

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.894 of 2010 & M.P.No.1/2010

M/s.DHL Logistics Pvt.Limited,
(Formerly:M/s.DHL Danzas Lemuir Pvt.Limited)
Representing DHL Global Forwarding,
No.5, Srinivasa Towers,First Floor,
Alwarpet,
Chennai-600 018.Appellant/2nd Defendant
(Cause title Amended as per Order dt.18.01.2017
in CMP No.20767/2016).

..Vs..

- 1.Gabro India(P)Ltd.,
12/21,Khader Nawaz Khan road,
Nungambakkam,Chennai-600 006.
Rep.by Subrogee and Power Agent,
Tata AIG General Insurance Co.,Ltd.
- 2.M/s.Tata AIG General Insurance Co.Ltd.,
Rep.by its Senior Manager-Claims,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008.Respondent 1 & 2/Plaintiff 1 & 2
- 3.Airports Authority of India,
Chennai International Airport,
Chennai-600 027.
- 4.Singapore Airlines Cargo Pvt.,Ltd.,
108, Dr.Radhakrishnan Salai,
Chennai-600 004.Respondents 3 & 4/Defendants No.1 & 3

Prayer: Appeal filed under Section 96 r/w. Order 41 Rule 1 & 2
of the Civil Procedure Code to set aside the Judgment and
Decree dated 06.02.2009, passed by the VI Additional Judge, City
Civil Court, Chennai, in O.S.No.5664 of 2007 as against the
appellant.

For Appellant : Mr.D.Raj Kumar
for M/s.Sai Raaj Associates

For RR-1 : Mr.M.B.Raghavan
For R-3 : Mr.V.Ramesh
For R-4 : Mr.O.R.Santhana Krishnan
For R-2 : Mr.M.B.Gopalan

JUDGMENT

The 2nd defendant in O.S.No.5664/2007 is the appellant.

2.The said suit was filed by the plaintiff for recovery of a sum of Rs.6,77,721/- (Rupees Six lakhs seventy seven thousand seven hundred and twenty one only) towards the loss suffered due to the damage caused to the consignment booked by the 1st plaintiff through the 2nd defendant to be delivered at Chennai. The said consignment was booked on 18.09.2006 at United States of America, and the consignee was 1st plaintiff at Chennai. According to the plaintiff, the goods consigned are accessories for Cell Separator used in the treatment of Cancer patients. It is manufactured and used in highly sterile conditions as it is very sensitive. The said consignment was received for carriage by the 2nd defendant and was actually handed over to the 3rd defendant. The consignment was insured by the 2nd plaintiff. The 1st defendant had taken custody of the goods upon its arrival at Chennai and was retained in the warehouse belonging to the 1st defendant. The plaintiff paid the necessary customs duty and other charges and attempted to take the delivery of the goods. It was found that the consignment was damaged. Immediate notice of the damage was given to the 2nd plaintiff as the insurer and the defendants. A joint survey was done in the presence of superintendent of 1st defendant and Mr.Suresh representative of the 3rd defendant besides the 1st plaintiff. It was confirmed during the said survey that the consignment was fully damaged and considering the intended purpose of the consignment namely medical use it was found totally unfit for the said purpose. Therefore, it became useless and was totally destroyed on 27.02.2006. The 1st plaintiff sustained a loss of Rs.8,59,186.39 (Rupees Eight lakhs fifty nine thousand one hundred and eighty six and paise thirty nine only). A claim was lodged on 17.10.2006 with defendants 1 to 3. As per the agreement entered into between 1st and 2nd plaintiff on 09.11.2006, the 2nd plaintiff had settled the claim for Rs.6,77,721/- (Rupees Six lakhs seventy seven thousand seven hundred and twenty one only) to the 1st plaintiff and obtained a letter of subrogation. While defendants 2 and 3 issued untenable replies, there was no response from the 1st defendant. In the above circumstances the plaintiff was forced to file the above suit for recovery.

3.The 1st defendant namely Airports Authority of India remained ex-parte, after having filed a written statement. The 1st defendant claimed that it had given a reply on 01.12.2006 denying the liability. The 2nd defendant filed a written statement contending that it is not liable, since the goods have been delivered at Chennai Airport and has been put in custody of the 1st defendant in good condition. The damage having occurred while the goods were in the custody of the 1st defendant, the 1st defendant alone has liable for the damages.

4.It was further contended by the 2nd defendant that the Airway Bill dated 18.09.2006 itself makes it clear its liability ends with the delivery of the goods in the Airport and it does not extend beyond that. Once the goods have been delivered in a good condition to the 1st defendant and the damage had occurred when the goods were in the custody of the 1st defendant, the 2nd defendant, according to it, cannot be held liable for the damages.

5.The 3rd defendant filed a written statement contending that there is no privity of contract between the 1st plaintiff and 3rd defendant. The 3rd defendant being an Airline cannot be held liable for damages caused to the goods when the goods were not in transit. In view of the admitted position that the Cargo was damaged when it was in the custody of the 1st defendant, 3rd defendant claimed that it was not liable for the damage. On the aforesaid pleadings, the learned Trial Judge namely the VI Additional City Civil Judge, Chennai framed the following issues:-

- 1)Whether the plaintiff is entitled to get a decree against the defendants as prayed for?
- 2)Whether the 2nd defendant is liable to pay any amount to the plaintiff?
- 3)Whether the 3rd defendant is liable to pay any amount to the plaintiff?
- 4)Whether the 1st defendant caused to the damage consignment of the plaintiff?
- 5)whether the plaintiff is entitled to get any interest? If so what is the rate of interest?

6.On the side of the plaintiff, PWs-1 & 2 were examined. Exs.A-1 to A-16 were marked. On the side of the defendants DWs-1 & 2 were examined. Exs.B-1 to B-12 were marked. On a consideration of the oral and documentary evidence, the learned trial Judge held that the 3rd defendant is not liable for damages, since, there was no privity of contract between the plaintiff and the 3rd defendant. In so far as the defendants 1 and 2 are concerned, the learned trial Judge

concluded that the 2nd defendant being the Transporter and the 1st defendant who was in custody of the goods at the time the damage occurred are liable to answer the suit claim. The learned trial Judge also rejected the claim of the 2nd defendant that the Airway Bill stipulates that the liability of the 2nd defendant is only till the goods were delivered at the Airport and cannot be extended beyond that. On the above conclusions, the learned trial Judge decreed the suit as against the defendants 1 and 2. Aggrieved by the said judgment and decree, the 2nd defendant alone has preferred the above appeal.

7. I have heard Mr. D. Rajkumar, learned counsel appearing for Ms/. Sai Raaj Associates for the appellant, Mr. M. B. Raghavan, learned counsel appearing for the 1st and 2nd respondent, Mr. V. Ramesh, learned counsel appearing for the 3rd respondent, & Mr. O. R. Santhana Krishnan, learned counsel appearing for the 4th respondent.

8. As already stated, the suit has been decreed against the defendants 1 and 2. The 1st defendant is not on appeal. Considering the limited scope of the appeal, the following point is framed for determination in the appeal:

1) Whether the claim of the 2nd defendant that it cannot be made liable for the suit claim in as much as its responsibility ends with the delivery of the goods at the Airport could be sustained?

9. Mr. D. Raj Kumar, learned counsel appearing for the appellant took me through the Ex. A-1 Airway Bill issued by the 2nd defendant and contend that the Airway Bill is marked as "BA4" which means that the liability of the carriage ends with delivery at the Airport. In cross examination of DW-2, who is the authorised signatory of the 2nd defendant, had deposed that he has not filed any document to show that words "BA-4" would indicate that the delivery at the Airport will terminate the liability of the carrier. Though the learned counsel would rely upon Sub Clause (1) of the Article 18 of the schedule to the carriage by Air Act and contend that the liability of the carrier extends only if the damage is caused during carriage. Since in the case on hand, the damage had occurred after the delivery to the 1st defendant, according to the learned counsel, the 2nd defendant cannot be made liable. I am unable to agree with the said submission of the learned counsel for the appellant. Sub Clause (2) of the Article 18 reads as follows:

"(2) The carriage by air within the meaning of sub-rule (1) comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an

aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever." Therefore, till the goods are delivered to the consignee, they are deemed to be in charge of the carrier.

10. The learned counsel would rely upon the judgment of the Karnataka High Court in CRP Nos.126 and 294/2005 in support of the contention, the said decision arose out of the proceedings under which notified general Agent of the Customs Authority claimed that it cannot be made liable for the damages caused to the goods. The Karnataka Hgh Court held that the notified agent would also be liable. The said decision cannot be applied to the case on hand as there was no dispute regarding the liability of the carrier and from the report it can be seen that carrier was not even a party to the proceedings.

11. The learned Trial Judge after considering entire evidence on record has come to the conclusion, that the 2nd defendant is also liable for the damages along with the 1st defendant. The 1st defendant has conveniently remained ex-parte. There is no dispute regarding the entrustment of the consignment and the fact that it was damaged. The 1st plaintiff has given letter of subrogation to the 2nd plaintiff. Therefore, there is no dispute regarding the entitlement of the plaintiffs for damages. The learned counsel appearing for the appellant is unable to establish that it was brought to the notice of consignor or the consignee under Ex.A-1, that the carrier will be liable only till the delivery of the goods in the Airport. Merely because the Airway Bill Ex.A-1 contains the letters "BA-4" it cannot be presumed either the consignor or the consignee were made aware of the actual implication of the same. The 2nd defendant cannot avoid its liability unless it establishes that the consignor or the consignee had actual knowledge of the meaning of the letters "BA-4" which have been incorporated in the Airway Bill. Under such circumstances, I do not find any reason interfere with the findings of the trial Court. It is open to the 2nd defendant to work out its remedies as against the 1st defendant if it is open to the 2nd defendant to do so.

12. In fine, the appeal is dismissed. In circumstances of the case, I direct the parties to bear their own costs. Consequently the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The VI Additional Judge,
City Civil Court,
Chennai.

+1cc to M/S.Sai Raaj Associates, Advocate Sr.3560

A.S.No.894 of 2010

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