

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2018

PRONOUNCED ON :01.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1607 of 2003

and

C.M.P.No.14766 of 2003

M/s.Friendly Transport (Regd.)
Branch Office No.1,
Balaji Buildings,
Bye-Pass Road,
Hosur.Appellant/Defendant

Vs.

1.M/s.G.M.M.Co.Ltd.,
Opposite to Training Institute,
Behind N.M.D.C Guest House,
Kirandal Post, Bastar District,
Madhya Pradesh.

Rep. By its Branch G.M.M. Co.Ltd.,
6 GST Road, St.Thomas Mount, Chennai,
by its Power of Attorney,
The New India Assurance Co.Ltd.,

2.The New India Assurance Co.Ltd.,
Divisional Office 710 800,
Rathna Buildings,
231, TTK Road, Alwarpet, Chennai
Rep. By its Divisional Officer,
New India Assurance Company Ltd.,
Hosur.Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the Judgment and Decree made in A.S.No.26 of 1999 dated
14.03.2002 on the file of the Principal Additional District
Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri,
reversing the Judgment and Decree of the Learned Subordinate
Judge's Court, Hosur in O.S.No.381 of 1996 dated 07.08.1997.

For Appellant : Mr.K.A.Ravindran

For Respondents : Mr.S.Manohar

J U D G M E N T

The second appeal is directed against the judgment and decree dated 14.03.2002 passed in A.S.No.26 of 1999 on the file of the First Additional District Judge cum Chief Judicial Magistrate's Court Dharmapuri at Krishnagiri, reversing the Judgment and Decree dated 07.08.1997 passed in O.S.No.381 of 1996 on the file of the Subordinate Court, Hosur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4.The case of the plaintiff in brief is that M/s.Hindusthan Power plus Limited Works, Hosur Taluk as the consignor and the first plaintiff as the consignee despatched the consignment involved in the suit namely Earth Moving and mining machinery shovels and spare parts of earth moving machinery and mining machinery packed under standard conditions to M/s.G.M.M Company Limited at Kirandal (M.P) by road through the lorry No. AHT5770 belonging to the defendant on 10.02.1993 and the goods were transported by the defendant's lorry and delivered at the destination. On opening it was found that machinery has been received in a damaged condition and the driver certified to that effect and the damage is attributable on account of the negligence on the part of the carrier and the damages were assessed to the value of Rs.3,52,085/- by the surveyor and the defendant as the carrier is liable and responsible for the damages caused to the machinery, while transporting the same to the destination and the first plaintiff had insured the machinery /consignment with the second plaintiff and accordingly, the second plaintiff settled the claim of the first plaintiff in respect of the damage caused to the consignment for a sum of Rs.1,85,266/- on 05.10.1993 and accordingly the second plaintiff got subrogated to the rights of the recovery of the first plaintiff as per the letter of subrogation and special power of attorney deed dated 10.12.1993 executed by the first plaintiff in favour of the second plaintiff and in order to avoid technicalities that may be raised by the defendant, the first plaintiff has also been made a party in the suit proceeding and inasmuch as the defendant being the common carrier and liable to make good the

loss sustained by the plaintiffs and despite several requests made through letters, inasmuch the defendant has not paid the amount but had only given evasive replies, according to the plaintiffs, they have had been necessitated to lay the suit for appropriate reliefs.

5.The case of the first defendant in brief is that the suit is not maintainable either in law or on facts. The suit is bad for non-jointer of parties and the defendant has admitted the consignment sent by the first plaintiff through lorry bearing No.AHT 5770 on 10.02.1993 and admitted that the same was delivered to the consignee on 26.02.1993 and however would contend that the said lorry which carried goods does not belong to the defendant and the consignment was kept closed and the particulars of the consignment could not be known thereby and that the driver of the vehicle cannot give any open delivery certificate and it is false to state that the damage to the consignment had occurred during the transit and the assessment made by the surveyor of the damages is without the knowledge of the defendant and not binding upon the defendant. The case of the plaintiffs that the second plaintiff had settled the claim of the first plaintiff, based on the insurance policy and the second plaintiff got subrogated to the rights of the first plaintiff executed by the first plaintiff in favour of the second plaintiff are not admitted and the plaintiffs are not entitled to lay the suit jointly and the plaintiffs have not issued the statutory notice contemplated u/s 10 of the Carriers Act 1865 and hence the suit is liable to be dismissed on the above ground and there is no loss or damage caused to the goods as such and it is false to state that the plaintiffs made several requests to pay the damages to the defendant, there is no cause of action of the suit and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A6 were marked. On the side of the defendants' D.W.1 was examined. Exs.B1 to B3 were marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit laid by the plaintiffs. On appeal, at the initiative of the plaintiff, additional documents have come to be marked in support of the plaintiffs' case as Exs.A7 to A9 in the first appellate court and on an appreciation of the materials placed and the submissions made, the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiffs, decreed the suit as prayed for. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(a) Whether the lower Appellate Court is right in holding that the notice dated 10-03-1993 allegedly issued by the first respondent herein is a statutory notice under Section 10 of the Carriers Act, 1865, while the notice dated 12-03-1993 referred by the first respondent himself has not been produced before the court?

(b) Whether the lower Appellate Court's finding that the trial court had refused permission to the first respondent herein for marking Exhibits A7 to A9, while the first respondent himself has not raised it as one of the Grounds of Appeal and failed to substantiate such allegations? and

(c) Whether the lower Appellate Court is right in holding Ex.A9 as the Statutory Notice dated 10-03-1993 under Section 10 of the Carriers Act, 1865 when the first respondent himself pleads to have issued a Notice dated 12-03-1993 as a statutory notice?

9. The only point that is canvassed in the second appeal by the counsel for the appellant is that the plaintiffs had not issued the statutory notice u/s.10 of the Carriers Act, 1865 as prescribed therein and in such view of the matter, it is argued that the plaintiffs' suit should fail and therefore according to him, the trial court on an appreciation of the above position in the correct perspective, rightly dismissed the plaintiffs' claim, he would further submit that the first appellate court has erred in placing reliance upon the additional documents marked as Ex.A7 to A9, particularly on Ex.A9, which is stated to be the statutory notice issued u/s 10 of the Carriers Act, 1865 and as the plaintiffs had failed to establish that the said notice had been received by the defendant and as the plaintiffs had not marked the acknowledgment card to establish that the defendant had received the same, according to him, the first appellate court erred in accepting the plaintiffs' claim based upon Ex.A9 notice and therefore the judgment and decree of the first appellate court are liable to be set aside.

10. Per contra, it is contended by the plaintiffs' counsel that the statutory notice contemplated u/s 10 of the Carriers

Act 1865 had been issued by the plaintiffs and the defendant has received the same and according to him even prior to the issuance of Ex.A9 notice the plaintiffs had issued the notice on 26.02.1993 to the defendant marked as Ex.A3 and the defendant has acknowledged the same and the acknowledgment card has been as marked as Ex.A5 and further according to him the defendant had sent communications in response to Ex.A3 which are marked as Exs.A4 and A7 and further according to him after the assessment of damages had been done by the surveyor, the plaintiffs had issued the notice marked as Ex.A9 and in such view of the matter, according to him, even in the absence of the acknowledgment card to evidence the receipt of the notice sent by way of Ex.A9, inasmuch as the plaintiffs had already issued the notice u/s.10 of the Carriers Act 1865 by way of Ex.A3 and when the same had been acknowledged by the defendant and it had sent its response with reference to the same, marked as Exs.A4 and A7, it is contended that the same would itself be sufficient compliance u/s 10 of the Carriers Act, 1865 and therefore it is his argument that Courts below have failed to appreciate the above aspects of the case in the right perceptive and so according to him the first appellate court had rightly upheld the plaintiffs' claim by holding the statutory notice contemplated u/s 10 of the Carriers Act 1865 had been issued and therefore there is no warrant to disturb the judgment and decree of the first appellate court.

11. On a perusal of the materials placed, it is seen that according to the plaintiffs, they had noticed the damage, which had occurred to the consignment on delivery on 26.2.1993 itself and accordingly it is found that they had issued the notice marked as Ex.A3 to the defendant informing about the delivery of the consignment in a damaged condition and accordingly called upon the defendant that it would be held responsible on the determination of the actual damages occurred to the consignment. The receipt of Ex.A3 has been accepted by the defendant and this could be also seen from the acknowledgment card marked as Ex.A5, in addition to that it is further seen that the defendant had responded by way of Exs.A4 and A7 and it had only repudiated its responsibility for the damages as claimed by the plaintiffs under Ex.A3. Following the above said exchange of notices between the parties, it is found that the surveyor had inspected the consignment on 07.04.1993 and 08.04.1993 and assessed the damages and the surveyor's report dated 12.04.1993 has been marked as Ex.A8. Meanwhile, it is seen that the plaintiffs had issued the notice marked as Ex.A9 dated 10.03.1993 to the defendant and a perusal of the same would go to show that they had also referred to their earlier notice dated 26.02.1993 marked as Ex.A3 and accordingly pointed out to the damage caused to the consignment and the defendant being responsible to the same as the Carrier of the consignment,

demanded the defendant to pay the requisite damages and settle the matter. It is thus found that taking into consideration all the above said materials placed on record, the plaintiffs are found to have complied with the statutory compliance contemplated u/s.10 of the Carriers Act, 1865 and in such view of the matter, the contention put forth by the defendant's counsel that on the failure of the plaintiffs to establish the receipt of Ex.A9 notice by the defendant, as such the plaintiffs' suit should be rejected cannot be countenanced. Even assuming for the sake of arguments that the plaintiffs have to establish the receipt of Ex.A9 notice by the defendant, when it is noted that even prior to the same, the plaintiffs had issued the notice informing the damages to the defendant by way of Ex.A3 and when it is seen that the defendant had also responded to the said notice, in my considered opinion that would be sufficient compliance of section 10 of the Carriers Act 1865 and therefore the failure of the plaintiffs in establishing the proof of receipt of Ex.A9 by the defendant by itself would not in any manner dis-entitle the plaintiffs to claim the damages from the defendant. As rightly put forth by the defendant's counsel, the statutory notice contemplated u/s.10 of the Carriers Act 1865 does not state that the notice should specifically mention that it is issued u/s.10 of the Carriers Act, 1865. It is seen that it would be sufficient if the notice fulfills the requirement of section 10 and inform the carrier about the loss or injury to the goods. The object of the notice 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 and occasioned. Accordingly, it is found that on a reading of the contents of Ex.A3, when the plaintiff had clearly put on notice about the damage caused to the consignment on delivery to the defendant and also put on notice that it will be held responsible for paying the damages being quantified by the surveyor, it is found that the said notice is sufficient compliance of section 10 of the Carriers Act, 1865 and as already seen, the defendant has also responded to the same, by way of Exs.A4 and A7 reply notices and when it is found that the defendant being the carrier having been entrusted with the consignment for safe custody to the consignee and when it is noted that the consignment had been delivered at the destination only in a damaged condition and accordingly it is found that the defendant as the carrier is liable to pay the damages suffered by the plaintiffs during transit and accordingly, it is found that the first appellate court has rightly held that the defendant is liable to pay the damages occasioned to the plaintiffs as put forth by them.

12. In the light of the above discussions, it is found that the first appellate court is right in holding that Ex.A9 is the statutory notice issued u/s.10 of the Carriers Act 1865 coupled

with the fact that the plaintiffs had already issued the statutory notice way back on 26.02.1993 itself to the defendant marked as Ex.A3. It is further found that there is no infirmity or defect in the first appellate court entertaining the reception of additional documents marked as Ex.A7 to A9, considering the reasons given by the first appellate court with reference to the same. Accordingly, it is found that the plaintiffs had established that they had issued the statutory notice contemplated u/s.10 of the Carriers Act 1865, when the materials placed by the plaintiffs particularly Exs.A3, A4, A5, A7 and A9 are read in conjunction with the other materials placed on record and in such view of the matter, it is found that the plaintiffs' suit cannot be rejected for want of the statutory notice as contended by the defendant's counsel and on the other hand, as rightly determined by the first appellate court, the plaintiffs had issued the statutory notice required under law and in such view of the matter, the substantial question of law formulated in the second appeal are accordingly answered in favour of the plaintiffs and against the defendant.

13.In support of the contentions, the counsel for the plaintiffs relied upon the decision reported in 2007 ACJ 1308 [Transport Corporation of India Ltd. Vs. Veljan Hydrair Ltd]. The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the case at hand.

14. In conclusion the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

1.The Principal Additional District
Judge cum Chief Judicial Magistrate,
Dharmapuri at Krishnagiri.

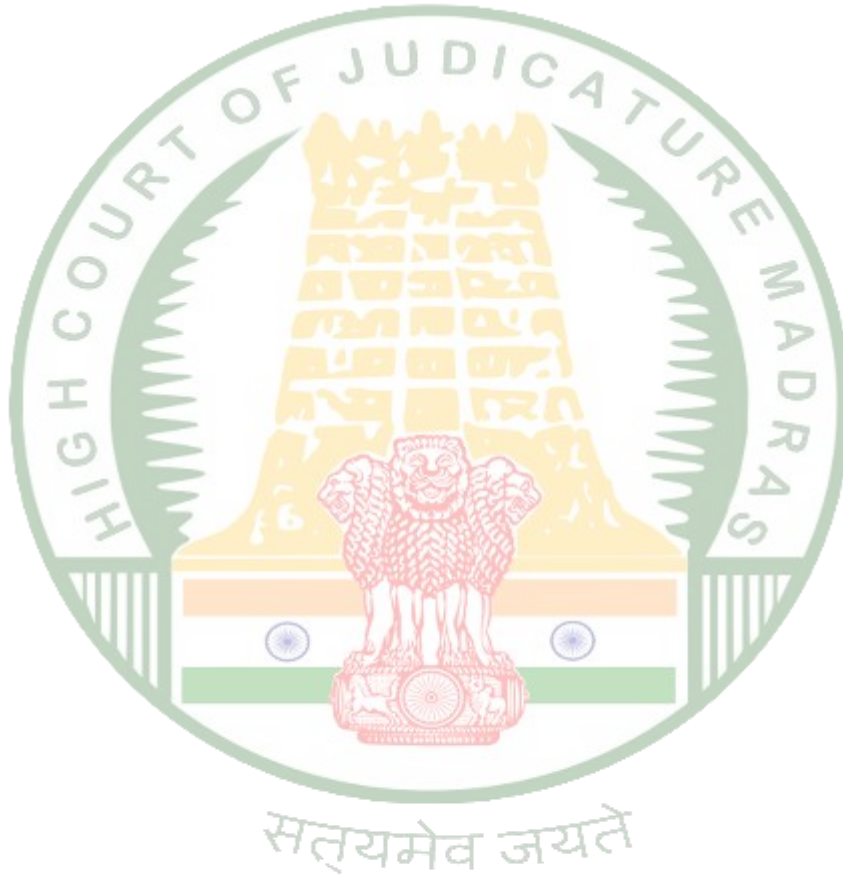
2.The Subordinate Judge, Hosur.

COPY TO:
The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.ELVEERA RAVINDRAN, Advocate, S.R.No.7582

Judgment made in
S.A. No.1607 of 2003

MP (CO)
TR(04/06/2018)



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