

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO.64 OF 2019

NAGESH ROADLINES, THR.
ITS MANAGER AND AUT.
REP., R. K. PANDEY.

... Appellant

Versus

GAULA CLOSURES (INDIA)
PVT. LTD. AND ANR.

... Respondents

Mr. A. D. Bhobe, Advocate for the Appellant.

Mr. Shashikant N. Joshi and Ms. C. Velingkar, Advocates for
Respondent No.1.

Ms. C. Afonso, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATED : 23rd September 2022

P.C.:

1. Heard Mr. Bhobe, learned counsel for the Appellant, Mr. S. N. Joshi, learned counsel for Respondent No.1 and Ms. Afonso, learned counsel for Respondent No.2.

2. This Second Appeal is directed against the concurrent judgments and decrees, decreeing the suit instituted by the consignor and the insurer. The trial Court decreed the suit by directing the present Appellant to pay the amount of ₹1,96,440/- along with interest at the rate of 18% per annum from 27.08.2007 till the

realisation of the amount. The Appellate Court modified the decree by awarding interest at the rate of 12% per annum.

3. Mr. Bhobe proposes the following substantial questions of law which according to him arise in this appeal.

(i) Whether in the absence of compliance with the provisions of Section 10 of the Carriers Act, 1865 and in the absence of a Notice as required thereunder, the findings of the Appellate Court and the Trial Court in respect of the Carriers Act, 1865 suffers from perversity?

(ii) Whether in the absence of negligence on the part of the driver of the truck, the Appellate Court and the Trial Court were justified in holding the Appellant responsible and/or liable for the alleged loss?

4. If the impugned decrees are perused, then, there are findings of fact about compliance with the provisions of the Carriers Act, 1865. Necessary notice was indeed given as held concurrently. Similarly, even the issue of negligence is a question of fact that has been concurrently answered by the two Courts against the Appellant. In such circumstances, no question of law much less any substantial questions of law, arise for determination in this Second Appeal.

5. The Appellate Court has already reduced the rate of interest from 18% to 12%.

6. For the above reasons, this appeal is liable to be dismissed and is hereby dismissed.

7. The Decree Holders can now withdraw the amount deposited by the Appellant in this Court together with interest, if any, that has accrued on this amount. If there is any balance amount to be recovered then the Decree Holders will have to take out the execution proceedings for the same.

M. S. SONAK, J.