

**(1984) 01 MAD CK 0013**  
**In the Madras High Court**  
**Case No : Appeal No. 356 of 1979**

Amin and Co.

APPELLANT

Vs

Southern Roadways Ltd., Madurai

RESPONDENT

**Date of Decision :** 25-01-1984

**Acts Referred:**

Carriers Act, 1865 — Section 8, 9

**Citation :** AIR 1985 Mad 287 : (1984) 97 LW 656 : (1985) 1 MLJ 78

**Hon'ble Judges :** V. Ramaswami, J

**Bench :** Single Bench

**Advocate :** J. Abdul Razack, for the Appellant; A.R. Ramanathan, for the Respondent

## Judgement

1. The plaintiffs are the appellants. They are dealers in handloom goods. They have a branch at Kadayanallur. On 24-1-1975, the plaintiffs"

branch at Kadayanallur dispatched two bundles of handloom lungies valued at Rs. 10895-65 to the plaintiffs at Madras under their way bill the

original of which has been marked as Ex B 1 in the case, through the defendants who are common carriers within the meaning of that term under

the Carriers Act (III of 1865). The plaintiffs branch sent the original way bill to the plaintiffs by post on the same day of dispatch of the goods. On

the next day, namely, the 25th Jan. 1975, the branch office sent another letter to the plaintiffs with reference to other matters connected with the

businesses, in which also they made a reference to the dispatch of the two bales on the 24th. That letter was received by the plaintiffs on the 27th.

On the ground that they have not received the original way bill sent on the 24th, the plaintiffs wrote to the Kadayanallur branch informing them of

the non-receipt of the way bill and asking them to get a consent letter from the

consignor and the carrier and send it to them to enable them to clear the parcel. As to when this letter, was written by the plaintiffs, there is no evidence. However, we find that on 3-2-1975, the plaintiffs received from the branch. A consent letter of the consignor duly endorsed by the defendants' agent at Kadayanallur. Armed with this letter, they approached the defendants on the 3rd Feb. to take delivery of the consignment. The plaintiffs' clerk, who went to office of the defendants was informed that the parcel was taken delivery of on 27-1-1975 by producing the original way bill (Ex B 1) with an endorsement thereon purported to have been signed by the plaintiffs with a direction to deliver the parcel to the office boy and it was taken delivery of by a person named Babu claiming himself to be the person authorised to take delivery. Thereafter, disputing the rubber stamp and the authorisation given on behalf of the plaintiffs endorsed on the way bill, and also denying that the person who had taken delivery of the parcel is the office boy or the agent of the plaintiffs, the present suit was filed claiming recovery of the sum of Rs. 10895-65 P. being the value of the goods.

2. The defendants pleaded that the original way bill was produced for delivery of the goods, that it contained the rubber stamp of the plaintiffs and was duly endorsed with a request to deliver the bundle to the office boy. The person who produced the way bill claimed to be the person authorised under the endorsement. There was no reason for the defendants either to dispute the endorsement or the person who brought the way bill for taking delivery of the goods and therefore, they delivered the goods when the original way bill itself was produced. They further claimed that they were not guilty of any negligence or want of exercise of due care and caution and they also contended that they were not guilty of any fraud or collusion with any party in delivering the goods.

3. The parties proceeded on the basis that the goods were not delivered to the plaintiffs and therefore, it has to be presumed that the endorsement in the way bill was not that of the plaintiffs and that the person who took delivery was not authorised by the plaintiffs to take delivery of the goods.

The question for consideration, therefore, is whether the defendants are liable to make good the loss to the plaintiffs or on any ground they can extricate themselves from the liability to make good the loss. As already stated,

the defendants are common carriers whose rights and liabilities are governed by the provisions of the Carriers Act (111 of 1865). The goods despatched are also not special goods referred to in S. 3 of the Act. The carriers are therefore governed by the provisions of Ss. 8 and 9 of the Act. S. 8 provides as follows-

Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property

delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or

servants and shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of S. 3 apply

and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of

the carrier or any of" his agents or servants.

It may be seen from the provisions of S. 8 that the liability of the carriage arises for loss or damage by the criminal act of the carrier or of any of his

agents or servants ""and also the negligence of the carrier or any of his agents or servants."" Therefore, unless the carrier or his agent or servant is

guilty of negligence or guilty of a criminal act or fraud, he would not be liable for making good the loss or damage. Of course, courts have

recognised the common law exceptions to the liability of a carrier, namely, act of God and enemies of the State. S. 9 deals with the onus and that

squarely rests the onus of proving that the carrier was not negligent or not guilty of any criminal act, on the carrier himself. To that extent, it is

enough for the plaintiffs, if they prove that they entrusted the goods to the carrier and that there was a loss or damage and it was not delivered, in

order to entitle them to claim the value of the goods or damage. The onus will thereafter shift to the carrier, if he wants to extricate himself from

liability, to prove that he was not negligent or not guilty of any criminal act.

4. We have already seen that the person who took delivery of the goods produced the original way bill. Normally, it is not expected that the

original way bill will find a way to a person who is not the consignee. In this case, it was the case of the plaintiffs that their branch office despatched

by post the original way bill to the plaintiffs at Madras. They used a printed addressed cover of the plaintiff for posting such letters. That printed

addressed cover, a specimen of which is marked as Ex A-2; also contains the PB number of the plaintiff. It is, therefore presumed that the letter would have reached Madras and was put in the post box or postbag allotted to the plaintiffs. We have to assume so, even for the reason that the plaintiffs themselves stated that their agent posted the way bill at Kadayannallur and it had reached Madras as seen from the production of the way bill before the defendants. It is also not the case of the plaintiffs that the Postal department had also colluded with the person who took delivery of the goods and handed over the original way bill to that person and did not place it in the PB number allotted to the plaintiffs. Therefore, after it had reached Madras, and deposited in the PB number referable to the plaintiffs, the way bill should have gone to the hands of the man who got delivery of the goods. It is admitted by the plaintiffs that only the plaintiffs' authorised agent would go and open the post box or post bag and take delivery of the letters addressed to the plaintiffs. Therefore, something should have happened after it was taken delivery of by the authorised agent of the plaintiffs, as we now find the original way bill was produced by some one who was not the authorised agent of the plaintiffs. Without the connivance of the authorised agent who opened the post box or bag allotted to the plaintiffs, the way bill could not have gone into the hands of a third party. That is one aspect of the matter which I am referring to show that there should have been some sort of a contributory negligence on the part of the plaintiffs enabling a fraud being committed by a third party. It is also in evidence that the plaintiffs used to send cartmen and some others who are not their regular employee, to take delivery of the goods giving them due authorisations and, in the course of two years prior to the loss in question, there were about 1500 parcels that were cleared by the plaintiffs by such authorisations. The original way bill produced contained a rubber stamp similar to that used by the plaintiffs, which I have verified and it does not show any suspicious circumstances to doubt its genuineness. Having regard to the large number of parcels that the plaintiffs have been receiving and different persons including cartmen clearing the same, the defendants did not seem to have entertained any doubt about the genuineness of the endorsement or the impersonation of the person who wanted to take delivery of the goods. Learned counsel for the appellants seriously contended that when the person claiming himself as Babu and the office

boy of the plaintiffs, wanted to take delivery of the goods, there was a heavy duty on the defendants to have verified as to the identity of the person

and since they have failed in that duty, the liability shall have to be fastened on the defendants. In this connection, he also referred to a decision of a

single Judge of this Court in Konda Rm. Eswara Iyer and Sons and Others Vs. Madras Bangalore Transport Co. and Others, wherein the learned

Judge has observed (at p. 518) : -

It is the elementary duty of a carrier to enquire, whenever a person presents the consignee's note, whether he is the proper person or the

consignee's authorised agent. He should have taken steps to call upon him to identify if he is the proper person or he should have taken some

measures or some device to prevent mis delivery or wrong delivery.

It is true that the carrier should be satisfied about the identity of the person who produces the way bill this question will have to be approached, not

in the abstract, but with reference to the facts and circumstances in each case. If there were grounds for suspecting the identity of the person, a

need for verification arises. As already stated, the plaintiffs are a known firm to the defendants; they have been sending odd persons, known and

unknown, including cartmen, to take delivery of the goods; they have been delivering the goods to such person and there was no occasion earlier

to claim any loss in this regard. In the circumstances, therefore, by their presuming that the person who came with the original way bill was an

authorised person, the defendants could not be said to have acted negligently or without due care or caution. In fact, we do not have any system of

carrying identity cards and fraudulent people are always very clever and would pose themselves as the correct persons authorised. Therefore,

unless there are other extraordinary circumstances which should have put the defendants on caution requiring them to take more precautions than

that was normally expected, we could not say that they have acted negligently. Further, I have verified the original order in C.R.O. 937 of 1961, in

the case reported in Konda Rm. Eswara Iyer and Sons and Others Vs. Madras Bangalore Transport Co. and Others, . I find that the defendant

carrier in that case did not produce the original way bill against which he claimed that he has delivered the goods to the person not authorised by

the plaintiffs therein. Only the delivery note signed by that third party

acknowledging having taken delivery of the parcel was produced. This makes all the difference in considering the question whether the carrier has discharged his onus of proving that he was not negligent. The fact that the original way bill was produced for delivery of the goods, which is present in this case, makes all the differences or at least an important factor in considering the question of negligence. Though the plaintiffs alleged a criminal act or a conspiracy or a type of collusion between the employees of the defendants and the person who took delivery of the goods, that fact is denied in the evidence of D.W. 1, and no other circumstances has been made out even to create a suspicion of that nature. The defendants are a reputed company in Southern India and the plaintiffs themselves had no other occasion to complain of any collusion at any time before. In the circumstances I have to conclude that the defendants are neither negligent nor guilty of any criminal act

5. In the result, the judgment and decree of the court below are confirmed and this appeal is dismissed. But, there will be no order as to costs.

6. Appeal dismissed.