

2021:PHHC:116341
202 (2) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-6444-2016 (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)

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

CM-16900-C-2016

For the reasons stated in the application, delay of 60 days in filing the appeal is condoned.

Application stands allowed.

Main case

This appeal has been preferred by the defendants while assailing the findings of fact arrived at by the First Appellate Court while decreeing the suit for recovery of Rs.3,85,793/- alongwith interest at the rate of 6% per annum simple from the date of filing of the suit till its realization. The defendants are common carriers.

Undisputed facts are that plaintiff no.2 booked a consignment of 186 cartons containing yarn for being transported from Ludhiana to Mumbai which was dispatched on 21.10.1997. It was

reported that the truck fell into the water pool as a stray animal came in front of it on the road. The defendants issued a certificate of damage on 05.12.1997. On the basis thereof, the insurer reimbursed plaintiff no.2 and on the basis of letter of subrogation the suit was filed. The defendants contested the suit on the ground that truck fell into the pool due to act of God as the brakes of the truck failed.

On appreciation of evidence, learned trial court dismissed the suit whereas the First Appellate Court has reversed the findings.

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. Learned counsel representing the appellant contends that as a stray cattle had suddenly come on the road, therefore, the driver of the truck was not negligent.

It may be noted here that this aspect has already been examined in various precedents. In **Harmesh Kumar vs. Inderjit Singh (2014) 3 RCR (Civil) 409** the court held that the negligence could not be attributed to any other agency if the accident takes place due to a stray cattle. It was further observed that the driver has to be careful as stray animals can suddenly enter the road. It was further held that Hon'ble Supreme court in **Nath Brothers Exim International Limited vs. Best Roadways Limited 2000 (2) RCR (Civil) 620** held that the carrier can escape its liability only if it is established that the loss or damages was due to act of God or enemies of the State. In that case, the Court was examining the matter in the context of accidental fire.

The court still held that the failure on the part of the carrier to deliver goods safely is breach of duty placed on him by the common law and therefore, an action of tort lies against the carrier for such breach.

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

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

01.11.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE