

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

RSA-5432-2016 (O&M)

Date of Decision: 04.02.2020

M/s Bansal Transport Corporation

.... Appellant

Versus

The United India Insurance Company Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Jasuja, Advocate
for the appellant.

Mr. Munish Goel, Advocate
for respondent No.1.

...

ANIL KSHETARPAL, J. (ORAL)

Respondent No.2-Appellant has filed the present Regular Second Appeal against the findings of fact arrived at by the First Appellate Court decreeing the suit for recovery of Rs.3,99,380/- along with interest @ 6% per annum from the date of filing of the suit till its realization.

Plaintiff No.1 – The United India Insurance Company Limited, on the strength of letter of subrogation filed the suit, claiming the amount on the ground that plaintiff No.1 has satisfied the claim of plaintiff No.2 on account of damage to cotton bales being transported through defendant-appellant-Transport Company. Defendant No.1 contested the suit on the ground that the goods were booked at owner's risk and there was no privity of contract between plaintiff No.1 and defendant No.1.

Learned trial Court dismissed the suit on the ground that original policy has not been produced by The United India Insurance Company Limited.

In appeal, learned trial Court while referring to documents Annexures, Exhibits P-5 and P-12, 16 and 17 held that once the Insurance Company has settled the claim of plaintiff No.2, there is hardly any doubt about the existence of the insurance policy.

It will be significant to note that Exhibit P-5 is an application of the claim lodged by plaintiff No.2 with plaintiff No.1 on account of marine claim policy. Whereas Exhibit P-12 proves that plaintiff No.2 claimed the amount on account of damages suffered. Exhibits P-16 and 17 prove the existence of transit policy issued by plaintiff No.1 in favour of plaintiff No.2.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by the Courts below.

Learned counsel for the appellant submits that the appellant-Transport Company was not negligent. Hence, the appellant could not be directed to reimburse the amount to The United India Insurance Company Limited. He has further submitted that out of 100 cotton bales, which were transported, only few of them suffered damaged and therefore the First Appellate Court erred in decreeing the suit.

On the other hand learned counsel for the respondent has submitted that as per Section 9 of the Carriers Act, 1865, the plaintiff in such suits is not required to prove negligence or criminal Act on the part of the carrier. He has further submitted that no doubt some cotton bales were partially damaged but that fact was taken care of while settling the claim of plaintiff No.2.

On consideration of the matter, this Court find substance in the arguments of the learned counsel for the respondent. It is be suffice to refer to Section 9 of The Carriers Act, 1865, extracted as under:-

9. Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act. - In any suit brought against a common carrier for the loss, damage or non-delivery of goods (including container, pallets or similar article of transport used to consolidate goods) entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

The phraseology used in Section 9 clearly indicate that it shall not be incumbent on the plaintiff to prove that such loss, damage or non delivery of goods was on account of negligence or criminal act of the carrier, his servants and agents.

It will be noted that as per report of the Surveyor Exhibit P-21, partial damage to some cotton bales has been taken note of while assessing the amount payable to the plaintiff No.2.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

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

(ANIL KSHETARPAL)
Judge

04.02.2020
Pardeep

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No