

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.2472 of 2010 (O&M)

Date of decision:05.04.2018

United India Insurance Company Limited

... Appellant

Vs.

M/s Bharat Motor Transport Co. (P) Ltd. & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.P Gupta, Advocate
for the appellant.

Mr. Ramneek Vasudeva, Advocate with
Mr. Saurabh Dalal, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the judgment and decree dated 27.08.2009 rendered by the Lower Appellate Court, whereby the appeal preferred by the Transporter against the judgment and decree dated 03.12.1999 decreeing the suit of the appellant-plaintiff, has been allowed while setting aside the judgment and decree of the trial Court.

The appellant-plaintiff/United India Insurance while joining National Fertilizer consigner and consignee on the basis of subrogation preferred the suit for recovery of ₹15,79,764/- against M/s Bharat Motors Transport Company Limited, Ludhiana through its registered office at Red Cross Bhagwan Sector 1, Naya Nangal, Tehsil Anandpur Sahib, District Ropar on account of the claim made by the National Fertilizer for the

damaged goods insured with them. It was averred that on the basis of report of surveyor, the amount of compensation was paid to them and the suit for recovery was filed on account of the negligence of the defendants. It was averred that defendant no.1 issued a regular G.R.No.21163 dated 17.3.1990 against the freight charges of ₹1055/- at the destination. Defendant No.1 agreed and assured plaintiff no.2 that he would carry the goods in safe, sound and perfect condition and would give the delivery of the consignment at Nangal. The rotor consignment was transported by the said Carrier (defendant No.1) to their godown at Nangal on 28.03.1990. On receipt of the information about the arrival of the said consignment at Godown of defendant no.2, concerned official inspected the consignment and found it in a damaged condition. Plaintiff no.2 is stated to have issued a notice by writing a note thereon as “wooden case received in a damaged condition” on 28.03.1990. The defendant was asked to issue a certificate of damage but refused to do so. On inspection of the rotor, it was found that the same was in a damaged condition and not fit for the purpose it was required, therefore, Carrier was liable to pay the aforementioned amount alongwith interest @ 22% per annum from the date of filing of the suit till decretal of the suit.

Preceding to the filling of the suit, a registered notice dated 25.06.1990 was sent to defendant No.1. It was averred that loss was surveyed by one Sh. B.M.Gupta, Surveyor, Chandigarh on 10.04.1990 and 25.06.1990. Thereafter, services of M/s J.B.Boda Surveyors Pvt. Ltd. New Delhi were engaged and surveyed the loss on 18.09.1990.

The aforementioned suit was contested by the defendants by filing a joint written statement taking objection qua non-maintainability as legal notice under Section 10 of the India Carriers Act, 1865 had not been served upon them and various other preliminary objections. On merit, it was averred that the goods were imported by the national fertilizer and the same were loaded from the Delhi Airport by availing the services of the defendants without examining the status of the Rotor consignment. It was denied that Rotor consignment was handed over to defendant no.1 on 17.03.1990 in safe and sound condition as alleged but the rate of freight was admitted. The consignment was never inspected by any of the functionary of the NFL plaintiff prior to 7.4.1990. The alleged note was an after thought and therefore, was not signed by any of the agent of the defendants. There was no privity of contract between the defendants and plaintiff. It at all, any damage was suffered which was during the transportation from the Godown Office at Jawahar Market, Nangal to NFL Factory premises Naya Nangal and prayed for dismissal of the suit.

On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiffs are entitled to receive and recover the disputed amount of Rs.15,79,764/- against the defendants as claimed through this suit? OPP*
- 2. If issue no.1 is proved, whether the plaintiffs are also entitled to receive the said amount alongwith interest? If so, at what rate? OPP*

3. *Whether the suit is barred by time? OPD*
4. *Whether this Court has no jurisdiction to entertain and try this suit? OPD*
5. *If this suit neither competent nor maintainable as alleged? OPD*
6. *Relief.”*

Both the parties led evidence. The plaintiff examined as many as five witnesses and brought on record the documents; Ex.P1 to Ex.P16. On the other hand, defendants examined two witnesses, i.e., DW1 and DW2 and closed the evidence.

The trial Court on the basis of evidence brought on record, i.e., surveyor report Ex.P2, decreed the suit alongwith interest @ 18% from the date of filing of the suit till realization but the lower Appellate Court reversed the findings.

Mr. D.P.Gupta, learned counsel appearing on behalf of the appellant-plaintiff submitted that the Lower Appellate Court has committed illegality and perversity in setting aside the well reasoned finding of the trial Court as it has failed to consider the provisions of Carrier Act and as well as the fact that respondent No.1 and 2 did not produce on record the original goods receipt. It was case of the appellant that a noting was given on the original goods receipt that the consignment was received in damaged condition. PW5 Harbhajan Singh specifically stated that bottom plank of wooden of the rotor consignment was broken/damaged. The aforementioned statement has not been taken into consideration, therefore, there was mis-

direction resulting into perversity. DW1-Tejinder Singh in cross-examination feigned ignorance whether the rotor consignment was damaged or not. Photocopy of the goods receipt Ex.P11 on which endorsement was made at the time of taking delivery of the consignment has not been taken into consideration. DW2 -Raj Kumar was not an employee of respondent no.3, therefore, his testimony could not be taken into consideration. The consignment was sent at the owner's risk but respondents No.1 and 2 failed to prove such contract and thus, prayed for setting aside the judgment and decree under challenge.

Per contra, Mr. Ramneek Vasudeva, learned counsel for the respondents submitted that judgment and decree of the Lower Appellate Court being the last Court of fact and law after examining the oral and documentary evidence found that appellant-plaintiff failed to prove the case and presumption under Sections 8 and 9 of the Carrier Act was not rebutted. The report of Surveyor Ex.P1 did not reveal that damage was caused during mishandling of goods at the time of loading and un-loading and all these facts weighed in the mind of the Lower Appellate Court while allowing the appeal and prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submission of Mr. Gupta, for, the fact as noticed above with regard to picking up the consignment and delivery at the consigner office on 07.04.1990 was not in dispute and note on the receipt as well but fact of the matter is that preliminary surveyor was

appointed on 10.04.1990 and 25.06.1990 and thereafter, final survey on 18.09.1990. All these surveys have not been done in the presence of any authorized person or partner of the transporter to assess the damage.

It is a matter of record that consignment was imported and straightway un-loaded to the office. No such inspection was done at the time of loading whether the goods were already damaged or not and therefore, alleged damage caused to the rotor consignment remained mystery. The surveyor report is conspicuously wanting reason with regard to mishandling of goods during loading and un-loading.

All these facts noticed by the Lower Appellate Court are correct appreciation of law and the documentary evidence placed on record.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

April 05, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No