

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2094 of 2017 (O&M)

Date of Decision: November 26, 2018

M/s Associates Road Carriers Limited

...Appellant

Versus

M/s United India Insurance Co.Ltd. & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Parveen Sharma, Advocate for
Mr. Arun Dogra, Advocate,
for the appellant.

AMIT RAWAL, J.

CM No.5074-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 39 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.2094 of 2017

Present Regular Second Appeal is directed against the concurrent findings of fact and law, whereby the suit of the appellant-plaintiff bearing No.275 of 23.11.2004 seeking recovery of ₹ 9,79,084/- along with future interest @ 18% per annum as damages on account of loss of goods, has been dismissed by the trial court and affirmed by the Lower Appellate Court. However, Civil Suit bearing No.3186 of 16.11.2006 filed by M/s United India Insurance Co. Ltd. & another against appellant-M/s Associated Carriers Ltd. has been decreed by the trial court.

Plaintiff claimed the aforementioned amount on the premise

that the goods entrusted to the plaintiff were insured by defendant No.5- M/s United India Insurance Company Ltd. The consignment was despatched on a truck owned by defendant No.2 and driven by defendant No.3. The defendants were given challan, transit papers and as well as advance rent. However, on the fateful night of 4/5.4.2004, defendant No.3- driver of the truck, illegally stopped en route to his village Malsiawas, Rewari and, thus, the truck deviated from the assigned route. On 10.04.2004 at Sangli Maharashtra, out of 437 crates, only 416 were delivered and 17 were found in damaged condition. Immediately a complaint was lodged to the police against defendant Nos.1 to 3 and they were found guilty. Preceding to filing of the suit, a mandatory notice under Section 10 of the Carrier Act was also served upon defendant Nos.1 to 3 but in vain.

Defendant No.1 filed a separate written statement asserting the suit to be not maintainable. Defendant Nos.2 and 3 filed the joint written statement and denied the alleged damages to the material. Insurance Company-defendant No.5 did not deny the insurance of the goods but asserted that after proper survey and assessment of loss and due application of mind, payment of ₹ 9,84,494/- was made to defendant No.4, i.e., Punjab Communication Limited vide voucher dated 02.12.2004 in full and final settlement by reserving a right to recover against the carrier, i.e., plaintiff.

Mr. Parveen Sharma, Advocate for Mr.Arun Dogra, learned counsel appearing on behalf of the appellant-plaintiff, in support of the memorandum of appeal, submitted that the courts below have committed illegality and perversity in decreeing the suit of the Insurance Company for recovery against the carrier as no fault or negligence was established, even filing of suit against the defendants itself was the testimony of claiming the

damages. Assessment of damages to the tune of ₹ 9,84,494/- did not require any further quantification in terms of money at the behest of the plaintiff. The report of the Surveyor was vague and inconducive and in such circumstances, suit of the Insurance Company could not have succeeded. The territorial jurisdiction of the courts was conspicuously absent as suit was to be filed either at the place of booking or at the place of delivery.

I have heard the learned counsel for the appellant-plaintiff, appraised the paper book and of the view that the report of the Surveyor has not been belied through independent witness, whereby on inspection of crates, Insurance Company assessed the claim and paid the compensation to the consignee, i.e., defendant No.4, which was received in full and final settlement with a rider to recover. The Insurance Company had, in view of the facts, indemnified the consignee, but cannot be prevented to claim the amount on account of the negligence of the carrier. It was obligatory upon the plaintiff to have a check and control over its employees so that stick to the route. The driver was in employment of the carrier and, therefore, could not deviate from the assigned route. No contrary evidence has been led regarding quantification as assessed by the Surveyor.

In my view, the findings of fact and law arrived at in decretal of suit cannot be faulted with. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on the ground of delay and as well as on merits.

November 26, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No