
(1957) 09 MP CK 0018

In the Madhya Pradesh High Court

Case No : Second Appeal No. 173 of 1952

Mooljee Sicka and Co.

APPELLANT

Vs

Sardar Narhar Singh

RESPONDENT

Date of Decision : 25-09-1957

Acts Referred:

Carriers Act, 1865 — Section 8, 9

Evidence Act, 1872 — Section 101 , 102, 103, 104

Citation : AIR 1959 MP 351 : (1958) 3 MPLJ 25

Hon'ble Judges : B.K. Chaturvedi, J

Bench : Single Bench

Advocate : B.R. Mandlekar, for the Appellant; N.N. Pande, for the Respondent

Final Decision : Allowed

Judgement

B.K. Chaturvedi, J.

This is plaintiff's second appeal against a decree of the 2nd Additional District Judge, Bilaspur, reversing the decree of the trial Court and dismissing the plaintiff's suit.

The facts are that on 21-1-1949 at Bilaspur the plaintiff-firm through the Manager delivered to the defendant No. 2, the driver of a truck of the defendant No. 1, one hundred and twenty bags of tendu leaves for transport to Gondia. It is admitted that Motiram (defendant No. 2) was authorised to enter into contracts on behalf of the defendant No. 1. It was agreed that the plaintiff would pay Rs. 3/8/- per bag as the hire for the transport and Rs. 20/- were paid as advance on this account. The truck No. C.P.R. 578 of the defendant No. 1 left for Gondia loaded with 120 bags that very day, but the bags were never delivered at Gondia. At the rate of Rs. 16/- per bag, the bags of tendu leaves were worth Rs. 1920/- and a suit was filed by the plaintiff against the two defendants for Rs. 1940/-after a demand and after service of a notice.

The suit proceeded ex parte against the defendant No. 2. Defendant No. 1, who

is the respondent in this appeal, contested the suit mainly on the ground that near about 58 miles from Gondia, on 23-1-1949, the bags of tendu leaves caught fire from some sparks accidentally escaping from the coal-gas boiler of the truck and the leaves being dry and inflammable, the whole truck was ablaze and was destroyed along with the leaves by fire. The defendant No. 1 contended that it should be treated as vis major and that there was no negligence.

The main question for consideration in the case was : Was the failure of the contract on the part of the defendants due to vis major or due to negligence? The defendant No. 1 himself had not gone with the truck but had sent the driver (defendant No. 2) and the cleaner Bhaiyalal with the truck. He did not produce in his evidence either the driver or the cleaner or anybody else who was in the truck. He examined himself, but only said that he learnt from his driver and his cleaner about the accident. He also produced Narain Rao (D.W. 2), Maruti Rao (D.W. 3) and Subedar (D.W. 4) to depose that on their way they had seen the truck burning and some persons throwing earth on it to quench the fire. The trial Court observed that there was no evidence to show how the fire had originated. It decreed the suit.

The lower appellate Court was of opinion that u/s 8 of the Carriers Act of 1865 the carrier is liable for loss of goods when such loss or damages arises from the negligence of the carrier or any of his agents or servants. It also conceded that mere loss of, or, the non-delivery of his goods) is prime facie proof of negligence of the carrier, But it came to the curious conclusion that the defendant No. 1's version that the fire was due to sparks accidentally coming out from the coal-gas plant attached to the truck should be believed. It also observed that the defendant No. 1's witnesses (D.W. 2, D.W. 3 and D.W. 4) had also seen the truck burning and that the coal-gas plant of the defendant's truck was obvious to the plaintiff and with open eyes he had sent his tendu leaves, which are inflammable, in this truck and, therefore, he must bear the loss.

In my opinion, the learned Judge of the lower Appellate Court has fallen into an error on a point of law. He has ignored the principle underlying Section 9 of the Carriers Act, 1865 (III of 1865), which relieves the plaintiff of proving negligence. The carrier must exonerate himself from liability for the loss. The mere occurrence of the fire, under circumstances such as the present, is evidence of negligence, the truck with the coal-gas plant on it being under the management of the defendant No. 1's servants; and as they have not been produced to show how the fire originated and no explanation offered, the respondent has not discharged the onus cast upon him by law of showing that there was no negligence, and that being so, the plaintiff was entitled to recover. See Chouthmull Doogar v. The Rivers Steam Navigation Co. ILR 24 Cal 780 The Rivers Steam Navigation Company v. Chouthmull Doogar ILR 26 Cal 398 (PC) and India General Navigation and Railway Co. Ltd. Vs. The Eastern Assam Company Ltd., . In the last case, Rankin J. (as he then was) observed :

"When a defendant is called upon to prove that he was not negligent he is not

really called upon to prove a negative. He is called upon to prove that he took reasonable care The task is burdensome not because the thing to be proved is a negative but because the field within which care has to be proved is quite indefinite and the presumption being against the carrier the defendants' positive proof must cover the whole field."

The respondent must have known that dry tendu leaves are inflammable and while loading in a truck with a coal-gas plant either he ought to have entered into a special contract limiting his liability for negligence, or, ought to have proved that he had taken such reasonable care which would not have allowed the coal-gas plant to emit any live spark. In other words, he ought to have adduced evidence to prove that he had taken such care which, under the circumstances of the case, was reasonably and practically possible to ensure the safety of the goods. In the absence of such evidence, or of a special contract, the plaintiff's suit could not have been dismissed.

If the respondent had adduced evidence to show that he had used all the means to which prudent owners of such public carrier ordinarily have recourse, he would have been deemed to have done all that can be reasonably required of him. and! if even then, his truck had been overpowered by a dust storm or very strong breeze or other natural agency, he would have come within the rule which gives immunity from the effects of vis major or the "act of God".

For reasons stated above, I allow the appeal with costs, set aside the judgment and decree of the lower appellate Court and restore those of the trial Court.