

RSA No. 5503 of 2018 (O&M)

-1-

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

RSA No. 5503 of 2018 (O&M)

Date of Decision: July 23, 2019

M/s. Gobind Goods Carriers (Regd.)

..... Appellant(s)

Versus

The New India Assurance Company Ltd. and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gopal Singh Nahel, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant has filed this appeal being aggrieved of judgment and decree dated 12.12.2017, passed by the learned District Judge, Sangrur as well as judgment and decree dated 16.07.2016, passed by the learned Civil Judge (Jr. Division), Sangrur.

Brief facts necessary for the adjudication of the case are that respondents-plaintiffs filed a suit for recovery of Rs.1,50,244/- along with interest @ 12% per annum. It is pleaded that the defendant-appellant is a common carrier and transports goods by road carrier from one place to another on freight charges. Plaintiff no.2 dispatched cotton yarn weighing 9000 KG on 04.09.2014 on truck bearing registration No. PB-13R-3516 on 04.09.2014. The value of the goods was stated to be Rs.16,31,990/-. Plaintiff no.1 had insured plaintiff no.2, the consignor of the said goods, against transit road risk. The goods arrived at Delhi on 06.09.2014 in a

RSA No. 5503 of 2018 (O&M)

-2-

damaged condition being wet. They were returned by the consignee M/s. Umesh Yarn Agencies. The damage was due to heavy rain during transit and the goods were received back on 07.09.2014 in a wet and damaged condition. Damage took place due to negligence, carelessness and misconduct on the part of the defendant-appellant or its agents or its concerned employees. A surveyor and loss assessor namely Manjit Singh Kohli was appointed by plaintiff no.1. Report dated 22.09.2014 was submitted by the surveyor. The authorized signatory of the appellant, it is pleaded, issued a shortage certificate. Notice under Section 10 of the Carriers Act, 1865 was served by plaintiff no.2 upon the appellant but to no avail. Loss of Rs.1,28,089/- was pleaded to have been suffered by plaintiff no.2 as the consignment was insured. Plaintiff no.1 released the payment of Rs.1,28,089/- to plaintiff no.2 on 30.09.2014. Plaintiff no.2 accordingly executed a discharge voucher, letter of subrogation and special power of attorney in favour of plaintiff no.1, thereby assigning, abandoning and transferring all their rights, title and interest for claiming damage to the cotton yarn in favour of plaintiff no.1. It is further pleaded that plaintiff no.1 was entitled to claim the reimbursement from the defendant-appellant. Despite requests, the amount was not made good by the defendant. Hence, a suit for recovery was filed.

Appellant-defendant resisted the suit while taking various preliminary objections. It is stated that there is no privity of contract between plaintiff no.1 and the appellant. Material facts, it is stated were suppressed. The truck in question is stated to have been insured with Reliance General

RSA No. 5503 of 2018 (O&M)

-3-

Insurance Company Ltd. A categoric stand is taken that plaintiff no.2 at the time of booking of the consignment, took a blank letter head of the appellant alongwith signature and stamp of the defendant on the pretext of the rent. Shortage certificate (Ex. P-10) was prepared on the said blank letter head. The goods in question, were of sub-standard material and were accordingly returned. It is denied that the goods were damaged due to rain, attending negligence, misconduct of carelessness on the part of the appellant. It is when the appellant asked for the rent of the return, that the present suit was filed, only with a view to harass the appellant. Report by the surveyor is stated to be false and submitted in connivance with the plaintiffs. Dismissal of the suit was prayed for. Replication was not filed.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether the plaintiff is entitled to recovery of amount as prayed for in the plaint?OPP.
- ii) Whether the plaintiff has no locus standi to file the suit?OPD
- iii) Whether the plaintiffs have filed the suit on false and frivolous grounds? OPD.
- iv) Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD
- v) Relief.

Evidence was led by both the parties in support of their respective claims/stands.

RSA No. 5503 of 2018 (O&M)

-4-

Learned trial Court on considering the evidence on record, facts and circumstances of the case and while referring to the shortage certificate Ex. P-10, issued by the defendant, decreed the suit filed by the plaintiffs vide the impugned judgment and decree dated 16.07.2016, ordering recovery of Rs.1,50,244/- alongwith interest @ 12% w.e.f. 01.04.2014 to 15.02.2015 and 9% from 16.02.2015 till the date of decree and 6% per annum till the date of realization of the decretal amount.

Appeal filed by the defendant/appellant was dismissed by the learned District Judge, Sangrur vide impugned judgment and decree dated 12.12.2017. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred on facts and in law in decreeing the suit for recovery of Rs.1,50,244/- filed by the respondent-plaintiff. It is submitted that the letter head on which Ex.P10 was drawn, is a forged and fraudulent document to the extent that it was drawn up on a blank letter head, which was taken by plaintiff No.2 during course of business by way of security of goods, which were to be transported. Notice under Section 10 of the Carriers Act, 1865 was not served upon the defendant. It is contended that the present appellant is still carrying out the work of transportation for plaintiff No.2. It is thus prayed that the present appeal be allowed and suit filed by the plaintiffs be dismissed throughout. It is, thus, prayed that the present appeal be allowed and the judgments and decrees of both the Courts below be set aside.

RSA No. 5503 of 2018 (O&M)

-5-

I have heard learned counsel for the appellants and I have gone through the record, which was requisitioned.

After considering the arguments advanced and perusing the record, I find that the plaintiffs in this case, have indeed successfully proved their case on the basis of the evidence on record. Report dated 22.09.2014 (Ex.PW1/A) submitted by the surveyor M.S. Kohli (PW-1) is accompanied with the photographs of the cartons/goods i.e. Ex.PW1/B to Ex.PW1/Y. PW-1 specifically stated that he personally inspected the consignment of cotton yarn and found that 16 cartons were in bad condition and the balance were in a wet condition. Photographs were also taken by him. The shortage certificate issued by the appellant clearly states that the consignment, which was taken on 4th of September 2014, was refused to be accepted by Umesh Yarn Agency. They refused to have the same unloaded. It is stated therein that due to heavy rain on the way to Delhi, the consignment was spoiled. 16 cartons were totally spoiled and packaging of rest of 162 cartons was damaged. The total damage is quantified and it is specifically mentioned that the said certificate was being issued for the purposes of insurance and that the damage had taken place due to an act of God/nature, in which the defendant-appellant was not at fault.

Argument raised by learned counsel for the appellant that the said shortage certificate is false and incorrect having been drawn up on a blank letter head obtained from the appellant by plaintiff no.2 is not substantiated by any evidence on record. Learned counsel for the appellant even during arguments stated that the appellant is still carrying out transportation of goods

RSA No. 5503 of 2018 (O&M)

-6-

for plaintiff no.2, even as on date. However, there is not an iota of evidence on record to show that blank letter heads were taken by plaintiff no.2 as a matter of routine between the parties or that Ex. P-10 was drawn-up in a false or fraudulent manner. DW-1 has admitted that the letter head is of their office. PW-2 M.C. Dhawal has admitted that their firm did not issue any notice to plaintiff no.2 for claiming the return fair as claimed. Thus the defendant was unable to prove that Ex.P-10 was drawn up fraudulently on a blank signed letter head of the defendant. Plea of learned counsel for the appellant that notice under Section 10 of the Carriers Act, 1865 was not served upon the defendant, is not borne out from the record. Notice dated 14.09.2014 (Ex.P-8) and the postal receipt thereof dated 19.09.2014 (Ex. P-9) is on record. Ex.P-7 is the communication from Umesh Yarn Agencies to M/s. Avani Textiles, informing that the consignment of yarn was received on the truck in question on the morning of 06.09.2014 but the same was found totally wet and damaged, due to heavy rain. It is further stated that the material was rejected, hence the truck was returned. Learned Courts below have rightly decreed the suit filed by the plaintiffs/respondents in the given circumstances.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated

RSA No. 5503 of 2018 (O&M)

-7-

16.07.2016, passed by the learned Civil Judge (Junior Division), Sangrur as well as judgment and decree dated 12.12.2017, passed by the learned District Judge, Sangrur, respectively, which calls for any interference by this Court in second appeal.

There is a delay of 199 days in filing of this appeal. As the same has been adjudicated upon on merits, decision on the application for condonation of delay is rendered academic. Application is disposed of accordingly.

Appeal is accordingly dismissed with no order as to costs.

July 23, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No