2021:PHHC:116342

202(4) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-3026-2017 (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-7537-C-2017

2. For the reasons stated in the application, delay of 14 days in re-filing the appeal is condoned.

3. Application stands allowed.

CM-7539-C-2017

4. For the reasons stated in the application, delay of 1 day in filing the appeal is condoned.

5. Application stands allowed.

Main case

6. This appeal has been preferred by the defendants in a suit for recovery of Rs.92,005/-. Both the courts have decreed the suit to the extent of Rs.80,374/- alongwith interest at the rate of 10% per annum with respect to the period prior to the filing of suit and pendency of the

suit whereas future interest at the rate of 6% per annum.

7. The fact that 197 and 198 cartons of 100% cotton grey yarn were required to be transported by the appellant from Ludhiana to Mumbai is not disputed. The truck carrying one consignment through invoice no. 198 was damaged. The surveyor, on assessment of the damages, found that the damage has been caused to 522 cones. Thus, the report was submitted. On the report of the surveyor the insurer reimbursed plaintiff no.2 and on the basis of letter of subrogation, the suit was filed.

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

9. Learned counsel representing the appellants contends that since the goods were being carried at the owner's risk, therefore, the appellants could not be made liable. This aspect has been examined in depth by the both the courts below. Both the courts have observed that such contract does not absolve the carrier from reimbursing the damage to the goods on account of the negligence of the driver. It has been observed that such contract shall be in violation of Section 9 of the Carriers Act, 1856. The First Appellate Court has relied upon **New India Assurance Insurance Company vs. Pawan Transport Corporation and another 2006 ACJ 828 (Jharkhand).**

10. In the present case, the appellants have pleaded that since the rainy season was going on, therefore, the road was in a bad condition

and hence, it was an act of God.

11. In the considered view of the Court, it was known to the carrier that it is being requested to transport the goods in the rainy reason. The appellants being in the business of transportation knew the condition of the roads. Hence, it was incumbent upon the appellant to have ascertained adequate safety precautions by covering the material in order to save it from rain. Hence, their defence has been rightly rejected.

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

13. Dismissed.

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

01.11.2021 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No