

(2000) 12 MAD CK 0129
In the Madras High Court
Case No : A.S. No. 601 of 1987

Kalpaka Transport Co. Ltd.

APPELLANT

Vs

The Oriental Fire and General Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Transfer of Property Act, 1882 — Section 92

Citation : AIR 2001 Mad 164 : (2002) 2 LW 172 : (2001) 1 MLJ 714

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : N.S. Varadachari, for the Appellant; G. Bharadwaj, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—This appeal suit is directed against the judgment and decree dated 5-3-1986 made in O.S. No. 9019/84 on the file of the 8th Assistant Judge, City Civil Court. Madras. The defendant is the appellant herein.

2. A suit was filed by the respondent/ plaintiffs namely the Oriental Fire and General Insurance Company, Madras and Spencer and Company, Madras against M/s. Kalpaka Transport Company Limited having its office at Calicut praying for a decree for a sum of Rs. 45,949.89 together with interest at 18% per annum and the costs on averments such as that M/s. Parke Davis (India) Limited carrying on business at Bombay entrusted with the defendant for carriage to Vishakapatnam to be delivered to the branch office of the second plaintiff under L.R. No. 893648 dated 9-12-1981 insuring the said consignment with the first plaintiff for all risks; that the defendant delivered the said consignment with damage and shortage and informed the same to the consignee by their letter dated 22-12-81; that the lorry which carried the consignment met with an accident on the Bombay Hyderabad National Highway at Mohol village 15 kms. away from Sholapur.

3. The further case of the plaintiffs is that the branch office of the first plaintiff at Vijayawada engaged a surveyor to assess the damage caused to the goods and on such assessment the surveyor submitted a report on 15-1-1982 assessing the value of the damage to goods at Rs. 42,950.62. that on the basis of the survey report the consignee sent notices dated 15-3-82 and 29-3-82 making claims with the defendant to compensate the loss sustained by them. Further the consignee received some items of medicines with breakage and spoiles the value of which is Rs; 3,233.03 which also the defendant being liable to pay in addition to the earlier claim in toto a sum of Rs. 45,949.89 is the amount settled to the second plaintiff by the first plaintiff being its insurer, both the plaintiffs have come forward to file a suit against the carrier for recovery of the said sum as damages.

4. In the written statement filed by the defendant besides generally denying all the allegations it would also be specifically alleged that the suit is not maintainable in the lower Court since the goods were admittedly booked at Bombay and they were consigned to Vijayawada and therefore, this Court has no Jurisdiction to entertain the matter; that apart from that, the contract of carriage on the goods consigned specifically provides that the Court in Calicut alone will have jurisdiction to entertain the suit and therefore the suit cannot be maintained in the lower Court at Madras.

5. It is further alleged that the defendants chartered the truck No. ADT 7244 and the consignments were loaded and while being carried, the truck met with an accident on 10-12-1981 near a village called Mohol about 15 kms from Sholapur, Maharashtra on the Bombay-Hyderabad Highways where the truck turned turtle; that the accident occurred on account of unforeseen and unexpected circumstances and beyond the control of the driver of the truck and there was no negligence or default on his part; that the defendant acted as booking agent and transport contractor and as per terms and conditions of the contract of carriage, at owners risk and under the provisions of Section 152 of the Contract Act the defendant is not liable to pay any damages especially, when the same is due to accident which was beyond their control. On such averments, and questioning other pleadings of the plaint, the defendant would ultimately pray to dismiss the suit.

6. Based on these pleadings by parties, the trial Court having framed seven issues for determination of the questions involved in the claim, ordered for a full-fledged trial to be held in the suit, in which, for oral evidence, one witness has been examined on either side. For documentary evidence, 15 documents have been marked on the side of the plaintiffs as Exs. A1 to A15 and four documents have been marked on the part of the defendant as Exs. B1 to B4.

7. So far as oral evidence adduced by P.W. 1 and D.W. 1 are concerned, they would stick to the pleadings respectively of the plaint and the written statement. Regarding the documentary evidence, so far as Ex. A series marked on the part of the plaintiffs are concerned, Ex. A1 dated 7-12-1981 is the invoice of Parke

Davis (India) Limited to the second plaintiff, Ex. A2 dated 22-12-1981 is the damage certificate, Ex. A3 is the joint inspection report, Ex. A4 dated 15-1-1982 is survey report. Ex. A5 dated 15-3-1982 is the letter of the second plaintiff to the defendant, Ex. A6 is the acknowledgement of Ex. A5, Ex. A7 is the copy of the letter dated 29-3-1982, Ex. A8 is the acknowledgement of Ex. A7, Ex. A9 is the estimate of loss or damage assessed by the second plaintiff dated 7-4-1982. Ex. A10 dated 29-6-1982 is the receipt for Rs. 45,949.89. Ex. A11 dated 22-6-1982 is the letter of subrogation and special power of attorney, Ex. A12 dated 22-6-1984 is the notice of the plaintiffs to the defendant, Ex. A13 dated 16-7-1984 is the reply to Ex. A12. Ex. A14 dated 1-3-1981 is the copy of the insurance policy, and Ex. A15 dated 29-6-1982 is the receipt for the amount of Rs. 45,949.89.

8. So far as the documents marked on the part of the defendant in Exs. B1 to B4 are concerned, Ex. B1 dated 9-12-1981 is the goods forwarding note, Ex. B2 dated 9-12-1981 is the lorry receipt. Ex. B3 is the hire payment advice and Ex. B4 is the invoice for having sent the goods from Bombay to Vijayawada.

9. The lower Court, in appreciation of these evidence placed on record and having its own discussions on the subject towards answering the issues framed, would find that there was enough materials placed on record for the damage having been caused to the goods and since it is the case of the defendant that the damage of goods have not been caused on account of their callousness or negligence, no evidence has been put forth much less examining the truck driver nor even placed any document before the Court to that effect and therefore their contention that the accident did not occur due to either callousness or negligence of the defendant could not be accepted and hence would arrive at the conclusion that the damage to the goods was caused only due to the callousness and negligence of the defendant.

10. Secondly, while deciding the Jurisdiction question in spite of parties being at Bombay and the goods having been sent from Bombay to Vijayawada and further in spite of the goods forwarding note containing a clause to the effect that the Jurisdiction for litigation would arise only at Calicut and on such grounds meeting with the point of jurisdiction, the lower Court going into the contention put forth on the part of the plaintiffs that the goods have been Insured with the first plaintiff and the Insured amount had also been handed over to the second plaintiff by the first plaintiff only at Madras and further the second plaintiff has granted the letter of subrogation and the special power of attorney in favour of the first plaintiff, as per principle of subrogation only at Madras and therefore the trial Court has Jurisdiction to try the suit.

11. In its endeavour to decide this issue, the Court below would find that the letter of subrogation had been executed and signed only at Madras and not accepting the propositions held in two Judgments cited on the part of the defendant, the first one reported in *Globe Transport Corporation Vs. Triveni Engineering Works and Another*, and the second one reported in *South Eastern*

Carriers Limited v. Sha Pavzwal Rickabdas by Devichand, 1979 TLNJ 57 on the ground that they are not applicable to the facts of the case and based on the letter of subrogation having been executed at Madras by the second plaintiff in favour of the first plaintiff and as per the principles of subrogation, held that it has got jurisdiction to try the case and hence would decide this issue also in favour of the plaintiffs. Likewise, the lower Court having decided the other question raised on both sides also would ultimately arrive at a conclusion that the first plaintiff is entitled to recover the amount sought for in the suit and would pass a decree to that effect with interest at 6% per annum from the date of suit till the date of realisation.

12. Aggrieved, the defendant in the suit has come forward to prefer the above appeal suit on certain grounds as brought forth in the ground of memorandum of appeal.

13. In consideration of the facts and circumstances pleaded by the parties and having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that it is a suit for recovery of the damages filed by the plaintiffs, the second plaintiff being the consignee and the first plaintiff being the insurer of the goods transported through the defendant carrier from Bombay to Vijayawada. The extent of damage is assessed at Rs. 45,949.89 and hence both the counsel have come forward to institute the suit claiming the same as damages with interest at 18% per annum from the date of suit till the date of realisation.

14. Though both the parties are from Bombay and in spite of the fact that the goods were sent from Bombay to Vijayawada and further in spite of the fact that the accident, admittedly by the defendant, had taken place where the truck carrying the goods met with the accident and turned turtle resulting in extensive damage having been caused to the goods contained therein, it was assessed through the surveyor of the first plaintiff at Rs. 45,949.89 and since the same has been insured by the second plaintiff with the first plaintiff at Madras. The first plaintiff settled the said amount in favour of the second plaintiff as damages and the second plaintiff executed the letter of subrogation and the power of attorney in favour of the first plaintiff based on which both the plaintiffs have instituted the suit for the recovery of the said sum with interest and costs.

15. On the part of the defendant, they denied any negligence or callousness, further saying that they could not give guarantee for such accident which occurred on the highways on account of many reasons and that the trial Court has no jurisdiction to try the suit since neither of the parties live or carry on business for profit at Madras nor the goods have been sent either from or to Madras, nor any other event connecting the claim took place at Madras for the trial Court to gain jurisdiction to try the suit. In fact during the argument, it is the only point that is stressed on the part of the learned counsel appearing on behalf of the appellant.

16. On the part of the learned counsel appearing on behalf of the respondents/ plaintiffs, he would cite from four cases namely:

(1) A. Abdul Kareem Vs. National Insurance Company Limited, ; (2) Lakshmi Mills Co. Ltd. etc. v. Kalpaka Transport Co. (P.) Ltd., (1994) 2 MLW 543; (3) M/s Best and Crompton Engineering Limited and others Vs. Patel Roadways Private Ltd., Bombay, ; (4) M/s. Ravichandran Transports Mettur Dam, Salem District Vs. United India Insurance Company Limited, Divisional Office, .

All these cases have been decided by this Court at different points of time.

17. So far as the first case reported in A. Abdul Kareem Vs. National Insurance Company Limited, is concerned it has held:

"Under Section 20(c) of CPC if a part of cause of action arose for filing a suit, that Court could have jurisdiction. In this case, admittedly subrogation took place at Coimbatore.

.....

Therefore, looked at from this point of view undoubtedly subrogation has a great bearing and that being a part of cause of action which has arisen in Coimbatore, the order of Court below is correct."

18. In the second judgment cited above and reported in (1994) 2 MLW 543 in the lorry receipt, there is a remark to the effect:

"The Courts in Calicut alone shall have Jurisdiction in respect of claims and matters arising out of this consignment."

Answering this, the learned single Judge of this Court has held that :

"As per decision reported in M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, , the plaintiffs are entitled to file the suit at Coimbatore and the defendant cannot confer jurisdiction on the Court at Calicut alone where its Registered Office is situated in order to compel the plaintiffs to file the suit at Calicut."

19. In the third judgment cited above reported in M/s Best and Crompton Engineering Limited and others Vs. Patel Roadways Private Ltd., Bombay, it is held that agreement between parties conferring exclusive Jurisdiction on one Court is not valid since parties cannot confer jurisdiction on Court where no part of cause of action has arisen.

20. In the last judgment cited above reported in M/s. Ravichandran Transports Mettur Dam, Salem District Vs. United India Insurance Company Limited, Divisional Office, , it is held by the learned single Judge of this Court wherein the suit is based on letter of subrogation executed by the insurer in favour of the Insurance company, such a letter executed in Madras and notarised by notary public, the Court in Madras has jurisdiction to entertain the suit as part of cause of action arises at Madras.

21. In the light of the above decisions rendered at different points of time by this Court, no mention need be necessary that in the case on hand, the trial Court has undoubtedly jurisdiction to try the suit since the letter of subrogation and special power of attorney issued in favour of the first plaintiff by the second plaintiff under Ex. All dated 22-6-1982 and hence the trial Court which tried the suit undoubtedly has jurisdiction to try the same and the only point raised on the part of the appellant, that is the jurisdiction of the lower Court being decided in the above manner, nothing remains to be seen.

22. In the circumstances, this Court is left with no option but to hold that the above appeal has no merits and the same deserves only to be dismissed and it is dismissed accordingly.

The Judgment and decree dated 5319 of 1986 made in O.S. No. 9019 of 1984 by the Court of VII Assistant Judge, City Civil Court, Madras is hereby confirmed.

In the circumstances, there shall be no order as to costs.