

(1980) 02 AHC CK 0064

In the Allahabad High Court

Case No : Second Appeal No. 3141 of 1968 in Civil Appeal No. 65 of 1967 (Suit No. 501 of 1967)

Madan Gopal and Another

APPELLANT

Vs

Balak Ram and Another

RESPONDENT

Date of Decision : 27-02-1980

Acts Referred:

Carriers Act, 1865 — Section 10, 2

Citation : (1980) AWC 397

Hon'ble Judges : K.M. Dayal, J

Bench : Single Bench

Advocate : N.S. Chaudhary, T.P. Singh and J. Swarup, for the Appellant; Alok Chatterjee, Rajendra Kuamr and Shiva Shanker Pandey, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Dayal, J.—This is a Defendant's appeal. The Defendant Appellant is the owner of Bus No. U.P. I. 3346. He was carrying passengers by that bus and one of the passengers was the Plaintiff. The passengers are permitted to take some luggage with them. The Plaintiff was carrying a box and a hold all with him. The Plaintiff wanted to keep this luggage with him inside the bus but it was insisted by the driver and the conductor, the employees of the Appellant, that the goods be placed on the roof of the bus and they will be delivered to the Plaintiff at his destination. When the bus reached the destination, it was found that the goods were missing. Subsequently, the present suit was filed for an amount of Rs. 1456/- the price of the goods lost. Several issues were framed and issue No. 7 was framed about the applicability of Section 10 of the Carriers Act in the present case. The trial court decided all the issues in favour of the Plaintiff except issue No. 7 and held that the suit was bad as no notice was issued to the Defendant u/s 10 of the Carriers Act. Consequently the suit was dismissed. An appeal was filed by the Plaintiff which has been allowed by the court below.

2. The lower appellate court held that the Carriers Act had no applicability and

the Defendant was not a common carrier as defined in Carriers Act. Consequently the Plaintiff was entitled to the price of his goods that were lost by the negligence or misconduct of the servants of the Defendant Appellant.

3. The only question argued before me related to the applicability of Section 10 of the Carriers Act. The learned Counsel for the Appellant argued that the Defendant Appellant was a common carrier as defined in Section 2 of the Act "denoting a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or any land navigation, for all persons in discriminately. "From the definition quoted above, the court below found that the Defendant was not carrying goods for hire but was transporting persons and the business of the Defendant was not of transporting property from place to place. The learned Counsel for the Appellant has relied upon the case of Radhakrishnan Reddiar Vs. Venkatesan Chettiar and Another, In that case the passenger was carrying extra luggage in a bus and had paid charges for carrying that extra luggage. It was held that Carriers Act applied to the luggage which was to be transported by the Defendant for hire. That case was cited even before the Court below and the court below rightly held that that case had no application to the instant case. In our case admittedly no hire was charged for the goods that were taken with the Plaintiff by the Defendant's servants.

4. Another case relied upon by the learned Counsel for the Appellant is D.P. Narasa Reddy Vs. Ellisetti China Venkata Subbayya and Another, . There was an observation as under: "What is required in the case of a person who answers the definition of common carrier under the Carriers Act is that he must be ready to carry for hire as a business and not as a casual occupation. It is essential that he should hold himself out as being ready to carry goods for any person or to carry any passenger no matter who they may be".

5. That case was about the goods lost and the question whether the carrier of mere passengers was a common carrier was not at all involved. The observations made on the basis of Halsburry's Laws of England was merely an obiter.

6. It was not at all required to be decided in that case and, therefore, could have no binding effect. The learned Judge who decided that case was dealing with a case where the Defendant was a Public Carrier and a consignment of Biris worth Rs. 260/- was entrusted to it for transport from Proddatur to Tadipatri. It was a case of Public Carrier and the remark "for carrying the passenger" was not at all relevant for the decision of that case. In my opinion that case does not help the Appellant. In view of the definition of the common carrier and the discussions made above, I am of the opinion that the Defendant-Appellant was not a common carrier and the provisions of the Carrier Act do not apply to him.

7. The present appeal, consequently, fails and is dismissed. There will, however, be no order as to costs.