IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on: 26.04.2016

1. RSA No.3570 of 2013

Delhi Assam Roadways Corporation Limited

....Appellant

Versus

United India Insurance Company Limited

....Respondent

2. RSA No.4384 of 2013

Delhi Assam Roadways Corporation Limited

….Appellant

Versus

United India Insurance Company Limited

….Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Jainainder Saini, Advocate
for the appellant (in RSA Nos.3570 and 4384 of 2013)

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

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REKHA MITTAL J.

This order will dispose of RSA Nos.3570 of 2013 and No.4384 of 2013 as common questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from RSA No.3570 of 2013.

The appellant-Delhi Assam Roadways Corporation Limited (in short 'the corporation') filed a suit for recovery of Rs.8,88,492.50/-

paise on the plea that heavy goods vehicle Volvo Model No.FH-12 bearing registration No.CG-04G-4113 was insured with the respondent vide cover note No.885984 dated 01.07.2003 w.e.f. 01.07.2003 to 30.06.2004. Vide consignment note dated 21.05.2004, the aforesaid vehicle was loaded with 65,700 MT of coal for transportation from Jindal Coal Mines at Tamnar to Jindal Steel and Power Limited, Kharsia Road, Raigarh (Chhatisgarh). On the same day, while the vehicle was being unloaded at the destination, a boulder of coal got crushed under the tyre in the last axle housing, as a result thereof, the vehicle overturned and sustained extensive damage. DDR No.688 dated 22.05.2004 was lodged with Police Station at Kotra Road, Raigarh and the matter was immediately reported to the respondent and insurance claim for accidental damages in the prescribed form was lodged, duly registered as claim No.111205/31/4/00357 with the respondent. All the necessary and relevant documents as and when asked by the respondent were sent by the appellant from time to time. It is averred that the respondent repudiated claim of the appellant through an illegal and non-speaking legal notice dated 10.10.2007 on the plea that at the time of accident, the vehicle was carrying a load that was more than permissible limit mentioned in its registration certificate and certificate of loading capacity issued by RTO, Raipur.

Counsel for the appellant would contend that assuming though not admitting that the vehicle in question was carrying load more than its capacity prescribed in registration certificate, the respondent cannot repudiate the claim on the said plea without substantiating their plea that the accident occurred due to overloading. Further dilating, it has been argued that even if it is accepted that the accident occurred due to overloading as alleged by the respondent, the respondent cannot escape its liability at least to the extent of 75% of admissible claim. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India ***"Amalendu Sahoo vs Oriental Insurance Company Limited",*** **2010(2) RCR (Civil) 635.** Reference has been made to the judgment of the National Consumer Disputes Redressal Commission, Karnataka ***"New India Assurance Company Limited vs Narayan Prasad Appaprasad Pathak"***, **2006(2) CPJ 144**, which has been relied upon by Hon'ble the Supreme Court of India in ***Amalendu Sahoo's case (supra)***.

I have heard counsel for the appellant, perused the records particularly the judgments impugned and the judgments cited at bar.

Before adverting to the observations made by Hon'ble the Supreme Court of India in ***Amalendu Sahoo's case (supra)***, it would be appropriate to advert to the findings recorded by the Courts below wherein the Courts have consistently rejected claim of the appellant/plaintiff. The learned trial Court in Paras 17 and 18 has commented adversely against the plaintiff/appellant and a relevant extract therefrom reads as follows:-

> *"**17.** It is well settled law that the plaintiff has to stand on his own legs. It was incumbent upon the plaintiff to prove that the accident took place on 21.05.2004 at Rajgarh. The plaintiff was to plead specifically the date, time and manner of the accident. He was to prove the*

> *report of the same in the police station. Further the plaintiff was to prove the damages and repair by examining the authors of the bills of alleged repair working. Merely exhibiting the bundle of the bills by the plaintiff's company does not dispense with the mode of proof. The bills placed on file by the plaintiff themselves without examining the persons, who issued those bills does not prove that in fact the repair work was done. The said bills are not per se admissible documents.*
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> ***18.*** *Admittedly the claim of the plaintiff is based on the report of surveyor which says that the accident was caused due to crushing of coal piece under the tyre. It was mandatory for the plaintiff to prove the said report of the surveyor by examining the surveyor himself. However, neither the report has been prove nor the surveyor has been examined and as such the very basis of the claim of the plaintiff is missing."*

Counsel for the appellant is not in a position to assail much less successfully the factual findings recorded by the learned trial Court, duly affirmed in appeal. The appellant did not examine any witness to prove the bills in regard to expenses incurred on repair of the vehicle in question. As per settled position in law, mere marking of a document as an exhibit is not sufficient to dispense with proof in accordance with law. The appellant cannot take advantage of the procedure being followed by the Tribunals while dealing with claims in motor vehicular accident cases as the Tribunals are not bound by the strict principles laid down under the Indian Evidence Act. On the contrary, in a civil suit, the pleaded facts are to be proved in accordance with law and the matter is to be decided on the basis of balance of probabilities. As the appellant did not examine any witness to prove the bills in question, the Courts below have rightly refused to rely upon the bills to accept plea of the appellant that he has incurred expenditure on repair of the vehicle in question. Similarly, the appellant has not placed on record the report of the Surveyor for perusal and appreciation much less to provide an opportunity to the respondent to challenge correctness and authenticity of the said report. In absence of the appellant having proved that the vehicle in question suffered any damage resulting in monetary loss on account of expenditure incurred on repair charges, etc. neither any fault can be found in the consistent findings recorded by the Courts below nor the appellant can take any advantage to its contention from the judgment in ***Amalendu Sahoo's case (supra)***.

In view of what has been discussed hereinabove, finding no merit, the appeals are dismissed *in limine*. No order as to costs.

(REKHA MITTAL)
JUDGE

26.04.2016
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