IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6384 of 2016 (O&M)
Date of decision: 26.09.2017

M/s Aar Bee Freight and Forwarders Private Limited
...........Appellant
Versus

United India Insurance Company Limited and others
...........Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Kapoor, Advocate,
for the appellant.
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Ritu Bahri, J.

This appeal has been filed against the judgment dated 15.09.2016 passed by the Additional District Judge, Hisar, dismissing an appeal filed by defendant No.2-appellant against the judgment and decree dated 30.11.2013 passed by the Civil Judge (Senior Division), Hisar, whereby suit filed by plaintiff-respondent Nos.1 and 2 for recovery of Rs.22,52,401/- along with interest, has been decreed.

United India Insurance Company Limited and M/s DCM Textile, Hisar-plaintiffs (respondent Nos.1 and 2 herein) filed a suit for recovery to the effect that plaintiff No.1 was incorporated under the Indian Companies Act, 1956 and Sh. Y.P. Miglani, Divisional Manager, Principal Officer was duly authorized to institute, sign and verify the plaint being conversant with the facts of the case on behalf of plaintiff No.1-company. Plaintiff No.2 was a division of DCM, constituted under the Companies Act. Plaintiff No.2 through its Chief Executive Officer, duly authorized, executed special power of attorney on 19.03.2008 in favour of plaintiff No.1 and as such, plaintiff No.2 filed the present suit through United India. Defendant No.2 was the carrier who carried on the business of transporting goods by road service on higher and reward basis from one place to another in India. The goods of the suit were sent in a trolla of defendant No.1-appellant. Defendant No.1 was driver of trolla No. HR-38-D-1962 on 07.08.2007 when the goods were loaded in the said trolla on the date of loss of consignment i.e. 7/8.08.2007. Plaintiff No.2 was having the transportation contract with defendant No.2 for transporting its all the material from Hisar to anywhere in the world. Plaintiff No.2 made a request to defendant No.2 to transport the consignment of cotton yarn of 460 cartoon i.e. 22166 kgs from Hisar to M/s Jamesh Apparels Pvt. Ltd. Bangladesh vide invoice No. E-70892 dated 07.08.2007 for Rs.21,13,268/-. Defendant No.2 issued its G.R. No.664 dated 07.08.2007 and directed defendant No.1 to load the same for transportation from Ex-Hisar to Bangaladesh. Thereafter, defendant No.1 loaded the same in the aforementioned truck of defendant No.2. On 08.08.2007, at about 2.30 A.M., when the truck in question reached between Bahadurgarh and Rohtak, before bridge, then due to coming of one tractor, the truck was put on slow speed and three boys boarded the truck on the pretext of taking lift in the truck. However, after some distance, they gave some intoxicating material to the driver and cleaner. One of them came on the steering and started plying the truck. Thereafter, another boy boarded the truck. Due to intoxication, defendant No.1 and cleaner Vipin heard themselves that they would take away the truck after killing them. After long time, when the Trolla was reached near Surya Roshni Factory, they (boys) stopped the same for the purpose of drinking water and urinating etc. Due to fear, defendant No.1 and cleaner ran away towards Delhi and gave information about the incident to the owner of Trolla through telephone, who further reported the matter to the police. On account of aforesaid occurrence, the goods were lost and plaintiff No.2 sent a claim bill dated 08.08.2007 of Rs.21,13,267/- to plaintiff No.1. Plaintiff No.1 appointed an independent Surveyor, Bharat Bhushan & Company, Sonepat, for preliminary survey and thereafter, Mr. D.S. Chadhra, Investigator, to confirm the circumstances of the loss as alleged. Amit Jain, Advocate, was appointed to confirm the genuineness of FIR and non traceable certificate issued by Judicial Magistrate. However, plaintiff No.1 appointed another surveyor i.e. V.P. Singhal & Company, Sector 27, Noida, to assess the loss. After receiving the report of surveyor, plaintiff No.1 settled the claim for a sum of Rs.21,13,267/-. Defendant Nos. 1 and 2 admitted the loss of plaintiff No.2 and defendant No.2 gave the lost certificate dated 03.03.2008 certifying that the above consignment had not been delivered as the total consignment was stolen. Thereafter, plaintiff No.2 sent a registered letter dated 09.08.2007, which was duly received by defendant No.2, but in spite of this, defendant No.2 had failed and neglected to pay the entire claim or part thereof to the plaintiff. The suit consignment was totally lost as mentioned above. This is the presumptive proof of negligence and misconduct on the parts of the defendants and their employees, as it was the negligent of defendant No.1. The above consignment was insured with plaintiff No.1 against all road risks and they had settled the claim of plaintiff No.2 for a sum of Rs.21,13,267/-, who had subrogated, assigned and transferred all their rights, claims and beneficial interests in respect of the subject matter, insured as per insurance policy, including rights to recover and realize in its own name, amount of compensation from defendant Nos. 1 and 2 for and on behalf of plaintiff No.2 in favour of plaintiff No.1. Plaintiff No.2 also executed a letter of assignment deed in favour of plaintiff No.1. Even otherwise, plaintiff No.1 upon making aforesaid payment of the compensation to the insured plaintiff No.2 got right under statute to claim the compensation from defendant Nos. 1 and 2. Hence, the suit.

Upon notice, defendant No.1 failed to appear, therefore, he was proceeded against exparte. Defendant No.2-appellant filed written statement by taking preliminary objections with regard to maintainability of suit and territorial jurisdiction of the trial Court. It was submitted that the goods sent in Trolla in question were booked at risk only. The consignor had also informed that they would themselves get those goods insured to cover the risk of transit. Any alleged dealing between plaintiff No.2 and plaintiff No.1 and or any other person was denied not being in the knowledge of defendant No.2. It was further submitted that plaintiff No.2 never booked any goods weighing 22166 kgs, as alleged. The goods sent under Trolla, if any, were at owners risk only, as is clearly mentioned on GR No.664 dated 07.08.2007. Defendant No.2 was not having any knowledge that the goods were lost and plaintiff No.2 had sent a claim bill dated 08.08.2007 to plaintiff No.1. The trolla with container was seized by the police in same condition i.e. original sealed condition, as was put up by the consignors themselves. The answering defendant took proper precaution of the goods, as an ordinary and prudent man would take of his own goods. The mishap was not occasioned due to any negligence on the part of defendant No.2. The owner of the truck was also necessary party to the suit. It was further submitted that insurance Company accepted the risk against premium and in case of eventuality, it was liable to make payment. In the present case, the claim had been exaggerated to help plaintiff No.2. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled for the recovery of Rs.22,52,401/- as prayed for? OPP
2. If issue No.1 is proved in favour of plaintiffs, then whether plaintiffs are entitled for interest, if so, at what rate? OPP
3. Whether the suit of the plaintiffs is not maintainable its present form?OPD
4. Whether this court has no jurisdiction to try and decide the present suit? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, decreed the suit. Appeal against the said judgment also met the same fate.

Heard.

While decreeing the suit, it has been observed by the Courts below that as per letter of subrogation Ex.P2, plaintiff No.1 has made payment of Rs.21,13,267/- to plaintiff No.2. This fact was sufficient to prove that the goods sent by plaintiff No.2 on consignment with defendant No.2 had been lost and the claim had been satisfied by plaintiff No.1. Defendant No.2, who had taken the consignment for delivery, could not deliver the same on account of theft or hijacking of vehicle. Accordingly, defendants were held liable to make good the loss to the consignor on account of its theft. While holding so, reliance was placed on a judgment passed in ***New India Assurance Company Ltd. vs. M/s Pawan Transport***

Corporation and another, 2005 (2) RCR (Civil) 522 and ***Basavaraj Yellappa Pundi vs. National Insurance Company Ltd., Belgaum and another,*** 2005 (3) RCR (Civil) 337.

FIR No.197 dated 11.08.2007 Ex.P7 was registered under Sections 328/379/34 IPC at Police Station Sapla, Rohtak with regard to the theft of goods, which were being transported by defendant No.2 (appellant). As per Sections 6, 8 and 9 of Carrier Act, liability of the carrier/transporter is absolute in the sense that he had to deliver the goods safely, undamaged and without loss at the destination, indicated by the consignor. It was the duty of the carrier to take due care as he would have taken of his own goods. He would be liable, if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agents and servants and only exception is the act of God or special contract between the carrier and consignor. In this regard, reference was made to the judgments passed in ***Nath Bros. Exim International Ltd. vs. Best Roadways Ltd.,*** 2000 (2) RCR (Civil) 620 SC and ***Economic Transport Organization vs. Ms. Charan Spinning Mill (P) Ltd.,*** 2010 (1) Consumer Protection Cases 404 SC. While interpreting Section 9 of the Act, in ***Patel roadways Limited vs. Birla Yamaha Limited,*** AIR 2000 (SC) 1461, Hon'ble the Supreme Court has held that in case of claim of damage or loss or deterioration of goods entrusted to a carrier, it was not necessary for the plaintiff to establish negligence. It was further held that even assuming that the general principle in cases of tortuous liability is that of the party who alleges negligence against the other, must prove the same. The said principle has no application to cover the case under the Carrier Act. This principle has been followed in ***South Eastern Carriers (P) Ltd. vs. Oriental Insurance Co.***

Ltd., AIR 2004 Kerala 139 and ***Oriental Insurance Company vs. Mukesh & Co.,*** AIR 2000 Madhya Pradesh 35.

Both the Courts have further returned a finding that the District Courts at Hisar had the jurisdiction to entertain the suit as the contract between plaintiff No.2 and defendant No.2 for transporting the goods was entered in Hisar. The truck was loaded at Hisar and GR Ex.P6 was also issued at Hisar. Even letter of subrogation Ex.P2 had been issued in favour of plaintiff No.2 at Hisar, therefore, the suit was rightly filed in Hisar in view of Section 20 CPC. Mere mentioning on the GR that disputes are subject to Delhi jurisdiction did not confer the jurisdiction to Delhi Courts. Although, on GR Ex.P6, it was printed that the goods were being transported 'at owner's risk', yet this would not absolve the carrier/transporter from his liability as the liability of the carrier was absolute. Moreover, GR Ex.P6 does not bear the signature of the consignor i.e. M/s DCM Textile Mills. Thus, it cannot be said that the consignor had agreed to transport the goods at his own risk. The Madras High Court in ***Shanmuga Pillai @ Somasundaram vs. National Insurance Company,*** 2000 (2) RCR (Civil) 415 (Madras), has held that words "owners risk" printed on the document cannot absolve the carrier of his liability and the liability of common carrier is absolute. Further, the Madras High Court in ***Economic Roadways Corporation Madras vs. Soundararaja Mills Limited,*** 2001 (2) RCR (civil) 512, has held that a public carrier cannot plead that the goods were carried at owner's risk and not at the public carrier's risk.

Learned counsel for the appellant has vehemently argued that before filing the suit, a notice under Section 10 of the Carriers Act, was required to be given to the present appellant (defendant No.2) and in the absence of such notice, the suit was not maintainable.

This argument of learned counsel for the appellant is liable to be rejected, as no evidence has been led by the appellant on issue No.3 with regard to maintainability of suit before the trial Court. Moreover, letter of subrogation Ex.P2 was sufficient knowledge to the defendants that after making payment of Rs.21,13,267/-, plaintiff No.1 had retained the right of recovery from the defendants. While issuing the letter of subrogation, defendants had admitted the loss of goods and they were made aware that the plaintiffs will recover the same from them. Therefore, the plaintiffs had become entitle to claim damages from defendant No.2. The fact that letter of subrogation gives right of recovery to the consigner, has been elaborately considered in ***Basavaraj Yellappa Pundi's*** case (supra).

After going through the impugned judgments, this Court is of the view that suit of the plaintiffs has been rightly decreed by both the Courts below. No illegallity, much less perversity, has been found in the impugned judgments, warranting interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

(RITU BAHRI)
JUDGE

26.09.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No