IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2025

PRONOUNCED ON : 04.03.2025

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

A.S.No.910 of 2018
and
CMP.No.23448 of 2018

M/s.Blue Dart Express Ltd.,
No.11, Status Quo Building,
Sterling Road, Nungambakkam,
Chennai – 600 034. ... Appellant

Vs.

1.M/s.Epson India (P) Ltd.,
Rep.by its Subrogee /Power Agent
National Insurance Company Ltd.,
No.1, Murphy Road, Ulsoor,
Bangalore – 560 008.

2.National Insurance Company Ltd.,
No.3, Middleton Street,
Kolkata – 700 071.

Both respondents in turn represented
by their Principal Officer/
Senior Divisional Manager,
Lakshmi Chandrasekar,
No.3, Shri Lakshmi Complex,
15-17-19, St. Mark's Road,
Bangalore – 560 001. ... Respondents

PRAYER : First Appeal has been filed under Section 96 r/w Order 41 Rule 1 of CPC against the Judgement and Decree dated 06.04.2018 passed in O.S.No.820 of 2017 on the file of the XVI Additional City Civil Court, Chennai.

For Appellant	...	Mr.Hemanth Ragu for Mr.S.Ramasubramanian and Associates
For Respondents	...	Mr.G.Guruswaminathan for Nageswaran and Narichania

JUDGMENT

Aggrieved over the Judgement and Decree dated 06.04.2018 passed in O.S.No.820 of 2017 on the file of the XVI Additional City Civil Court, Chennai, the defendant has preferred the first appeal.

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

3.Suit for recovery of money for damages.

4.The defendant in O.S.No.820 of 2017 on the file of the XVI Additional City Civil Court, Chennai, is the appellant herein.

5.The plaintiffs' case is as follows:

The first plaintiff is the owner of the suit cargo. The second plaintiff is the insurer, who issued a marine cargo policy and indemnified the loss to the first plaintiff and have been subrogated to the rights of the first plaintiff. The first plaintiff in the course of their business transferred their consignment of 95 Nos. of Business Projectors from their office at Chennai to their office at Howrah as per their Internal Stock Transfer Invoices bearing No.INCL/49536761/INEO valued at Rs.58,271.24/-, No.INCL/49532066/INEO valued at Rs. 17,88,305.77/- both dated 18.10.2013. The said consignment securely and customarily packed was entrusted with the Defendant for safe carriage from Chennai to be delivered at Howrah. The Defendant in such acknowledgement of such entrustment in good order and condition issued their Airway Bill bearing No.50245266853 dated 19.10.2013, thereby undertaking to carry and deliver the cargo in the same and good order as was entrusted to them. The said consignment was insured with the Second Plaintiff under Marine Cargo Open Policy No.602200/21/13/42/00000056.

5.1.The Defendant Carrier failed to deliver the said consignment in the same apparent good order and condition as was entrusted with them and thereby, committed breach of their statutory obligation. The suit consignment was delivered in a damaged condition by the defendant at destination on 06.11.2013 when the first plaintiff acquired knowledge of the loss to the suit consignment. Upon such damaged delivery, the second plaintiff appointed Mr.G.C.SAHU, surveyors and Loss Assessors Valuers licensed under the Insurance Act, to assess the loss suffered by the first plaintiff. The said surveyor conducted a detailed survey at the First Plaintiff's premises and assessed the nature, extent and quantum of loss and issued their final survey report bearing No.VT/M/2524-Epson/13-14 dated 10.02.2014, assessing the loss amount.

5.2. Upon such damaged delivery, the first plaintiff, who are the owner of the suit consignment, at all relevant times issued a statutory notice of loss to the Defendant on 11.11.2013 informing about the loss sustained and calling upon the Defendant to settle their claim. The said notice of loss was duly served on the Defendant. The Defendant issued their Damage certificate bearing No.13075 dated 22.11.2013 admitting the fact of damaged delivery and value of the loss also. Due to the damaged delivery of the suit consignment by the defendant, the first plaintiff suffered a pecuniary loss of Rs.13,37,245/- being the proportionate insured value of the consignment short delivered. The second plaintiff settled the claim of the first plaintiff by paying a sum of Rs.13,37,245/- vide their Loss Voucher dated 25.09.2014 being the proportionate insured value of the damage consignment including other expenses incurred like survey fee, etc., On being indemnified by the second plaintiff, the first plaintiff executed a letter of Subrogation and Special Power of Attorney in favour of the second plaintiff on 19.03.2014 at Chennai. Thus, the second plaintiff is entitled to file and maintain the suit under the letter of Subrogation and Special Power of Attorney and by virtue of Section 79 of the Marine Insurance Act and thus, pleaded to decree the suit.

6.The defendant contested the suit and filed a written statement and denied the allegations contained in the plaint and contended that the present suit is not maintainable in the view of the Agreement dated 02.04.2012 entered between the first plaintiff and the Defendant, which specifically limits the liability of the Defendant to Rs.5000/- for any claims against the Defendant in case of loss or damage to the shipment, if the same were insured with the second plaintiff. In the present case, the shipment was insured with the second plaintiff. The goods were shipped as per the terms and conditions stated in Air Way bill issued by the Defendant to the first plaintiff. The Plaintiff is bound by the terms and conditions mentioned in the Airway Bill. One of the terms in the Airway Bill clearly states that goods were shipped on the basis of "Non-Negotiable - At Owner's Risk" basis.

6.1.It is further contended that the Airway bill also limits the liability of the Defendant to Rs.5000/- only. The present Suit is not maintainable in the view of the Agreement dated 02.04.2012 entered by the first plaintiff and the Defendant, wherein it was agreed that defendant shall be discharged of all liabilities, if any arising of shipment, on acceptance of Damage/Loss/Short Delivery Certificate issued by the Defendant for the purpose of enabling the shipper to lodge Insurance Claim with its Insurance Company. Thus, under the Agreement between the first Plaintiff and Defendant, in case of loss/damage to goods of Plaintiff, the maximum liability of the Defendant is limited to Rs.5,000/-. The first Plaintiff had booked a Consignment and the Defendant issued the consignment note bearing No.50245266853 dated 19.10.2013 for the value of Rs.18,46,377/-. The consignment comprises 95 Nos. of projectors and was booked at Chennai and to be despatched to Howrah office of first Plaintiff. The Defendant carried the consignment with utmost care in a truck and reached the Defendant godown without any loss or damage. As there was another track parked inside the Defendant's godown, it was difficult for the driver to drive the truck inside the godown. Therefore, the driver of the truck of the Defendant reversed and due to heavy rain and water logging, the driver was not able to perceive that there was a pond behind the truck and the truck fell into the pond accidentally. Immediately, with the help of two cranes, the truck with the consignment was rescued from the pond. However, few materials of the Plaintiff's consignment were damaged due to the aforesaid accident. The consignment was delivered by the Defendant and received by the first Plaintiff at Howrah. The loss if any to the consignment has taken place in the present case, it was solely due to an accident and not due to any negligence on the part of this Defendant. The Defendant has no intention to cause any damage to the consignment and therefore, the Defendant is not liable for any damages/loss and thus, pleaded to dismiss the suit.

7.The trial Court, upon the above pleadings, framed the following issues for consideration;

i).Whether the plaintiff is entitled to recover the sum of Rs.13,37,246/- with interest?

ii).Whether it is true that the suit is not maintainable in view of the agreement dated 2.4.2012?

iii).To what other relief the plaintiff is entitled for?

8.On the side of the plaintiffs, one witness was examined as PW1 and Ex.A1 to Ex.A11 were marked. On the side of the Defendant, one witness was examined as DW1 and Ex.B1 & Ex.B2 were marked.

9.The trial Court, upon considering the oral and documentary evidence on record, found that the plaintiff is entitled to recover the amount and hence, decreed the suit with costs. Aggrieved by this, the defendant filed this appeal before this Court.

10.The points for consideration before this Court are,

i). Whether the trial Court has territorial jurisdiction to entertain the suit?

ii).Whether the liability of the defendant is restricted Rs.5,000/- as per the goods consignment note?

iii). To what relief ?

11.The learned counsel for the appellant/defendant submitted that the judgement of the trial Court is against law and weight of evidence and probabilities of the case and contended that the trial Court overlooked the fact and not properly appreciated the agreement of the parties signed on

02.04.2012 though it was expired on 31.03.2013. However, both the companies continued to act under the said agreement even after the expiry of the said agreement. In view of the agreement, the limits of liability is Rs.5,000/-. The trial Court failed to consider the terms of the airway bill submitted by the defendant. As per the airway bill, the liability of the defendant was limited because of the limitation of liability that the defendant recommended and the first plaintiff to obtain necessary insurance policy from the second plaintiff. In the light of this, neither the first plaintiff nor the second plaintiff has any claim against the defendant over and above Rs.5,000/-. The trial court overlooked the fact that the goods were transported entirely at the owners' risk. The defendant has discharged his duty of carrier under the law and is not obligated to pay any compensation to the first plaintiff or the second plaintiff. Interest awarded by the trial Court is also unsustainable. The trial Court has no territorial jurisdiction to entertain the suit, without jurisdiction the trial Court passed the judgment and decree and reiterated other grounds raised in the grounds of appeal and pleaded to set aside the judgment and decree of the trial Court and to allow the appeal.

12.The learned counsel for the plaintiffs supported the judgement of the trial Court and admitted the fact that the first plaintiff is the owner of the suit cargo. The entrustment of cargo with the defendant in good order and condition is accepted. It is also proved that the loss of cargo is in the custody of the defendant and it was established by the defendant's certificate produced before the trial Court. The value of loss is also not disputed by the defendant. Statutory notice of loss served on the defendant within the time prescribed under the law. The agreement by which liability is restricted is not proved by the defendant. Therefore, the defendant is liable to compensate the loss to the second plaintiff as rightly held by the trial Court. There is no illegality in the findings of the trial Court and no merit in the appeal and thus, pleaded to dismiss the appeal as it has no merit.

13.To Support of his argument, the learned counsel for the respondents relied upon the following judgments:

1.2001 – 1 – L.W. 756 (Nath Bros.Exim International Ltd., Vs. Best Roadways Ltd.,)

2. 2004 – 2 – L.W.663 (Bond Food Products Private Ltd., Registered Office at No.80, 4th Block, Koramangala, Bangalore – 560 034 and another Vs. M/s.Planters Airways Ltd., 13/5, Kalasipalayam, New Extension I Floor, bangalore – 560 002)

14.I have considered the matter in the light of the submissions made on either side and perused the materials available on record.

15.On perusal of the records and evidence, the fact reveals that the first plaintiff transferred their consignment of 95 Nos. of Business Projectors from their office at Chennai to their office at Howrah as per their Internal Stock Transfer Invoices bearing No.INCL/49536761/INEO valued at Rs.58,271.24/-, No.INCL/49532066/INEO value at Rs.17,88,305.77/- both dated 18.10.2013. It is evidenced by Ex.A4 consignment note dated 19.10.2013. This fact is not disputed by the defendant.

16.From the evidence, it is noticed that the defendant did not deliver the said consignment in the same good condition as it was entrusted with them. It was delivered in a damaged condition by the defendant, upon such a damage delivery, the second plaintiff appointed surveyors and loss assessors, valuers licensed under the Insurance Act, to assess the loss suffered by the first plaintiff. They issued a final survey report on 10.02.2014, which is evidenced by Ex.A7. Thereafter, the plaintiff issued statutory notice for the loss to the defendant on 11.11.2013 informing about the loss sustained and calling upon the defendant to settle their claim, which is evidenced by Ex.A6.

17.The defendant raised two defenses. First is, absence of territorial jurisdiction. I have considered the defence, it has no merit as the defendant is carrying on their business for gain and issued their certificate of damage and the suit consignment was entrusted with the defendant. The defendant has a place of business in Chennai, here the suit summon was served. The defendant issued the certificate of damage, here the claim for damage was lodged and the defendant also filed a written statement and participated in the trial Court proceedings. The defendant had not filed any petition agitating the territorial jurisdiction of this Court at the earliest point of time. Therefore, at this stage, the defence of no territorial jurisdiction has no merit, therefore, rejected.

18.The next argument of the learned counsel for the defendant is that the defendant's liability is restricted by agreement and restricted to Rs.5,000/- as per the goods consignment note. In this regard, I have considered the written statement and the evidence on record. The defendant in his written statement para 3 A, pleaded that the agreement dated 02.04.2012 between the parties and liability has been limited to Rs.5,000/- for any claim as against the defendant. Admittedly, this agreement is only for one year and came to an end on 31.03.2013. Though the defendant claims that the companies continued to act under the above said agreement, is not supported by any material on record. Therefore, the parties are bound by the agreement dated 02.04.2012 has no merit.

19.I have gone through the judgment of the trial Court, the trial Court has rightly held that the agreement pertaining to the relevant period was not filed and hence, the defendant cannot rely upon Ex.B2 which is not relevant during the period of loss. As per the Carriage by the Road Act, 2007, it carries liability for the loss. Therefore, the argument of the defendant that the defendant liability is restricted to Rs.5,000/- is contrary to law and the provision of the Carriage by the Road Act, 2007. Further, the consignment note Ex.A4 is only a document evidencing the entrustment of the cargo and it cannot be treated as a concluded contract.

20.In this case, it is evidenced that goods entrusted to the defendant have been damaged and the loss to the goods has been caused by the defendant's own negligence. In such a situation, the carrier would be liable for the damages to the goods. The argument of the learned counsel for the defendant that since the goods were booked at owner's risk, the defendant would not be liable for any loss to those goods, is not an acceptable one.

Unless there has been an agreement in writing as contemplated by Section 6 of the Act, the defendant is liable. The liability of the carrier could not be restricted and liable for the loss caused to the goods. Therefore, I find no illegality in the findings of the trial Court and no ground for interference. Appeal has no merit, all the issues are answered accordingly.

21. In view of the above, the judgment and decree of the trial Court dated 06.04.2018 in O.S.No.820 of 2017 is hereby confirmed and the first appeal is dismissed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Index/Internet: Yes / No
Speaking order: Yes/No **04.03.2025**
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To

1.The XVI Additional City Civil Court, Chennai.
2.The Section Officer, VR Section High Court, Madras.

V.SIVAGNANAM, J.

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Pre-delivery judgment made in
A.S.No.910 of 2018 and
CMP.No.23448 of 2018

04.03.2025