

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.129 OF 2008

JUDGMENT:

Sole defendant in O.S. No.1614 of 1996 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad, preferred the present City Civil Court Appeal under Section 96 of the Code of Civil Procedure, 1908, challenging the judgment and decree, dated 14.06.2004, whereby and where-under, the claim of Rs.4,92,824/- with costs and future interest at 12% per annum from the date of suit till the date of decree and, thereafter, at 6% per annum till realization was decreed.

2. Heard Sri B. Vijaysen Reddy, learned counsel for the appellant - defendant, and Sri Kota Subba Rao, learned counsel for respondent No.1 - plaintiff No.1. None appears for the respondent No.2 - plaintiff No.2 though, service was completed on it.

3. The appellant herein is the defendant in the aforesaid suit, while respondent Nos.1 and 2 are plaintiffs.

4. For the sake of convenience, the parties herein are referred to as they were arrayed in the Original Suit.

5. A few facts, which are relevant for the purpose of adjudicating upon the controversy in the present appeal, require advertence.

i) The Consignor in the instant claim is M/s. Royal Trade Agency, Madras. It transported a consignment consisting of three wooden cases of pump spares, 18 numbers of screw bearings and impeller thrust ring through defendant - M/s. Patel Roadways Limited from Madras to Vijayawada insured by plaintiff No.1 - M/s. New India Assurance Company Limited. The consignment was carried in a Truck and the said truck met with an accident due to negligence of the driver and pump spares were lost.

a) The plaintiff, alleged that on account of the negligent and misconduct of the defendant carrier and its employees while the consignment was in their custody and during transit, the loss occurred. It got issued a letter to the defendant stating therein that on the claim made by plaintiff No.2 - M/s. Andhra Pradesh State Electricity Board, plaintiff No.1 has settled the claim for Rs.4,92,824/- as the claim made by plaintiff No.2 with the defendant was not honoured. Plaintiff No.1 also claimed that plaintiff No.2 executed a letter of subrogation and special power of attorney in its favour and, therefore, the defendant being carrier is bound under law to make good the loss caused to the suit consignment.

b) The plaintiff No.1 also stated that an independent surveyor was appointed and the actual loss was ascertained before making payment to plaintiff No.2, and the plaintiff No.2 is made as proforma party to the suit and, thus, laid the claim.

ii) The defendant filed its written statement resisting the claim contending that the suit claim was barred by limitation; that the Civil Court at Hyderabad has no jurisdiction to try the suit; that the consignment was booked from Madras to deliver at Vijayawada under L.R. No.019565, dated 17.11.1993, and it was carried at 'owners risk', and when the lorry met with an accident by an act of God, no negligence can be attributed and no liability can be fastened on it towards damages caused to the consignment.

a) The defendant also took a stand that the letter, dated 01.06.1994 was addressed bringing to the notice of plaintiff No.2 that the accident in question was due to act of God and it (defendant) is not liable to pay loss, and the plaintiff No.2 is entitled to claim the compensation from the Insurance Company.

b) The defendant also expressed its ignorance as to the settlement of claim by plaintiff No.1 to plaintiff No.2 to the tune of Rs.4,92,824/-. The defendant also expressed its ignorance as to plaintiff No.2 executing a letter of subrogation and special power of attorney. According to it, there is no cause of action and valuation of the suit claim is highly inflated and that the Civil Court at Hyderabad has no jurisdiction to entertain the suit and, therefore, sought to dismiss the suit.

6. The learned trial Court upon hearing both sides and on the basis of the pleadings, settled the following six issues:

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1. Whether this court has no territorial jurisdiction?
2. Whether the suit claim is barred by limitation?
3. Whether the loss in transit was due to negligence and careless of the employee of the defendant or due to act of god?
4. Whether the surveyor's report is binding on the defendant?
5. Whether the plaintiffs are entitled to the suit amount?
6. To what relief?”

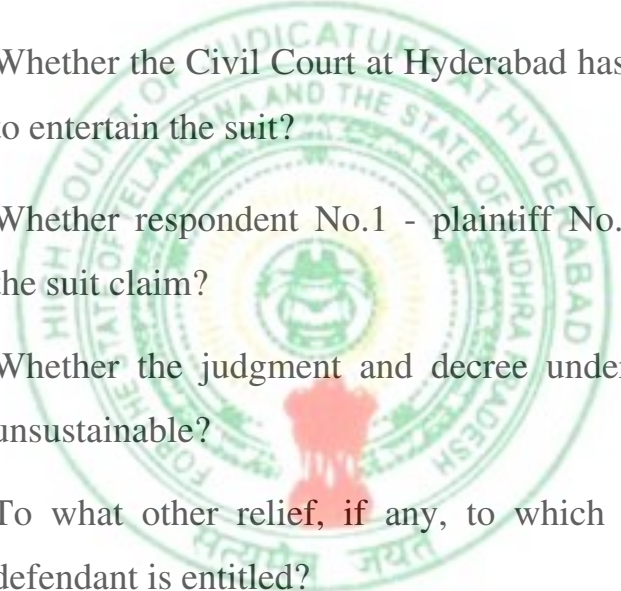
7. During trial, on behalf of plaintiffs, PW.1 was examined and Exs.A-1 to A-6 were marked. Whereas, defendant did not adduce any evidence either oral or documentary to substantiate its stand.

8. The learned trial Court taken up common discussion under issue Nos.1 to 5. Basing on the evidence of PW.1 and the surveyor's report showing the loss was estimated to the tune of Rs.4,92,824/- and the said amount was paid to plaintiff No.2 answering the claim as defendant failed to satisfy the claim and since plaintiff No.2 executed a letter of subrogation in favour of the plaintiff No.1 under Special Power of Attorney and since the defendant did not make payment despite the plaintiffs' demand, finding that the marine insurance policy, surveyor's report and letter of subrogation, categorically establish that the defendant failed to make payment as per the demand made by both the plaintiffs, decreed the suit as aforementioned.

9. In the grounds of appeal, the very same stand has been taken contending that the learned trial Court did not properly comprehend the case of the defendant and failed to notice that the owner of the

vehicle was not made as a party to the suit; that the surveyor was not examined; and the trial Court ought to have reduced the compensation to an extent of consignment which was not damaged in the accident and no chance was afforded to the defendant to cross-examine PW.1 and, therefore, sought to set aside the judgment and decree passed by the trial Court.

10. In view of the submissions made by both sides, the following points would arise for determination:

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- (i) Whether the Civil Court at Hyderabad has no jurisdiction to entertain the suit?
 - (ii) Whether respondent No.1 - plaintiff No.1 is entitled to the suit claim?
 - (iii) Whether the judgment and decree under challenge are unsustainable?
 - (iv) To what other relief, if any, to which the appellant - defendant is entitled?

Point No.(i)

11. The learned counsel for the appellant - defendant, of course, reiterated what has been stated in the grounds of appeal in making submissions.

12. The learned counsel for respondent No.1 - plaintiff No.1, Sri Kota Subba Rao, relies on the decision in **M/s. Patel Roadways Ltd., v. M/s. Prasad Trading Company Ltd.¹**, and **Bond Food**

¹. AIR 1992 SC 1514

Products Pvt. Ltd. v. Planters Airways Ltd². The former ruling was relied on in the context of jurisdictional aspect. When a similar situation arose, in **M/s. East India Transport Agency, Hyderabad v. National Insurance Company Limited³**, it was referred to the Full Bench of this Court. The reference was answered holding that the Courts at Hyderabad have jurisdiction though, lorry receipt in that case stipulated a specific term that “Courts in Calcutta only have jurisdiction to entertain the suit” and since the said condition was not specifically brought to the notice of the consignee or insurer, a third party is not bound by it. What has been laid down by the Hon’ble Full Bench of this Court in paragraph No.21 is relevant for the present purpose. The Hon’ble Full Bench observed thus:

“21. From the above discussion, we approve of the decisions of Ramaswamy, J. in *M/s. Patel Roadways Pvt. Ltd. v. The Republic Forge Co. Ltd.* ((supra) and of Rama Rao, J. in *M/s. B. A. Transport Co. v. Bankatlal* (1982) 1 APLJ 288 (supra) that in the event of entrustment of goods to a carrier under a consignment note and a claim arising out of such a contract, the third party to the consignment note is not bound by the terms and conditions contained in the consignment note limiting the jurisdiction of the Court to decide the dispute unless it is shown that such a third party's attention is specifically drawn to such a clause contained in the consignment note and he is made aware of its implications. Such a term excluding the jurisdiction the Court cannot bind a third party unless it is shown that he acted upon the

². 2006 ACJ 24

³. 1990 (3) A.L.T. 481 (F.B.)

contract consciously knowing the effect and implications of such a contract. The decision in *Rajarao v. A. P. T. Company* ((1969) 2 APLJ 151) (supra) is distinguishable on the facts of this case inasmuch as in that case, M/s, Dumex and Co., was held to be aware of the term of the contract with regard to the jurisdiction of the Court and that the plaintiff who has stepped into the shoes of M/s. Dumex and Co., is bound by such a term. In the instant case, inasmuch as a part of cause of action has arisen at Hyderabad, we hold that the decision of the learned Xth Assistant Judge holding that he has got jurisdiction to entertain the suit is perfectly correct and does not call for any interference.”

Therefore, so far as jurisdiction aspect is concerned, the stand taken by the appellant - defendant is unsustainable in view of the aforesaid decision.

Point No.(ii)

13. It is no doubt true, the defendant has taken up the stand that since the lorry met with an accident, there was damage to the goods consigned and it is an act of God and, therefore, nothing can be attributed to the defendant and the defendant is not liable to pay any amount. When the lorry which was loaded with the consignment meets with an accident, it cannot be said that due to act of God, the accident did occur and it is to be viewed that only on account of rash and negligent driving of the lorry driver, the accident had taken place. Therefore, that stand taken by the defendant is without any substance. The said stand is taken only for the purpose of getting rid of the

liability that would be fastened on it. So far as the evidence on record is concerned, since the defendant did not take part in cross-examination of PW.1 despite filing a written statement controverting the allegations made in the plaint, the evidence of PW.1 stands unchallenged and un-rebutted. In fact, the defendant is not seeking to remit the matter to the trial Court to afford an opportunity to cross-examine the witness. Even otherwise, the defence set up by the defendant is wholly untrue and incorrect. The ruling in **Bond Food Products Pvt. Ltd.**², would assist plaintiff No.1 - Insurer to sustain the claim made by it. It is not the case of the defendant that it got appointed any surveyor independently, whereas, plaintiff No.1 appointed a surveyor to ascertain the loss caused on account of damage to the goods under consignment. The ground that no notice was given to the defendant before appointment of surveyor and before the amount is paid to plaintiff No.2 is not a sustainable ground to reject the suit claim. Therefore, this point is also held against the appellant - defendant and in favour of the respondents - plaintiffs.

Point No.(iii)

14. Since point Nos.(i) and (ii) are held against the appellant - defendant, the judgment and decree passed by the trial Court is affirmed in all respects.

Point No.(iv)

15. The present appeal fails and, accordingly, dismissed. Both parties shall bear their own costs.

As a sequel thereto, miscellaneous applications, if any pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

FEBRUARY 07, 2018.
GBS/Mgr

