
(2006) 07 P&H CK 0166

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3555 of 2000

Aitco Movers Pvt. Ltd.

APPELLANT

Vs

United India Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Citation : (2007) ACJ 1620 : (2006) 144 PLR 373

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : S.S. Bhinder, for the Appellant; Amit Rawal, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The Punjab Cotton Company (Export-Import) Ltd. Cotton Merchants & Commission Agents Bathinda (respondent No. 3) was the owner of 90 bales of cotton which were duly pressed. It was duly insured with respondent No.1 M/s United India Insurance Company Ltd. (in short "the Insurance Company"). The said cotton bales were entrusted by respondent No. 3 to Truck Operator Union Fazilka (respondent No. 2) on 19.1.1992 for the purpose of transportation. Later on respondent No. 2 entrusted 50 bales of cotton out of 90 bales of cotton to the appellant for transportation Ex. U.P. Border Gaziabad. Ultimately the material was to be delivered to M/s Katheyee Cotton Mills Ltd. Alwaye. The material reached the godown of the appellant on 25.1.1992 and it was stored for onward dispatch to the consignee. A fire broke out in the godown of the appellant on the night intervening 26/27.1.1992. As a result the cotton bales alongwith other articles lying in the godown of the appellant were burnt. As a result the consignment could not be delivered to M/s Katheyee Cotton Mills Ltd. Alwaye. A certificate to that effect was issued by the appellant to the owners. Since the material was insured with respondent No. 1 therefore the owners respondent No. 3 were duly compensated by the Insurance Company-respondent No. 1 for the loss suffered by them i.e. to the tune of Rs. 321078.85 P.

2. On this the United India Insurance Company Ltd.-respondent No. 1 filed a civil suit against the appellant for recovery of Rs. 321000/-. The appellant filed the written statement and contested the case on merits besides pleading some legal objections.

3. The issues were framed. The parties led the evidence.

4. The learned trial Court concluded that since the Insurance Company has compensated the loss suffered by the owners on account of the fire which broke out in the godown of the appellant therefore they were entitled to recover this amount from the appellant who were responsible for causing the loss. Accordingly the suit for recovery of Rs. 321000/- was decreed against the appellant and respondent No. 2 with interest @ 12% per annum vide judgment and decree dated 21.11.1998.

5. The appellant filed an appeal before the learned Lower Appellate Court. The learned Lower Appellate Court upheld the findings recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 15.2.2000.

6. Hence the present appeal.

7. The learned Counsel for the appellant did not dispute the factual position and the findings recorded by the Courts below thereon. The only question raised by the learned Counsel for the appellant was that the Insurance Company cannot maintain a suit for recovery in its own name and reliance was placed on the judgment of the Hon''ble Supreme Court reported as Union of India (UOI) Vs. Sri Sarada Mills Ltd., .

8. On the other hand the submission of the learned Counsel for the respondent-Insurance Company was that the filing of the suit by the respondent-Insurance Company in its own name for recovery of losses was the only remedy open to the respondent-Insurance Company and reliance was placed on the judgment of the Hon''ble Supreme Court reported as Savani Roadlines Vs. Sundaram Textiles Ltd. and Another, and another judgment of the Hon''ble Supreme Court reported as Prakash Roadlines (P) Ltd. Vs. Oriental Fire and General Insurance Co. Ltd., .

9. The facts of this case have been perused so also the judgments of the learned Courts below. The submissions have also been considered.

10. In Union of India's case (supra) relied upon by the learned Counsel for the appellant the facts were different. In that case the owners even after getting the insurance amount from the Insurance Company had filed the suit for recovery in its own name from the Railway authorities. The objection taken was that the owners were not entitled to institute the suit as it had insured the goods with the Insurance Company and had received the amount of total loss from the Insurance Company. Now the question before the Hon''ble Supreme Court was whether the civil suit for recovery by the owner was maintainable against the railway authorities. One of the Hon''ble Judges who delivered dissenting judgment held that when the owners had subrogated their rights amounting to

assignment to the Insurance Company and has received the compensation for the loss suffered by them from the subrogee/assignee the assured had no cause of action to institute the case against the Railway administration or recovery of damages. It was observed by the Hon''ble Judge after discussing the whole law on subject as under:

1 I think the reasoning in the decisions above referred to is correct that the assignment conveyed to the insurance company the entire right in respect of the assured to sue in its own name and that after the assignment the assured had no cause of action to institute the suit against the Railway Administration for recovery of damages.

11. But the Hon''ble Judges constituting the majority formed the question which was before their Lordships for decision as under:

The question which falls for determination in this appeal is whether the respondent mill on recovering Rs. 32254/- 6-9 from the Indian Globe Insurance Co. Ltd. and assigning all rights against the Railways Administration in favour of the insurance company as a subrogee was competent to institute and maintain the suit against the Railway Administration.

12. The Hon''ble Judges constituting the majority view answered this question by observing as under:

In the present case the insurance company and the mill proceeded on the basis that the insurance company was only subrogated to the rights of the assured. The letter of subrogation contains intrinsic evidence that the respondent would give the insurance company facilities for enforcing rights. The insurance company has chosen to allow the mill to sue. The cause of action of the mill against the Railway Administration did not perish on giving the letter of subrogation.

13. Therefore the facts of the judgment relied upon by the learned Counsel for the appellant were entirely different as the subrogation in the form of assignment was not proved.

14. On the other hand the judgment rendered by the Hon''ble Supreme Court in Parkash Roadlines (P) Ltd. case (supra) relied upon by the learned Counsel for the respondent-Insurance Company is fully applicable to the facts of the present case. In that case also the owners had suffered losses at the hands of the carriers of goods and they had received the losses from the Insurance Company and the Insurance Company had filed the civil suit for recovery from the transporters and the Hon''ble Supreme Court was pleased to observe

On the strength of the said letter the Insurance Company filed a suit against the defendant-appellant for recovery of Rs. 188305.97 with interest towards the damage caused to machinery in transit. In the said suit one of the additional issues framed was whether the suit at the instance of the plaintiff was maintainable. While deciding this issue the trial court came to the conclusion that the letter dated 26.7.1981 is the deed of subrogation and therefore the insured

being not a party to the suit the same was not maintainable. Cr sequently the suit was dismissed. The appeal filed by the plaintiff-respondent before the High Court of Kamataka was allowed and the suit was decreed. The High Court was of the view that Exhibit P-9 in fact was a deed of assignment and not a deed of subrogation.

15. Accordingly it was held in this case by the Hon''ble Supreme Court that the suit by the Insurance Company in its own name was maintainable.

16. In the present case the respondent-Insurance Company has specifically taken the plea that now they were entitled to recover and realise the amount of compensation from the transporters by filing the suit in its own name as the owners had executed letter of subrogation/assignment deed and special power of attorney in their favour. Although the general denial was pleaded by the appellant but the learned trial Court had recorded a specific finding that because of the deed of subrogation (Exhibit P-21) the Insurance Company had stepped into the shoes of the original owners. This deed of subrogation therefore was held as the deed of assignment and accordingly the suit of the respondent-Insurance Company was decreed by the learned trial Court vide judgment and decree dated 21.11.1998.

17. The learned Lower Appellate Court had also recorded the same finding after examining the evidence led by the parties that the owners had executed letter of subrogation (Exhibit P-21) in favour of the Insurance Company and therefore the Insurance Company had stepped into the shoes of the consigner/owner. Therefore the letter of subrogation which amounted to deed of assignment is clearly proved by the respondent-Insurance Company by which the Insurance Company stepped into the shoes of the owner/consigner. Therefore Parkash Roadline''s judgment is fully applicable to the facts of the present case.

18. In view of the discussion held above it is held that since the respondent-Insurance Company was the assignee of the rights of the owners therefore it was entitled to file the suit for recovery in its own name and the judgment relied upon by the learned Counsel for the appellant is not applicable to the facts of the present case.

19. Accordingly this appeal is dismissed with costs and the costs are quantified @ Rs. 5000/-.