

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

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RSA-4912-2017 (O & M)
Date of Decision:01.10.2018

M/s R.K. Roadlines

...Appellant

Versus

Punjab Alkalines and Chemicals Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Lath, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM-12925-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the delay of 165 days in filing the appeal is condoned.

Application is allowed.

CM-12924-C-2017

Allowed as prayed for.

Main Case

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below.

In the considered opinion of this Court, appellant has already been let off lightly. Dispute in the present case is with respect to non delivery of fuel oil, which was to be supplied to the plaintiff-(respondent herein)-Company after having carried it from Mathura Refinery.

It is not disputed that after getting the delivery from Mathura Refinery, fuel oil did not reach the plaintiff-Company.

Both the Courts after appreciating the evidence have decreed the suit filed by the plaintiff for a sum of Rs.4,77,012/- along with interest @ 18% per annum.

Learned counsel for the appellant has submitted that Insurance Company has not been impleaded as a party. He submitted that Insurance Company was a necessary party and in absence thereof, no suit was maintainable. However, learned counsel for the appellant admitted that when official of the plaintiff-Company appeared in evidence, he disclosed that no claim has been filed with the Insurance Company. In such circumstances, Insurance company cannot be said to be necessary party with regard to dispute between the carrier and the customer.

Next argument of learned counsel is that their liability is restricted to Rs.100/- as value of the property, was not disclosed. It may be noted that this argument was never raised before the Courts below. Still further, two Public Sectors undertakings namely Indian Oil Corporation and Punjab Alkalines and Chemical Limited were involved. Plaintiff-Company had given a contract to the defendant-appellant to transport furnace oil/light diesel oil from various oil depots to their factory at Naya Nangal. It was a regular contract given to the defendant-Company.

In such circumstances, defendant-Company cannot claim that it did not know what was the value of the oil, which was being transported. Loss of material (Fuel Oil) in the transit is not dispute. In fact the transport vehicle which took the delivery from the refinery never reached plaintiff-

Company.

In such circumstances, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

01.10.2018
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(ANIL KSHETARPAL)
JUDGE

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