

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.2080 of 2015 (O&M)
Date of Order:25.10.2018**

Luxmi Transport and another

..Appellants

Versus

ICIC Lombard General Insurance Co. Ltd. & anr.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.L.Bajaj, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by both the courts below, while decreeing a suit filed by the plaintiffs for recovery of Rs.82411/- along with interest @ 12% per annum with effect from 28.08.2007.

Undisputed facts are that plaintiff no.2 entrusted certain goods to defendant no.1-appellant, a common carrier for transportation were damaged/lost in a motor vehicular accident. Plaintiff no.2 had insured that consignment booked for transportation of goods belonging to plaintiff no.1. On a claim lodged by plaintiff no.2, plaintiff no.1 reimbursed plaintiff no.2 and rights of plaintiff no.1 got subrogated qua recovery of the amount from the defendants. The suit thus was filed by two plaintiffs i.e. plaintiff no.1 and plaintiff no.2 i.e. the Insurance Company and owner of the goods.

Both the courts after appreciation of evidence have found that the amount is recoverable.

Learned counsel for the appellants has submitted that the defendants had no privity of contract with plaintiff no.1. He further submitted that no notice before filing the suit as required under the

Carriers Act, 1865 has been given. He further submitted that defendants-appellants were not given opportunity when payment was made by plaintiff no.1 in favour of plaintiff no.2.

This court has considered the arguments and find no substance therein.

Subrogation of rights in favour of Insurance Company after payment of the compensation is well known. Still further the present suit has been filed not only by the Insurance Company but also by the owner of the goods i.e. plaintiff no.2. Hence, the argument of learned counsel for the appellants has no substance.

As regards notice, Ram Kesh i.e. appellant no.2 (defendant no.2 in civil suit) when appeared in evidence admitted that he has received the notice, Ex.P27. Aforesaid notice was sent by plaintiff no.2 as found by the first appellate court in para no.28. However, learned counsel for the appellants insist that the aforesaid notice was in fact sent by the Insurance Company. No doubt, the argument is factually correct, however, that would not make any difference. Once there is a subrogation of rights by plaintiff no.2 in favour of plaintiff no.1, the notice issued by plaintiff no.1 is deemed to be noticed on behalf of plaintiff no.2.

Last argument of learned counsel for the appellant that he was not given opportunity or joined when claim of plaintiff no.2 was settled by plaintiff no.1 is also to be noticed and rejected because while filing the present suit, defendants have been given sufficient opportunity to prove their case. The suit has not merely been decreed on the basis of settlement of the compensation in between the plaintiffs. Cogent evidence has been lead to prove that plaintiff no.1 suffered loss which was reimbursed by the

Insurance Company i.e. plaintiff no.1.

Learned counsel for the appellants submitted that the accident which took place was act of God because of rains the roads were slippery. It is for the transporter to take reasonable care. Once he knows that roads are slippery a transporter or his driver has to take extra precaution. Slippery roads on account of rains cannot be ground to absolve the transporter from the loss suffered by the owner particularly when such accident could be avoided by taking reasonable care and precaution which the transporter failed to do so.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

C.M.No.5426-C of 2015

Prayer in this application is for condonation of delay of 223 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 223 days in re-filing the appeal is condoned.

Application is allowed.

C.M.No.5427-C of 2015

Prayer in this application for making good the deficiency in Court fee.

Deficiency in Court fee has already been made good. Delay, if any, in making up the deficiency is condoned.

October 25, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No