holding the appellant to be liable which cannot be faulted with and thus there being consistent finding does not calls for any interference. The appeal being wholly without any merit stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

February 16, 2015
rps