

(1982) 03 MP CK 0048
In the Madhya Pradesh High Court
Case No : First Appeal No. 24 of 1975

Gwalior Transport Co. (P) Ltd.

APPELLANT

Vs

National Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 01-03-1982

Acts Referred:

Contract Act, 1872 — Section 151, 152, 69
General Clauses Act, 1897 — Section 6
Insurance Act, 1938 — Section 2(13A)
Marine insurance Act, 1963 — Section 2, 3, 4, 4(1), 4(2)
Transfer of Property Act, 1882 — Section 135A, 15A, 25, 52(1), 52(2)

Citation : (1984) ACJ 81

Hon'ble Judges : R.C. Shrivastava, J; A.R. Navkar, J

Bench : Division Bench

Advocate : Arun Mishra, for the Appellant; S.K. Dubey, for the Respondent

Final Decision : Allowed

Judgement

A.R. Navkar, J.—This, is an appeal against the judgment and decree, passed by the Second Additional District Judge, Gwalior, in Original Civil Case No. 4-B of 1971, on 21.4.1975.

2. The facts of the case are that Plaintiff No. 1 had claimed a sum of Rs. 23,010.27 as damages for the loss of polyester yarn, suffered by the Gwalior Rayon Silk Manufacturing (Wvg.) Co. Limited (hereinafter referred to as "the Gwalior Rayon") during its transit from Bombay to Gwalior by the carrier-Defendant.

3. The undisputed facts of the case are that on 21.4.1969, Gwalior Rayon, Plaintiff No. 2, through M/s. Manubhai Gokaldas, Yarn Merchants and Commission Agents of Bombay, handed over three cases, containing polyester yarn to the Defendant at Bombay for carriage and delivery of the same to the Plaintiff No. 2 at Birla Nagar, Gwalior. The Defendant gave receipt No. 6165, dated 21.4.1969. The consignment weight 588.083 kilogram of 100-48-100

polyester filament yarn dull sized on cones den (sic) sub-standard second quality. The consignment was imported and was packed in wooden cases and handed over to the Defendant. The aforesaid consignment was delivered to Plaintiff No. 2 at Birla Nagar, Gwalior by the Defendant. The property was insured with Ruby General Insurance Company Limited against transit comprehensive risk under policy No. GB-7871-69, dated 1.4.1969. In the policy, the relevant clause on which the Plaintiff based his claim is:

Insured against transit, theft, pilferage and non-delivery risks as per clause attached hereto, including the risks of shortage, rain and/or freshwater damage, hooks, acid, oil, mud, grease and other extraneous substances or heating and sweating and damage by other cargo.

It is further admitted that in pursuance of the said policy, Gwalior Rayons obtained cheque No. 04869, dated 5.8.1970 for a sum of Rs. 18,517.03 en United Commercial Bank, from Ruby General Insurance Company Ltd.

4. Plaintiff claimed that the goods were handed over to the Defendant transport company in sound condition and they were of the worth of Rs. 1,02,150.01 and at the time of delivery to the consignee, Plaintiff No. 2, Gwalior Rayons, on 30.4.1969, three cases of the said consignment were broken which had resulted into the yarn being badly damaged. The cones having the yarn on it were pressed. The winding was displaced and had become loose as well as bulged. This mutilated winding and dirt on the yarn was of carton Nos. 10, 13, 17 and 23 from case No. 63 and carton Nos. 2, 16, 14 and 25 from case No. 64 and carton Nos. 8, 11 and 16 from case No. 84. This damage had been caused in transit because of the Defendant's failure to take proper and necessary care of the consignment in the transit due to Defendant's and his agent's negligence and misconduct. An entry of this damage was made in the Defendant's note and the loss was surveyed and assessed by Mr. C.P. Sarvahi, Surveyor at Gwalior on 6.7.1969.

5. Plaintiff No. 2, Gwalior Rayons, demanded the damage from the Defendant several times and the last notice was dated 14.2.1970. As the consignment was insured with Plaintiff No. 1, Ruby General Insurance Company against transit comprehensive risk, it settled the claim and paid Rs. 18,517.03 by the cheque as mentioned above. Because of this payment, the insurance company submits that it has acquired all rights, interest and claims in respect of the damage to the consignment and as the amount is not paid, the Plaintiff has filed the present suit for the amount of Rs. 18,517.03 with interest at the rate of 12 per cent per annum from 1.5.1969 to 30.4.1971 (the date of the filing of the suit), amounting to Rs. 4,438.24 and also other charges amounting to Rs. 55.

6. The insurance company demanded this amount from the Defendant by notice dated 15.7.1970, but as the Defendant denied the claim, the Plaintiff had to file the present suit.

7. The Defendant transport company denied that the consignment was checked

at the time of acceptance for transit at Bombay. The transport company claimed that the packing of yarn cartons was not proper. The cases were old. The receipt of consignment was issued at owner's risk and the nature, contents, condition and value of the consignment was not known to the Defendant transport company. The consignor did not satisfy the transport company about the packing, nor they ever obtained endorsement from the Defendant company about the factum of satisfaction in respect of the packing. The consignment was transported from Bombay to Gwalior directly and the delivery was effected in the compound of Gwalior Rayons, Gwalior at Birla Nagar, Gwalior without any trans-shipment of the goods on 29.4.1969. The Defendant company took all reasonable care in the carriage of the goods. As the three cases, containing yarn-cartons were sufficiently old, two of them cracked in transit. There was no negligence on the part of the transport company. The remark made by the Plaintiff, Gwalior Rayon on the delivery challan of the Defendant, did not disclose damage to all three cases and the remarks made only referred to two cases. The transport company further submitted that whatever damage was caused to the goods was due to the defective packing and natural jerks which the goods suffered in transit. As there is no misconduct, negligence, carelessness on the part of the Defendant transport company or their agent, they are not liable. The assessment of loss by Mr. Sarvahi is not proper and before assessing the loss, no notice was given to the transport company and the surveyor assessed the loss behind their back. If any damage was done to the goods, it was due to the negligence of the Plaintiff company, which took the delivery of the goods and kept them in open yard. The allegations of the Plaintiff that they have right to claim this amount from the transport company is not proper and there is no proper assignment of the alleged claim in favour of the Plaintiff. As to the interest, it was submitted that the Plaintiffs are not entitled to claim any interest and as such, the Defendant is not bound to pay. Further, there were other objections as well, but in our opinion, they are not material to decide the case and the objections are taken for objections' sake only.

8. The trial Court, taking into consideration the evidence on record and the statements of the witnesses, held that the transport company was negligent and the loss assessed by the surveyor was proper, that the packing was proper and the cases containing the cones were properly packed and properly despatched. It also held that after receiving the goods at Birla Nagar, they were kept properly and therefore, the Plaintiff was not negligent and as there was subrogation in favour of the Ruby General Insurance Company Ltd. and as the insurance company has paid the liability as an insurer, the insurance company is entitled to claim the same from the transport company. Holding this, the Plaintiff's claim was decreed in full. The trial Court has further held that the transport company has not examined material witnesses and so also kept back certain important documents which were in their possession and as the documents and the witnesses are not produced by the transport company, a presumption is drawn against the company. Aggrieved by this judgment and decree, the present appeal

has been filed.

9. Before taking into consideration the submissions made by the learned Counsel for the Appellant Mr. Arun Mishra, we will consider the evidence produced in the file. The first witness produced on behalf of the Plaintiff is C.P. Sarvahi, the surveyor, who inspected the loss on behalf of the insurance company. In para 2 of his statement, he has stated that he surveyed the damaged goods from 13.5.1969 to 17.5.1969 and also inspected the same on 4th and 5th July. 1969. The cases containing the goods were broken and because of the breakage, the goods were damaged. Two cases were completely damaged and one case was partially damaged. He has valued the price of the goods at Rs. 1,02,150.01. But, the value of the damaged goods, he has assessed at Rs. 18,517.03. He was cross examined on the point as to how he has assessed the damage and the reply he has given is that from the consignments, every cone was seen and the yarn which was good was taken out and the yarn which was damaged was separated and taking into consideration the percentage of the damaged goods, the loss was calculated. Further, he has stated that the yarn which was damaged was of no use and it had become completely useless for using it on a machine. The survey report is Ex. P-1. The reason he has mentioned for the damage is that due to the negligence in transit of the goods, the damage occurred. While considering this evidence, we have to remember that he is the surveyor on behalf of the insurance company with whom the claim was lodged and he is working from 1961 as the surveyor of the insurance company. As to the condition of the wood which was used for preparing the cases, he has stated that the wood was good and the cases were prepared out of the wood of good quality, namely, "chid". From his evidence and document Ex. P-1, it is clear that the goods were received in a damaged condition and that there was no possibility of salvaging the damaged goods as he has stated "salvage being waste yarn of no commercial value, they were destroyed" and the loss was assessed at Rs. 18,517.03. From Ex. P-1, it is clear that he has examined the goods as well as the packing and has assessed the loss correctly. It was submitted before us by the learned Counsel for the transport company that before assessing the loss the surveyor should have given notice to the transport company. But, we are not impressed much with this submission, as the document produced by the transport company shows that the goods were delivered in damaged condition. It is Ex. P-7, which is signed by the man who works for the transport company. The endorsement on Ex P-7 says "Received all the two cases against T.R. No. 6165 in broken condition and yarn in damaged condition". The learned Counsel submitted before us that the endorsement mentioned only two cases, while three cases were transported. We have seen the original and after seeing the original, we are of the opinion that the endorsement "Received all the two cases" refers to three cases and not to two cases, as argued by the learned Counsel. The reason for holding this is that in the statement of the surveyor (P.W.1) it has come that in transit, one case was partially broken while two cases were completely broken. If this statement is taken into consideration, then, the endorsement to the effect that "Received all

the two cases" must refer to all the three cases.

10. The second witness is Purshottam Patel (P.W. 2). He looks after the godown on behalf of the firm Manubhai Gokuldas, which deals in yarn. He has stated that the three cases were despatched and they were given to the transport company for transportation to Gwalior. He has also stated as to how the goods were packed. At the time of delivery to the transport company, the goods were checked and the goods were found to be in good condition and properly packed. The wood used for the cases was of a very good quality. From his cross-examination, nothing useful was brought out which could have favoured the Defendant.

11. The third witness produced on behalf of the Plaintiff is K.L. Budhia (P.W. 3). He is a servant of Gwalior Rayons. He has also stated regarding the number of cases and the condition of the goods which were delivered by the transport company to the Gwalior Rayons. He has also supported the statement of the surveyor that the goods were in damaged condition and about 351 cones were damaged and the weight of these cones was 103.71 kgs. For weaving the cloth, the damaged yarn cannot be used. He has given in detail the number of cartons from each packing which were damaged. He has been cross-examined in length to show that the company did not take proper care when the goods were delivered. But, from the evidence, the submission that the damage was caused because of the negligence of the company is not made out. He has stated in his statement that the goods were kept in a tin shed when they were delivered by the transport company to Gwalior Rayons. It was not asked to him as to whether they will get damaged, as mentioned by the surveyor in his survey report. He has further stated in his evidence that the goods which were damaged were destroyed. We may mention in Hindi his very words which he has stated regarding the disposal of the damaged goods:

Kharab Dhage Ko Nashta Kar Diya Gaya Hain, Nashta Karne Ka Koi Indraj Wadi Kramanka 2 Ke Pas Nahin Hain. Main Nahin Bata Sakta Ki Kis Tarikh, Mahine, San Main Nashta Kiye Gaye.

Therefore, from his statement also, nothing useful was shown to us, from which we can hold that the transport company was not negligent in transporting the goods and that they are not responsible for the damage to the goods as held by the trial Court.

12. The next witness is S.P. Gupta (P.W. 4). He is Manager of the Ruby General Insurance Company, Gwalior. In his statement, he has stated how the policy is issued and whether the goods in question were insured or not. From his cross-examination, we do not feel that anything useful was brought out in favour of the transport company. This is the evidence produced on behalf of the Plaintiff.

13. Before considering the evidence and documents produced by the Defendant, we will have to consider the documents produced by the Plaintiff, on which, the learned Counsel for the Appellant relied and argued the case in favour of the

Appellant. The first document produced by the Plaintiff which is Ex. P/1, is the surveyor's report, which we have already mentioned. The second document is the price of the goods despatched, which shows the price of the goods was Rs. 1,02,150.61 only. The other document is the receipt given by the Gwalior Rayons for carriage of the goods. It does not mention any condition regarding the goods or the package in which the goods were packed. The receipt shows that the goods were to be transported at the owner's risk. Further, it says that the goods will be carried at owner's risk, unless they are properly insured and packed. We are mentioning this to show that unless the transport company was satisfied that the goods were properly packed, they would not have accepted the goods at all. The other question to be decided is whether they were properly insured or not. For deciding whether they were properly insured or not, we will have to consider the policy document which is produced by the Plaintiff. The policy under which the goods are insured is Ex. P/11 and the policy covers risk upto the amount of Rs. 5,00,000/-. Along with the policy, there are certain conditions and the first condition regarding coverage of the risk is as under:

Insured against transit, theft, pilferage and non-delivery risks as per clauses attached hereto. Including the risk of shortage, rain and/or fresh water damage, hooks, acid, oil, mud, grease and other cargo.

It further mentions that the risk ceases immediately on arrival of the consignment in the assured's premises. It also says that it is an open policy. The risk to be covered was for transit from Bombay to Birla Nagar, which is clear from Ex- P/14. Ex. P/15 is the special power of attorney given by the Gwalior Rayons in favour of the Ruby General Insurance Company Ltd. The other important document is the letter of subrogation (Ex. P/16), which reads as under:

In consideration of your paying to us the sum of Rs. 18,517.03 only, say Rupees eighteen thousand five hundred seventeen and paise three only, in full settlement of our claim for non-delivery/shortage and damages under declaration/policy No. 12376/69 of GB/7871/69 issued by you on the undermentioned goods, we hereby assign, transfer and abandon to you all our rights against railway administration/transport company or other persons whatsoever, caused or arising by reason of the said damage or loss and grant you full power to take and use all lawful ways and means in your own name and other wise at your risk and expense to recover the said damage or loss and we hereby subrogate to you the same rights as we have in consequence of or arising from the said loss or damage.

And we hereby undertake and agree to make and execute at your expense all such further deeds, assignments and documents and to render you such assistance as you may reasonably require for the purpose of carrying out this agreement.

This is dated 20.4.1970 and the goods mentioned in the document are three cases of polyester yarn-lorry receipt No. 6165, dated 22.4.1969 from Bombay to

Gwalior. It is clear from the documents produced in the file that the letter of subrogation refers to the goods in dispute. The other documents are not very much relevant for the decision of the case.

14. From the facts mentioned above, it is clear that the insurance policy covered the goods in question and that the Gwalior Rayons executed the letter of subrogation as well as the special power of attorney in favour of the Ruby General Insurance Company. Therefore, the insurance company had a right to file the present suit and after paying the amount of damages to the Gwalior Rayons, they had a right to recover the amount of damages from the transport company. This position is also covered by Section 69 of the Indian Contract Act which runs as under:

69. A person who is interested in the payment of moneys which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by the other.

15. The learned Counsel for the Appellant submitted before us that he was in custody of the goods as a bailee and u/s 152 of the Indian Contract Act, if he takes reasonable care in transporting the goods and proves it before the Court, he is not responsible for the loss occasioned to the goods. The relevant section is as under:

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151.

But, we have already held that the transport company has failed to produce the relevant documents and important witnesses before us and so also there is evidence that when the goods were delivered to the Gwalior Rayons, they were in a broken condition and they could not be used for the purpose for which they were purchased. This point is considered by the trial Court in its judgment in para 31 and the learned trial Court has held that:

31. Defendant in its notice Ex. P-19 of 14.9.70 claimed that the damage was not in the transit. In Ex. P-18, the Defendant claimed that the loss was due to natural jerks, while the truck was in motion. As early as on 17.9.69, Defendant transport company claimed that the cases were not broken in transit; damaged yarn was found in closed cases. Ex. P-8 and P-9 are very clear on the point. But Ex. P-12 indicates that on 13.4.69, Defendant had admitted that the cases were broken. D.W. Milkatsingh has also admitted that at the time of delivery, the cases were broken as noted at A to A on Ex. P-7 receipt of the goods given by the Plaintiffs to Defendant transport company.

32. As laid down at page 665 in J.K. Kapur's 9th edition of Indian Contract Act by Pollock and Mulla the burden of proof in case governed by provisions of Sections 151 and 152 of the Indian Contract Act, the loss or damage of the goods entrusted to the bailee is prima facie evidence of negligence and the burden of proof therefore to disprove negligence, lies on the bailee. In the

present case, Defendant transport company, by withholding its correspondence regarding loading with its agents Basant Rajani and Nathmal Morar-Ka who loaded the consignment at Bombay have failed to discharge that burden.

We are in agreement with whatever is stated by the learned trial Court regarding the proof of negligence and we are of the opinion that the Defendant transport company failed to prove that it had taken proper care of the goods despatched. Therefore, the submission of the learned Counsel for the Appellant that the transport company is not responsible as it has taken proper care of the goods in transit cannot be accepted and we confirm the finding of the learned trial Court regarding the want of proper care.

16. The next submission made by the learned Counsel was that the trial Court fell in error in granting interest when the Plaintiff failed to prove any contract between the parties for payment of interest and neither they have proved any custom. We are of the opinion that this submission has force and we will have to accept the same. Nothing has come in the evidence of the Plaintiff as to why he is entitled for interest on damages. Therefore, the decree given by the trial Court with respect to interest will have to be set aside and we set it aside accordingly. The amount awarded by way of interest is Rs. 4,438.24.

17. It was submitted before us by the learned Counsel for the Appellant that the suit filed in the name of the insurance company is not properly framed. The suit should have been filed in the name of Gwalior Rayons. But, we are not much impressed with this submission because, after paying the amount to Gwalior Rayons, the insurance company was subrogated to the rights of Gwalior Rayons against the transport company. We have already mentioned the document by which the Gwalior Rayons have subrogated their rights to the insurance company. Further, the Gwalior Rayons is already made a party to the suit and so also in the appeal. The similar point came for consideration before the Supreme Court in *Union of India v. Sri Sarada Mills*, in which it was held as under *Union of India (UOI) Vs. Sri Sarada Mills Ltd.*, :

Where the mill on satisfaction of its claim for the loss and damage by the insurance company has assigned all rights against the railway administration in favour of the insurer as a subrogee and the letter of subrogation contains intrinsic evidence that the mill would give the insurance company facilities for enforcing rights but the insurance company has chosen to allow the mill to sue:

Held that the cause of action of the mill against the railway administration did not perish on giving the letter of subrogation. The mill was competent to institute and maintain the suit against the railway administration. The mill could be answerable and accountable to the insurance company for the moneys recovered in the suit to the extent the insurance company paid the Respondent mill.

Therefore the submission of the learned Counsel for the Appellant has no weight and we reject the same.

18. The main point submitted before us by the learned Counsel for the Respondents is that the Marine insurance Act, 1963 is applicable to the present case and u/s 92 of the said Act, the insurance company can recover the amount from the transport company, for which the suit is filed. The learned Counsel for the Appellant submitted before us that the said Act will not be applicable to the present case as it is not a marine adventure. What is marine insurance is defined in Section 3 of the said Act, which runs as under:

3. Marine insurance defined.--A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

Relying on this section it was submitted before us that the said Act will not be applicable to a transport company which undertakes to transport the goods by land. But, there is an explanation to the said section which runs as under:

Explanation.--"An adventure analogous to a marine adventure" includes an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit.

And relying on it, it was submitted by the learned Counsel for the Respondents that the said Act should be extended to motor transport also. This point was considered in "Treatise on Law of Insurance" by C. Kameshwara Rao (1962 edition) in item No. 639 at page 263, which reads as under:

639. Mixed sea and land risks.--Strictly speaking, marine insurance is not confined only to sea risks, but to other risks also. It may be extended by the contract itself, or by usage of trade, to protect the assured against other losses. Modern commerce has necessitated its enlargement to various modes of transit. Goods carried from our country to another have to be carried, as occasion arises, not only on sea, but on land or inland waters. If they are not protected during these transits also, there could hardly be any commercial enterprise. The Act itself recognises this in Section 2. It says:

(1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to marine adventure is covered by a policy in the form of a marine policy the provisions of this Act, in so far as applicable, shall apply thereto ; but except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of insurance as by this Act defined.

The normal insurance on goods now contains the "warehouse clause" which covers the goods from the time they leave the shipper's or manufacturer's warehouse until they reach the warehouse of the consignee. These mixed sea

and land risks may be compared, by way of analogy, with "through bills of lading" which are the invention of modern commerce.

The learned author has considered the definition and the explanation under the said Act and he has opined that if the said Act is not extended to transit by land also, the Act itself will be of no use. The same view is taken in *Gaya Muzaffarpur Roadways Co. v. Ford Gloster Industries Ltd.* 1972 A.C.J. 362 (Cal.). In paras 25 and 26 of the judgment, this point is considered and it was held therein as under:

25. Mr. Banerjee has next contended that the provisions of Section 135A are applicable to cases of marine insurance on the basis of definition of "marine insurance business" then prevailing. "Marine insurance business" has been defined in Section 2(13A) of the Insurance Act, 1938 as including contracts of insurance of goods insured for any transit by land or water or both. The law relating to marine insurance business was codified by the Marine Insurance Act, 1963 (Act XI of 1963) which came into force on August 1, 1963 when the suit was pending before the trial Court. In this Act in Section 3, "marine insurance" has been defined as a contract of marine insurance whereby the insurer undertakes to indemnify against marine losses, i.e. losses incidental to marine adventure. "Marine adventure" u/s 2, Clause (d) as also "maritime perils" of Clause (e) under the definitions are thus inseparable from perils of the seas. u/s 4 Sub-section (1), "marine insurance" has been extended to protect the assured against losses on inland waters or any land risk incidental to any sea voyage. Mr. Banerjee accordingly contended that marine insurance is thus always referable to sea voyage and incidental land risk and not to any transit over land only. Section 91 provides, by way of saving clause, that rules of law, including the law merchant, i.e., the custom of merchants as settled by judicial decisions applying to contracts of marine insurance immediately before the commencement of this Act, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance. By Section 92, amongst others, Section 15A of the Transfer of Property Act 3 was repealed and its Sub-sections (1), (2) and (3) being incorporated in Sections 52(2), 79 (1) and (2) respectively while Sub-section (4) was in effect incorporated in Section 90. In view of the change in law, Mr. Banerjee contended that u/s 6 of the General Clauses Act after coming into force of the said Act, marine insurance policy could not cover purely inland risks of transit under its definition and u/s 51, rules of law and law merchant which are inconsistent with the express provisions of the Act had no application. Accordingly, the provisions of Section 135A of the Transfer of Property Act or corresponding sections in the said Act ceased to have application for purely inland transit including the one in suit. The cumulative effect of the coming into force of the Act is that there could be no subrogation by payment even of total loss, as Section 135A and corresponding sections in the Act applied to marine insurance as defined by it so that the insurer was not competent to sue or continue the suit while the company was already out of picture because of the payment.

26. These contentions, apparently attractive, have however, no legal basis as pointed by Mr. Mitra who drew our attention to Sub-section (2) of Section 4 of the Act and its explanation and also contended that the new Act could not affect pending action in absence of express provision. In Section 4, Sub-section (1), it is provided that a contract of marine insurance may, by its terms or usage of trade, be extended to protect the assured against losses on inland waters or on any land risk incidental to any sea voyage. Sub-section (2) provides that where "any adventure analogous to a marine adventure" is covered by a policy in the form of a marine policy, the provisions of the Act, only as by this section provided, shall apply thereto. The "explanation" attached to this sub-section is to the following effect:

Explanation--"An adventure analogous to a marine adventure" includes an adventure where any ship, goods or movable are exposed to perils incidental to local or inland transit.

It is obvious that such an adventure, by its terms include cases where the goods or movables are exposed to perils incidental to local or inland transit. This definition thus obviously covers the present case where the goods entrusted for transit and covered by the policy in the form of a marine policy, as specified in Section 25 [Ex. land 1(a)] were wholly through inland routes and exposed to perils incidental to such transit. Accordingly the provisions of Section 135A of the Transfer of Property Act as also the corresponding sections, of the said Act would, in our opinion apply to cases of local or purely inland risks if covered by policy in the form of marine policy. The insurer in the present case thus would be entitled to a decree in the suit.

Therefore, relying on the observations made above, we are of the opinion that the, said Act is applicable to the case in hand and all the essentials for claiming damages against the transport company are proved by the Plaintiff in this case. Therefore, the judgment and decree of the trial Court is confirmed, except the amount of interest awarded by it, which is Rs. 4,438.24.

19. The result, therefore, is that the appeal is allowed partly as indicated above. But, taking into consideration the facts of the case, the parties will bear their own cost.