

(2000) 03 SC CK 0134

In the Supreme Court Of India

Case No : P. for S.L.A. (C) No. 1318 of 1999 P. for S.L.A. (C) No's. 298 of 1999, 473 of 1999, 595 of 1999 and 612 of 1999

M/s. Economic Transport Organization

APPELLANT

Vs

Dharwad Distt. Khadi Gramudyog Sangh

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Carriers Act, 1865 — Section 9
Consumer Protection Act, 1986 — Section 14(1)
Evidence Act, 1872 — Section 114
Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : AIR 2000 SC 1635 : (2000) AIRSCW 1724 : (2000) 5 ALT 62 : (2000) 3 CTC 73 : (2000) 4 JT 327 : (2001) 2 LW 106 : (2000) 126 PLR 357 : (2000) 3 SCALE 153 : (2000) 5 SCC 78 : (2000) 2 SCR 888 : (2000) 3 Supreme 232

Hon'ble Judges : M. Jagannadha Rao, J;M. B. Shah, J

Bench : Division Bench

Final Decision : dismissed

Judgement

1. The petitioner is a common carrier governed by the Carriers Act, 1865. It contends that u/s 14(1)(d) of the Consumers Protection Act, 1986 the Consumer Fora can direct payment of compensation to the consumer for loss or injury suffered by the consigner due to the 'negligence' of the opposite party and hence the burden of proof is on the complainant. It is contended that Section 9 of the Carriers Act which imposes burden on the defendant or the common carrier to prove absence of negligence cannot therefore be applied so as to shift the onus to the carrier to prove absence of negligence.

2. In view of the recent Judgment of this Court dated 28th March, 2000 in Patel Roadways Limited v. Birla Yamaha Limited in C.A. No. 9071 of 1996, : [2000]2SCR665 , we are of the view that the liability of the common carriers is that of the insurer. It was held there that Section 9 of the Carriers Act, 1865 applies to matters before the Consumer Fora under the Consumers Protection Act. It was also held that the principle underlying Section 9 of the said Act

relating to burden of proof is a principle of common law and has been incorporated in Section 9 of the Carriers Act. Even assuming that Section 9 of the Carriers Act, 1865 does not apply to the cases before the Consumer Fora under Consumers Protection Act, the principle of common law above mentioned gets attracted to all these cases coming up before the Consumer Fora. Section 14(1)(d) of the Consumers Protection Act has to be understood in that light and the burden of proof gets shifted to the carriers by the application of the legal presumption under the common law. Section 14(1)(d) has to be understood in that manner. The complainant can discharge the initial onus, even if it is laid on him u/s 14(1)(d) of the Consumers Protection Act, by relying on Section 9 of the Carriers Act. It will therefore be for the carrier to prove absence of negligence. It has been held in like circumstances that a defendant in a suit on the basis of a negotiable instrument can discharge the onus lying on him u/s 118 of the Negotiable Instruments Act by relying on another presumption u/s 114 of the Evidence Act under which if a plaintiff does not produce the accounts in his personal custody an adverse inference can be drawn against the plaintiff. *Kundanlal v. Custodian, Evacuee Property* AIR 1961 SC 1316

3. With the above observations and following the above said Judgment in the case of *Patel Roadways* : [2000]2SCR665 we dismiss the special leave petitions accordingly.