

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

RSA No.1504 of 2018 (O&M)

Date of Decision:14.03.2018

United India Insurance Co. Ltd. and others Appellants

Vs.

Harinder Deol

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Ravinder Arora, Advocate for the appellants.

RAMENDRA JAIN, J. (Oral)

CM No.3949-C of 2018

For the reasons mentioned in the application, the same is allowed. Delay of 15 days in refiling the appeal is condoned.

RSA No.1504 of 2018 (O&M)

This is a futile attempt of the defendants through this regular second appeal to assail the judgments and decree of both the Courts below, whereby suit of the respondent- plaintiff for recovery of ₹19,38,564/- along with interest @ 12% per annum from the date of lodging the claim till the decree and future interest @ 6% per annum has been decreed and affirmed by the First Appellate Court.

Briefly stated, the respondent- plaintiff as a partner/proprietor of M/s Diamond International (Regd.) at Ludhiana sold the goods worth ₹19,38,564/- to a foreign buyer and despatched the same after obtaining a transit insurance policy from the appellant- Company. However, the goods lost overboard in transit and were never delivered to the consignee being not reached at the destination. Consequently, respondent- plaintiff lodged his

claim with the appellant- Insurance Company which was repudiated by the appellant, forcing the respondent to file a civil suit for recovery of the amount aforesaid along with interest.

The trial Court after holding trial, decreed the suit in the manner as narrated above. The appeal of the appellants too was dismissed by the First Appellate Court.

Learned counsel for the appellants inter-alia contends that both the Courts below have failed to appreciate that the respondent- plaintiff has categorically admitted in his statement that he has received the value of the goods from the consignee, therefore, he was not liable to be enriched by directing the appellants to make payment, equivalent to the value of the goods.

Having given considerable thoughts to the submissions made by learned counsel for the appellants, I find the instant appeal completely devoid of any merit, inasmuch the argument raised before this Court has already been dealt with unambiguously by both the Courts below in detail. The First Appellate Court specifically dealing with the issues raised before this Court has observed as under:-

“Learned counsel for the appellants has contended that PW2 Harinder Deol has admitted in his cross-examination that he has received value of the goods damaged during transit. When the amount has been received by the respondent from the purchaser for delivery of goods and the said goods have not been delivered to the purchaser, then respondent could not retain the said amount so received and the respondent i.e. the

seller has to return the amount and the said receipt of the amount cannot be said to have been indemnified the respondent. Merely because the earnest money has been received, which under the given circumstances is to be treated as security or endorsement for the delivery of the goods, could have been claimed or retained only after the delivery of the goods to the purchaser. When the goods have not been delivered, said security has to be returned and under such circumstances, the loss occurred due to the loss of goods during transit is to be compensated by the appellants. Hence, this contention is devoid of merit.”

Learned counsel for the appellants has miserably failed to show that it is a case of enrichment of the respondent as alleged, rather the amount received by respondent against the shipment of the goods has to be refunded by him, since the goods did not reach to the consignee.

Learned counsel for the appellants has not been able to show any illegality or perversity in the impugned judgment and decree and, therefore, the appeal is dismissed.

March 14, 2018
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No