

2021:PHHC:116340
**202 (3) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-6341-2016 (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-16637-C-2016

2. For the reasons stated in the application, delay of 91 days in filing the appeal is condoned.

3. Application stands allowed.

Main case

4. The defendants have filed this Regular Second Appeal assailing the correctness of the concurrent findings of fact arrived at by the courts below while decreeing suit for recovery of Rs.5,01,137/- by way of compensation and damages for delivery of goods in a damaged condition by a common carrier. Some important facts are required to be noticed in order to comprehend the controversy involved in the present case.

5. Plaintiff no.2 (respondent no.2 herein) booked a

consignment for delivery of 115 rolls of (fabric for readymade garments inventory) which were dispatched on 27.07.1998. Out of the aforesaid 115 rolls, 76 rolls of linen fabric were delivered in a damaged condition. On the basis of the intimation, the common carrier appointed a surveyor who found that the damage has been caused to the goods and submitted a report to the transporter on 03.11.1999. On the basis thereof, a damage certificate was issued on 15.11.1999, by the appellants. The Insurance Company reimbursed the amount to the insured and on the basis of letter of subrogation the suit was filed.

6. The appellants contested the suit on the ground that the truck met with an accident due to heavy rains on 26.07.1999 and therefore, it was an act of God. It was also claimed that the suit is barred by limitation as it was required to be filed within three years as per the provisions of the Limitation Act, 1963. Both the courts, on appreciation of evidence, have found out the claim of the plaintiffs to be genuine and therefore, decreed the suit.

7. Learned counsel representing the appellants contends that both the courts have erred in decreeing the suit, particularly, when it is established that the suit is filed after a period of three years from the date the goods were damaged. He submitted that the accident took place on 26.07.1999, whereas the damaged goods were taken into possession by defendant no.2 on 24.08.1999 and therefore, the limitation expired on 24.08.2002. He submits that since the suit has been filed after a period of more than 3 years i.e 06.09.2002, therefore, the suit is barred. It may

be noted here that both the courts have examined the aforesaid argument and found that the defendants have not led any evidence to prove the aforesaid fact. Furthermore, the limitation does not begin to run from the date of accident. This suit has been filed within three years from the date the claim was lodged by plaintiff no.2. The suit has also been filed within a period of 3 years from the date the damage certificate was issued by the appellant.

8. Consequently, finding no merit, the appeal is dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

01.11.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE