

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.189 of 2014
and
CMP No.24277 of 2019

1. G.T.P.Transport Company,
No.4, Bharathi Street,
Swaranpuri, Salem 4.
2. Muthuraja
Prop. G.T.P.Transport Company,
No.4, Bharathi Street,
Swaranpuri, Salem 4. ... Appellants/Respondents 1 & 2/
Defendants 1 & 2

Vs.

1. National Insurance Company Ltd.,
Divisional Manager,
Divisional Office -1,
LRN Colony, Saradha College Main Road,
Salem 7.
2. Ashok Granites Pvt. Ltd.,
Vellakkalpatti, Chetty Chavadi
Omalar Taluk, Salem District. ... Respondents/Appellants/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 31.07.2013 made in A.S.No.100 of 2012 on the file of the Principal District Judge, Salem reversing the Judgment and decree in OS No.23 of 2007 dated 05.07.2010 on the file of the 2nd Additional Subordinate Judge, Salem.

For Appellants : Mr.M.Devaraj

For Respondent : Mr.G.Guruswaminathan
for M/s.Nageswaran & Narichania

J U D G M E N T

The defendant in OS No.23 of 2007 who succeeded in convincing the Trial Court to dismiss the suit for damages filed by the Insurance Company and the consignor of the goods under the Carriers Act, seeking damages for loss of goods that were consigned by the second plaintiff through the first defendant Transport Company, upon the reversal of the said judgment and decree by the Lower Appellate Court has come up with this Second Appeal.

2. The facts are not in dispute. The second plaintiff had consigned 141 polished granite monuments in good condition on 01.02.2005 in a lorry bearing No.TN 27 M 2756 under lorry Receipt No.007112 on 01.02.2005. The second plaintiff has also paid the freight charges of Rs.10,500/-. The goods were to be transported to Chennai. The value of the consignment was Rs.9,60,140/-. The lorry met with an accident on the way to Chennai on 02.02.2005, and this resulted in severe damage to the goods that were consigned. Immediately after the accident the defendant issued a Damage Certificate, which was marked as Ex.A3, accepting the value of the loss at Rs.3,06,109/- on 07.02.2005. On 10.02.2005, the second plaintiff issued a notice demanding the said loss. The receipt of the said notice is not disputed. Thereafter, a survey was conducted and a Surveyor's Report came to be filed on 18.04.2005. After the Survey Report, the second plaintiff viz., the Insurance Company which had by then got subrogation of the loss issued a notice dated 10.02.2005 and sued for recovery of damages.

3. The suit was resisted by the defendants contending that the first defendant was not negligent and the accident did not occur due to the negligence of the first defendant's employee. It was also claimed that the notice issued on 10.02.2005 is not a valid notice under Section 10 of the Carriers Act.

4. The Trial Court accepted the defence and concluded that Ex.A5 notice dated 10.02.2005 is not a valid notice and therefore, the suit having been filed without issuance of notice under Section 10, is liable to be dismissed. The Trial Court also concluded that there was no negligence on the part of the driver of the lorry. On the said conclusions, the learned Trial Judge dismissed the suit. Aggrieved the plaintiffs preferred an Appeal in AS No.100 of 2012.

5. The Lower Appellate Court upon a re-appreciation of the evidence on record concluded that Ex.A5 notice is sufficient notice under Section 10 of the Carriers Act. It also found that once a notice under Section 10 having been issued the plaintiff need not prove negligence in order to succeed in a suit for damages. Therefore, the carrier cannot avoid liability on the

ground of absence of negligence. On the said findings, the Lower Appellate Court allowed the Appeal and decreed the suit.

6. Aggrieved the defendants have come up with this Second Appeal.

7. The following questions of law were framed at the time of admission.

1. Whether the findings of the first appellate court is that the appellant liable to pay the amount as damages is perverse finding as contended by the appellant?

2. Whether the finding of the first appellate court in taking into account Ex.A15 as the notice contemplated under Section 10 of the Carriers Act is valid?

3. Whether the finding of the first appellate Court is that the suit is not barred by limitation is correct?

8. I have heard Mr.M.Devaraj, learned counsel appearing for the appellants and Mr.G.Guruswaminathan, learned counsel appearing for M/s.Nageswaran & Narichania for the respondents.

9. Mr.M.Devaraj, learned counsel for the appellants while elaborating on the questions of law would contend that the Lower Appellate Court was not right in concluding that Ex.A5 is a valid notice under Section 10 of the Carriers Act and therefore, the presumption raised by the Lower Appellate Court is not just and proper.

10. Section 9 of the Carriers Act, 1865, fastens an absolute liability on the Carrier in case of loss during transit. The said Section reads as follows:

9. Goods Receipt:

(1) A Common carrier shall,—

(a) in case where the goods are to be loaded by the consignor, on the completion of such loading; or

(b) in any other case, on the acceptance of the goods by him, issue a goods receipt in such form and manner as may be prescribed.

(2) The goods receipt shall be issued in triplicate and the original shall be given to the consignor.

(3) The goods receipt shall be prima facie evidence of the weight or measure and other particulars of the goods and the number of packages stated therein.

(4) The goods receipt shall include an undertaking by the common carrier about the liability under section 10 or section 11.

11. Section 10 imposes an obligation on the consignors to issue a notice within a period of six months from the time of the loss or injury came to the knowledge of the plaintiff. Section 10 does not prescribe any format for issuance of such notice. The said provision reads as follows:

10. Liability of common carrier.-

(1) The liability of the common carrier for loss of, or damage to any consignment, shall be limited to such amount as may be prescribed having regard to the value, freight and nature of goods, documents or articles of the consignment, unless the consignor or any person duly authorised in that behalf have expressly undertaken to pay higher risk rate fixed by the common carrier under Section 11.

(2) The liability of the common carrier in case of any delay up to such period as may be mutually agreed upon by and between the consignor and the common carrier and specifically provided in the goods forwarding note including the consequential loss or damage to such consignment shall be limited to the amount of freight charges where such loss, damage or delay took place while the consignment was under the charge of such carrier.

Provided that beyond the period so agreed upon in the goods forwarding note, compensation shall be payable in accordance with sub-section (1) of Section 11:

Provided further that the common carrier shall not be liable if such carrier proves that such loss of, or damage to, the consignment or delay in delivery thereof, had not taken place due to his fault or neglect or that of his servants or agents thereof.

12. A close reading of Section 10 of the Carriers Act, would show that all that is required is a notice of demand specifying the amount of loss. A perusal of the notice that has been marked as Ex.A5 in this case, viz. the notice dated 10.02.2005 shows that it complies with the requirements of Section 10. The fact that the second notice was issued by the Insurance Company after the Surveyor Report would not render the earlier notice invalid. Therefore, the lower Appellate Court was justified in concluding that Ex.A5 would constitute a valid notice under Section 10 and in view of the presumption under Section 9, in the absence of any evidence on the side of the

carrier to show that the accident that had happened despite exercise of proper care by the driver of the vehicle. The Carrier would be liable for the loss.

13. I therefore, do not think that the findings of the Lower Appellate court regarding the validity of Ex.A5 notice and the liability that is cast on the carrier under Sections 9 and 10 of the Act, can be said to be perverse. In view of the same, the questions of laws 1 and 2 are answered against the appellants.

14. The third question of law in my considered opinion does not arise at all. The accident occurred, admittedly, on 02.02.2005 and the suit came to be filed on 20.11.2006, therefore at no stretch of imagination can it be said that the suit is barred by limitation. In view of the same, the third question of law is also answered against the appellants.

15. In view of the answers to the questions of law as above, the Appeal stands dismissed. There will be no order as to costs in the Second Appeal alone. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal District Judge,
Salem.

2. The 2nd Additional Subordinate Judge,
Salem.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.18133

+1cc to Mr.Nageswaran & Narichania, Advocate, S.R.No. 18145

S.A.No.189 of 2014
and CMP No.24277 of 2019

AP(CO)
GN(05/10/2020)