

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

RSA No.583 of 2016 (O&M)

Date of Decision: May 08, 2019

M/s Aryavart Goods TransportAppellant

Versus

M/s Martin & Harris (Pvt.) Ltd. & Anr.Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Arun Jain, Senior Advocate assisted by
Mr. Akash Dewal & Mr. Brijender Kaushik, Advocates
for the Appellant.

Mr. H.L.Tiku, Senior Advocate assisted by
Ms. Yashmeet, Advocate for Respondent No.1

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the impugned Judgment and Decree passed by the Ld. Addl. District Judge, Karnal in Civil Appeal No.126 of 2012 dated 3.9.2015, vide which the original Judgment & Decree passed by the Ld. Civil Judge (Senior Division) Karnal in Civil Suit No.RBT-45/1 of 2010 dated 29.5.2012 in favour of the present Appellant/Plaintiff were upheld.

2. Background of the matter is that the Respondent No.1/Plaintiff had filed the Suit for recovery of Rs.27,30,169.58 P against the Appellant as well as Respondent/Defendant No.2, in which its contention was that the said Respondent had been procuring medicines from the plaintiff from time to time. The plaintiff company was the consignment agent and M/s Roma Pharma was the stockist of M/s Organon (India) Ltd. In the month of August, 2006, as per the order of defendant no.2, plaintiff entrusted a consignment comprising

of 80 cases containing medicines worth Rs.20,71,614.60 against bill no. MHY-10887 dated 28.8.2006 raised in the name of M/s Roma Pharma, Rohtak for transportation from Karnal to Rohtak on self basis to the Appellant/Defendant No.1, who issued LR/GR no.6259 dated 31.8.2006 in token of receipt of consignment for transportation to Rohtak. On the same day, another consignment comprised of five cases containing medicines worth Rs.1,42,272.00 was also handed over to Appellant for transportation from Karnal to Rohtak against LR/GR No.10496 dated 31.8.2006. M/s Roma Pharma (Respondent No.2) was required to pay the amount of bills to the plaintiff company on or before 15.10.2006 and then to take delivery of the goods from defendant No.1, but the defendant No.2 M/s Roma Pharma, neither paid the amount of bills to the plaintiff company for about five months nor obtained the buyers copy of the invoices from the plaintiff company and the goods continued to be in the power and possession of the Appellant, who was under obligation to return the goods to the plaintiff company, since the common carrier cannot misappropriate the goods and in case of loss or injury to the goods, would be liable to pay the costs of the goods to the consigner. In the month of February, 2007, the Respondent No.2 remitted a sum of Rs.7.00 lacs through Bank Draft dated 5.2.2007 for adjustment in its account and also acknowledged the liability to pay a sum of Rs.18,74,362/- to the plaintiff company. On 28.8.2006, apart from the above mentioned two consignments, medicines of the value of Rs.99,403.20, Rs.99,403.20, Rs.99,403.20 and Rs.63,685.44 were also sent to the said Respondent No.2 against the order placed by it

vide bill No.10888, 10889 and 10890, and 10891 which were duly received by that Respondent. Although the plaintiff company maintained that defendant No.1 was liable to account for the goods entrusted to it for transportation from Karnal to Rohtak and not delivered to defendant No.2 as per the instructions of plaintiff company, yet even assuming that the said defendant No.1/Appellant had delivered the goods of Rs.22,13,886.60 to defendant No.2 qua which defendant No.2 issued LR No.6259 and LR No.10496 dated 31.8.2006, still both the Defendants remained liable to pay Rs.18,74,258.43 to the plaintiff and this amount was worked out after adjustments of all the amount remitted by defendant No.2.

3. Further averment of the Respondent/Plaintiff was that vide letter dated 29.5.2007, it requested the Appellant to arrange re-booking of the above mentioned two consignments and to deliver back the goods to the plaintiff company at Karnal. On 29.5.2007, Branch Manager of the plaintiff company personally visited the office of the Appellant to deliver letter dated 29.5.2007, but the Appellant's Manager was not available, and so the Manager of the plaintiff company came back. On 1.6.2007, again Manager of the plaintiff company visited the office of the Appellant and delivered letter dated 29.5.2007, and the Appellant while acknowledging the receipt of the documents attached with the letter, promised to deliver the goods to the plaintiff company, but the goods of aforesaid two consignments were not delivered back to the plaintiff company. The defendant No.1/Appellant was well aware that the goods entrusted are medicinal preparations having a limited life time and should have

been delivered back without delay. On 26.11.2007, the plaintiff sent a Legal Notice for sending the consignments within a week, failing which legal action would be taken against the Appellant/defendant No.1, but to no avail. While acknowledging the receipt of goods covered by bill No. MHY-10887 dated 28.8.2006 and bill No. MHY-10892 dated 28.8.2006, the defendant No.2 had remitted a sum of Rs.7.00 lacs to the plaintiff company and the said amount was duly credited in the account of defendant No.2, yet according to the Plaintiff, the defendant No.1 was nevertheless liable to pay at least Rs.15,13,886.00 alongwith interest @ 2% per month, and assuming the delivery of goods by defendant No.1 to defendant No.2, who is liable to pay balance of Rs.18,74,258.43. The amount of interest calculated @ 2% p.m. on Rs.15,13,886.00 would come to Rs.6,68,633.27 and interest on Rs.18,74,258.43 @ 2% p.a. would come to Rs.8,55,911.15 upto the date of filing of the Suit.

4. The Suit was decreed in favour of Plaintiff/Respondent by the Ld. Civil Judge (Senior Division), Karnal, vide his impugned Judgment and Decree dated 29.5.2012. The said Judgment was challenged by the present Appellant as well as Respondent/Defendant No.2. But both those Appeals were dismissed by the Ld. Addl. District Judge, Karnal vide his common Judgment dated 3.9.2015, which is now the subject-matter of the present Appeal.

5. After having recorded the oral as well as documentary evidence led in the Suit, and after considering the arguments and submissions raised by the contesting sides in the light of their original pleadings and evidence on record, the Ld. Trial Court had

determined that the Respondent/Plaintiff had *“been able to prove that vide Bills/invoices Ex.P4 to Ex.P9 on 28.8.2006, medicines were supplied to the defendant No.2 through defendant no.1 being transporter, who without getting the original consignee receipt, delivered goods to defendant no.2 in violation of the terms and conditions of the plaintiff company and the defendant no.2 did not make the payment, despite legal notice issued by the plaintiff company. That being so, plaintiff is held entitled to recover Rs.27,30,169,58 alongwith pendente lite and future interest @ 2% p.m., till realization, as mentioned in Ex.P4 to Ex.P9 from the defendants jointly and severally.”*

6. The Trial Court therefore, decreed the Suit for recovery of Rs.27,30,169.58/- (Rs.18,74,258.43 as principal and Rs.8,55,911.15p as interest) alongwith pendente lite interest @2% P.M. in favour of the Plaintiff/Respondent No.1.

7. Further, the Respondent/Plaintiff was also held entitled to interest on the decretal amount at 6% per annum till realization and both the Defendants being the Appellant (Defendant No.1) and Respondent/Defendant No.2 was held jointly and severally liable to pay the said amount alongwith the Appellant.

8. The above decision of the Trial Court was upheld by the Lower Appellate Court which did not agree with the arguments and contentions raised on behalf of the Appellants in their respective Appeals, and in dismissing those Appeals, made the following observations in its impugned Judgment dated 3.9.2015 -

“16. As regards the appeal filed by the appellant-defendant no.1, it is observed that the appellant-defendant no.1 was

carrier to whom the consignments were entrusted for delivery to defendant no.2. It has come on record that the plaintiff had booked the consignments comprised of 80 cases pending against bills Ex.P4 and Ex.P5 and L.Rs. Ex.P27 and Ex.P28 were issued. A perusal of these L.Rs. shows that the consignor as well as the consignee was the plaintiff, which clearly means that the delivery could have been made by defendant no.1 as per the instructions of plaintiff. The plaintiff being consignee of goods could have endorsed the consignee copy of defendant no.2 and only on production of the said consignee copy/ original receipt issued by plaintiff, the defendant no.1 could have delivered the goods to defendant no.2. It has come in evidence that the defendant no.1 had delivered the goods to defendant no.2 without taking original receipt and the defendant no.2 did not make the payment of the bills, against the said consignments, so the plaintiff re-booked the consignments vide letters Ex.P25 and Ex.P26. Although the case of plaintiff was that the defendant no.1 had neither made delivery of the goods to defendant no.2 nor returned it back to the plaintiff and so it had re-booked the consignments but the defendant no.1 had again failed to deliver the goods to the plaintiff or to pay an amount of consignments, but as the witnesses of defendant no.2 have categorically admitted that the goods were delivered to them, the defendant no.1 was at fault in delivering the goods to defendant no.2 without instructions of the plaintiff. As the defendant no.1 had failed to deliver the goods even after re-booking of the consignments and even after issuance of letters dated 29.5.2007 to it and legal notice dated 26.11.2007, the defendant no.1 was also liable to pay the amount of consignments after deducting the amount of Rs.7.00 lacs remitted by defendant no.2 to the plaintiff back and credited in the account of defendant no.2. The status of defendant no.1 was of a bailee and his duty was to deliver the goods as per the instructions of the bailor. As he had delivered the goods unauthorizedly to defendant no.2 without getting L.R.s, buyers copies of invoices, he is liable for the amount of bills alongwith interest. The defendant no.1 had

not led any evidence to prove that the goods were delivered as per the instructions of plaintiff. Thus, the evidence led by the plaintiff had gone un rebutted and defendant no.1 could not discharge its burden on the case file.

*17. Ld. counsel for the appellant-defendant no.1 has contended that as the plaintiff had received the part payment of said consignment, it had acquiesced the matter and so, plaintiff is not entitled to put any claim against the defendant no.1. He contended that the plaintiff had ratified the act of defendant no.1 regarding delivery of goods to the defendant no.2. He placed reliance on the citation in cases **Ramaswamy Chetty Vs. Karuppan Chetty and others, AIR 1916 Madras 1133, Messr. Shankar Das Rup Lal Aggarwal Vs. Governor General in Council, 1951 PLR, 231, Lakshumanan Chetty and others Vs. Chadambaram Chetty, AIR 1919 Madras 343 and Hukumchand Insurance Company Limited Vs. The Bank of Baroda and others, 1977 AIR Karnataka, 204.** He contended that even if the defendant no.1 had exceeded his authority, the plaintiff had ratified his act by keeping mum for about one year whereas as per the condition mentioned in the LRs, the plaintiff was required to issue notice to defendant no.1 if the goods were not delivered within 45 days. He further contended that the ratification of the plaintiff is implied as no notice was ever issued to the defendant no.1 regarding non-delivery of the goods. However, I am not convinced with his contentions. If the defendant no.2 had specifically admitted in cross-examination of its witnesses that the goods were delivered by defendant no.1, the question of acquiescence does not arise. Moreover, the defendant no.2 had remitted the amount of Rs.7.00 lacs to its account with plaintiff and so the plaintiff had no apprehension of non-delivery of goods to defendant no.2. On the other hand, the act of defendant no.1, who was a carrier and was in the capacity of a bailee, is liable to be depreciated as he had wrongly delivered the goods to the defendant no.2 without obtaining the original receipt. Help can be taken from the law laid down in the case of **Dhian***

Singh Sobha Singh and another Vs. Union of India, AIR 1958 Supreme Court, 274. Thus, the defendant no.1 was rightly held liable to pay the amount of goods alongwith interest to the plaintiff. As regards the issuance of notice to the defendant no.1 by the plaintiff, it is observed that the plaintiff had issued notice though it was issued late and that was due to the reason that the defendant no.2 had remitted part payment of the consignment to it. Thus, no adverse inference can be taken for issuing the notice late by the plaintiff. Ld. counsel for the appellant-defendant no.1 has pointed to certain conditions mentioned in the L.R. slips and contended that the defendant no.1 is not liable to pay the amount of bills or interest thereof but in view of the observations made above, as the defendant no.1 had delivered the goods unauthorizedly to defendant no.2 without the instructions of plaintiff, the defendant no.1 was rightly held liable to pay the amount by the trial court. This, I find no illegality in the judgment passed by learned trial court.”

9. The above quoted decisions are sought to be impeached on behalf of the Appellant on various grounds, which are noted as follows -

(i) That undisputedly, delivery of the Medicines covered in two consignments was meant to be made to Respondent No.2 as can be seen from the relevant Invoices. It is not the Plaintiff's case that such delivery was not made over to the said Respondent on account of which, there is neither any question of misappropriation of the goods covered in the consignments nor any violation of the agreed terms and conditions regarding delivery, and as such, the Appellant who is only the common Carrier of the entrusted goods, cannot be held liable for any damages, as there was neither any misappropriation nor violation of any agreement on its part, since Respondent No.2 had in any case admitted the receipt

of the goods, which is verifiable in its letter dated 5.2.2007 (Ex.P-32);

(ii) That there is no material on record to show that release of the goods to Respondent No.2 was subject to receipt of payment;

(iii) That admittedly, an amount of Rs.7 Lacs was received by Respondent No.1/Plaintiff towards part payment of the goods from Respondent No.2 in the month of February. Consequently, the Legal Notice dated 26.11.2007 (Ex.P-34) issued by the Plaintiff to the Appellant was well beyond the period of six months from partial receipt of payment, on account of which, the Suit for Damages is rendered non-maintainable in view of Section 10 of the Carries Act, 1865;

(iv) That in any case, the Appellant/Carrier is not responsible for any damages, since the value of the goods was in excess of Rs.100/- on account of which, the Consignor/Plaintiff was required to have the same insured in terms of condition No.17 printed on the back of Consignment Slip (Ex.P-27), which it failed to do, and so no claim for damages due to loss of the goods would arise;

(v) That there was no privity of contract between the Appellant (Carrier) and Respondent No.2 (Consignee) on account of which, there cannot be any common cause of action against both of them for the purpose of filing a single Suit by the Consignor;

(vi) That there was no agreement between the concerned parties regarding the rate of interest for delay in payment being fixed at 2% per month as claimed.

10. In respect of the contention noted at Sr. No.(i) above, it is to be remembered that it is no where the case of Plaintiff/Respondent that the Appellant/Carrier had indulged in any kind of 'misappropriation'.

On the other hand, its claim was founded purely on account of the loss which accrued to it as a consequence of non-payment of the price of the consignments, which was a pre-condition to actual delivery of the goods to the consignee, since only after such payment, the Consignee's copy could have been made over to Respondent No.2, which otherwise was retained by the Plaintiff/Consignor itself, till the payment was made. Perusal of the relevant Consignment Slip (Ex.P-26) clearly goes to show that name of the Consignor as well as Consignee is the same, which unambiguously demonstrates that the Consignee's copy, which was retained by the consignor, could not have been handed over to the Carrier by the consignee till sale price of the goods had been passed on to the Consignor/Plaintiff. But in the present case, the Appellant/Carrier had delivered the goods in question to the Consignee without receiving the Consignee's copy from it, on account of which, clearly it had failed in its duty to make over delivery to the consignee specifically in terms of the original arrangement between the parties. Undoubtedly, as a result of non-payment of the full price of the goods, the Plaintiff did suffer a financial loss for which the Carrier would become liable for its failure due to this act of delivering the goods to Respondent No.2 without insisting on the Consignee's copy, which had not been delivered to it by the Plaintiff on account of non-payment of the consideration price. In fact, the endorsement against the column 'Consignee's name and address' showing the description of the Consignee as 'self' i.e. the Consignor himself in Ex.P-26 clearly goes to show that release of the goods to Respondent No.2 was subject to payment of its value

mentioned in the relevant column, which was the same as given in the original Invoices, which are on record as Ex.A-1 and Ex.A-2. Consequently, it cannot be said that there was no violation of the original arrangement/terms and conditions regarding delivery of the goods by the Carrier to the consignee as now claimed by the Appellant.

11. Again it is seen from the letter dated 26.7.2007 (Ex.P-29) that the Respondent/Plaintiff had asked the Appellant/Carrier to re-book the concerned consignments, which had been earlier delivered to it on 31.7.2006 and for this purpose, even the original Consignee's copy of the goods was handed over to the Carrier on 1.6.2007 as mentioned in the said letter. So it cannot be said that at any point of time, the Plaintiff/Consignor had claimed any loss of the goods. On the contrary, its case was that so long as the Consignee's copy remained in its custody, and not delivered to the Carrier by the Consignee against delivery of goods, the goods were presumed to be retained by the Carrier, on account of which, the Plaintiff simply sought re-booking of the same to the place of its origin. In such a situation, if instead of delivering back the goods, the Carrier had even delivered the same to Respondent No.2 at Rohtak, but without obtaining the Consignee's copy, which actually was a *sine qua non* towards such delivery, which could not have been effected in the absence of payment of the consideration price, the financial loss must be taken to have accrued to the Plaintiff/Consignor.

12. The Appellant's side has relied upon a decision of the Andhra Pradesh High Court in '**M/s Indian Drugs and Pharmaceuticals**

Ltd., Hyderabad Versus M/s Savani Transport P. Ltd., Hyderabad' 1979 AIR (A.P.) 41, in which it was held that a Suit against a Transporter/common Carrier would be governed for the purpose of limitation by Section 10 of the Act, which happens to be a period of six months for giving notice to the Carrier. It is however, to be remembered that the limitation of six months is applicable only in case where the damages are sought on account of loss, damage or non-delivery due to negligence or criminal act of the Carrier or its servants or agents. But in the present case, there was absolutely no allegation of any actual damage or loss of the goods before issuance of Legal Notice dated 26.11.2007, in which, the Plaintiff/Consignor had only asked for re-booking of the consignments and their delivery back to the Plaintiff/Consignor in a situation where the Consignee's copy still remained in its custody. The failure on the part of the Appellant/Carrier therefore, to either return the goods or even reply to the concerned Legal Notice (Ex.P-34) clearly justified filing of the Suit seeking compensation, when neither the goods in question were returned/re-delivered, nor any intimation was sent to the Plaintiff, who in any case had not alleged in its notice that the goods were damaged or lost or mis-delivered anywhere. In the given circumstances thus the application of Section 10 of the Act as also the decision in **M/s Indian Drugs and Pharmaceuticals (Supra)** would not appear to arise, when the Plaintiff had never claimed any loss or damage or mis-delivery of the goods in its Legal Notice or even in the Complaint in question.

13. In this regard, the liability of the Appellant becomes clearly

covered by the two decisions of the Supreme Court, as also one of the Andhra Pradesh High Court, which are referred to in the succeeding Paragraphs.

14. In '**Patel Roadways Limited Vs. Birla Yamaha Limited'** (2000) 4 SCC 91, it was observed by the Apex Court -

“39. From the conspectus of views taken in the decisions of different High Courts noted above it is clear that the liability of a common carrier under the Carriers Act is that of an insurer. This position is made further clear by the provision in section 9, in which it is specifically laid down that in a case of claim of damage for loss to or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence. Even assuming that the general principle in cases of tortious liability is that the party who alleges negligence against the other must prove the same, the said principle has no application to a case covered under the Carriers Act. This is also the position notwithstanding a special contract between the parties. These principles have held the field over a considerable length of time and have been crystallized into accepted position of law. No good reason has been brought to our notice to persuade us to make a departure from the accepted position. Therefore we reiterate the position of law noticed above. The consequential position that follows is that the contention of Shri Ashok Desai learned senior counsel, that the respondents herein having failed to establish negligence on the part of the appellant, their claim for damages should be rejected, cannot be accepted.”

15. In '**The East and West Steamship Company, George Town, Madras Vs. S.K.Ramalingam Chettiar'** AIR 1960 SC 1058, the Supreme Court held -

“When in the context of the previous paragraphs of Art. III the 6th paragraph seeks to provide an immunity to the carrier "from all liability in respect of loss or damage " after a certain time, it is reasonable to think that it is loss or damage to the owner of the goods, be he shipper or the consignee, which is also meant, in addition to the " loss of the goods ". When the goods themselves are lost, e.g., by being jettisoned, or by being destroyed by fire or by theft, there will be failure to discharge the goods in full and loss to the owner of the goods will occur. Even where the goods

are not lost the carrier may fail to discharge the goods in full or not in proper order and there also loss will occur to the owner of the goods. In such a case, even though there may not have been "loss of the goods" the goods are lost to the owner. The word "loss" as used in paragraph 6 is in our opinion intended to mean and include every kind of loss to the owner of the goods-whether it is the whole of the consignment which is not delivered or part of the consignment which is not delivered and whether such nondelivery of the whole or part is due to the goods being totally lost or merely lost to the owner by such fact of nondelivery there is in our opinion "loss" within the meaning of the word as used in paragraph 6."

16. In '**Union of India, owning Southern Railway represented by the General Manager, Madras Vs. Mitayagiri Pullappa**' AIR 1958 AP 475, the Andhra Pradesh High Court had observed that loss includes mis-delivery of the goods by the person entrusted with the same. The relevant observations of the High Court in this regard are as follows -

"11. The trend of decisions of all the Courts in India and the weight of authority is in favour of the view that there is no warrant for giving a restricted interpretation to the word 'loss' in S. 77 of the Act. Loss would include loss to the owner on account of nondelivery or mis-delivery as well. We have already adverted to the decisions of the Allahabad and the Calcutta High Courts. The Bombay High Court also took the same view as would be apparent from the decisions of that High Court in G.I.P. Rly. v. Ramchandra Jagannath, MANU/MH/0154/1918 : ILR 43 Bom 386 : (AIR 1919 Bom 67) (H) and Martab Ali v. Union of India, MANU/MH/0084/1954 : AIR 1954 Bom. 297 (1)."

17. In the given circumstances therefore, the liability of the Appellant/Carrier cannot be treated as having been discharged simply on the plea that it had delivered the goods in question at the address they were meant to be delivered, when such delivery was not in accordance with the arrangement requiring prior payment of the

consideration price, without which, the Consignee's copy could neither have been acquired by the Consignee from the Plaintiff, nor delivered to the Carrier for the purpose of discharging its own obligation regarding the manner of delivery. Where therefore, the Carrier delivered the goods to the Consignee without compliance of the requisite formality of obtaining the Consignee's copy, it must be held that it retained its lien to the goods as a Bailee and thus, would be liable to compensate the consignor for any financial loss on account of non returning of the same, or non-payment of the consideration price.

18. The challenge to maintainability of the Suit in view of Section 10 of the Carriers Act 1865 for want of notice within six months from the alleged date of loss coming to the notice to the Plaintiff/Consignor is similarly unfounded. This is so because at no point, the Plaintiff has alleged any loss of the goods. At the cost of repetition, it may be mentioned that the Plaintiff's claim was founded on the premise that the goods were not delivered in accordance with the agreed terms and conditions between the parties by virtue of which, the Consignee was obliged to take delivery in return of delivering its Consignee's copy to the Carrier, which could not have been done except when price had been passed on to the Consignor who till that time had retained the original Consignee's copy with it.

19. Again, there is no substance in the contention that the Plaintiff/Respondent had not complied with condition No.17 printed on the back of Consignment Slip (Ex.P26) which required insurance of the goods for off-setting the loss since their value was in excess of

Rs.100/-. As already seen in the decision of **Patel Roadways (Supra)**, the liability of the Carrier is itself that of Insurer. As such, there was no need for any separate Insurance for the goods by the consignor, which might have otherwise been warranted if the goods in question had been destroyed or damaged in any unforeseen situation such as accident or of the act of God etc. But mis-delivery of the same by the Carrier by not complying with the agreed terms and conditions was certainly not a valid ground to invoke any calls for pre-insurance by the Consignor.

20. Similarly, there is no force in the contention that both the Defendants could not have been sued by the Plaintiff/Carrier in a single Suit since there was no privity of contract independently between the Defendants themselves. In this regard, it would be apt to refer to Order I Rule 3 of the CPC, which provide inter-alia -

“3. Who may be joined as defendants – All persons may be joined in one suit as defendants where --

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.”

21. The provisions of Rule 3 reproduced above undoubtedly covered the case of the original Plaint, in which compensation was sought for on account of the loss suffered. As a consequence of physical delivery to the Respondent No.2 without insisting on the Consignee's copy by the Appellant (Carrier), which in turn could not have been passed on to the said Respondent by the Plaintiff in the

absence of actual payment of the price covered in the concerned Invoices. Undoubtedly, the Respondent No.2 was under a legal obligation to pay the price for the consigned goods, but when delivery of the same was made over without insisting on the Consignee's copy, the loss accruing to the Plaintiff/Consignor would certainly also be attributable to the Appellant/Carrier even if it had not caused any damage to the goods or lost them or misappropriated them. But being in the capacity of a Bailee till the delivery ought to have been effected strictly in terms of the agreement/arrangement between the parties, when it is the normal trade practice that goods are released by the Carrier only on making over of the Consignee's copy. Consequently, both the Carrier and actual recipient of the goods became liable to the Plaintiff when the recipient failed to pay the price for the same, after delivery had been made to it by the Carrier without insisting on the Consignee's copy, which had still been retained by the Plaintiff to ensure actual payment of the price. The cause of action accruing in favour of the Plaintiff in the circumstances was therefore, inextricably linked to both the defendants, and it is thus immaterial if there was any, or no privity of contract directly between themselves, when loss had occurred to the Plaintiff on account of their respective actions of delivery and receiving the goods in the absence of the sale price, and which therefore, surely made them jointly and severally to compensate the Plaintiff.

22. On perusal of the Tax Invoice issued on behalf of the Respondent/Plaintiff which is Ex.P-4 on the record of the Trial Court,

it is seen that there is a clear mention therein to the effect that 'Over due payment will attract interest @ 2% per month'. Undisputedly, the Invoice was issued on the actual date of consignment i.e. 28.8.2006 and goods covered under the said Invoice were not only loaded but even delivered to Respondent No.2. It can therefore, not be said that there was no agreement between the concerned parties regarding the rate of interest for delay in payment at 2% per month. In this regard, Ld. counsel for the Appellant submitted further that in any case, the Appellant had not entered into any contract regarding the rate of interest as claimed by the Respondent/Plaintiff. But in view of the observations already recorded in the preceding Paragraph 21 to the effect that the cause of action in the peculiar facts and circumstances of this case in favour of the Plaintiff's had accrued jointly and severally against both the Defendants on account of the financial loss suffered due to delivery of goods by the Appellant/Carrier and actual receipt of the same by the Consignee/Respondent No.2, which were both improper actions on account of non-payment of the sale price, it is held that the Plaintiff in any case was entitled to recover it from both the respondents alongwith the admissible interest thereon.

23. For the reasons narrated above, this Court finds no substantive merit in the present Appeal, which is therefore, dismissed.

(SUDIP AHLUWALIA)
JUDGE

May 08, 2019
AS

- | | |
|--------------------------------|--------|
| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |