

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
05.08.2016	12.08.2016

Coram:

The Hon'ble Mr.Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.329 of 2010

1. M/s.Brakes India Ltd.,
rep.by power agent/Subrogee
M/s.United India Insurance Company Ltd.,
Chennai 600 002
and carrying on business at Padi
Chennai 50

2. M/s.United India Insurance Company Ltd.,
Rep.by its Senior Divisional Manager
Registered Office at
No.24, Whites Road,
Chennai 600 014
and Divisional Office No.12
at W.122, Third Avenue
Anna Nagar, Chennai 600 040

.. Appellants

Vs.

M/s.BIC Logistics Ltd.,
Regd. Office at 9009/11
D.B.Gupta Road, Paharganj
New Delhi 110 055 and
Branch Office at
6-D, Ega Trade Centre,
809, P.H.Road,
Chennai 600 010

.. Respondent

This Appeal is preferred under Order XXXVI Rule (II) of O.S.Rules r/w Clause 15 of the Letters Patent Act against the order of this Court dated 26.2.2010 in C.S.No.546 of of 2006.

For Appellants : Mr.N.Venkataraman
for M/s.Nageswaran & Narichania

For Respondent : Mr.K.K.Sancheti for
M/s.Sai Bharath and Illan

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED
BY A.SELVAM, J.)

This Original Side Appeal is directed against the judgment and decree dated 26.2.2010 passed in C.S.No.546 of 2006 by the learned Single Judge of this Court.

2. The appellants herein, as plaintiffs, have instituted C.S.No.546 of 2006 on the file of this Court, praying to pass a money decree, wherein the present respondent has been shown as sole defendant.

3. In the plaint, it is averred that the first plaintiff has entrusted certain automobile spare parts to the defendant, who is a public carrier

within the meaning of Carriers Act, 1865 at Polambakkam, Cheyyar Taluk, Tamil Nadu. The same has to be transported to M/s.M.V.Axles Ltd, Jamshedpur. The goods have been insured by the first plaintiff with the second plaintiff (insurer). The goods have not been received by the consignee and subsequently it is found that the driver and cleaner of the container have been murdered. Since the defendant has failed to deliver the goods to the consignee, the defendant is liable to pay the suit amount. Under the said circumstances, the present suit has been instituted for the relief sought therein.

4. In the written statement filed on the side of the defendant, it is averred that the Court is not having territorial jurisdiction and the suit is barred by limitation under the Limitation Act. The defendant, public carrier, is not liable to pay the suit amount. The defendant has not been able to deliver the goods due to murder of driver and cleaner and there is no merit in the suit and the same deserves to be dismissed.

5. On the basis of the rival pleadings raised on either side, the learned Single Judge of this Court has framed necessary issues and after contemplating both the oral and documentary evidence has dismissed

the suit. Against the judgment and decree passed by the learned Single Judge, the present Original Side Appeal has been filed at the instance of the plaintiffs as appellants.

6. Before contemplating the rival submissions, the Court has to narrate the following admitted facts:

It is an admitted fact that on 30.5.2003, the first plaintiff has entrusted automobile spare parts to the defendant, who is a public carrier and the same have to be sent to M/s.M.V.Axles Limited, Jamshedpur, but the defendant has not handed over the goods. Of late, it has come to know that both the driver and cleaner have been murdered and thereafter, the second plaintiff has conducted a survey and the Surveyor's report has been marked as Ex.P.14.

7. The learned counsel appearing for the appellants/plaintiffs has argued to the effect that the goods in question have not been plundered by inter state enemies and the learned Single Judge has erroneously found that the crime has been committed by the enemies of the State and ultimately dismissed the suit and therefore, the judgment and

decree passed by the learned Single Judge are to be interfered with.

8. In support of his contention, he has drawn the attention of the Court to **Law Lexicon**, wherein it is stated like thus:

"The definition of 'enemy' is an inclusive definition and means and includes not only the raiders but also the nationals of the State who have either taken part or assisted in the campaign which was a continuous activity consisting of various acts like murder, arsonet. The word 'enemy' is used as a compendious expression to denote collectively all the persons who are engaged in the organised activity described as campaign and whose design and object was to subvert the Government"

9. Further, he has relied upon the following decisions:

(i) **1961 ILR (Madras) 1091** (P.K.Kalasami Nadar v. K.Ponnuswami Mudaliar and others), wherein this Court held that if loss of goods was occasioned due to gross negligence on the part of the public carrier, the same is liable to pay the value of the goods.

(ii) In **1971 ACJ 298**, the Kerala High Court has held that if there is negligence on the part of the defendant during transit, the defendant cannot disown its liability.

10. From a close reading of the decisions mentioned supra, it is made clear that if there is any loss during negligence on the part of the public carrier, the same is liable to pay the actual damage.

11. In order to repudiate the contentions put forth on the side of the appellants/plaintiffs, the learned counsel appearing for the respondent/defendant has suitably drawn the attention of the court to the amendments made in the Carriage by Road Act, 2007, wherein in Clause No.17, it is stated that save as otherwise provided in this Act, a common carrier shall be responsible for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment entrusted to him for carriage, arising from any cause except the following, namely

- a) act of God
- b) act of war or public enemy
- c) riots and civil commotion
- d) arrest, restraint or seizure under legal process

e) order or restriction or prohibition imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf.

12. From a mere reading of Clause 17, it is made clear that if any loss or destruction has been caused by a public enemy, common carrier is not liable.

13. In the instant case, it is an admitted fact that the alleged crime has been committed by interstate gangsters and due to that occurrence, the driver and cleaner have been murdered and the same has been evidenced in Ex.B.14, Surveyor's report. Therefore, it is quite clear that since occurrence has taken place due to interstate gangsters and since there is no negligence on the part of the defendant, the defendant cannot be mulcted with liability.

14. The learned counsel appearing for the respondent/defendant has drawn the attention of the court to the decision reported in **2001**

(1) Law Weekly 756 (Nath Bros. Exim International Ltd., v. Best Roadways Ltd.), wherein the Hon'ble Supreme Court has held that no burden is on the owner to show that the loss or damage was caused owing to negligence in criminal act of carrier, provided under Section 9 of the Carriers Act, 1865. The carrier can escape liability only if it is due to act of God or enemies of State.

15. From the decision referred to supra, the Court can easily deduce that if loss has occasioned due to act of God or enemies of State, common carrier is not liable.

16. In the instant case, as noted down earlier, as per Clause 17 of the Carriage by Road Act, 2007, if a loss has been occasioned by a public enemy, the common carrier is not liable. Therefore, viewing from any angle, the contention put forth on the side of the respondent/defendant is really having acceptable force, whereas the contention put forth on the side of appellants/plaintiffs is sans merit.

17. The learned Single Judge, after considering the available evidence on record, has rightly found that the respondent/defendant is

not liable to pay the amount claimed in the suit and therefore, the present Original Side Appeal deserves to be dismissed.

In fine, this **Original Side Appeal is dismissed without cost**. The judgment and decree dated 26.2.2010 passed in C.S.No.546 of 2006 by the learned Single Judge are confirmed.

(A.S.,J.) (P.K.,J)
12.08.2016

Index : Yes/No
ajr

**A.SELVAM, J.
and
P.KALAIYARASAN , J.**

ajr

**Judgment in
O.S.A.No.329 of 2010**

12.08.2016