

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No.171 of 1998

Judgment Reserved on : 2.8.2017

Judgment Delivered on : 27.10.2017

The Oriental Insurance Company Limited, Head Office, Ashaf Ali Road, New Delhi, through Senior Divisional Manager, Oriental Insurance Company Limited, Divisional Office, Geetanjali Bhawan, Main Road, Korba, Tahsil Korba, District Bilaspur, M.P. (now Chhattisgarh)

---- Appellant

versus

1. M/s Transport Corporation of India Limited, Transport House 218/B, Puna Street, Bombay 400 009, Head Office 1-7-293, Mahatma Gandhi Road, Secunderabad, Andhra Pradesh, Through Branch Manager, Transport Corporation of India Limited, Transport Nagar, Korba, Tahsil Korba, District Bilaspur, M.P. (now Chhattisgarh)
2. M/s Bharat Aluminium Company Limited through Deputy Manager (F&A), Bharat Aluminium Company Limited, Balco Township Korba, Tahsil Korba, District Bilaspur, M.P. (now Chhattisgarh)

--- Respondents

For Appellant : Shri Ghanshyam Patel, Advocate
For Respondent No.1 : Shri B.P. Sharma and Shri Chakresh Tiwari, Advocates
For Respondent No.2 : Shri Sudeep Agrawal and Shri Deepak Lal, Advocates

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal has been preferred under Section 96 of the Code of Civil Procedure against the judgment and decree dated 29.11.1997 passed in Civil Suit No.17-B of 1993 by the Additional District Judge, Korba, whereby the Learned Additional District Judge has dismissed the suit of the Plaintiff/Appellant/Oriental Insurance Company Limited.
2. Brief facts of the case are that Bharat Aluminium

Company/Defendant No.2/Respondent No.2 had dispatched 31 bundles of aluminium valued at Rs.2,03,897/- to consignee M/s Ramesh Metal Syndicate through Defendant No.1/Respondent No.1 M/s Transport Corporation of India Limited (the Carrier) under invoice No.10/1057 dated 10.12.1990 and insurance with the Plaintiff/Appellant/Oriental Insurance Company Limited. The said consignment was dispatched on 9/10-12-1990 which was delivered to consignee M/s Ramesh Metal Syndicate on 15.12.1990 in badly damaged condition. 23 packets were found in damaged condition. As per damage certificate No.BBX/168 dated 22.3.1991, the value of the damaged material was worth Rs.25,925/-. Consignee lodged a claim of Rs.25,925.52 on Defendant/Respondent No.1 (the Carrier) by serving a notice under Section 10 of the Carriers Act, 1865 (henceforth 'the Act') dated 6.3.1991, which was received on 8.3.1991. A copy of the said notice was also served to the Appellant/Plaintiff. The Appellant/Plaintiff as the insurer, after obtaining the right to recover the claim from Respondent No.1 (the Carrier), has settled the claim of Respondent No.2 upto the value of loss. The damage was caused due to gross negligence, carelessness and misconduct by Respondent No.1 (the Carrier), who is liable to pay the claim due to the above stated failure. Therefore, the suit was preferred by the Appellant/Insurance Company.

3. Respondent No.1 (the Carrier), in its written statement, pleaded that goods was dispatched at the owner's risk. It had not served a notice under Section 10 of the Act and objected the territorial jurisdiction of the Court also.

4. The Court below framed total 10 issues. Out of them, issues No.4, 10 and 6 are decided in favour of Respondent No.1 (the Carrier). Issues No.4, 10 and 6 read thus:

	<u>“वाद प्रश्न”</u>	<u>निष्कर्ष</u>
4/—	क्या धारा — 10(क) कैरियर्स एक्ट के अंतर्गत नोटिस के अभाव में प्रस्तुत दावा चलने योग्य नहीं है ?	“हाँ”
10/—	क्या मेसर्स रमेश मेटल सिंडीकेट बंबई द्वारा धारा—10 कैरियर्स एक्ट के तहत दी गयी नोटिस वादी द्वारा दी गयी नोटिस की परिधि में आता है ? तथा प्रभाव	“नहीं”
6/—	क्या इस न्यायालय को प्रस्तुत वाद के सुनवाई का क्षेत्राधिकार नहीं है ?	“हाँ”

5. The Court below dismissed the suit. Hence, this appeal.
6. Learned Counsel appearing for the Appellant/Plaintiff argued that in spite of the fact that a notice under Section 10 of the Act was duly served on Respondent No.1 (the Carrier), the Learned Trial Judge committed a grave legal error in dismissing the Plaintiff's suit on the ground that the notice as required by the law was not sent. As per requirement of Section 10 of the Act, the notice has been served before institution of the suit. The legal requirement was fulfilled as soon as the transport company was served with the notice. Section 10 of the Act nowhere says as to by whom the notice requires to be sent. It was further argued that in this case the notice has been given and served on Respondent No.1 (the Carrier). This amply satisfies the legal requirement. The purpose of the notice is that the transport company should be apprised of the fact that on account of its negligence damage to the goods has

been caused for which the company is responsible. It was further argued that the finding of the Learned Trial Judge regarding territorial jurisdiction is also perverse and illegal.

7. Learned Counsel appearing for Respondent No.1 and Respondent No.2 supported the impugned judgment.
8. I have heard Learned Counsel appearing for the parties and perused the entire record of the Court below.
9. In this case, it is not disputed that a notice (Ex.P7) under Section 10 of the Act was sent to Respondent No.1 at its Bombay Office by consignee M/s Ramesh Metal Syndicate which was received on 8.3.1991 as per acknowledgement (Ex.P10). The said notice is reproduced hereinbelow:

“Ref.No.RMS/CLAIM/317/3/91 REG.AD. Date 6.3.91

To,

Transport Corporation of India Ltd.
Transport House
128/B, Poona Street,
Bombay 400 009

NOTICE UNDER SECTION 10 OF THE
CARRIERS ACT CLAIM FOR
Rs.25925.52 Debit Note No:-316/3/91
dt:-6.3.91, Ex-Korba to Bombay
Consignment Aluminium Ext Section,
D/A.No:-10/1057 dt:-10.12.90 &
L.R.No:-E15941 dt:-10.12.90 of
Transport Corporation of India Ltd.

Dear Sirs,

Out of the aforesaid consignment, 384.300, Kges, damage materials received in damage conditions for which we have suffered loss to the extent Rs.25925.52, per the particulars here given below,

Amount For Damage Quantity, 384.300, Percentage Amount, 25925.52

The said shortage non delivery and consignment loss have

been caused due to negligence and/or misconduct and/or willful laches on the part of the carriers and/or their agents and/or their servants and the carriers are further quality of breach of contract malfeasance and/or wrongful conversion of the said goods short delivered to us for your own use and benefits and the carriers are fully liable to compensate us for the loss suffered by us,

In the premises damage of your settlement and payment of the Claim for Rs.25925.52,

Thanking you

Yours faithfully
For Ramesh Metal Syndicate
Sd/-
(Partner)

C.C. To:- Oriental Insurance Co. Ltd.

Bombay

This is relates insurance Policy No:-21/91/00007/period from 1.4.90 to 31.3.91. Kindly register our claim and take a necessary action for its early settlement.”

10. It was argued that the said notice (Ex.P7) was not sent by the Appellant/Plaintiff/Insurance Company, but it was sent by the consignee, therefore, the said notice does not fall within the meaning of a notice under Section 10 of the Act.

11. Section 10 of the Carriers Act, 1865 runs thus:

“10. Notice of loss or injury to be given within six months.— No suit shall be instituted against a common carrier for the loss of, or injury to, goods including containers, pallets or similar article of transport used to consolidate goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.”

12. From a bare perusal of the notice (Ex.P7), it is clear that Respondent No.1 (the Carrier) was informed about the loss caused to the goods which was damaged and the value was marked as Rs.25,925.52. A copy of the notice (Ex.P7) under Section 10 of the

Act was also duly forwarded to the Plaintiff/Insurance Company. On the bottom of the said notice, it is clearly mentioned that it relates to Insurance Policy No.21/91/00007 for the period from 1.4.1990 to 31.3.1991.

13. The Supreme Court, in **Transport Corporation of India Ltd. v. Veljan Hydrair Ltd., (2007) 3 SCC 142**, at paragraph 7 of the judgment, has interpreted Section 10 of the Carriers Act, 1865 as under:

“7. Section 10 of the Act requiring notice, is extracted below:

“10. Notice of loss or injury to be given within six months.— No suit shall be instituted against a common carrier for the loss of, or injury to, goods including containers, pallets or similar article of transport used to consolidate goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.”

Section 10 requires a notice in the manner set out therein, for initiation of a proceedings against a common carrier for loss of goods or injury to goods entrusted for carriage. The notice need not say specifically that it is issued under Section 10 of the Carriers Act, 1865. It is sufficient if the notice fulfills the requirement of Section 10, that is to inform the carrier about the loss or injury to the goods. Such notice under Section 10 will certainly be required where the common carrier delivers the goods in a damaged condition, or where the common carrier loses the goods entrusted for carriage and informs about such loss to the consignor/consignee/owner. The object of the section is to put the carrier on notice about the claim in respect of the loss or damage to the consignment so that

it can make good the loss occasioned. But, where there is no loss or injury to the goods, but the common carrier wrongly or illegally refused to deliver goods and the person entitled to delivery initiates action for non-delivery, obviously Section 10 will not apply. Similarly, where the common carrier informs the person entitled to delivery (consignor/consignee/owner) that the consignment is being traced and process of tracing it is still going on and requests him to wait for the consignment to be traced and delivered, but does not subsequently inform him either about the loss of the consignment, or about its inability to trace and deliver the consignment, the claim by the consignor/consignee, will not be for loss or injury to goods but for non-delivery of goods. The requirement relating to notice within six months in Section 10 will not apply to a claim based on such non-delivery. In fact Section 10 does not use the word 'non-delivery' of goods, but uses the words 'loss of, or injury to, goods'. A case of 'non-delivery' will become a case of 'loss' of consignment, only when the common carrier informs the consignor/consignee about the loss of the consignment."

14. In the instant case, the Carrier was informed about the loss caused to the goods which was damaged and the value was marked to the extent of Rs.25,925.52. There is no specific provision in Section 10 of the Act that by whom the notice will be served, i.e., either by the Insurance Company or by the consignee. It is sufficient if the notice fulfills the requirement of Section 10 of the Act, i.e., to inform the Carrier about the loss or injury caused to the goods. As interpreted by the Supreme Court in the aforesaid case, the object of Section 10 of the Act is to put the Carrier on notice about the claim in respect of the loss or damage to the consignment so that it can make good the loss occasioned.

15. Regarding the territorial jurisdiction, the Learned Trial Judge has

observed that since notice (Ex.P7) under Section 10 of the Act was sent to Respondent No.1 (the Carrier) to its Bombay Office/Branch, the cause of action arose with the territorial jurisdiction of the Mumbai Court. The transport company has its branches at number of places and any notice to the transport company sent to its any of the branches substantially fulfills the legal requirement. The purpose of the notice is that the transport company must be apprised of certain facts. In this case, it was not pleaded by the transport company/Respondent No.1 that it was not apprised of the relevant facts regarding loss or damage to the goods consigned through its company on 10.12.1990. Thus, the finding of the Trial Court regarding the territorial jurisdiction is perverse.

- 16.** In view of the above discussion, the findings arrived at by the Trial Court regarding issues No.4, 10 and 6 are set aside. Resultantly, the appeal is allowed in part. The matter is remanded back to the Trial Court. The Trial Court shall afford opportunity to the parties to lead additional evidence, if any and thereafter shall hear the parties and reach to a fresh conclusion in accordance with law. Record of the Trial Court be sent back along with a copy of this judgment forthwith so that it reaches there by 20th of November, 2017. The parties are directed to appear before the Trial Court on 4th of December, 2017. No costs.

Sd/-

(Arvind Singh Chandel)
JUDGE