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AS Nos. 692 of 2005



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

AS No. 692 of 2005

and

C.M.P.No.10692 of 2005

Mr S.A. Kumar
Proprietor,
M/s.Popular Transport,
6/9, Thiruvalluvar Salai,
Ramapuram, Chennai 600 089.

Appellant(s)/1st defendant

Vs.

1. Wyeth Ltd.,
RBC Mahindra Towers,
4th Floor "A" Wing,
Dr.G.M.Bhosale Road Worli,
Mumbai 400 0148.
Rep. by Mr.S.K.Rai Asst. Manager Distribution.

1st respondent/Plaintiff

2. N.C.Sekar Agencies,
No.23, M.G.Road,
Babu Complex,
Villupuram 605 602.

Appeal against R2 is dismissed vide order dated 12.04.2024
made in A.S.No.692 of 2005.

2nd Respondent/2nd defendant



PRAYER: Appeal is filed under Section 96 of CPC r/w. 41 Rule 1 of CPC, against the judgement and decree dated 30.11.2004 made in O.S.No.2499 of 2001 by II Fast Track Court Judge (Additional District & Sessions), City Civil Court, Chennai.

For Appellant(s): M/s.Ajay Kumar Gnanam

For Respondent(s): Ms.K.Ishwarya
for M/s.S.Ramasubramaniam &
Associates For R1

ORDER

Unsuccessful first defendant has preferred the present appeal.

2. The parties are referred to as per their rankings in the trial Court.

3. The suit is filed by the plaintiff to recover a sum of Rs.5,87,634/- together with further interest @ 18% per annum on the principal amount of Rs.3,83,448/- from the date of plaint till the date of realisation and for costs.



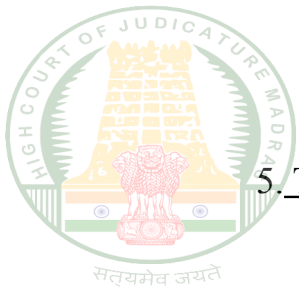
The trial Court decreed the suit and directed the first defendant to pay a sum of Rs.3,83,448/- with interest at the rate of 6% per annum on the said sum from the date of invoice i.e., on 13.04.1998 till the date of realisation. The suit against the 2nd defendant was dismissed by the trial Court.

4. The plaintiff is one of the leading companies dealing with pharmaceutical formulations, toiletries and other consumer durable items. It is stated that normally stocks are despatched to the stockist on the basis of written/verbal order from the stockist on “self” basis. Once the stockist honours the documents, the banker endorses the consignee copy of the Lorry Receipts (in short, 'LR') in favour of the stockist, to enable the stockist to take delivery of the consignment. The plaintiff's sale office at Chennai, had entrusted consignments contains various pharmaceutical formulations for transporting to one his stockist in four invoices, valued at Rs.3,83,448/- to their stockist/2nd defendant and booked the above consignment through the 1st defendant/transport firm. The consignment were entrusted to the first defendant for transportation from Chennai to Villupuram, on “Self” basis. The plaintiff's



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made an endorsement on the back of each consignee copy of lorry receipts in favour of Karur Vysya Bank Ltd., Villupuram. The first defendant was contractually and legally bound to the plaintiff to deliver the consignment as per the plaintiff's directions only. The 1st defendant's action in delivering the consignments without proper verification and authority, is in breach of its contractual obligation towards plaintiff. The 1st defendant has delivered the other consignments covered under lorry receipt Nos.8262, 8263, 8264 and 8265 to other than the consignee. The 1st defendant fully being aware of the significance of "Self" LR, has acted in breach of the agreement and contrary to his contractual obligations towards plaintiff by having delivered the consignments. The first defendant in wrongly delivering the goods to the 2nd defendant as well as to others is in violation of clause 5 and 15 of the terms of the lorry receipt. Therefore, the plaintiff had issued a legal notice dated 11.11.1999 to the 1st defendant and demanding the payment of Rs.3,83,448/-, being the value of the goods together with interest thereon. Hence, the suit.



5. The brief case of the defendant is as follows:

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As far as this suit is concerned, it is governed by the Carriers Act, 1865. The statutory notice as required under Section 10 of the Carriers Act has not been given by the plaintiff to the defendant within stipulated time. A prior notice of claim under clause 14 of the terms and conditions mentioned in the consignment note within 30 days of booking of the consignment has not been given by the plaintiff at all. Therefore, this suit is barred by limitation. The trial Court has no jurisdiction to try this suit as no cause of action had arisen within the jurisdiction of the trial Court. The value of the goods is not mentioned in the LR and there is no connection whatsoever between the respective LR and invoices. Due to collusive acts of the local office of the plaintiff and the 2nd defendant alone, leading to wrong delivery taken place. The plaintiff did not entrust goods to the defendant under the invoices. Besides the plaintiff did not give notice to the defendant as required under Carriers Act, 1865. Therefore, the suit is liable to be dismissed.



6. Based on the above pleadings, the trial Court has framed the following issues:

(i) Whether the suit is not maintainable for non-issuance of notice under Section 10 of the Act?

(ii) Whether the suit is barred by limitation?

(iii) Whether the plaintiff is entitled the relief as claimed for?

(iv) To what other reliefs?

7. During the trial, on the side of the plaintiff, one Mr.Syam Keswar Ray was examined as PW1 and Ex.A1 to A.10 were marked on the side of the plaintiff and one Mr.S.Chelliah was examined as DW1 and Ex.B1 to Ex.B3 were marked on the side of the defendants.

8. Findings of the trial Court are as follows:

(i) The failure to issue a notice under Section 10 of the Act, is not fatal to the suit.

(ii) A notice under Section 10 of the Act, would be necessary only when



there is a loss or injury to goods.

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(iii) The suit is filed within the limitation period and the trial Court has jurisdiction to entertain the suit.

9. The learned counsel appearing for the appellant/first defendant would submit that the invoices marked as Ex.A2 to A5, does not show any order which was obtained from the stockiest. The invoices does not reveal the name of the appellant firm and it is mentioned that Annamalai Road Transport had carried the goods. The lorry receipts which are marked as Ex.A6 to A9, there is no mention of the invoice amount and it is booked on “self” basis. There is no evidence that the Exs.A2 to A9 were sent to Karur Vysya Bank Ltd., as there is no bank endorsement or seal in the above documents. Further, he submit that the plaintiff company has booked the goods through the 1st defendant/appellant firm without any order from the stockiest and without sending the invoice and lorry receipts and took delivery of the goods through their own employee from the 1st defendant by sending the original lorry receipts and took delivery of the consignment of Anacin tablets. Subsequently, they had also filed a criminal



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complaint against their own employee. Now the plaintiff had filed the suit for double enrichment and there is no discussion in the judgment with regard to the aspect that there is no correlation between the invoices Exs.A2 to A5 and lorry receipts A6 to A9. Moreover, the plaintiff has filed the Xerox copies of the Lorry Receipt to prove his claim. As per the judgment of this Court in **2002-4-L.W.147** in **TITCO Vs. N.Swaminathan and others**, it has been held that Xerox copies cannot be marked. Another important factor is that the lorry receipts were not negotiated to the Bank. The trial Court failed to discuss with regard to non-negotiation with the Bank in the judgement. The plaintiff had knowledge of delivery of goods to their own employee on 21.07.1988, but the notice has been issued on 11.11.1999, which is clearly more than six months from the date of knowledge and the same is not complied with under Section 10 of the Act.

10. Further, he would submit that the plaintiff has sought remedy for the loss of goods and not for damages. The trial Court has gone on the assumption that wrong delivery has taken place and hence in such cases Section 10 of the Act, will not apply. It is the case of the correct delivery and as such, the



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plaintiff/company is sought for the loss sustained by them and Section 10 of the Act will apply in this case. To strengthen its contentions, he has relied upon the judgment reported in **2004 (3) CTC 127** and the judgement of this Court in A.S.No.311 of 2005. It is also submitted that the present case would fall within the terms “loss of or injury to goods” and hence Section 10 of the Act, will apply to this case, as it is not a case of wrong delivery or non-delivery but only correct delivery.

11. Per contra, the learned counsel appearing for the first defendant/plaintiff would submit that notice under Section 10 of the Act, would be necessary only when there is loss or injury of goods and the same will not stand attracted when there is a non-delivery or wrong delivery on part of the carrier. To strengthen its contentions, he has relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2007) 3 SCC** in the case of ***Transport Corporation of India Limited Vs. Veljan Hydrair Limited***, to show that notice under Section 10 of the Act, would be necessary only when there was a loss or injury to the goods.



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12. The learned counsel further would submit that as per Section 9 of the Act, the plaintiff is not required to prove the negligence or criminal Act of the carrier. Therefore, the onus is on the carrier to prove that there was no negligence or criminal act on his part.

13. This Court has considered the submissions made by the learned counsel on either side and perused the materials available on record.

14. The point for determination arises in this appeal are as follows:

(i) Whether Section 10 of the Carriers Act, 1865 is applicable to the suit transaction?

(ii) Whether the plaintiff is entitled to the relief as prayed for?

15. According to the appellant/first defendant that Section 10 of the Act is applicable to the suit transactions. It was further contended that the failure to issue notice under Section 10 of the Act, is fatal. The suit was filed by the first



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respondent/plaintiff to recover a sum of Rs.5,87,635/-, being Rs.3,83,448/- toward principal and Rs.2,04,186/- towards interest for the financial loss sustained by them due to wrong delivery of the goods by the appellant/first defendant. The first defendant has relied on Ex.B1 issued by the first defendant to the plaintiff to acknowledge receipt of the delivery receipts. On perusal of Ex.B1 letter dated 21.07.1998 shows that it does not proved that the consignment was rightly delivered. However, the same reveals that the plaintiff has indeed handed over the goods to the first defendant. The Lorry Receipts being LR Nos.8262, 8263, 8264, and 8265 issued by the first defendant to the plaintiff is reflected in the Ex.B1 (letter).

16. It is the specific case of the appellant that the consignment was entrusted by the plaintiff to the appellant/first defendant for transportation on “Self” basis and therefore the consignment was handed over to one Mr.Ramesh, an employee of the 1st respondent/company. In this regard, the appellant/first defendant has not provided a single document to show that the same was delivered to Mr.Ramesh and that he was authorized by the plaintiff to receive



the consignment. Ex.B2 is the copy of the final report in C.C.No.8951 of 2002

dated 05.08.2002, shows that the plaintiff has taken criminal action against

various employees to the plaintiff/company for fraudulently intercepting the goods and taking delivery of the consignment and misappropriating the goods.

As per the Ex.B2, shows that the plaintiff/company has taken action against their employees for taking delivery of the goods without proper authorization and misappropriating the same.

17. It is relevant to extract Section 148 and 151 of the Indian Contract Act, 1872, as under:

“148. “Bailment”, “bailor” and “bailee” defined – A

“bailment” is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the



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goods is called the “bailor”. The person to whom they are delivered is called the “bailee”.

Explanation: If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.”

“151. Care to be taken by bailee: In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

18. In the case of *Tilendra Nath Vs. United Bank of India*, reported in *AIR 2002*, Gau.1, wherein it has been held that it is the duty of the bailee to deal with the goods according to the direction of the bailor.

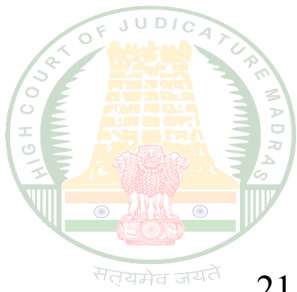


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19. On perusal of the Ex.B2, the goods entrusted to the first defendant was fraudulently taken possession by one Mr.E.P.Davidson. However, the first defendant claim to have delivered the goods to Mr.Ramesh, which shows that the appellant/first defendant was not aware of the person to whom the goods were delivered. It is relevant to refer Section 9 of the Carriers Act, which reads hereinunder:

“9. Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act. In any suit brought against a common carrier for the loss, damage or non-delivery of goods including container, pallets or similar article of transport used to consolidate goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.”

20. The said section creates a legal presumption against the carrier and the carrier must rebut the same with substantial material evidence. The onus is on the carrier to prove that there was no negligence or criminal act on his part.



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21. It is relevant to cite the following judgements of the Hon'ble Supreme Court of India as well as the Hon'ble Division Bench of this Court:

(i) In the case of ***Economic Transport Organization Vs. Charan Spinning Mills Private Limited and another***, reported in (2010) 4 SCC 114, the Hon'ble Supreme Court held as under:

'58.The loss of consignment by the assured and settlement of claim by the insurer by paying Rs.4,47,436/- is established by evidence. Having regard to the presumption regarding negligence under Section 9 of Carriers Act, it was not necessary for the complainants to prove further that the loss/damage was due to the negligence of the appellant or its driver. The presumption regarding negligence was not rebutted

. Therefore, the District Forum was justified in allowing the complaint brought by the assured (first respondent) represented by the insurer and the insurer for recovery of Rs.447,436. The said order was affirmed by the State Forum and the National Forum. We find no reason to interfere with the same. The appeal is, therefore, dismissed.

(ii) In the case of ***Nath Bros.Exim International Ltd., Vs. Best Roadways Ltd.***, reported in 2001 1 LW 756, the Hon'ble Supreme Court held thus:



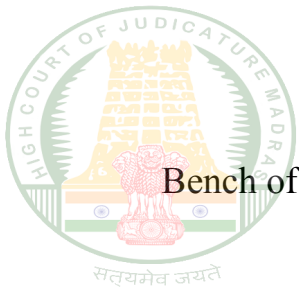
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26. We have already reproduced the provisions of Sections 6, 8 and 9 above. Section 6 enables the common carrier to limit his liability by a special contract. But the special contract will not absolve the carrier if the damage or loss to the goods, 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 as damage was caused owing to the negligence or criminal act of the carrier 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 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.

(iii) In the case of ***Bond Food Products Private Ltd., and Another .vs. M/s. Planters Airways Ltd.***, reported in ***2004 2 LW 663***, the Hon'ble Division



Bench of this Court held as follows:

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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 Pillai @ Somasundaram Pillai v. Insurance Co. Ltd, 2000 (1) 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.

22. The evidence of DW1 and through Exs.B1 and B2 are not sufficient that the appellant/first defendant has acted diligent manner and there was no negligence on their part. It is also relevant to refer Section 10 of the Carriers Act, which is extracted hereinunder:



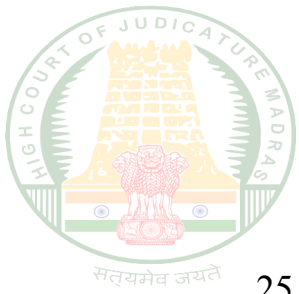
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“10. Notice of loss or injury to be given within six months. No suit shall be instituted against a common carrier for the loss of, or injury to goods including container, pallets or similar article or transport used to consolidate goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.”

23. In the case of ***Transport Corporation of India Limited*** supra, has categorically held that a notice under Section 10 of the Act, would be necessary only when there was a loss or injury to goods and the same will not stand attracted when there is non-delivery or wrong delivery on the part of the carrier.

24. The ratio laid down by the Hon'ble Supreme Court in the case of ***Transport Corporation of India Limited*** supra is squarely applicable to the case on hand. Therefore, the trial Court has rightly held that the Section 10 of the Act is not applicable to the suit. The said finding arrived at by the trial Court needs no interference by this Court. Hence, the points are answered accordingly. There is no merit in the appeal and the same is liable to be dismissed.



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25. In the result, this first appeal is dismissed by confirming the judgement and decree dated 30.11.2004 made in O.S.No.2499 of 2001 on the filed of II Fast Track Court Judge (Additional District & Sessions), City Civil Court, Chennai. No costs. Consequently, connected Miscellaneous Petition is closed.

05.08.2025

jd

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



AS Nos. 692 of 2005



To

II Fast Track Court Judge (Additional District & Sessions),
City Civil Court, Chennai.

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