
(1993) 02 MAD CK 0038
In the Madras High Court
Case No : A.S. No. 783 of 1982

A.B.T. Parcel Service

APPELLANT

Vs

City Palayakat Company and Others

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Carriers Act, 1865 — Section 8, 9

Citation : (1993) ACJ 1269

Hon'ble Judges : E.J. Bellie, J

Bench : Single Bench

Advocate : N.C. Rangarajan, for the Appellant; C.N. Sivakumar, for the Respondent

Final Decision : Allowed

Judgement

E.J. Bellie, J.—Against a decree passed for a sum of Rs. 16,100/- as damages, the defendant A.B.T. Parcel Service has filed this appeal.

2. The plaintiff, City Palayakat Company, is dealing in lungis and kailies. Its office is in Madras. It used to get kailies from mofussil for transporting

to other countries like Malaysia. The manufacturers of lungis in the mofussil used to send lungis to the plaintiff through the defendant parcel service.

On receipt of waybills from the manufacturers in the mofussil, the plaintiff would send its staff with an endorsement on the waybills authorising with

its seal thereon for receipt of lungis from the defendant's godown.

3. It appeals three manufacturers in the mofussil have sent through the defendant lungis in gunny bags totalling seven in number to the total value of

Rs. 16,100/- on 7.9.1974 and 8.9.1974 to be delivered to the plaintiff at Madras. They have sent the waybills to the plaintiff through post. The

plaintiff was not aware of the despatch of the seven consignments until the said

manufacturers in the mofussil wrote to them in October, 1974. Then on enquiry it came to know that some third person had presented the waybills and obtained the delivery. Immediately the plaintiff wrote to the Presidency Post Master about the nondelivery of the waybills to them and also to the defendant parcel office at Linghi Chetty Street complaining about the loss of lungis. They also sent a police complaint but the culprit has not been traced.

It is the plaintiff's case that usually they will endorse on the waybills authorising their cartman Balaraman to receive the goods. Occasionally, when that Balaraman is not available his brother, Krishnan, or one Subramaniam or Vadivel will be sent for taking delivery of the consignments, and the authorisation will be signed mostly by Sriramulu or Arumugham or Balasundaram or Mohanasundaram who are the members of the plaintiff's staff, and the endorsement would be invariably followed with affixing a circular rubber stamp of the plaintiff. Whenever the defendant would entertain any suspicion they would send for the plaintiff and then only they will effect delivery. The plaintiff on inspection of the waybills found that one Natarajan who is not a staff of the plaintiff has authorised delivery of the consignments on 11.9.1974 and instead of the usual endorsement of authorisation in Tamil it was in English and the delivery was to be given to one Babu who is also not the plaintiff's cartman. The plaintiff is not aware of the said Babu or Natarajan. According to the plaintiff, the defendant's staff had been negligent and careless in delivering the goods to the said Babu who is an utter stranger. Therefore, the defendant is liable to make good the said loss of Rs. 16,100/- to the plaintiff.

4. Against this the defendant would contend, inter alia, that quite often their staff members are transferred from one branch to another branch and, therefore, they will not be well conversant with the staff members of their customers or the manner of authorisation made by the customers. There were no special instructions by the plaintiff with regard to their authorisation of staff members. The waybills are documents of title and so even in genuine cases if delay is made in delivery of goods it would entail in claim of damages against the defendant. The defendant would further contend that there was nothing for them to suspect from the waybills presented and, therefore, on production of the waybills they made delivery of the

goods.

5. The trial court on consideration of the evidence held that the plaintiff is the owner of the goods of seven consignments and that the defendants

had been negligent and careless in delivering the goods to a third person and the plaintiff is not guilty of any contributory negligence. On these

findings the trial court decreed the suit as prayed for.

6. Now in the appeal, it is not in dispute that the seven consignments of goods have been sent to the plaintiff at Madias by the manufacturers at

mofussil and the plaintiff is the owner thereof and those consignments have not been delivered to the plaintiff. But it is contended that the trial

court's finding that the defendant was negligent in delivering the goods to a stranger and, therefore, the defendant should make good the loss to the

plaintiff is erroneous. This is the only point that has to be considered in the appeal.

7. There is no dispute with regard to the genuineness of the waybills presented to the defendant for delivery of the goods. Exhs. A-10 to A-12 are

the photocopies of the three waybills. According to the plaintiff, the originals are with the police. In these circumstances we have to consider

whether the defendant had been negligent in delivering the goods to a stranger whose name is said to be Babu. The question arises as to how the

waybills sent by the manufacturers in the mofussil through post to the plaintiff had gone to the hands of the said stranger Babu. In this respect

nothing can be stated against the defendant. Quite possibly some fraud might have been committed by the staff members of the plaintiff company

themselves. When the genuine waybill sent by the consignor to the consignee is presented to the defendant for delivery of goods the defendant has

to deliver the goods.

8. The case of the plaintiff appeals to be that usually one Balaraman, their cart man, used to present the waybill and in his absence his brother

Krishnan or one Subramaniam or one Vadivel used to present the waybill and none of them presented the waybills in question, and the

authorisation would be signed mostly by the plaintiff's staff members, Sriramulu, Arumugham, Balasundaram or Mohanasundaram, but in the

waybills in question the authorisation has been made by one V. Natarajan, and the authorisation is in English but usually it is in Tamil, and further

invariably the plaintiff would affix a circular rubber stamp on the waybill but the rubber stamp affixed in the waybills in question is not so, and these

should have aroused a suspicion in the mind of the defendant's staff members, but nevertheless they delivered goods and, therefore, they were

negligent. But as contended by the defendant there is no special instruction by the plaintiff regarding the persons who would bring the waybills for

taking delivery of the goods or regarding the staff members who only would make the authorisation. This is a relevant point for consideration.

9. It is the further case of the defendant that their staff members are often transferred from one branch to another. Therefore, they cannot be

expected to be familiar with the staff members of the customers. Further the staff members of the defendant had to deal with several customers

who present several waybills and, therefore, when the genuine waybills are presented normally they are expected to deliver the goods unless there

is anything glaring which should arouse their suspicion. As stated above the plaintiff has not given any special instructions regarding its staff

members who would present the waybills or who would make authorisation or the manner of authorisation or the type of its seal. For these reasons

it cannot be said that the defendant was negligent in delivering the goods.

10. The trial court relying on a decision in *Konda Rm. Eswara Iyer and Sons, Madurai v. Madras Bangalore Transport Co.*, Madurai 1958 ACJ

532, held that it is the duty of the common carrier to deliver the goods to the right person, and when the waybills are presented they should have

made necessary enquiries as to whether the person who delivers the waybill is the person of the consignee and in the present case the defendant

has not made such enquiries and they are negligent in delivering the goods to a stranger. But in a later judgment by V. Ramaswami, J., as he then

was, in *Amin and Co. Vs. Southern Roadways Ltd.*, Madurai, , in which the facts are almost identical with the facts in the present case, referring to

Sections 8 and 9 of the Carriers Act, 1865, it has been held that common carriers are not negligent. In this judgment the earlier judgment in *Konda*

Rm. Eswara Iyer and Sons, Madurai v. Madras Bangalore Transport Co., Madurai 1958 ACJ 532, has been referred to, and the learned Judge

has distinguished that case stating that the facts therein are different, in that in the said case the defendant carrier did not produce the original

waybill against which he claimed, he delivered the goods to a person not authorised by the plaintiff therein, but the delivery note signed by that third party acknowledging having taken delivery of the parcel was produced, and this makes all the difference in considering the question whether the defendant carrier has discharged his onus of proving that he was not negligent.

11. For all these reasons, I hold that the defendant carrier cannot be said to be negligent in delivering the goods and, therefore, the judgment and decree of the trial court cannot be upheld as correct. In the result the appeal is allowed, the judgment and decree of the trial court are set aside and the suit is dismissed. In the circumstances of the case, there will be no order as to costs.