



AS.No.621 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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M/s.Jyothi Transport Corporation
represented by their Manager,
registered Office at No.5,
Jadulal Mullick Road,
(Malapura) Calcutta 700 006

... Appellant

Vs.

- 1.M/s.J.J.Automotive Limited,
rep. by their Special Power of Attorney Agent
M/s.United India Insurance Co. Ltd.,
25-B, Park St.Calcutta
- 2.M/s.Hyundai Motor India Limited,
rep by their Insurer M/s.United India Insurance Co Ltd.,
Plot No.H1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram Dist,
Tamilnadu 602 105
- 3.M/s.United India Insurance Co Ltd.,
rep. by their Senior Divisional Manager,
No.24, Whites Road,
Chennai—14
and at No.640, Annasalai, 1st Floor,
Nandanam, Chennai-35

...Respondents



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PRAYER:

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Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 14.12.2007 passed in OS.No.8002 of 2006 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Appellant	: Mr.J.Dileep Kumar
For Respondents	: Mr.G.Guruswamy Nathan for M/s.Nageswaran & Narichania

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 14.12.2007 passed in OS.No.8002 of 2006 on the file of the VII Additional Judge, City Civil Court, Chennai, thereby decreed the suit as prayed for.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The respondents herein are the plaintiffs and the appellant is the defendant. The case of the plaintiffs is that the second plaintiff had entrusted the



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consignment containing 4 Accent Model Cars valued at Rs.5,25,872/-, Rs.4,81,200/-, Rs.4,81,200/- and Rs.4,81,201/- respectively to the defendant carrier on 29.09.2003 for safe carriage from the first plaintiff's factory at Irungattukottai, Sriperumbudur, Tamilnadu to deliver to the first plaintiff dealer at Calcutta, West Bengal. The defendant had accepted the consignment for safe delivery to the consignee at Calcutta and issued receipt dated 29.09.2003. The second plaintiff had insured the consignment with the third plaintiff against any loss /damage in transit under the policy No.011800/21/02/0004. Due to the rash and negligent driving of the driver of the truck which was carrying the consignment, had met with an accident on 03.10.2003 at Orissa. Due to the said accident, the consignment went off the road and capcized towards its right into the road side lower land. Therefore, the consignment suffered damages and spot survey was conducted by the licenced surveyor at the accident spot. The surveyor assessed that all the four cars were damaged and reported that more damages might have been unearthed after dismantling the vehicle and its parts assembly. Once again, the consignments were reloaded and delivered to the consignee at Calcutta. In order to ascertain the damages, the third plaintiff had appointed an independent and licenced surveyor to assess and quantify the loss.



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The surveyor assessed total loss to the tune of Rs.7,03,074/- after deducting the salvage. Accordingly, the first plaintiff had sent notice dated 09.10.2003 claiming damages to the consignment to the tune of Rs.19,69,473/-. The defendant had issued damage certificate dated 12.10.2003 thereby admitted the damages caused to the consignment.

3.1 It is the further case of the plaintiffs that the defendant as a common carrier had a duty under the common law to safely carry and deliver the consignment without any loss/damage to the consignment at the destination in tact and in sound condition and therefore, the defendant had committed breach of its duty as a common carrier and liable to pay the compensation. The first plaintiff made a claim to the defendant under Section 10 of Carriers Act by letter dated 09.10.2003 thereby demanded payment of compensation for the damages to the consignment. The third plaintiff had paid a sum of Rs.8,09,473/- to the first plaintiff on 10.03.2004 and settled the claim in terms of the contract of insurance and thus, subrogated the rights of the first plaintiff. Hence, the suit for the said amount and the charges paid to the surveyor to the tune of Rs.10,432/- with interest at the rate of 21% per annum.



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4. Resisting the same, the defendant filed written statement and stated that admittedly the consignment was carried by the defendant and met with an accident on 03.10.2003 at Orissa. Due to the said accident, the driver of the truck lost his control and caused damage to the consignment. The defendant had no knowledge about the survey conducted by the plaintiffs and assessment of the damages. The defendant was not served with any survey report dated 11.10.2003. The accident did not occur on the rash and negligent driving of the driver of the lorry. When the vehicle was plying in drizzling rain, suddenly a cow calf crossed the road and in order to avoid hitting the calf, suddenly brake was applied by its driver and skidded off the road on the right side. Therefore, there was no rash and negligent driving on the part of the driver of the lorry. On the very same allegation, the driver lodged complaint on 03.10.2003 before the Inspector of Police, Jherpokharia Police Station, Mayurbhange District, State of Orissa. Therefore, the defendant is not liable to pay for any damage. The defendant as a common carrier, had diligently carried out its work and had not been negligent either by itself or its employee while delivering the goods. Therefore, there was no negligence on the part of the defendant in carrying the goods. Hence, he prayed for dismissal of the suit.



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5. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

- 1) வாதி தாவாவில் கோரிய பரிகாரங்கள் தொகை பெற தகுதியுடையவரா?
- 2) வேறு என்ன பரிகாரம்?

6. In support of the plaintiffs' case, P.W.1 was examined and ten documents were marked as Ex.P.1 to Ex.P.10. On the side of the defendant, D.W.1 & D.W.2 were examined and Ex.D.1 to Ex.D.7 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit as prayed for. Aggrieved by the same, the defendant has preferred this appeal suit.

7. The learned counsel for the defendant would submit that the defendant was not served with any survey report to ascertain the damages caused due to the accident. The trial court has no jurisdiction to try the suit. Though one of the plaintiffs is having office within the jurisdiction of the trial



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court, since the accident had occurred in Orissa and the FIR was registered at Orissa, therefore no cause of action arose to file the present suit before the trial court.

8. Heard, Mr.J.Dileep Kumar, the learned counsel appearing for the defendant and Mr.G.Guruswamy Nathan, the learned counsel appearing for the plaintiffs.

9. On the strength of the submissions made on either side, the following points arise for consideration of this appeal suit:

- (i) Whether the trial court has got jurisdiction to try the suit?
- (ii) Whether the defendant is liable to pay compensation as a common carrier?

10. Admittedly, the accident occurred on 03.10.2003 at Bhursurion on NH6, Orissa. Immediately after the accident, the driver of the truck had lodged a complaint before the Inspector of Police, Jherpokharia Police Station, Mayurbhange District, State of Orissa. The defendant marked the certificate issued by the police department as EX.D7. It is evident that the accident



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occurred within the jurisdiction of Jherpokharia Police Station, Mayurbhange District, State of Orissa. The consignment was entrusted to the defendant at Sriperumbudur. When the defendant was carrying the consignment to deliver to the first plaintiff at Calcutta, the accident occurred within the jurisdiction of Jherpokharia Police Station, Mayurbhange District, State of Orissa. Therefore, the jurisdiction arose to file the suit for damages and the cause of action arose either at Calcutta or Sriperumbudur. Whereas the present suit has been filed before the VII Assistant Judge, City Civil Court, Chennai which has no jurisdiction to try the suit. In this regard, the learned counsel for the defendant relied upon the judgment of this Court in the case of ***Drs Logistics Private Limited Rep. by its Director, Dinesh Agarwal Vs. Blue Star Limited, Mumbai Rep. by its power agent*** in SA.No.822 of 2015 dated 17.03.2017, wherein it is held as follows:

10. The matter can be looked into different perspective as well. There is a difference between subrogation and assignment. A subrogation is nothing but an act of substitution of one person with another. Therefore, the right of the one would get transferred to the other. Thus, a subrogation is not a species of assignment. If that is a case, it will not give a cause of action being a transfer of right. Such a fact will not



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give jurisdiction to a Court notwithstanding the other material facts which would disclose the cause of action before some other Court. Thus, the decisions relied upon by the learned counsel appearing for the respondents in BOND FOOD PRODUCTS PRIVATE LTD. AND THE ORIENTAL INSURANCE COMPANY LTD., (NOW CHANGED AND HITHERTO KNOWN AS THE ORIENTAL FIRE AND GENERAL INSURANCE COMPANY) V. PLANTERS AIRWAYS LIMITED (2004 (2) Law Weekly 663) does not help his case. The following paragraph would in fact help the case of the appellant.

14.10. In its literal sense, subrogation is the substitution of one person for another. The doctrine of subrogation confers upon the insurer the right to receive the benefit of such rights and remedies as the assured has against third parties in regard to the loss to the extent that the insurer has indemnified the loss and made it good. The insurer is, therefore, entitled to exercise whatever rights the assured possesses to recover to that extent compensation for the loss, but it must do so in the name of the assured, vide [Oberai Forwarding Agency v. New India Assurance Co. Ltd.](#), (2000) 2 SCC 407.

14.11. The distinction between the subrogation and assignment, as explained in the standard textbook Insurance



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Law by MacGillivray & Parkington (7th Edition), is referred to as follows:

"1131. Difference between subrogation and assignment:- Both subrogation and assignment permit one party to enjoy the rights of another, but it is well established that subrogation is not a species of assignment. Rights of subrogation vest by operation of law rather than as the product of express agreement. Whereas rights of subrogation can be enjoyed by the insurer as soon as payment is made, as assignment requires an agreement that the rights of the assured be assigned to the insurer. The insurer cannot require the assured to assign to him his rights against third parties as a condition of payment unless there is a special clause in the policy obliging the assured to do so. This distinction is of some importance, since in certain circumstances an insurer might prefer to take an assignment of an assured's rights rather than rely upon his rights of subrogation. If, for example, there was any prospect of the insured being able to recover more than his actual loss from a third party, an insurer, who had taken an assignment of the assured's rights, would be able to recover the extra money for himself whereas an insurer who was confined to rights of subrogation would have to allow the assured to retain the excess.



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1132. Another distinction lies in the procedure of enforcing the rights acquired by virtue of the two doctrines. An insurer exercising rights of subrogation against third parties must do so in the name of the assured. An insurer who has taken a legal assignment of his assured's rights under statute should proceed in his own name..."

11. In the case on hand, the first plaintiff is having Office at Calcutta and had executed special power of attorney i.e. its insurer, third plaintiff. The second plaintiff is a car company situated at Irungattukottai, Sriperumbudur, Kancheepuram District, Tamilnadu. As per the agreement entered between the second and third plaintiffs, the third plaintiff is representing on behalf of the second plaintiff. Except the third plaintiff, other plaintiffs are not situated within the jurisdiction of the trial court. The third plaintiff entrusted the consignment from its factory i.e. the second plaintiff situated at Irungattukottai, Kancheepuram District to deliver to the first plaintiff situated at Calcutta. Letter of subrogation executed between the plaintiffs would not give rise cause of action within the territorial jurisdiction of the Courts at Chennai. The defendant is having office outside the territorial jurisdiction of the trial court and as such no cause of action arose to file a suit within the jurisdiction of the trial court.



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The cause of action of subrogation and special power of attorney at Chennai would not clothe a court with jurisdiction. All the transactions have taken place outside the jurisdiction of the Court. Therefore, the present suit instituted by the plaintiffs before the VII Assistant Judge, City Civil Court, Chennai lacks territorial jurisdiction. In the above judgment, this Court also referred the judgment of the Hon'ble Supreme Court of India in the case of ***ABC Laminart Pvt.Ltd and another Vs. A.P.Agencies, Salem*** reported in ***1989 (2) SCC 163***, wherein it is held as follows:

A cause of action means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a fight to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if



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not proved would give the defendant a fight to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

12. Further, Section 20 of the Civil Procedure Code speaks about the institution of the suit. A suit, accordingly, has to be instituted where the defendant resides and a cause of action arises. In the case on hand, the defendant is having office outside the territorial jurisdiction of the trial court. The power of attorney executed by the first plaintiff can never be said to give the cause of action on its own. It merely gives right to the second plaintiff to step into the shoes of the first plaintiff. Therefore, it is not a material fact as even *de hors* the power of attorney, the first plaintiff can maintain the suit. Therefore, merely based upon the power of attorney, a jurisdiction cannot be conferred to a court. Even by consent by the parties to a transaction, a jurisdiction to a court cannot be conferred is a settled principle of law. Thus, being a document of subrogation and a power of attorney, there cannot be any cause of action arose from it. Hence, the trial court has no jurisdiction to try the



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suit. Accordingly, both the points are answered in favour of the defendant.

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13. In view of the above, the judgment and decree passed by the trial court are liable to be set aside. Accordingly, the judgment and decree dated 14.12.2007 passed in OS.No.8002 of 2006 on the file of the VII Additional Judge, City Civil Court, Chennai are set aside and this appeal suit is allowed. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

- 1.The VII Additional Judge,
City Civil Court, Chennai.
- 2.M/s.United India Insurance Co. Ltd.,
Special Power of Attorney Agent
M/s.J.J.Automotive Limited,
25-B, Park St.Calcutta
- 3.M/s.United India Insurance Co Ltd.,
Insurer,
M/s.Hyundai Motor India Limited,
Plot No.H1, Sipcot Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kancheepuram Dist,
Tamilnadu 602 105
- 4.Senior Divisional Manager,
M/s.United India Insurance Co Ltd.,
No.24, Whites Road,
Chennai—14
and at No.640, Annasalai, 1st Floor,
Nandanam, Chennai-35
- 5.Section Officer,
V.R.Section,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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