

(1938) 12 MAD CK 0018
In the Madras High Court

Chokka Dhanamma and Another	APPELLANT
Vs	
The Coromandal Company, Limited and Another	RESPONDENT

Date of Decision : 09-12-1938

Acts Referred:

Citation : AIR 1939 Mad 401 : (1939) 49 LW 341 : (1939) 1 MLJ 235

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal arises out of a contract for the carriage of goods from the wharf at Cocanada to a steamer lying at anchor in

the roads. The facts are no longer in dispute. The first plaintiff the Coromandal Company was shipping agent for Messrs. Ralli Brothers and in that

capacity through its agent the second plaintiff, arranged for the transport of 875 bags of castor seeds in a lighter of which the fourth defendant was

the tindal, whereas the owner has now been found to be the second defendant, defendants 1 to 3 being members of a joint family. The goods were

loaded into the lighter which left for the anchorage some 6 or 7 miles away from the wharf one night and returned on the following evening,

whereupon the fourth defendant reported that his boat had sprung a leak and he had been obliged to jettison 330 bags of seeds and further 144

bags had been damaged by sea water. The circumstances were suspicious and an inquiry demonstrated that the fourth defendant's story was false

and that the missing bags had been stolen by him or with his connivance. The plaintiffs claimed to recover the value of the lost and damaged goods

from all the defendants. Defendants 1 to 3 denied liability, but the suit has been decreed against defendants 1, 2 and 4 and the family properties of

the third defendant. The appeal has been preferred by defendants 1 and 3.

2. There can be no doubt that the damage was caused owing to the criminal act of the fourth defendant. If the defendants are common carriers,

they are liable for the loss of goods entrusted to them for carriage unless the loss be due to an act of God or of the King's enemies. It is urged that

they are protected by rules made under the Carriage of Goods by Sea Act (XXVI of 1925). The reply to this contention is that by Section 2 of

that Act the rules apply only to the carriage of goods by sea in ships carrying goods from any port in British India to any other port whether in or

outside British India. There seems to be some doubt whether the anchorage of Cocanada is or is not included within the limits of the port. The

plaint asserts that the ships are anchored in the port and there is no denial. But the actual notification prescribing the limits of the port is not in

evidence. The matter is to my mind, however, not material. The defendants' lighter would come within the definition of a "ship" in Act XXVI of

1925. It carries goods from the port of Cocanada, but it does not, so far as the evidence goes, carry those goods to any other port and the fact

that the goods transported are placed in another ship, which itself carries them to another port, would not to my mind bring this lighter within the

purview of Section 2 of Act XXVI of 1925. Moreover, even if this lighter was a "ship" to which that Act applies, I am of opinion that Clause (g) of

Rule 2 of Article IV of the Schedule to that Act would make the defendants liable for this loss which is certainly due to the fault of the agent of the

carriers. The decision of the Court below is correct and the appeal is dismissed with costs.