

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 8563 of 2017

Date of Decision: 09.08.2018

EmBee Road Service Private Limited

.....Petitioner

Vs.

United India Insurance Co. Ltd and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ajay Pal Singh, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the Award of the Permanent Lok Adalat (Public Utility Services), Ludhiana, dated March 21, 2017, by which the respondents-claimants before the Lok Adalat were awarded a sum of Rs. 3,82,837/- as damages for the loss of goods suffered by them when such goods were being transported by the petitioner company from Ludhiana to Mumbai on 06.07.2008.

Interest @ 6% per annum has also been awarded on the aforesaid amount, running from the date of filing of the application before the Lok Adalat, till the date of payment of the sum awarded.

As per the case of the respondents, the first of whom is the United India Insurance Company Ltd. and the second one is the company that had insured the goods with the aforesaid insurance company, the goods that were being carried by the petitioner company did not reach their destination, as the truck of the company which was carrying the goods met with an accident near Sangrur, with

the cotton yarn, (i.e. the goods) damaged in the accident and the consignment brought back to the place of origin.

The learned Lok Adalat eventually came to the conclusion that negligence of the driver of the vehicle could not be disproved by the petitioner company whose stand was that the accident occurred due to “an Act of God”, with the wheel of the truck having come off at a turn, leading to the truck turning over, thereby damaging the goods contained in it.

Learned counsel for the petitioner before this Court points to the fact that on the goods invoice, annexed as Annexure P-1 with this petition, (stated to be duly exhibited before the Lok Adalat as Ex. A-6), the following words are written at a prominent place: “At Owners' Risk”.

He further points to the fact that the footnote of the invoice, issued by the petitioner company also contains the following phrase:-

“Carrier is not responsible for leakage and breakage”.

He thus submits that respondent no. 2 herein, i.e. the company to which the goods belonged, being fully aware of the risk it was taking, in sending the consignment with the petitioner company, the petitioner cannot be held liable for any damages to the goods, especially as respondent no. 2 has already been indemnified for the loss suffered by its own insurance company, i.e. respondent no. 1 herein.

He further submits that the wheel of the truck having come off on a turn as was stated by the driver thereof in the DDR registered at Police Station Sadar, District Sangrur, on the date of the accident, in any case the petitioner company can not be held liable.

Having considered the above, it is seen that the learned Permanent Lok Adalat has held that negligence of the driver of the vehicle, would be

presumed with no evidence led to the effect that it was actually “an Act of God”, other than simply the drivers' bald statement as recorded in the DDR, no enquiry conducted by the police also having been led by way of evidence to prove the non-negligence of the driver.

Upon query, learned counsel admits that it is now the insurance company (respondent no. 1 herein), that is claiming the awarded amount from the petitioner and not respondent no. 2, which is the company that had engaged the petitioner for transportation of the goods.

As already noticed, respondent no. 1 is the company that had insured the goods of respondent no. 2 and is not the insurance company that had insured the petitioner against loss sustained by it on account of transportation of the goods.

That being so, I agree with the reasoning of the Lok Adalat, to the effect that vicarious liability of the act of its driver, i.e. tortious liability of the petitioner company, had to be accepted by it, unless it could actually show by leading positive evidence to the effect that the accident occurred genuinely was due to “an Act of God” and not due to any fault of the driver.

On the issue of the right of the insurance company to recover damages to the extent that the insured has been indemnified by it, a judgment of five Judges of the Supreme Court in **Economic Transport Organization Delhi** vs. **Charan Spinning Mills Private Limited and another** (2010) 2 SCC 114, can be cited.

On specific query put to learned counsel for the petitioner, he could not deny that no evidence to that effect was led, in the form of either a mechanics' test report, or as already noticed, any enquiry held by the police (or any other agency), to the effect that the accident was genuinely was “an Act of God” and was not due to the negligence of the driver engaged by the petitioner company.

That being so, in the opinion of this Court, the Lok Adalat has not erred in awarding the damages which respondent no. 1, being the insurer for respondent no. 2, would be entitled to recover from the petitioner, it having paid such damages to respondent no. 2.

Consequently, finding no merit in this petition, it is dismissed in *limine*.

August 09, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.