

**(2009) 01 P&H CK 0145**  
**In the Punjab And Haryana At Chandigarh**

DHTC (India) Limited

APPELLANT

Vs

The New India Assurance Company Ltd. and Others

RESPONDENT

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**Date of Decision :** 22-01-2009

**Acts Referred:**

**Citation :** (2010) ACJ 1031 : (2009) 3 PLR 690 : (2010) 1 RCR(Civil) 555

**Hon'ble Judges :** Rakesh Kumar Garg, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Rakesh Kumar Garg, J.—This is defendants' second appeal challenging the judgment and decree of the courts below whereby suit of the plaintiff-respondent for recovery of Rs. 1,13,100/- along with pendente lite interest at the rate of 12% per annum and future interest at the rate of 6% per annum on the principal amount till the realization of the decretal amount was decreed against the appellant.

2. The case of the plaintiff as stated in the plaint was that defendant respondent No. 2 had purchased some goods for their factory from defendant-respondent No. 3 and go! the service of defendant No. 1 for transportation of goods vide consignment note date 16.9.2002. The goods were loaded in truck No. RJ-13-G-1118 with an understanding and obligation that goods would be delivered at premises of defendant-respondent No. 2 with the plaintiff-respondent No. 1. The loaded goods reached defendant No. 2's premises on 20.9.1992. It came to the notice of defendant No. 2 that the goods had been damaged during transit due to negligence of appellant and its agents. As a result of this, defendant-respondent No. 2 claimed the loss of Rs. 87,855/- from the plaintiff-respondent. Plaintiff-respondent got survey done and on the basis of the survey report, amount of damages were paid by the plaintiff respondent to defendant-respondent No. 2. It was averred that appellant was liable to make good the loss to the plaintiff by paying the amount in question . Hence the recovery suit was filed.

3. Pursuant to the notice, defendant appeared and filed written statement admitting that it was engaged for transportation of goods. However, it was stated that goods had reached in the factory premises of respondent No. 2 in good condition and without any damage and, in any case, the defendant-respondent No. 2 had been paid the loss by the plaintiff respondent and the appellant was not liable to pay the same.

4. After considering the evidence on record and hearing the counsel for the parties, the suit was decreed on 19.1.2006 against the appellant. The appeal filed by the appellant against the judgment and decree of the trial Court was also dismissed by the lower appellate court vide its judgment and decree dated 14.2.2007.

5. Feeling aggrieved from the judgment and decrees of the courts below, the defendant No. 1 has filed this appeal.

6. Learned Counsel for the appellant has vehemently argued that the courts below have misread and misinterpreted evidence and documents on record which has vitiated the judgment and decrees of the courts below. According to the counsel for the appellant, undisputedly defendant No. 2 had purchased the goods in question from defendant No. 3 and engaged appellant to transport the said goods and it was defendant No. 2 who got those goods insured with the plaintiff-respondent and according to the document Ex.P-12 on record (Special Power of Attorney) given by defendant No. 2 to the plaintiff-respondent on 31.8.1993 to file the case for recovery of damages against the appellant- and to do other needful things in this regard. thus, the plaintiff-respondent as Special Power of Attorney on the basis of Ex.P-12 could only file the suit on behalf of defendant No. 2 in its name, whereas the present suit has been filed by the plaintiff-company itself in its own name. The material defect has been completely ignored by the courts below. Therefore, the following substantial question of law arises in this appeal.

Whether on the basis of a letter of subrogation executed by the insurer in favour of insurance company, the Insurance Company was competent to file the present suit for recovery in its own name against the appellant.

7. Learned Counsel for the appellant relied upon a judgment of the Hon''ble Supreme Court of India in the case of Oberai Forwarding Agency Vs. New India Assurance Co. Ltd. and Another, .

8. Thus the learned Counsel for the appellant has prayed for acceptance of the appeal and setting aside the judgment and decrees of the courts below.

9. On the other hand, learned Counsel appearing on behalf of the respondent No. 1 has supported the impugned judgment and decrees passed by the courts below and has argued that the appellant was under obligation to deliver the goods in good condition and without any damage and it has been proved on record that the goods were damaged during transit of consignment and further the plaintiff-

respondent being insurer had made the payment to the insurer and was entitled to recover the same from the appellant.

10. Learned Counsel for the plaintiff-respondent has further argued that no such objection as has been now raised in this appeal was ever taken by the appellant in the courts below and thus the appeal is liable to be dismissed.

11. I have heard learned Counsel for the parties and perused the record of the case.

12. In this case, respondent No. 2 filed the suit for recovery of Rs. 83,200/- along with interest against the appellant as the aforesaid amount was paid by respondent No. 1 to respondent No. 2 due to negligence on the part of appellant.

13. From the pleadings of the appellant, it is clear that no such objection as has been raised in this appeal was taken by the appellant in its written statement with regard to the maintainability of the suit in the name of the plaintiff-company itself. The only objection taken by the appellant in its written statement was that the payment had been made by the Insurance Company to defendant No. 2 in connivance with each other and no loss had been caused to the goods during the transit of consignment. Neither any issue was claimed in this regard. Even no such ground was raised before the lower appellate court.

14. The Hon<sup>ble</sup> Supreme Court of India in the case of Bachhai Nahar v. Nilima Mandal and Anr. J.T. 2008 (13) S.C. 255 observed as under:

The object of issues is to identify from the pleadings the questions or points required to be decided by the courts as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the Court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is relief can be granted when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the Court considers and grants such a relief, it will lead to miscarriage of justice. Thus, it is said that no amount of evidence, on a plea that it not put forward in the pleadings, can be looked into to grant any relief.

15. In Oberoi Forwarding Agency's case (supra) the insured executed a letter of subrogation and also a special power of attorney in favour of the insurer authorizing him to file case on their behalf. Insurer filed a complaint in the Consumer Court in its own name, making the insured as co-complainant. An objection was taken that insurer is not a consumer within the meaning of

Consumer Protection Act, 1986. The question before the Hon''ble Supreme Court was whether the first respondent Insurance Company was subrogated to the rights of the second respondent consignor in respect of the lost consignment or whether it was the assignee of the rights of the second respondent in respect of thereof and, if the latter, whether it was a "consumer" within the meaning of the Consumer Protection Act, 1986, entitled to maintain a complaint thereunder.

16. The Hon''ble Supreme Court after examining the letter of subrogation and Special Power of Attorney executed by the insured in favour of insurer held that since the consigner has assigned and transferred his right to recover compensation for the loss to the insured, there was no question of the insurer being a beneficiary of the service, therefore, insurer was not a consumer within the meaning of Consumer Protection Act and was, therefore, not entitled to maintain the complaint.

17. Thus, in the aforementioned case, the question before the Hon''ble Supreme Court of India was whether by letter of subrogation, the insurer will become a consumer and can maintain the complaint in his own name instead of the consigner whereas in the present case, there is no such issue. In its literal sense, subrogation is the substitution of one person for another. The doctrine of subrogation confers upon the insurer the right to receive the benefit of such rights and remedies as the assured has against third parties in regard to the loss to the extent that the insurer has indemnified the loss and made it good. The appellant has not disputed the letter of subrogation issued by the respondent No. 2 in favour of respondent No. 1. The insurer is therefore, entitled to exercise whatever rights the assured possesses to recover to that extent compensation for the loss. Moreover, no such issue was raised before the lower appellate Court and, therefore, in view of the law laid down by the Hon''ble Supreme Court of India in Bachhaj Nahar's case (supra), the argument is liable to be out rightly rejected.

Thus, the substantial question of law raised by the appellant does not arise in this appeal

18. For the reasons recorded above, I find no merit in this appeal.

Dismissed.