



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2022

Coram:

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THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

S.A.Nos.249 and 250 of 2014

S.A.No.249 of 2014

M/s.BIC Logistics Ltd.,
Ega Trade Centre, X Floor,
No.809, P.H.Road, Kilpauk
Chennai 600 010

.. Appellant/Appellant/1st Defendant

.Vs.

1.M/s.Rane (Madras) Ltd., rep.by Power Agent/Subrogee
United India Insurance Company Ltd.

2. United India Insurance Company Ltd.,

Both 1 & 2 at No.19,
No.98-A Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.

..Respondents 1 & 2/Respondents 1 & 2/Plaintiffs

3.M/s.Tata Engg & Locomotive Co..Ltd.,
Spare Parts Division and Tata Indica car Projects Division
at No.78, Pune-Alandi Road, PO DIGHI, Pune.

..3rd Respondent/3rd Respondent/2nd Defendant

Prayer in S.A.No.249 of 2014: Second Appeal filed Under
Section 100 of the Code of Civil Procedure against the
Judgment and Decree dated 19.08.2013 of the IV Additional Judge,
City Civil Court, Chennai in A.S.No.383 of 2009 thereby
dismissing the appeal and also dismissing the judgment and
decree dated 01.04.2008 of the XI Assistant Judge, City Civil
Court, Chennai in O.S.No.3143 of 2006.

S.A.No.250 of 2014

M/s.BIC Logistics Ltd.,
6-D,Ega Trade Centre, X Floor,
No.809, P.H.Road, Kilpauk
Chennai 600 010

..Appellant/1st Respondent/1st Defendant

.Vs.

1.M/s.Rane (Madras) Ltd.,



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(Public Limited Company)
Registered Office at No.32, Cathedral Road
Chennai 86 and carrying on business among
other places through their Pondicherry Division
At No.77, Thirubhuvunai Main Road
Rep.by power agent/Subrogee
M/s.United India Insurance Company Ltd.,
Rep.by their Principal Officer/Assistant Divisional Manager
Ms.Shobha Shanmugam

2. M/s.United India Insurance Company Ltd.,
Rep.by their Principal Officer/Assistant Divisional Manager
Ms.Shoba Shanmugam
Carrying on their business of General Insurance
Having their registered office at
No.24, Whites Road, Chennai-14
And carrying on business amongst other places at
Chennai through their Divisional Office
No.19, No.98-A Dr.Radhakrishnan Salai
Mylapore, Chennai 600 004.
..Respondents 1 & 2/Appellants/Plaintiffs

- 3.M/s.Tata Engg & Locomotive Co..Ltd.,
Carrying on their business among other places,
Spare Parts Division and Tata Indica car Projects Division
at No.78, Pune-Alandi Road, PO DIGHI, Pune.
..3rd Respondent/2nd Respondent/2nd Defendant

Prayer in S.A.No.250 of 2014: Second Appeal filed Under
Section 100 of the Code of Civil Procedure against the
Judgment and Decree dated 19.08.2013 of the IV Additional Judge,
City Civil Court, Chennai in A.S.No.416 of 2009 reversing the
appeal and also dismissing the judgment and decree dated
01.04.2008 of the XI Assistant Judge, City Civil Court, Chennai
in O.S.No.3143 of 2006.

For Appellant : Mr.Saikrishnan
(Both SAs) for M/s.Sai i Bharath and Ilan

For Respondents : Mr.Nageswaran
(Both SAs) for R1 and R2

R3-NDW in SA.249/2014 Vide order
Dated 23.02.2022

R3-Not Ready in Notice in
SA.No.250/2014



COMMON JUDGMENT

The 1st defendant is the appellant in both the second appeals.

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2.The 1st plaintiff despatched their consignment of automobile components at Pondicherry and it was entrusted to the 1st defendant, who is the carrier, for safe carriage and delivery at Pune. The goods were delivered to the carrier on 14.03.2003.

3.The grievance of the 1st plaintiff is that the 1st defendant committed breach and failed to deliver the consignment that was entrusted to the carrier and thereby, the 1st plaintiff suffered a pecuniary loss of a sum of Rs.4,93,082.93.

4.The 1st plaintiff had insured the consignment with the 2nd plaintiff under the Marine policy of insurance. The 1st plaintiff also executed a letter of subrogation in favour of the 2nd plaintiff after receiving the policy amount towards the loss suffered by them. Since the amount towards the loss of consignment was not settled inspite of the claim letter dated 01.02.2006, the suit was filed seeking for the relief of recovery of amount from the 1st defendant to the tune of Rs.4,93,082.93 with interest.

5.The 1st defendant filed a written statement and took a stand that the consignment that was taken by the carrier was intercepted in the National highways and a criminal act of robbery took place whereby the lorry was hijacked and the entire consignment was looted. A complaint was also lodged before the concerned Police Station and an FIR came to be registered by the Neelamangala Police Station in Crime No.183 of 2003 for an offence under Section 392 of IPC. The 1st defendant took a further stand that the loss of consignment was not due to any criminal act on the part of the carrier or due to any negligence on the part of the carrier and the consignment was lost only due to robbery which must be considered as an act committed by enemies of State. Thereby, the 1st defendant denied their liability.

6.The 1st defendant also took a stand that the suit is barred by limitation and further it was stated that there was no territorial jurisdiction for filing the suit at City Civil Court, Chennai.

7.The trial Court on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, gave a categoric finding to the effect that the 1st defendant has established that there was no



negligence on their part and the loss of consignment had taken place only due to the robbery committed by miscreants and accordingly, the plaintiff was held not to be entitled for the suit claim. However, the trial Court based on the concession given by the counsel appearing on behalf of the 1st defendant directed the 1st defendant to pay a sum of Rs.1,00,000/- to the plaintiff towards the suit claim.

8. Aggrieved by the judgment and decree passed by the trial Court, 1st defendant filed A.S.No.383 of 2009 on the ground that they are not liable to pay any amount to the plaintiff and challenged the decree passed by the trial Court to the extent to which the trial Court had directed the 1st defendant to pay a sum of Rs.1,00,000/- to the plaintiff. The plaintiff also filed an appeal in A.S.No.416 of 2009 being aggrieved by the fact that the trial Court rejected the entire claim and the amount of Rs.1,00,000/- was directed to be paid only on the concession given by the counsel appearing for the 1st defendant.

9. Both the appeals were taken up together and the lower Appellate Court through judgment and decree dated 19.08.2013, allowed AS.No.416 of 2009 and decreed the suit as prayed for and dismissed AS.No.383 of 2009, filed by the 1st defendant. Aggrieved by the same, the 1st defendant has filed these Second Appeals.

10. When these Second Appeals were admitted, this Court framed the following substantial question of law:

S.A.No.249 of 2014

- 1) Whether the lower Appellate Court erred in not allowing the appeal of this appellant in so far as it relates to the suit which was decreed partly for a sum of Rs.1,00,000.00 as against total plaintiff claim of Rs.4,93,082.93 ?
- 2) Whether the lower Appellate Court's judgment is contrary to law as it has proceeded to dismiss the appeal of the appellant by applying strict criminal jurisprudence and strict criminal law without applying the principles laid down under Sec.8 of Carriers Act 1865 which is a civil law ?
- 3) Is not this appellant granted immunity under Carriers Act for the hijack of goods which has taken place under the circumstances supported by police records in a National Highway at 12.00 midnight which will fall strictly under the definition of "Acts of Enemies of State" ?

S.A.No.250 of 2014

- 1) Whether the lower Appellate Court's judgment is contrary to law as it has proceeded to allow the



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appeal of the respondents by applying strict criminal jurisprudence and strict criminal law without applying the principles laid down under Carriers Act 1865 which is a civil law ?

2) Is not this appellant granted immunity under Carriers Act for the hijack of goods which has taken place under the circumstances supported by police records in a National Highway at 12.00 midnight ?

3) Is not this appellant granted immunity under Carriers Act for the hijack of goods which has taken place under the circumstances supported by police records in a National Highway at 12.00 midnight which will fall strictly under the definition of "Acts of Enemies of State" ?

11. Heard Mr. Saikrishnan, learned counsel for the appellant and Mr. Nageswaran, learned counsel for respondents 1 and 2. This Court also carefully considered the materials available on record and the findings rendered by both the Courts below.

12. The trial Court on appreciation of the oral and documentary evidence came to a categorical conclusion that the appellant did not commit any negligence and therefore, they are not liable to compensate the plaintiff for the loss of consignment that occurred during the transit. Ultimately, the trial Court held that the plaintiff is not entitled for the suit claim. For proper appreciation, paragraph 10 of the trial Court judgment is extracted hereunder:

"10. There is no dispute that the suit consignment has not been delivered by the 1st defendant to the consignee. Because the carrier was hijacked by some miscreants during the transit and the same was intimated to the 1st plaintiff under Ex.B-8 due to the act of enemies of the state. According to the Carriers Act, the statutory notice to be issued by concerned parties. But the 1st defendant carrier intimated to the plaintiff about the hijack of the carrier. Therefore the question of statutory notice does not arise at this stage. Further on going through the pleadings of the plaintiff the cause of action arose for the purpose of filing the suit. Therefore, the contention of the counsel for the 1st defendant is not acceptable with regard to the statutory notice as well as cause of action for the suit. However, the 1st defendant carrier is a responsible person for taking almost care to deliver the suit consignment to the consignee. But the same has not been delivered due to the above said reasons. The 1st defendant



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has established by filing the necessary documents that the suit consignment was robbed by the miscreants while the carrier was going to Pune via Bangalore-Tumkur NH-4 at about 12.03 midnight (between Talakere and Dodderi). Therefore, the 1st defendant had clearly established that there is no negligence on the part of the 1st defendant common carrier and therefore he is not liable to compensate the owner of the goods for the loss of goods that occurred during the transit and the judgments cited by the learned counsel for the 1st defendant are applicable to the present case on hand. Therefore, the plaintiff is not entitled to the suit claim".

13. On carefully going through the judgment rendered by the lower Appellate Court, it is found that most part of the judgment is focused on the issue of limitation and territorial jurisdiction and the lower Appellate Court found that the suit is not barred by limitation and that the Court in Chennai had the territorial jurisdiction to try the case. The next crucial aspect that ought to have been considered by the lower Appellate Court was with regard to the liability of the 1st defendant to compensate for the loss of consignment in transit. The lower Appellate Court was expected to consider the scope of Section 8 and 9 of the Carriers Act, 1865 [hereinafter referred as "the Act"] and also deal with the findings of the trial Court and give its reasons while agreeing or disagreeing with the findings of the trial Court. Unfortunately, the lower Appellate Court has straightaway rendered a finding to the effect that the 1st defendant carrier is liable to compensate for the loss. For proper appreciation, the relevant portion of the judgment of the lower Appellate Court is extracted hereunder:

"As per the first defendant's contention that the hi-jacking of goods vehicle is by the Act of the alien enemies. As per Alien law Laxigen reprint 2010, 2011, 2012 P.80.

'Alien enemy - A subject of a nation which is at a war with this country. A contract with him is void... Where Sir William Scot described the Alien enemy as 'totally ex-large'. Nor can an alien enemy exercise their right of voting in respect of shares in an English company nor (unless with relm by the Kings licence) Can he sue here during the war through he liable to the suit. As to the grounds right at common law to forfeit the private property of subjects of an enemy state'.

At Page 589

Enemy means ;



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i) any person or country committing external aggression against India,

ii) any person belonging to a country committing such aggression.

iii) Such other country as may be declared by the Central Government to be assisted the country committing such aggression.

iv) any person belonging to such other country

One who opposes or injury on another an antagonist, block law dictionary-VII Edition P.548 includes all armed mutineers, armed rebels, armed rioters, pirates and any person subject to this Act to take action (Border Security Force act, 1968 (47 of 1968). s.2(1)(j))

It includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act. [Army Act, 1950 (46 of 1950), s 3(x)]

As per the above definition the first defendant carrier had not proved the person who was hijacked the first plaintiff's goods or alien enemies. In the complaint given by the driver of the vehicle. In the carrier four persons were travelling. One is the owner of the carrier by name Ajees. He has not chosen to prefer a complaint to the police. Only the driver had lodged the complaint. The police had not investigated in that angle and not examined the owner of the vehicle Ajees. Hence the Points No.1, 2 & 3 are answered against the appellant/1st defendant in A.S.383/2009."

14.While carefully considering the finding of the lower Appellate Court extracted supra, it is seen that the lower Appellate Court has not taken into consideration the findings of the trial Court and assigned specific reasons as to why it is disagreeing with the findings of the trial Court. If the trial Court judgment is sought to be reversed by the lower Appellate Court, there is a mandate under Order 41 Rule 31 CPC., for the lower Appellate Court to spell out the reason and discuss the point as to why it is disagreeing with the findings of the trial Court. This process would involve appreciation of the relevant evidence on record and specific reasons given for disagreeing with the findings of the trial Court. This position of law has been reiterated time and again and for proper appreciation, it will be relevant to take notice of the judgment of the Hon'ble Supreme Court in K. Karupparaj v. M. Ganesan reported in 2022 1 CTC 674.

15.The learned counsel for the respondents submitted that



in the present case, the 1st defendant had not discharged the burden of proving that they were not negligent as required under Section 9 of the Act. The learned counsel submitted that till this burden is discharged it is not necessary for the plaintiff to prove that the loss or damage was caused owing to the negligence of the 1st defendant. The learned counsel in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court in Nath Bros. Exim International Ltd., v. Best Roadways Ltd., reported in 2001 1 LW 756. The learned counsel specifically placed reliance upon paragraph 26 and 28 of the judgment which are extracted hereunder:

26. We have already reproduced the provisions of Sections 6, 8 and 9 above. Section 6 enables the common carrier to limit his liability by a special contract. But the special contract will not absolve the carrier if the damage or loss to the goods, entrusted to him, has been caused by his own negligence or criminal act or that of his agents or servants. In that situation, the carrier would be liable for the damage to or loss or non-delivery of goods. In this situation, if a suit is filed for recovery of damages, the burden of proof will not be on the owner or the plaintiff to show that the loss or damage was caused owing to the negligence or criminal act of the carrier as provided by Section 9. The carrier can escape his liability only if it is established that the loss or damage was due to an act of God or enemies of the State (or the enemies of the King, a phrase used by the Privy Council). The Calcutta decision in *The British & Foreign Marine Insurance Co. vs. The Indian General Navigation and Railway Co. Ltd.* (supra), the Assam decision in *River Steam Navigation Co. Ltd & Anr. vs. Syam Sunder Tea Co. Ltd.* (supra), the Rajasthan decision in *Vidya Ratan vs. Kota Transport Co. Ltd.* (supra), the Kerala decision in *Kerala Transport Co. vs. Kunnath Textiles* (supra), which have already been referred to above, have considered the effect of special contract within the meaning of Sections 6 and 8 of the Carriers Act, 1865 and, in our opinion, they lay down the correct law.

28. From the above discussion, it would be seen that the liability of a carrier to whom the goods are entrusted for carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination, indicated by the consignor. So long as the goods



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are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent and servants.

16. The learned counsel further placed reliance upon the Division Bench of this Court in *Bond Food Products Private Ltd., and Another .v. M/s. Planters Airways Ltd.*, reported in 2004 2 LW 663. The learned counsel drew the attention of this Court to paragraph 14.3 of the judgment which is extracted hereunder:

14.3. As per Section 9 of the Carriers Act, it is for the defendant to prove that there was no negligence on their part. The negligence on the part of the defendant is, therefore, presumed in law, as per Section 9 of the Carriers Act, unless the contrary is proved by the carrier by evidence and the burden of proof lies on the defendant/ carrier to prove that they were not negligent, vide

(i) *Shanmuga Sundaram Pillia @ Somasundaram Pillai v. National Insurance Co. Ltd.*, 2000 (I) CTC 346;

(ii) *Patel Roadways Limited v. Birla Yamaha Limited*, 2000 (III) CTC 59;

(iii) *Economic Transport Organisation etc., v. Dharwad Distt. Khadi Graudyog Sang etc.*, 2000 (III) CTC 73; and

(iv) *United India Insurance Co. Ltd. and another v. Economic Roadways Corporation*, 2001 (1) L.W. 301.

17. There is no difficulty in understanding the scope of Section 8 and 9 of the Act. The above judgments in no uncertain terms have categorically held that the carrier has a duty to take care of the consignment as they would take care for their own goods. If any loss or damage is suffered, the carrier has been mulcted with strict liability and they have to compensate for the loss or damage unless the carrier is able to prove that the loss or damage was not caused due to their negligence or criminal act of the carrier or their agent or servants. However, the burden of proof has been imposed on the carrier under Section 9 of the Act and the carrier is expected to discharge this burden. Till then, it is enough for the plaintiff to make the claim for the loss or damage suffered by them.

18. The trial Court has appreciated the oral and



documentary evidence and has given a categorical finding that the loss of consignment did not take place due to the criminal act or negligence on the part of the carrier. When this finding is sought to be reversed, the Appellate Court should have once again re-appreciated the oral and documentary evidence and assigned specific reasons as to why it is disagreeing with the findings of the trial Court.

19.This Court exercising its jurisdiction under Section 100 of CPC., cannot undertake the task of appreciation of evidence. It is now well settled that the High Court while dealing with the Second Appeal will only consider the findings of the lower Appellate Court and see if it suffers from perversity due to improper appreciation of the evidence available on record. If the lower Appellate Court had considered the evidence and given its reasoning for disagreeing with the findings of the trial Court, this Court would have straightaway considered as to whether such finding suffers from any perversity. It is not possible to give any such finding in this case since the lower Appellate Court has not assigned any reasons for disagreeing with the findings of the trial Court. The duty that has been assigned to the lower Appellate Court under Section 96 r/w Order 41 Rule 31 CPC, cannot be performed by this Court while exercising its jurisdiction under Section 100 CPC. Hence, this Court has to necessarily remand the matter back to the file of the lower Appellate Court.

20.Substantial questions of law framed by this Court touches upon the merits of the case and since this Court is inclined to remand the matter back to the file of the lower Appellate Court, these substantial questions of law need not be answered. This Court is consciously not getting into the merits of the case since it will have a bearing when the lower Appellate Court hears the appeal afresh and render a judgment.

21.In view of the above discussion, the judgment and decree of the lower Appellate Court made in A.S.No.383 of 2009 and AS.No.416 of 2009 dated 19.08.2013 are hereby set aside. The matter is remanded back to the file of the IV Additional Judge, City Civil Court at Chennai. The IV Additional Judge, City Civil Court, Chennai is directed to hear the appeals afresh and deal with every issue on fact and law after properly framing the points for consideration. The lower Appellate Court is directed to deliver the final judgment in both the appeals on or before 15.07.2022 and report compliance to this Court. The learned counsel appearing on either side shall appear before the IV Additional Judge, City Civil Court, Chennai on 06.06.2022 and the lower Appellate Court shall fix a date for final hearing and dispose of the case within the time stipulated by this Court.



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22. In the result, both the Second Appeals are allowed in the above terms. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The IV Additional Judge, City Civil Court, Chennai.
2. The XI Assistant Judge, City Civil Court, Chennai
3. The Section Officer
V.R. Section, High Court, Madras.

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.23895
+2cc to M/s.Nageswaran & Narichania, Advocate, S.R.No.24387,
24388

S.A.Nos.249 and 250 of 2014

PM(CO)
SB(17/05/2022)