

(1997) 08 MAD CK 0006
In the Madras High Court
Case No : S.A. No. 119 of 1984

C. Yegappa Chetty and Sons and 2 others	APPELLANT
Vs	
South Freight Carriers Pvt. Ltd.	RESPONDENT

Date of Decision : 18-08-1997

Acts Referred:

Carriers Act, 1865 — Section 3, 8, 9

Citation : (1997) 08 MAD CK 0006

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : P.K. Sivasubramanian, for the Appellant; P.C. Padmanabhan, for the Respondent

Judgement

A. Ramamurthi, J.—The aggrieved plaintiff is the appellant. The plaintiff filed a suit for recovery of a sum Rs. 4182.50. The plaintiff

purchased two bundles of copper wire containing 10 coils weighing 124.300 kgs. for Rs. 4147/- from M/s. R.J. Metal Syndicate at Bombay

under bill No. 1197 dated 9.3.74 for transporting them to Madras and delivering the same at Madras. The plaintiff paid the price of the goods viz.,

Rs. 4147/- by sending a demand draft to the said company at Bombay on 14.3.1974. The goods booked at Bombay would arrive at Madras

within 5 days. The defendant is the carrier of the goods and they were booked on 9.3.74. The plaintiff was informed that the goods had arrived

any they paid Rs. 35.50 forwards freight charges and took the two bundles to the plaintiffs place. The plaintiff weighed the two bundles but it was

only 62 kgs. instead of 124.300 kgs. The plaintiff immediately took back the two bundles to the office of the defendant at Madras and complained

that the weight was only 62 kgs. That the consignor's name was not written on

the bundles, that there was no mark in ink at the piece of stitching.

The two bundles were then reweighed by the defendant but the weight was only 62 kgs. As directed by the Head Clerk of the Company, the two

bundles were opened in their presence and they were found to contain black iron wire only. The defendant then promise to enquire the matter and

the plaintiff was asked to keep the iron wire bundles. The defendant who took delivery of the two bundles of copper wire weighing 124.300 kgs.

at Bombay for delivering the same to the plaintiff at Madras are legally bound to deliver the same intact. The delivery of 62 kgs. of iron wire is not

a delivery at all. They have failed and neglected to deliver the identical goods in spite of repeated notices. The defendant resisted the suit stating

that the Court at Madras has no jurisdiction to entertain the suit, since clause No. 18 in the receipt provides that the Court in the Bombay city

alone shall have the jurisdiction in respect of claims and matter arising in connection with the goods. The registered office of the defendant is at

Bombay. They accepted the consignment on the basis of ""said to contain"" that the term said to contain was mentioned on the consignment note

No. 64497 dated 9.3.74 and it was accepted by the consignors. They do not admit the contents of the said consignment at the time of accepting

the same for the purpose of transportation. It was not possible for the defendant to check the contents of the consignment at the time of accepting

the same. They have already delivered the consignment to the plaintiff at Madras. They do not admit about the actual weight and the value of the

consignments also. They have discharged their duty in delivering the suit consignments. They are not bound to take back the iron wire or to pay

any damage as claimed by the plaintiff. The notices sent by the plaintiff have been suitably replied.

2. The trial Court framed six issues and two witnesses were examined on the side of the plaintiff and one witness was examined on the side of the

defendant. Exs.A-1 to A-14 were marked and Ex.B-1 was marked on the side of the defendant. The suit was decreed as prayed for with costs.

Aggrieved against this, the defendant preferred an appeal in A.S. No. 261/82 on the file of Principal Judge, City Civil Court, Madras, wherein the

appeal was allowed and the judgment and decree of the trial Court were set aside and the suit was dismissed. Aggrieved against this, the plaintiff

has come forward with the present Appeal.

3. The points that arise for consideration are

(1) Whether the plaintiff is entitled to claim the suit amount?

(2) Whether the defendant is not liable for the suit claim?

4. Points 1 and 2: It is admitted that the goods were entrusted to the defendant for transporting the same to the plaintiff at Madras, though it was

purchased at Bombay. It is also not in dispute that the office of the defendant is situate at Madras and the registered office is at Bombay. After

transport, the goods have been taken delivery from the office of the defendant at Madras by the plaintiff and they found shortage and immediately

on the same day, took the said consignments to the defendant's office and when actually weighed it was only 62 kgs. whereas the consignments

should weigh 124.300 kgs. The parcel was also opened in the presence of the employees of the defendant carrier company and it was found to

contain only iron wire whereas the goods consigned from Bombay was copper wire weighing 124.300 kgs. Because of this only the plaintiff has

claimed a sum of Rs. 4147/- representing the price of the goods along with the lorry freight of Rs. 35.50.

5. The main contention put forward by the learned counsel for the defendant is that no doubt the goods were consigned at Bombay and even at the

time of booking, there is a definite endorsement that the consignment is said to contain copper wire. The contents in the parcel was never verified

and it is impossible to verify the same. In short, it is stated that they are not responsible for the change of the goods and whatever goods received

by them has been entrusted to the plaintiff and they have been taken away from the company of the defendant. The defendant cannot be made

liable to pay any amount such less damages.

6. Ex.A-1 dated 9.3.74 is the invoice for Rs. 4147/-. Ex.B-1 dated 9.3.74 is the lorry way bill. No doubt under Ex.B-1 there is a printed clause

as ""said to contain"". The defendant mainly rested upon the printed clause and took a stand that they are not responsible for the missing of the

goods. A perusal of Ex.B-1 only indicated that it contains two bundles of copper wire weighing 124.300 kgs. Such a description is specifically

given in both the copies. It is the duty of the carrier to find out the nature of the goods before accepting the same for delivery to the concerned

party. The defendant cannot take shelter under the printed clause and ultimately defeat the claim of the plaintiff that they are not liable to claim any damages, even if some other goods were delivered to them. No doubt the lower appellate Court has taken a wrong stand that as soon as the goods are delivered to the plaintiff, the responsibility of the carrier comes to an end. I am unable to agree with the reasoning given by the lower appellate Court. If the same property booked at the point of destination was delivered to the concerned party at the proper destination then it can be concluded that the liability will come to an end. What was booked at Bombay was a definite commodity but what was delivered at Madras was a different article. This being the state of affair, it cannot be said that the liability of the carrier will come to an end. If the proposition is accepted then it will lend to dangerous consequences.

7. Learned counsel for the plaintiff also brought to the notice that Exs.A-4, A-6, A-8 and A-10 notices were sent to the defendant but no reply was received although having received the same. However, Ex.A-11 is a reply sent by the defendant dated 6.6.74. It is patently clear that the notice of the defendant has been replied in the end and as such it cannot be made much of. The short question that has to be decided is whether the liability of the carrier namely, the defendant will come to an end since the consignment is taken away by the plaintiff.

8. Section 8 of the Carriers Act provides.

Common carrier liable for loss or damage caused by negligence or fraud of himself or his agent. Notwithstanding anything herein before contained, every common carrier shall be liable to the owner for loss of or 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 Section 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.

9. It is also clear that Section 9 of the Act provides that plaintiff, in suits for loss, damage or non-delivery is not required to prove negligence or criminal act. It is only based upon Sections 8 and 9 of the Carrier Act. The trial

Court rightly came to the conclusion that the defendant is liable to pay the amount claimed by the plaintiff, but unfortunately both the provisions were lost sight of by the lower appellate Court.

10. Learned counsel for the appellant also relied on the decision reported in the case of Vasuhdhara Lorry Services. Common Carrier, rep. by its

Manager v. D. Nagadass Foolchand & Company and another (1997 (I) CTC 393 = 1197-I-L.W. 406) wherein this Court has clearly observed

that it was not necessary for the owner of the goods who was the consignor, to prove negligence on the part of the carrier and in the teeth of

Section 9 of the Carriers Act, it was not open for the defendant to contend that there was no negligence on the part of the defendant carrier. This

decision is clearly applicable to the facts on hand. The plaintiff is not bound to prove negligence on the part of the carrier. On the other hand the

defendant being a public carrier has to prove that they did not act negligently or that all sufficient care and precaution had been taken on their part.

This being so, the present stand of the defendant that as and when the goods were delivered, the liability will come to an end cannot be accepted

and acted upon.

11. I am of the view that the liability of the carrier will continue till the actual goods consigned are delivered to the concerned party and so long it is

not done, the liability will subsist. In the present case it is clearly admitted that the goods consigned was copper wire weighing 124.300 kgs.

whereas the goods delivered by the carrier was only 62 kgs. of iron wire and under the circumstance, the plaintiff is entitled to get the value of the

goods as well as the freight charges paid by them. Hence these points are answered accordingly. In the result the Second Appeal is allowed and

the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial Court are restored and the plaintiff is

also entitled to get costs.