



AS.No.271 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2021

PRONOUNCED ON : 18.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.271 of 2013
CMP.No.18561 of 2021

(Through Video Conferencing)

1. M/s.Inland Road Transport (P) Limited
by its Managing Director, Kolkatta,
West Bengal - 700001
2. M/s.Inland Road Transport (P) Limited
by its Branch Manager, Kandaswamy Thottam
Erode.

Appellants

Vs

M/s.Om Sakthi Textile Mills, by its
Partner N.Gunasekar, Erode

Respondent

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated 21.11.2012, passed by the Principal District Judge, Erode in OS.No.3 of 2012.

For Appellants : Mr.K.V.Subramainam Associates for
Mr.P.Jagadeesan

For Respondents : Mr.S.Chandrasekaran

JUDGEMENT

1. This Appeal Suit has been filed, against the judgement and decree, dated



AS.No.271 of 2013

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21.11.2012 passed by the Principal District Judge, Erode in OS.No.3 of 2012.

2. The suit was filed for a judgement and decree, directing the Defendants to pay a sum Rs.17,75,138/- and to pay interest at 12% p.a. on Rs.15,60,332/- and for costs.
3. The case of the Plaintiff is that the Plaintiff is a partnership Firm, carrying on the business of Textiles. The Defendants have been carrying on the business of transportation of goods. On 20.10.2010, the Plaintiff had booked 108 bales of hand loom cotton clothes through the 2nd Defendant to the value of Rs.15,60,332/- to be delivered at Narol and Behrampura of North India. While the goods were in the custody of the Defendants, the Plaintiff came to know that the goods got burnt in an accidental fire and that major portion of the goods were completely destroyed. The 2nd Defendant, by his letter dated 25.10.2002, had admitted that 73 bales were completely destroyed and only 35 bales were recovered and they had also suffered damages on the folding ends, making the clothes not viable for any use. As such, the loss is a total loss. The Defendants have no underwriter to seek any indemnity and the Plaintiff had sought the value of the goods from the Defendants. In response to the Plaintiff's notice dated 31.10.2010, the 1st Defendant had sent a reply dated 23.11.2010 and another reply, dated 01.12.2010 denying the claim made and stating that the goods were booked at "owners risk". The



AS.No.271 of 2013

Defendants are legally bound to make good the loss. In such circumstances, the suit had been filed, for the reliefs as stated above.

4. The case of the Defendants, as set out in the written statement filed by the 2nd Defendant is that booking of the goods on 20.10.2010 is admitted. The value of the goods mentioned in the plaint is not correct. After booking the consignment, the Defendants had handed over the consignment to another lorry, namely S.R.Road Lines, for delivery of the goods. The said vehicle was duly insured. After handing over the goods to S.R.Road Lines, the lorry was parked in front of the office of the Defendants. The fire accident happened beyond their control. Unfortunately in the early morning, the said vehicle was involved in the fire accident. Out of 108 bales booked by the Plaintiff, 73 bales were recovered and handed over to the Plaintiff. The goods were booked only at "owners risk". The liability of the Defendants is only to the tune of Rs.20,000/-. The Defendants are in no way responsible for the loss. The suit is bad for non joinder of necessary parties. Hence, the suit is not maintainable.
5. On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A8 were marked and PW.1 was examined. On the side of the Defendants, Ex.B1 and Ex.B2 were marked and DW.1 was examined. The Trial Court had decreed the suit with costs. Aggrieved against the same, this Appeal Suit has been filed by the



AS.No.271 of 2013

Defendants.

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6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellant has submitted that no mandatory statutory notice was sent to the Defendants and there was no negligence on the part of the Defendants. Royal Sundaram Alliance Insurance Company is a necessary party to the suit, but they are not impleaded as a party. The goods were carried under owner's risk. The consignment left at the door of the office catches fire without any obvious reason or provocation. Therefore, the Trial Court ought to have applied the maxim Act of God. Sub contract is a common practice in transport trade. The Appellants' liability is a limited one. The terms of carriage is deemed to be binding on the Respondent. Hence, he would pray to allow this appeal. The learned counsel would rely on the decision reported in 2021 3 CTC 280 (KGL Transport Vs. Indian Additives Limited) and an unreported judgement of the Madurai Bench of this Court, dated 12.04.2019, made in AS(MD)No.106 of 2005.
8. The learned counsel for the Respondent would submit that the Trial Court considered both the oral and documentary evidence and passed a proper order. There is no necessity to interfere with the judgement of the Trial Court and therefore, he prays for dismissal of this appeal.
9. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.



AS.No.271 of 2013

WEB COPY

10.The main contention of the Appellants is that the accident was an Act of God and there was no negligence on the part of the Defendants. The Plaintiff's case was that on 20.10.2010 the Plaintiff Firm booked 108 bales of cotton clothes through the 2nd Defendant, a Branch of the 1st Defendant Company. While the goods were in the custody of the Defendants, they got burnt in an accidental fire. Hence, the Defendants are legally and factually bound to pay for the loss.

11.Ex.A4 is the Invoice issued by the 2nd Defendant at the time of booking the consignment . The value of the goods is also mentioned. There is no evidence let in by the Defendants to show that the fire was beyond their control or no negligence on their part. Notice under Section 10 of the Carriers Act, 1865 was sent to the Defendants on 31.10.2010. Therefore, the contention that the mandatory statutory notice was not sent is not at all sustainable. Even though there are carriage terms and conditions in Ex.A4, it is unilateral in nature and not binding on the Plaintiff.

12.There was no contractual relationship between the Plaintiff and third party, S.R.Road Lines. Therefore, the Defendants have to work out their remedy with S.R.Road Lines and its Insurance Company.

13.In so far as this case is concerned, the Trial Court came to the correct conclusion to allow the suit. Therefore, there is no necessity to interfere with the judgement of the Trial Court and hence, this appeal is liable to be



AS.No.271 of 2013

dismissed.

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14. In fine, this Appeal Suit is dismissed. No costs. Consequently, the connected
MP is closed.

18.03.2022

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

Srcm

To

1. The Principal District Court, Erode
2. The Record Keeper, VR Section, Madras High Court



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AS.No.271 of 2013

A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
AS.No.271 of 2013

18.03.2022