

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

(1) **RSA-2622-1997(O&M)**

The Amritsar Transport Co. Pvt. Ltd. and another

...Appellants

Versus

The British India Corporation Ltd. and others

...Respondents

(2) **RSA-3378-1997(O&M)**

Union of India

...Appellant

Versus

The British India Corporation Ltd. and others

...Respondents

Date of Decision:-2.12.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vikas Jain, Advocate
for the appellants in RSA-2622-1997 and
for the respondents No.2 and 3 in RSA-3378-1997.

Mr.Puneet Sharma, Advocate
for respondent No.1 in both appeals.

Mr.Vishal Gupta, Advocate
for the appellant in RSA-3378-1997 and
for respondent No.3 in RSA-2622-1997.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – The

British India Corporation Ltd. (New Egerton Woolen Mills Branch

Dhariwal) District Gurdaspur had brought a suit for recovery of Rs.42,060-73 paise against the defendants i.e. Union of India through its Secretary, Ministry of Communication, New Delhi, The Amritsar Transport Co. Pvt. Ltd. having registered office at Naya Bazar, New Delhi and Branch Office at Dhariwal, Tehsil Gurdaspur as well as its Branch office Dhariwal, Tehsil Gurdaspur and M/s Maaz and Co., Kanpur (U.P.).

As per the version of the plaintiff, on 10.11.1984, it had booked seven consignments of woolen clothes with defendant No.3 at Dhariwal to be carried to Kanpur; the said transporter had issued seven goods receipts in respect of the consignments; the bills and goods receipts were sent by the plaintiff to defendant No.4 on 15.11.1984 through registered cover; defendants No.2 and 3, who are common carriers delivered the consignments to undisclosed persons in contravention of the conditions of good receipts and instructions from the plaintiff; on inquiry, it came out that agents/employees of defendants No.1 to 3 had colluded and conspired for misappropriating the goods; the registered letter through which the goods receipts and bills had been sent to defendant No.4 was not delivered to the addressee and being fully aware that the person taking delivery of the goods was not entitled to do so, defendants No.2 and 3 had misappropriated the same; defendant No.1 had been impleaded and become liable since the registered letter was not

delivered to the addressee, whereas the defendants No.2 and 3 are the common carriers; defendant No.4 had been impleaded since the goods were despatched by the plaintiff on the order being made by the said defendant. According to the plaintiff it had issued notice under Section 80 CPC to defendant No.1 and also to defendants No.2 and 3 to pay the compensation amount but to no effect, as such, the plaintiff brought the suit in question.

On notice, all the four defendants appeared and filed written statements.

In the written statement filed by defendant No.1, it admitted that registered letter was booked at Serial No.126 dated 15.11.1984 with Dhariwal Post Office and it was addressed to M/s Maaz & Co., General Ganj, Kanpur; on inquiry, it came out that the registered letter was received at Kanpur Head Office on 20.11.1984 and entered at Serial No.178/250 as 128 Dhariwal instead of 126. Such defendant denied any liability to make compensation contending that the department is liable to pay only Rs.50/- as compensation.

Defendants No.2 and 3 filed a joint written statement contesting their liability to pay any compensation amount though admitting that consignment were booked with them at Dhariwal and the goods had reached Kanpur on 24.11.1984. According to these defendants, the goods were delivered to lawful consignee/endorsee of

M/s Maaz & Company against the surrender of original goods receipts duly despatched in the proper manner in routine course of business. Such defendants had denied that there was any collusion or conspiracy between them and defendant No.1. Such defendants also took various legal pleas while praying for dismissal of the suit.

In the written statement filed by defendant No.4, it stated that the bills and goods receipts of the consignments were not received by it and that it had placed order for a total sum of Rs.12,422-46 paise only; the goods of consignments were not received by it. It was also contended that defendants No.2 and 3 were liable to make good the loss incurred by the plaintiff on account of loss of consignments. In the end, such defendant also prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues, including additional issue were framed:

1. Whether Civil Court at Gurdaspur has no jurisdiction to try this suit? OPD.
2. Whether the suit is bad for non-joinder of necessary parties? OPD.
3. Whether the suit is time barred? OPD.

4. Whether the plaintiff is entitled to recover the suit amount as alleged in plaint? OPP.

4-A Whether the suit is not maintainable for want of notice u/s 10 of the Carriers Act? OPD 2 & 3.

5. Relief.

In order to prove its case, the plaintiff – company had examined Sh.Makhan Singh, Commercial Assistant as PW1.

On the other hand, the defendants No.2 and 3 had examined Sh.Ravi Sethi as DW1. Defendant No.1 had examined Sh.Santokh Raj, Clerk of Post Office, Dhariwal as DW2.

After hearing the learned counsel for the parties, the trial Court of Senior Sub Judge, Gurdaspur vide judgment and decree dated 19.7.1993 decreed the suit of the plaintiff against the defendants No.1, 2 and 3 for recovery of Rs.42,060-72 paise with costs. The liability of such defendants was held to be joint and several. The plaintiff was also found entitled to get interest @ 12% per annum from the date of suit till realization.

Feeling aggrieved by the said judgment and decree, the defendant No.1 – Union of India and defendant No.2 - The Amritsar Transport Co. Pvt. Ltd. having registered office at Naya Bazar, New Delhi and Branch Office at Dhariwal, District Gurdaspur had filed separate appeals in the Court of District Judge, Gurdaspur, who vide judgment and decree dated 20.1.1997 dismissed both the appeals

upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed the Courts below, the defendants No.2 and 3 i.e. The Amritsar Transport Co. Pvt. Ltd. having registered office at Naya Bazar, New Delhi and Branch Office at Dhariwal, Tehsil Gurdaspur as well as its Branch office at Dhariwal, Tehsil Gurdaspur have filed RSA No.2622-1997 and defendant No.1 i.e. Union of India has filed RSA No.3378-1997 before this Court, notice of which was issued and respondents appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

It is not disputed by defendants No.2 and 3 even that the plaintiff had booked consignments with them at Dhariwal and the goods were to be delivered at Kanpur. Though according to them the consignments were delivered to M/s Maaz & Co. on production of original GRs but the factual position is otherwise. The goods had not been received by M/s Maaz & Company, rather it had been delivered to some other persons. The connivance of officials of Postal Department in the matter also comes out to be there, who instead of handing over the registered envelope containing the original GRs to address M/s Maaz & Company, Kanpur gave it to someone else, who took out the GRs and wrongly received the consignments. The dishonest intention of the officials of the carriers also comes out to be

there who either handed over the goods without proper verification and identification or misappropriated those themselves. The defendants No.2 and 3 cannot come up with a straight face and say that the goods were delivered to the persons, who had produced the original GRs. A duty of exercising due care and caution was cast upon such carriers and their officials to ensure that the goods were handed over to the genuine persons and not to any cheats or fraudsters. Here no such care or caution is shown to have been exercised by the carriers and their employees. Therefore, they are liable to pay the cost of consignments to the plaintiff. Similarly the officials of Postal Department are also liable to pay compensation. During the period in 80's Post and Telegraph Department used to handle the letters and parcels since that was one of the safe and proper mode of communication. The registered parcels or registered letters were meant to be delivered to the addressees only against proper receipt. Such registered parcels containing important documents could not be delivered to the third persons instead of the addressee. If the Postman or officials of Post and Telegraph Department delivered registered parcels to some other person, they are to be held liable and their department is vicariously liable for the loss suffered by the sender. As it has come on record, the officials of Post and Telegraph Department have been dealt with departmental for this lapse. Therefore, the trial Court was fully justified in holding

defendants No.1 to 3 to be jointly and severally liable to compensate the plaintiff for the loss occasion to it on account of non-delivery of the consignments.

Though learned counsel for the appellants carriers contended that no proper notice under Section 10 of the Carriers Act had been issued and suit had not been filed within time but those contentions have been dealt with in a very proper and appropriate manner by the trial Court and then rejected. The First Appellate Court also was in agreement with the trial Court. I do not see any reason to differ with the Courts below on such points.

Though learned counsel for appellant – Union of India contended that under Section 6 of the Indian Post Office Act, the Government is exempted from any liability by reason of the loss, misdelivery or delay or of damage to any postal article in the course of transaction by post. However, I find that in this case Union of India cannot escape liability since Section 6 itself provides that this exemption is not available, if the loss had been caused fraudulently or by wilful act or default. In this case it is a specific case of the plaintiff and it transpires from the record that there was wilful fraudulent act on behalf of the officials of the Postal Department in delivering the registered parcel to some other person except addressee – defendant No.4. Therefore, protection of Section 6 is not available. For that very reason, the authority **Union Bank of India**

Versus Union of India, 1991 CivCC 138 by Kerala High Court does
not help the case of the appellant – Union of India.

No substantial question of law arises in both the appeals.

Therefore, I do not find any merit in both the appeals and
do not see any reason to disturb the legal, valid and well reasoned
judgments passed by the Courts below.

The appeals stand dismissed accordingly.

2.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No