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AS.No.27/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 24.11.2020

DELIVERED ON 18.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AS.No.27/2017

Thomas Verghese
Prop. Of M/s.Classic Roadways Bus
at No.B/84, Station Plaza,
Station Road, Bhandup [W]
Mumbai 400 078.

... Appellant

Vs.

1.M/s.Textile Dye Chem Pvt Ltd
rep.by Power Agent/Subrogee
The Oriental Insurance Company Ltd
rep.by its Principal Officer/Sr.
Divisional Manager, having their
office at No.2, 4th Floor
Cisons Complex, 150, Montieth Road
Egmore, Chennai 600 008.

2.The Oriental Insurance Company Ltd
rep.by its Principal Officer/Sr.
Divisional Manager, having their
office at No.25/27, Asaf Ali Road,
New Delhi 110002 & their Claims
Service Centre at No.116/115,
Oriental House, Prakasam Salai
Broadway, Chennai 600 108.

... Respondents



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PRAYER : Appeal suit filed under Section 96 of CPC and under Order 41 Rule 1 of CPC against the judgment and decree dated 25.10.2016 passed in OS.No.206/2014 on the file of the learned XV Additional Judge, City Civil Court, at Chennai.

For Appellant : Mr.G.Sundaram

For Respondents: Mr.Guruswaminathan for

M/s.Nageswaran & Narichania

J U D G M E N T

- (1)The defendant in the suit in OS.No.206/2014 on the file of the learned XV Additional Judge, City Civil Court, Chennai, is the appellant in the above Appeal.
- (2)Respondents are plaintiffs in the suit. The 1st plaintiff/1st respondent is a Private Limited Company incorporated under the Companies Act, 1956 and is the consignor. The 2nd plaintiff/2nd respondent is the Insurance Company.
- (3)The respondents have filed the suit for recovery of a sum of Rs.11,68,219/- towards short delivery of goods and damages from the appellant as a carrier with interest at the rate of 12% per annum from the date of suit till the date of realisation.



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(4) Brief facts that are set out in the plaint filed by the plaintiffs/respondents are as follows.

(5) The 1st respondent/1st plaintiff during the course of their business, purchased Linear Alkyl Benzene from their supplier M/s.Nirma Limited, Baroda in Gujarat and entrusted the goods for consignment on 30.11.2010 to their consignee, M/s.Srinivasa Chemical Enterprises at Thirubhuvanai [Pondicherry] through the defendant/appellant. The appellant issued their Lorry Receipt dated 30.11.2010 and undertook to carry and deliver the consignment in good condition. The 1st respondent herein is the owner of the goods and consignor, who had also insured the same with the 2nd respondent herein under a Marine Policy of insurance. During transit, the suit consignment was heavily damaged due to an accident that took place on 06.12.2010 due to which the truck owned by the appellant herein, was capsized. The 2nd respondent / Insurance Company appointed an independent Surveyor to assess the loss and the Surveyor, after conducting survey on 08.12.2010 and 09.12.2010 respectively, submitted a Report on 18.12.2010 indicating that the loss was assessed at Rs.11,68,219/-. Out of 16,525 kgs of Linear Alkyl Benzene entrusted to the appellant/defendant for delivery of consignment, the actual quantity of



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Linear Alkyl Benzene delivered was only 4330 Kgs. It is alleged that the accident was due to the negligence of the driver of the truck of the appellant/defendant.

(6)The 1st respondent herein issued a statutory notice of loss to the appellant/defendant on 07.12.2010 informing about the loss sustained and called upon the appellant to settle their claim. The appellant acknowledged the short delivery of goods by issuing a Damage Delivery Certificate dated 21.02.2011 mentioning that the loss of goods was due to accident. Since the consignment was insured with the 2nd respondent / 2nd defendant, the 2nd respondent settled the claim of the 1st respondent/1st plaintiff by indemnifying the entire loss to the tune of Rs.11,68,219/-. Upon being indemnified by the 2nd respondent, the 1st respondent herein executed a Letter of Subrogation and special Power of Attorney on 18.03.2011 in favour of the 2nd respondent at Chennai. Upon execution of Letter of Subrogation and special Power of Attorney, the plaintiffs entrusted the claim papers to their recovery agents in whose favour, the 2nd plaintiff/2nd respondent authorised to initiate recovery on behalf of plaintiffs/respondents. The Recovery Agent also sent a claim bill to the appellant/defendant on 25.06.2011 calling upon them to compensate the loss. However, the appellant



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denied their liability and failed to settle the claim of the plaintiffs/respondents. Though the 2nd plaintiff is entitled to file and maintain a suit independently under the Letter of Subrogation and special Power of Attorney by virtue of Section 79 of the Marine Insurance Act, to avoid technical difficulties, it is stated that the suit is filed by both plaintiffs for recovery of a sum of Rs.11,68,219/- with interest at the rate of 12% per annum.

(7) From the plaint, it is seen that there is specific averment regarding the liability of the appellant/carrier for the short delivery of the consignment entrusted with the appellant and the negligence of the appellant who failed to discharge his statutory obligation to compensate the loss as a result of the negligent act of the employees of the appellant.

(8) The suit was contested by the defendant / appellant on various grounds by filing written statement. Almost every ground was raised unmindful of the specific case of the plaintiffs and the fact that the suit has been laid not only by the 1st plaintiff / consignor but also by the Insurance Company who had indemnified the 1st plaintiff for the loss. The appellant/defendant admitted the entrustment of goods with the appellant and the transportation of the goods through their truck. The



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appellant also admitted the quantity of short delivery as the transport charges were collected at the rate of Rs.4,100/- per metric ton.

However, the main defence that was taken by the appellant in the suit is that the defendant had agreed to transport the materials from Baroda to Pondicherry at the owners risk and therefore, the appellant is not liable for the loss or damage caused to the goods during transit as the loss was caused due to the accident, an act of God. It is admitted that due to the accident, the truck had capsized twice, as a result of which the cargo spilled out through top opening. However, it was contended by the appellant/defendant that neither the appellant nor his employee is liable to pay compensation towards the damage caused to cargo. It is also stated that the claim may be made against the insurer of the truck and not against the owner of the truck.

(9)The appellant/defendant has also raised the following contentions while defending the suit for the money claim by way of damages caused to the goods:-

(a)The 1st plaintiff/1st respondent loaded the cargo worth about Rs.15,63,555/- knowing fully well that the Insurance Policy coverage was only upto Rs.10 lakhs and therefore, there is a misrepresentation.



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- (b) The accident took place because of the collusion of the opposite vehicle and the negligence of the rider is also covered under the Insurance Policy and therefore, the appellant is not liable.
- (c) Since the cargo was insured only for Rs.10 lakhs, the independent Surveyor appointed by the 2nd respondent/2nd plaintiff himself has assessed the value/loss at Rs.7,37,973/- and the suit claim for a sum of Rs.11,53,861/-, is not sustainable.
- (d) No notice was issued to the defendant/appellant herein under Section 10 of the Carriers Act intimating the actual damage to the goods. [Strangely, the appellant/defendant received a notice dated 07.12.2010 from the 1st plaintiff calling upon the defendant to pay a sum of Rs.11,53,861/- being the loss suffered and the appellant/defendant has admitted not replying to the said notice of the 1st plaintiff as if it was at the request of the 1st plaintiff who was then having a good business relationship].
- (e) The Letter of Subrogation and special Power of Attorney was executed by the Deputy General Manager [Accounts] of the 1st plaintiff/1st respondent in favour of the 2nd plaintiff at Chennai on 18.03.2011 without any valid power or authority from the Board of Directors to give such a power to the 2nd plaintiff. On the basis



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of the said general Power of Attorney, which is a void document, the suit cannot be maintained by the 2nd plaintiff.

(f) The Insurance Policy was obtained on 30.11.2010 and the same was valid upto 26.05.2011 with the policy limit of Rs.10 lakhs. As per the Marine Open Policy, the loss limit was fixed at Rs.10 lakhs. However, willfully and deliberately the plaintiffs have overloaded the cargo worth Rs.15,63,555/-. Though there was an endorsement to increase the policy limit upto Rs.20 lakhs, the effective date of endorsement is 24.12.2010 and the liability beyond Rs.10 lakhs as per policy cannot be accepted and the accident took place only on 06.12.2010.

(10) Though the defence raised in the written statement was confined to the above points, it appears that the appellant has raised several grounds before the Trial Court as well as before this Court without there being any specific plea.

(11) Before the Trial Court, the plaintiffs have examined the Administrative Officer of the 2nd plaintiff/Insurance Company as PW1. Exs.A1 to A13 were marked on the side of the plaintiffs. The appellant has not filed any document. However, the appellant examined himself as DW1. No other witness was examined on behalf of the appellant.



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(12) Quite contrary to the pleadings, a peculiar defence was taken before

the Trial Court and before this Court by the appellant that the insurer

by subrogation is not entitled to issue in his own name and that the suit

can be only in the name of the insured by relying upon the judgment of

the Hon'ble Supreme Court in the case of ***Union of India Vs. Sri***

Sarada Mills Limited reported in ***AIR 1973 SC 281***. The Hon'ble

Supreme Court held that the suit by the consignor is maintainable after

referring to several precedents on the issue. Though an issue was

raised on the ground that the suit is barred by limitation, the Trial

Court found that the suit is well within the time as the accident

occurred on 06.12.2010 and the suit was filed on 25.11.2013. Despite

the fact that the appellant/defendant did not raise an issue in the

written statement, disputing the insurance policy, an argument was

advanced before the Trial Court that the document which was filed

under Ex.A2 is not a valid policy and that the claim and settlement is

invalid under Ex.A2 and further that the suit is liable to be dismissed

for want of cause of action.

(13) The Trial Court after considering the admitted facts and the

pleadings, held that the 1st plaintiff/1st respondent herein is entitled to

get the claim from the appellant with regard to shortage of delivery of



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cargo by the appellant/defendant. Another objection was also raised by

the appellant/defendant that the appellant/defendant is not liable as the

policy alleged in the present case does not cover the risk, loss or

damage of goods transported via road. After referring to the definition

'Marine Insurance' under the Marine Insurance Act, 1963 and the

principles settled by a few precedents, the Trial Court held that the 1st

plaintiff is entitled to claim for the loss due to shortage of delivery of

cargo transported by road.

(14)The contention of the appellant that the goods were carried at owner's

risk and that the appellant is not liable for the loss or short delivery,

was rejected by the Trial Court. Stating that the burden lies on the

appellant that the loss was occasioned not on account of his negligence

or negligence of his servants, the Trial Court held that the

appellant/defendant is liable as per Section 9 of the Carriers Act, 1869,

unless the contrary is proved by the appellant.

(15)However, the Trial Court did not agree with the claim of

Rs.11,53,861/- on the ground that the Surveyor's assessment regarding

shortage of delivery was only Rs.7,37,973/- and that the claim for a

sum of Rs.11,68,219/- cannot be allowed as the amount of loss

assessed by the 2nd plaintiff/2nd respondent herein cannot be



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disregarded. Aggrieved by the judgment and decree of the Trial Court, the above Appeal is preferred by the defendant, namely, carrier, with whom the goods were admittedly entrusted.

(16)The Court heard the submissions of the learned counsel for the appellant and the learned counsel appearing for the respondents and also perused the materials placed before it.

(17)Before this Court, the learned counsel for the appellant has raised almost all the grounds raised before the Trial Court ignoring the pleadings and the admitted facts. Written submissions were also made by the learned counsel for the appellant. The learned counsel reiterated every point that was raised in the written submission and therefore, this Court has to consider all the points that are raised in the written submission.

(18)The points raised in the written submission are as follows:-

1. The suit has to fail for suppression of material facts and for want of cause of action.
2. The suit as framed is not maintainable in law.
3. The suit has to fail for suppression of material facts.
4. The suit has to be dismissed as the goods were transported at owner's risk.
5. The suit has to fail as the plaintiffs/respondents have not



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approached the Court with clean hands.

6. The suit has to be dismissed on the ground that the accident was due to 'act of God'.
7. The suit is liable to be dismissed on the ground that there is no valid claim from a competent person.

(19)The learned counsel for the respondents/plaintiffs also argued elaborately pointing out that many of the issues are raised ignoring the pleadings. However, the learned counsel also submitted his arguments on every points that were raised by the learned counsel for the appellant/defendant and tried to convince this Court that the arguments of the learned counsel for the appellant are not sustainable on the factual background and that the legal issues raised by the learned counsel for the appellant are covered by several judgments of the Hon'ble Supreme Court.

(20)At the time of hearing the arguments of the learned counsel for the appellant, this Court noticed that several judgments were cited out of context and the learned counsel made submissions quite contrary to the principles laid by the Hon'ble Supreme Court as well as this Court in the judgments relied upon by him in support of his arguments.

(21)However uninfluenced by any of the unfairness with which the



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learned counsel has argued the matter, this Court is inclined to consider every points that were raised by the learned counsel for the appellant in the written submissions in the same chronology.

POINT No.1:-

(22)Learned counsel for the appellant submitted that Ex.A2 is only a Certificate issued under a Open Policy which is for a period from 27.05.2010 to 26.05.2011. The policy as such is not filed before the Trial Court and therefore, the terms and conditions subject to which the policy was issued are not available to this Court. Since Ex.A2 is only a certificate issued under the Marine Cargo Open Policy and the policy was not produced before the Court, the case of plaintiffs/respondents that the limit of Rs.10 lakhs was enhanced to Rs.20 lakhs cannot be accepted and the enhancement of coverage cannot be given retrospective effect from 27.05.2010. Referring to the fact that the main policy was issued on 27.05.2010, by the non production of the policy, the appellant was handicapped to put forth his valid defence. Learned counsel for the appellant further submitted that the document-Ex.A2 is a product of collusion between the plaintiffs to make an unlawful claim at the cost of public money. The plaintiffs/respondents have chosen to attach the endorsement as part of



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the certificate dated 14.12.2010 and filed it along with Ex.A2 to

mislead this Court deliberately. In the absence of a valid policy, the learned counsel contended that the suit is liable to be dismissed on the ground that the respondents/plaintiffs had not approached this Court with clean hands. In the absence of the policy, it was also contended by the appellant that the Court was not in a position to verify whether road peril is covered under the marine policy. Learned counsel also contended that since Ex.A2 cannot be treated as a policy by itself, the certification or a declaration under Ex.A2 cannot substitute the policy itself. Therefore, the main contention of the learned counsel for the appellant regarding suppression of material facts is mainly under the pretext that the appellant has failed to prove the existence of valid policy in force on the date of accident to cover road perils as on the date of accident.

(23) Learned counsel also submitted that the accident occurred just 3 km away from Tiruvannamalai and therefore, the accident is not covered under Ex.A2. As it was pointed out in the earlier paragraphs, none of the grounds raised by the learned counsel for the appellant regarding suppression of material facts or want of cause of action is supported by any specific pleading in the written statement. In other words, the



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material facts in the plaint relating to the suit claim leading to the filing of suit is not seriously disputed. The existence of policy as pleaded by the plaintiffs in the plaint is not specifically denied in the written statement. The certificate under Ex.A2 is admittedly for the period covering the loss due to the accident. The specific contention of the respondents/plaintiffs that the document [Ex.A2] is with regard to marine cargo open policy is not disputed. The claim of the 1st plaintiff on the basis of the marine policy was settled by the 2nd plaintiff. Having failed to raise an issue or dispute as regards the existence of marine cargo open policy, as it was pleaded by the respondents/plaintiffs by referring to Ex.A2, it is not open to the appellant to unnecessarily raise points to mislead this Court. Ex.A2 is titled as Marine-Cargo-Open Policy issued particularly covering the suit claim. It is the case of the respondents / plaintiffs that by subsequent request, the limit was enhanced from Rs.10 lakhs to Rs.20 lakhs, is not denied and therefore, there is no question of giving retrospective effect as it was contended by the learned counsel for the appellant. PW1 has denied the suggestion that Ex.A2 is a product of collusion between the 1st plaintiff and the 2nd plaintiff / respondents herein so as to pave way for the 1st plaintiff to make an unlawful gain



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at the cost of public money. From the suggestion that was put to PW1,

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this Court only noticed that the appellant is unnecessarily shedding tears for the 2nd plaintiff/2nd respondent as if the 1st plaintiff was allowed to make unlawful gain by getting his loss indemnified by the Insurance Company.

(24)The contention of the appellant in relation to the 1st point is also on the ground that there is no cause of action against the appellant for filing the suit. The plaint definitely disclose the cause of action against the defendant/appellant and from the facts narrated in the beginning of this Judgment, the respondents/plaintiffs have certainly disclosed the cause of action leading to the filing of the suit. Referring to the provisions under the Marine Policy Act, the learned counsel contended that a marine policy does not cover transport by road. The said point has been discussed by the Hon'ble Supreme Court as well as this Court in several precedents. The question whether the risk of goods transported by road would be covered by a Marine Insurance Policy under the provisions of the Marine Insurance Act, 1963, has been considered in several judgments and the Courts have concluded that Section 2[d] of the Act, 1963 alone is relevant and that the definition of 'Maritime Perils' as found in Section 2[e] of the Act, 1963, with sub-



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section [2] and the explanation to Section 4 of the same Act would help

the Court to hold that as per the Marine Insurance Policy, the 2nd plaintiff has admitted the coverage of goods transported by road and there is a valid Insurance Policy to cover the risk. The appellant who is a carrier, is not competent in interpreting the contract between the plaintiffs 1 and 2. In a suit that was filed by the plaintiffs namely, the insured and the insurer, it is not open to the appellant to raise an issue that the policy by which the 2nd plaintiff had indemnified the 1st plaintiff, cannot be the basis of the suit claim.

(25) The cause of action for the 1st plaintiff to file a suit against the carrier for the short delivery of goods does not depend upon the contractual obligation of the 2nd plaintiff under the policy. When the suit is filed by the 1st plaintiff as a consignor and the 2nd plaintiff / Insurance Company as the insurer, the Court will not reject the claim on the ground that there is no cause of action for filing the suit for want of coverage or on the ground that the Insurance Company is not liable to indemnify the insured without the types of perils mentioned in the policy. Ex.A2 shows the coverage of risk by road. When the appellant has not raised an issue with regard to the existence of a valid policy by specific denial, it is surprising to note that the learned counsel for the appellant has built



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several arguments without any foundation. The law is well settled that the defendant who has not raised an issue before the Trial Court in the form of a plea, cannot raise the issue before the Trial Court or before the Appellate Court at the time of advancing arguments. The law is also settled that facts not denied specifically in the written statement or by necessary implication, will be taken as admitted. Unless the plaint averments are specifically denied, it is not open to the defendant/appellant to build an argument that the suit shall fail because the 1st respondent/1st plaintiff has not produced the document, the existence of which is not specifically denied and the admission can be assumed by necessary implication. Further, the suit claim does not depend upon the existence of a valid policy which is a matter between plaintiffs.

POINT No.2:-

(26)The learned counsel contended that the 1st plaintiff/1st respondent is not represented by an authorised person of the Company. It is then stated that the plaint is verified only by the authorised representative of the 2nd plaintiff/2nd respondent in his capacity as the Power Agent of the 1st plaintiff/1st respondent. First of all, it is not the case of the appellant before the Trial Court that the plaint is not verified by the authorised representative of the plaintiffs/respondents. Therefore, it is not now open to the appellant to question the competency of the person



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who represented the plaintiffs in the suit for the first time before this Court. The 2nd limb of argument of the learned counsel for the appellant is that the law is settled to the effect that the suit of this nature has to be filed by the cargo owner either individually or along with the insurer jointly and that the Insurance Company alone cannot maintain a suit in its own name. The submission of the learned counsel for the appellant is absurd having regard to the position that the suit is filed by the owner of goods as well as the Insurance Company on the basis that the claim of the 1st plaintiff/owner had been indemnified by the Insurance Company by honouring the policy covering the risk.

(27)The learned counsel for the appellant relied upon the following judgments, namely, *[a]* the judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. Sri Sarada Mills Private Limited*** reported in ***AIR 1973 SC 281*** ; and *[b]* the judgment of a Division Bench of this Court in the case of ***Bond Food Products Private Limited Registered Office at No.80, 4th Blcok, Koramangala, Bangalore 560034 and Another Vs. M/s.Planters Airways Limited, Bangalore 560 002*** reported in ***2004 [4] CTC 103***.

(28)The first judgment relied upon by the learned counsel for the



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appellant in *Sarada Mill's case* [cited supra], is an authority to hold that subrogation does not confer any independent right of on underwriters to maintain in their own name and without reference to the persons assured for an action for damage to the thing insured. In a suit filed by the owner of the goods, it was admitted that the claim for the loss of damage was settled and by virtue of a Letter of Subrogation authorising the Insurance Company to enforce the legal rights of the consignor it was contended that the suit by the consignor after subrogation is not maintainable. It is held that the cause of action of the Mill against the Railway Administration does not come to an end by giving the letter of Subrogation and that the plaintiff/Mill was competent to institute and maintain the suit against the Railway Administration. It is further held that though the Mill could be answerable and accountable to the Insurance Company for the monies recovered in the suit to the extent the Insurance Company paid the respondent Mill, the suit as such, cannot be dismissed. The majority of a three Member Bench of the Hon'ble Supreme Court in the said case has held as follows:-

"22.In the present case the insurance company and



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the Mill proceeded on the basis that the insurance company was only subrogated to the rights of the assured. The letter of subrogation contains intrinsic evidence that the respondent would give the insurance company facilities for enforcing rights. This insurance company has chosen to allow the Mill to sue. The cause of action of the Mill against the Railway Administration did not perish on giving the letter of subrogation."

(29) Firstly, the above judgment of the Hon'ble Supreme Court has no application to the facts of the case where both the consignor and the Insurance Company have made a joint claim. The judgment relied upon by the learned counsel for the appellant is therefore, is in favour of the respondents/plaintiffs and this Court is convinced that the judgment relied upon by the learned counsel for the appellant is out of context and would only support the case of the respondents/plaintiffs.

(30) The second judgment cited by the learned counsel for the appellant is also in favour of the plaintiffs/respondents on all the three issues. It has been held in the said judgment that negligence on the part of the carrier is presumed in law and it is the burden of the carrier to discharge by proving that the accident was due to the negligence on the part of the carrier. It is also held by the Division Bench that in the



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absence of any evidence, the report of Surveyor pointed out by the Insurance Company can be taken to support the claim of consignor regarding loss or damage caused to the goods.

(31)The 3rd point that was decided by the Division Bench on the facts was that the doctrine of subrogation confers upon the insurer, the right to receive benefit of such rights and remedies as assured has against third parties in regard to the loss to the extent that insurer had indemnified and made into. The Division Bench considered the case where the consignor filed an appeal as against the judgment of the Trial Court dismissing the suit laid by the consignor to recover a sum of Rs.56,307.55p., towards the loss of entire consignment. The suit was dismissed on the ground that the plaintiff therein failed to produce the policy entered into between them and the 1st plaintiff therein and that the report of the Surveyor is not binding on the carrier and that the survey report cannot be relied upon to sustain the claim of the plaintiff/consignor. All the issues were decided in favour of the plaintiff therein and the judgment of the Trial Court was set aside by the Division Bench of this Court. It is to be noted that the Division Bench has placed reliance on Section 9 of the Carriers Act and held in favour of plaintiff with regard to the burden of proof on the question of



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negligence following several judgments of the Hon'ble Supreme Court

as well as this Court. On the question regarding quantum the

Surveyor's Report was held to be relevant following several precedents.

(32) Though it is concluded that a subrogee or Power of Attorney Holder can only file a suit on behalf of and in the name of the consignor and not in his own name, the present suit filed by the owner of the goods as well as the Insurance Company cannot be questioned by referring to the judgments relied upon by the appellant/defendant.

(33) As already observed by this Court earlier, the learned counsel for the appellant tried to build up a case that the 1st plaintiff is not represented by a proper person who is competent or authorised either by a resolution passed by the Board of Directors of the 1st plaintiff/1st respondent Company or a document to show that the signatory of the plaint has got power under the Memorandum and the Articles of Company. When the competency of the person representing the company is not raised in the plaint, this Court cannot expect the 1st plaintiff/1st respondent to produce any document as such. It is well settled that the substantive rights of the parties should not be allowed to be defeated on technical grounds or procedural irregularity.

(34) The Hon'ble Supreme Court in the case of *United Bank India Vs.*



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Naresh Kumar and Others reported in ***1996 [6] SCC 660*** held that

substantive rights should not be allowed to be defeated on technical grounds or procedural irregularity so as to ensure that no injustice is done to any party. Paragraph 10 of the said judgment reads thus:-

"10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney



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being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

POINT No.3:-

(35) Absolutely there is no merit in the submission of the learned counsel for the appellant regarding suppression of any materials. The fact that the 1st plaintiff/1st respondent has entrusted the goods to the appellant/defendant for transportation of the goods is not in dispute, the accident is not in dispute. The fact that the 1st plaintiff has suffered loss by short delivery is also not in dispute. The plaint averments with regard to the policy is not specifically denied. However, in the absence of any specific denial in the written statement, the appellant is now raising the issues which did not arise for consideration before the Trial Court. The learned counsel has come up with an argument in his written submission that there are several suspicious circumstances in the absence of any valid policy produced before the Trial Court. The 1st plaintiff has filed the suit not on the basis of the policy, but on the



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basis of the actual loss caused to the 1st plaintiff/consignor. The 2nd

plaintiff was added as a plaintiff to the suit under the Letter of Subrogation for indemnifying the claim. It is open to the plaintiffs to establish the actual loss and therefore, the submission of the learned counsel for the appellant on the basis of suppression or for want of cause of action has no merits.

POINT No.4:-

(36) It is contended by the learned counsel for the appellant that the suit claim against the carrier is not maintainable as the transport was undertaken by the appellant on the basis of a special contract as seen from Ex.A4. Relying upon Exs.A4 and A7, the learned counsel submitted that the transport contract was entirely at 'owner's risk'. It is seen that in the Lorry Receipt under Ex.A4, the following words are mentioned '*material transported entirely at owner's risk*'. The said receipt is issued while acknowledging the receipt of goods in good condition. Neither Ex.A4 nor Ex.A7 indicate a special contract as contended by the learned counsel for the appellant. When the appellant admitted the shortage of goods by issuing shortage certificate and failed to respond to the notice containing the claim at the relevant point of time, the appellant defended the claim as if the carrier is not



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responsible for the loss or damage caused to the goods during transit.

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In similar facts, the claim of the consignor is upheld in several precedents and the carrier cannot disown his statutory liability under the Carriers Act. It is now accepted that the right of consignor against the carrier responsible for the loss, is covered by Section 9 of the Carriers Act. A plain reading of Section 9 of the Carriers Act would indicate that the carrier is responsible for the non-delivery of goods and negligence or criminal act is presumed on the part of the carrier. Therefore, the burden lies on the carrier and not on the consignor that the carrier is not negligent. When the carrier is responsible for the loss, the burden of proof in the absence of negligence is upon the carrier. This has been held so in several judgments.

(37) In the case of *Assam Roadways Vs. National Insurance Company Limited and Others* reported in *AIR 1979 Cal 178* and in the case of *P.K.Kalasahi Nadar Vs. K.Ponnuswami Mudhliar* reported in *AIR 1962 Mad 44*, it is held that the owner of the goods is not required to prove negligence in a suit against a common carrier for the loss caused due to the non-delivery of articles or goods entrusted to the carrier. Same view was also expressed in the case of *M/s.Assam Bengal Roadways [P] Ltd., Vs. M/s.Hindustan Photo Films Manufacturing*



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Co. Ltd., reported in **1988 -1-L.W.-580** and in the case of **Bond**

Food Products Private Limited Registered Office at No.80, 4th

Blcok, Koramangala, Bangalore 560034 and Another Vs.

M/s.Planters Airways Limited, Bangalore 560 002 reported in **2004**

[4] CTC 103.

(38) In similar lines, a Division Bench of Calcutta High Court also held in the case of **The Great India Trading Co. Pvt Ltd Vs. Nowrangrai Ramniwas and Another** reported in **1983 AIR [Cal] 237**. This Court has already seen that there is no independent contract between the consignor and the carrier as regards the obligation of the carrier. In the absence of any special contract, Section 9 of the Carriers Act is relevant and the carrier is fully responsible to the loss or damage caused to the consignment. It may be true that the carrier may be absolved from his responsibility if he proves that the accident or the consequential damage was not due to his negligence while transporting goods. In the present case, on the admitted facts, this Court is unable to accept the appellant's case that the appellant is not responsible merely because in the Lorry Receipt issued by him, the undertaking of the carrier was "at owner's risk". By the insignificant reference to a word cannot absolve the appellant from his statutory obligation in



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terms of Section 9 of the Carriers Act.

WEB COPY POINT No.5:-

(39) This Court is unable to countenance Point No.5. It is important to note that the loss was assessed in tune with the suit claim as per the Surveyor's report which is marked as Ex.A6. However, the Surveyor calculated the loss in terms of the policy coverage indicating that the policy limit as per the coverage as Rs.10 lakhs. The liability of insurer was calculated corresponding to the value of coverage. This calculation of the Surveyor is erroneous. It is admitted and proved beyond doubt before the Trial Court that the policy coverage was enhanced to Rs.20 lakhs and therefore, the entire loss as assessed by the Surveyor, was admitted by the Insurance Company and the 1st plaintiff was indemnified by the 2nd plaintiff by settling the entire claim of Rs.11,53,861/-. The Trial Court miserably failed to read the contents of the Surveyor's Report and concluded that the 1st plaintiff's claim cannot be more than the loss assessed by the Surveyor. Since the loss was on account of the shortage of delivery, the Surveyor or anyone can easily find out the actual loss of goods. In other words, out of 16525 Kg, only 4330 Kg of goods alone was delivered. Therefore, the loss of cargo by short delivery is 12195 Kgs of Linear Alkyl Benzene.



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It was only on account of the wrong understanding of the policy limit by the Surveyor, the loss was reduced to Rs.7,37,973/-. The Surveyor's Report as to the actual loss was accepted and the fact that the 2nd plaintiff has indemnified the 1st plaintiff is not disputed. However, unreasonable reduction of claim on the basis of an erroneous report has now resulted in a decree for a lesser amount in favour of plaintiffs/respondents. The Trial Court has erroneously reduced the loss and unfortunately, the plaintiffs/respondents have not filed any cross appeal and therefore, this Court is unable to grant any relief to the respondents. However, the contention of the learned counsel for the appellant on this point is absurd and ridiculous.

POINT NO.6:-

(40)As in the various cases referred to and relied upon by this Court in this judgment, the issue whether the carrier is responsible for the accident which was an act of God was also considered. In this case, the accident of the lorry was unfortunate. The accident could have been avoided only by the drivers of the vehicles. When a specific allegation is made against the driver of the appellant's vehicle and it is stated that the accident was due to rash and negligent manner in which the employee of the appellant was driving the vehicle, this Court cannot



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refuse to grant relief merely because the loss or damage was due to accident. In the absence of any material to support the case of the appellant that there is no negligence on his part, he cannot be absolved from the liability which is strictly in terms of Section 9 of the Carriers Act.

POINT No.7:-

(41)The argument on this point is misconceived. The suit is not on the basis of the communication dated 25.06.2011. When the suit is laid on the original cause of action and the Letter of Subrogation under Ex.A11 is to enable the 2nd plaintiff to seek recovery against appellant. The agent of 2nd plaintiff sent intimation to the appellant regarding the claim. It is not known as to how the appellant could even plead that the said letter is a defence to him. The point raised by the appellant only indicates that the learned counsel is so unreasonable and unrealistic in making submissions without factual background or any legal basis. The learned counsel for the appellant has pleaded this Court to dismiss the suit with the exemplary cost on the ground that the appellant has spent lot of amount by way of expenses to pursue his cause. This prayer ought to have come from the learned counsel for the respondents.



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(42) This Court finds no merit in any of the submissions of the learned counsel for the appellant. Hence, the Appeal Suit is **dismissed with cost and** the judgment and decree dated 25.10.2016 passed in OS.No.206/2014 by the learned XV Additional Judge, City Civil Court, at Chennai, is hereby confirmed.

18.11.2022

AP

Internet : Yes

Index : Yes / No

To

1. The XV Additional Judge,
City Civil Court, Chennai.
2. The Principal Officer/Sr.
Divisional Manager,
The Oriental Insurance Company Ltd
Power Agent of M/s. Textile Dye Chem Pvt Ltd
Having their office at No.2, 4th Floor
Cisons Complex, 150, Montieth Road
Egmore, Chennai 600 008.
3. The Principal Officer/Sr.
Divisional Manager,
Oriental Insurance Company Ltd
Having their office at No.25/27, Asaf Ali Road,
New Delhi 110002 & their Claims
Service Centre at No.116/115,
Oriental House, Prakasam Salai
Broadway, Chennai 600 108.
4. The Section Officer
VR Section, High Court, Chennai.



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S.S. SUNDAR, J.

AP

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