(2006) 04 DEL CK 0152

In the Delhi High Court

Case No : Regular First Appeal No''s. 549-50 of 2005 and CM 10594 of 2005

Ace Door and Door Cargo and Another APPELLANT

Vs

Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Citation : (2006) 04 DEL CK 0152

Hon'ble Judges : Swatanter Kumar, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : Gulab Rai Chabria, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—The Oriental Insurance Company Limited Along with M/s Tripitak Marketing Pvt. Ltd. filed a suit for recovery of Rs. 4,96,000/- against the defendants. It was stated that plaintiff No. 2 booked a consignment consisting of precision measuring equipment/instrument including its accessories for transportation from New Delhi to Bangalore and the said consignment was entrusted to defendant No. 1 against goods receipt No. 0057077. The consignment of plaintiff No. 2 was booked in wooden cartons/cases and this was clearly so disclosed to the defendant No. 1. plaintiff No. 1 was the insurer for the value of goods in transit and was interested in the safe custody and delivery of the suit consignment. The goods in transit were insured with the plaintiff No. 1 for a total value of Rs. 24 lacs vide policy dated 22.10.1993. On reaching Bangalore, plaintiff No. 2 had reported that one machine in consignment was damaged and lodged a claim against defendant No. 1 vide their letter dated 3.11.1993 and also lodged a claim against plaintiff No. 1. The said machine was got surveyed on the advice of plaintiff No. 1 by plaintiff No. 2. The survey conducted by Keyen Associates, Bangalore showed that there were minor hit marks and scratches on the left column of the equipment and the equipment was repacked for transporting it back to New Delhi in the presence of the surveyors after the exhibition was over. The machine had suffered only minor damages for its onward journey but the machine was otherwise fully operational at that time. The consignment was sent to Delhi under GR No. 0056635 dated 5.11.1993 with defendant No. 1 and the said consignment was delivered back to plaintiff No. 2 at Delhi on 10.11.1993. When the wooden boxes were opened, the consignment was found damaged. Again a claim was lodged because the plaintiff No. 1 was interested in the safety of the consignment. It was noticed that the machine was damaged and the surveyors gave their report and assessed the damage to the extent of Rs. 24,24000. Defendant No. 1 even issued damage certificate on 19.3.1994. plaintiff No. 2 lodged a claim with defendant for the damage suffered by them and called upon them to pay the said amount. Since the goods were insured with plaintiff No. 1, plaintiff No. 2 had also preferred a claim for compensation with plaintiff No. 1 and claimed the damages suffered. According to the plaintiff, the goods were damaged during transit and during its handling by defendants and as such the defendants were liable to pay the claim of Rs. 4,96,000/-. Having failed to recover the said amount, the present suit was filed.

2. This suit was contested by the defendants who filed a common written statement and besides taking certain preliminary objections as to the institution of the suit, consignment and verification of the claim, it was stated that the consignment was delivered back on 10.11.1993 in sound condition and without any apparent damage to the wooden cases. However, the consignment remained in the custody of plaintiff No. 2 till it was opened on 19.11.1993 and as such the defendants could not be held liable for any damage and the plaintiffs were liable to make good the loss, if any and on this pretext the claim of the damages was denied.

The learned Trial Court vide its judgment and decree dated 6.9.04 decreed the suit of the plaintiff to the extent of Rs. 4,96,000 against the defendants with costs and also allowed interest @ 12% p.a from the date of filing of the suit till realisation.

The learned Counsel appearing for the appellant while relying upon the judgment of the Supreme Court in New India Assurance Co. Ltd. Vs. Economic Transport Corporation, contended that there was no objection recorded at the time of delivery and there was no apparent damage to the wooden boxes. Even despite surveyor''s report, the defendants have no liability to pay the claimed amount. In its detailed judgment, the learned Trial Court has clearly noticed that the plaintiff was able to establish its claim by leading cogent, oral and documentary evidence. Vide Ex PW1/22 the consignment was delivered back to the insurer on 10.11.1993 but upon survey conducted on 4.11.1993 the goods were displayed in the exhibition and thereafter the equipment was repacked in the presence of the surveyors for its return journey to Delhi after the exhibition was over. Subsequently, the cases were opened on 19.11.1993 after making arrangements for shifting of equipments in the Showroom. Thereafter, in the Final Certificate Report dated 31.8.94 the surveyors had opined that the repairs of the equipment would neither be economical nor viable. Besides these, Ex PW1 Sh Avinash

Kumar Malhotra, Senior Assistant of plaintiff company was examined who had proved the documents to show that the suit has been instituted by a duly authorised person.

3. In the judgment of the Trial Court, it has been specifically noticed that the defendants failed to lead any evidence in support of their defense. In other words, it was a case of no evidence as far as the defendants were concerned. Even in the written statement filed on their behalf no specific plea had been taken. In fact, the entire written statement is vague and indefinite.

Furthermore, the documents produced by the plaintiff clearly established that the damage to the consignment has been proved, besides the statement of the plaintiff. The question of mishandling the machines would primarily arise for the defendant in face of apparent damage to the equipment. The judgment of the Supreme Court in Economic Transport Corporation supra is of no avail to the appellant inasmuch as the goods were not carried against the normal terms of carriage as spelt out in the receipt as well as there were no contrary instructions given by the parties. In that case, the Certificate Report had clearly suggested that the damage was possibly occurred when the goods were being loaded or unloaded at the instance of the owner for which the carriers had issued no instructions. The facts of the present case are entirely different and particularly in the absence of any evidence having been led by the defendants on record, we are unable to see any error in the judgment of the Trial Court. In view of the above findings, present appeal is dismissed while leaving the parties to bear their own costs.

