

2021:PHHC:116339
202 (1) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-6340-2016 (O&M)
Date of decision: 01.11.2021

M/s BLR India Limited and another
.....Appellants
Versus

United India Insurance Company Limited and another
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Gaurav Mohunta, Advocate for the appellants
Mr. Vikas Mohan Gupta, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

CM-16634-C-2016

2. For the reasons stated in the application, delay of 454 days in filing the appeal is condoned.

3. Application stands allowed.

Main case

4. There is no dispute that the consignment was booked on 25.01.2003, by plaintiff no.2 (respondent no.2) for transporting 160 cartons for delivery in Mumbai. On the way, the vehicle overturned resulting in damage to the goods transported. Plaintiff no.2 issued notice to the defendants (appellants herein) on 27.01.2003, Ex.P17. There was another notice issued on 11.02.2006, which is Ex.P17-A. On the basis of surveyor deputed by the Insurance Company, the loss was assessed at Rs.2,36,565/- minus the salvage value. The appellants issued damage

certificate on 16.02.2003. The Insurance Company reimbursed the amount to plaintiff no.2 and thereafter, on the basis of letter of subrogation the suit was filed on 30.07.2003.

5. Learned trial court dismissed the suit on the ground that no notice under Section 10 of the Carriers Act, 1865, was issued. However, the First Appellate Court on re-appreciation of evidence has found that the plaintiff no.2 issued notices on 27.1.2003 as well as on 11.02.2003. Thus, the learned First Appellate Court has accepted the appeal and decreed the suit.

6. Heard learned counsel representing the parties at length and with their able assistance perused the paper book as well as the lower court record which has been requisitioned.

7. Learned counsel representing the appellants contends that the First Appellate Court has erred in overlooking the fact that no notice after assessment of the amount was issued to the appellants and therefore, the mandatory requirement under Section 10 of the carriers Act has not been complied with.

8. Section 10 of the Carriers Act, 1865, needs careful scrutiny with respect to the facts of the present case. Hence, it is extracted as under:-

Notice of loss or injury to be given within six months .—No suit shall be instituted against a common carrier for the loss of, or injury to 1 [goods (including container, pallets or similar article of transport used to consolidate goods) entrusted] to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the

loss or injury first came to the knowledge of the plaintiff.”

9. It is apparent on the reading of the aforesaid provision that the owner of the goods is required to issue notice of the loss or the injury within a period of six months. Section 10 requires that no suit shall be instituted against a common carrier unless it has been given notice within a period of six months from the time when the loss or injury first came to knowledge of plaintiff. In the present case, the shipment was booked on 25.01.2003, and the first notice was issued on 26.01.2003, whereas the second notice was issued on 11.02.2003. Hence, the requirement of Section 10 stands fulfilled.

10. Learned counsel representing the appellants did not raise any other argument.

11. Hence, dismissed.

01.11.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE