

(2012) 01 DEL CK 0059

In the Delhi High Court

Case No : Regular First Appeal No. 656 of 2003

M/s Roadlines Corporation (P) Ltd.

APPELLANT

Vs

M/s. Oriental Insurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Citation : (2012) 4 ILR Delhi 22

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Avni Singh and Mr. Ravi Prakash, for the Appellant;

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 30.4.2003 whereby the suit of the Insurance Company/subrogee/plaintiff has been decreed for Rs.3,02,214/- along with interest at 9% per annum against the appellant/transporter.

2. Before going into the facts of the case, it is relevant to refer to the ratio of the judgment of the Supreme Court in the case of Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd., which lays down that the liability of a transporter is the liability of an insurer, and negligence is statutorily fastened upon a transporter under Sections 8 and 9 of the Carriers Act, 1865. The Supreme Court in this judgment has also held that the only exception to the liability of a transporter is an act of god or an act of enemy of the State and the expression act of god, has to be strictly construed, and for which reason the Supreme Court has held that even when a fire is caused in the godown, the same cannot be treated as an act of god, inasmuch as, the striking of lightening is an act of god and not the causing of fire. Paras 25, 27 and 31 are relevant and which read as under:-

25. We have already reproduced the provisions of Sections 6,8 and 9 above. Section 6 enables the common carrier to limit his liability by a special contract. But the special contract will not absolve the carrier if the damage or criminal act

or that of his agents or servants. In that situation, the carrier would be liable for the damage to or loss or non-delivery of goods. In that situation, if a suit is filed for recovery of damages, the burden of proof will not be on the owner or the plaintiff to show that the loss or damage was caused owing to the negligence or criminal act of the carrier as provided by Section 9. The carrier can escape his liability only if it is established that the loss or damage was due to an act of God or enemies of the State (or the enemies of the King, a phrase used by the Privy Council). The Calcutta decision in *British & Foreign Marine Insurance Co. v. India General Navigation and Ry. Co. Ltd.*, the Assam decision in *River Steam Navigation Co. Ltd. V. Syam Sunder Tea Co. Ltd.*, the Rajasthan decision in *Vidya Ratan v. Kota Transport Co. Ltd.* and the Kerala decision in *Kerala Transport Co. v. Kunnath Textiles* which have already been referred to above, have considered the effect of special contract within the meaning of Sections 6 and 8 of the Carriers Act, 1865 and, in our opinion, they lay down the correct law.

27. From the above discussion, it would be seen that the liability of a carrier to whom the goods are entrusted for carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination, indicated by the consignor. So long as the goods are in the custody of the carrier, it is the duty of the carrier to take due care as he would have taken of his own goods and he would be liable if any loss or damage was caused to the goods on account of his own negligence or criminal act or that of his agent and servants.

31. Thus the expression "at owner's risk" does not exempt a carrier from his own negligence or the negligence of his servants or agents.

(Underlining added)

3. The undisputed facts in the present case are that the appellant vide its invoice no. 2941 dated 30.3.1999 took upon the transportation of 16 packages comprising of colour picture tubes from Malanpur to New Delhi. The goods receipt is dated 30.3.1999 and the goods were loaded in truck no. HR-38-C-7829, and which truck met with an accident enroute at Agra. The owner/defendant no. 2 suffered a loss of Rs.3,03,715/- and for which, claim was lodged on the plaintiff/respondent/Insurance Company after a notice was sent u/s 10 of the Carriers Act, 1865 to the appellant/defendant no. 1 vide letter dated 23.4.1999. The goods were covered under the Marine Insurance Policy No.214600/21/99/00078 and the plaintiff/Insurance Company therefore appointed surveyor who gave reports dated 13.4.1999 and 30.4.1999. The respondent/plaintiff/Insurance Company thereafter in view of the survey reports paid the amount to the owner of the goods/defendant no.2 and thereafter being subrogated filed the subject suit.

4. Learned counsel for the appellant/defendant no.1 argued before this Court three principal points:-

i) That the Courts at Delhi had no territorial jurisdiction;

ii) By virtue of a clause in the policy, the transporter/appellant was exempted from any liability; and

iii) There was no negligence of the appellant/transporter.

5. In my opinion, issue nos. 2 and 3 are fully covered by the judgment of the Supreme Court in the case of Nath Brothers Exim International Ltd.(supra), and therefore, the transporter/appellant cannot contract out of his liability, inasmuch as, liability is statutorily fastened upon a transporter under the Carriers Act, 1865. The liability of a carrier is the liability equivalent to that of an insurer. Accordingly, once it is proved and admitted on record that there was an accident involving the truck of the appellant/transporter, statutory liability on account of negligence is fastened upon the appellant/transporter, and therefore, the appellant has rightly been held to be liable.

6. So far as the issue of this Court not having territorial jurisdiction is concerned, I find that the Trial Court has exhaustively dealt with this aspect in paras 8 to 13 of the impugned judgment and which read as under:-

8. Issue No.1:-

i. Whether this Court has no territorial jurisdiction to try the present suit as alleged in the W.S." OPD.

The onus of proving the aforesaid issue lays upon the defendant. In order to discharge the onus Mr. Anup Lr. Shukla appeared as DW1, who filed his examination in chief by way of affidavit and deposed on the line of the pleadings. It is contended on behalf of the defendant that the goods were entrusted to defendant No.1 for transportation Ex.Malanpur to New Delhi by defendant no.2 was not damaged within the jurisdiction of this Court. He further argued that accident did not occur within the territorial jurisdiction of this Court as the consignment was to be delivered to New Delhi as the accident took place in "AGRA" which does not fall within the jurisdiction of this Court.

9. On the other hand, the counsel for the plaintiff urged that goods were entrusted at Malanpur and were to be delivered at New Delhi. It is further argued that the goods were insured at Delhi and claim was settled at Delhi. The payment was also made by the plaintiff to the defendant no.2 at Delhi. In "AIR 1992 SC 1915 in the matter of M/s. Patel Roadways Ltd. vs. M/s. Prashad Trading Co.", wherein their Lordships were pleased to make the following observations:-

Under Section 20(c) of the Code of Civil Procedure, it a part of cause of action arose for filing suit, that court could have jurisdiction.

10. In another judgment as reported in Kalpaka Transport Co. Ltd. Vs. The Oriental Fire and General Insurance Co. Ltd. and Another, , it was held that :-

Civil P.C. (5 of 1908), S.20 - Transfer of Property Act (4 of 1882), S.92 - Jurisdiction of Civil Court - Suit for damages - Goods transported from place "A" to Place "S" - Contract of Carriage provided that Court at place "C" alone will

have jurisdiction to decide disputes among the parties -Subsequently letter of subrogation and Power of Attorney granted in favour of insurer at place "D" - Suit for damages filed at place "D" by insurer and consignee- Maintainable.

11. On perusal of the judgments (supra), it appears that Court has a jurisdiction where part of cause of action arose. PW1 Sh. Sukhjeevan Singh specifically deposed in his examination in chief that the defendant no.1 has got its Branch Office at Delhi and works for gain within the territorial jurisdiction of this Court, but there is no cross-examination on this material point. It is a settled proposition of law as per the Evidence Act that if any part of the statement of any witness is not challenged in cross-examination, then it would be an admission of the truthfulness of the question as has been held in various judgments cited as under:

i. 1976 RLR (N) 112

ii. 1997 RLR 331

12. It has been held in case titled as The Commissioner of Income Tax Vs. M/s. Prudential Builders, , as under:-

Civil Procedure Code, 1908-Order 7 Rule 10 Section 20(1), Explanation -Return of plaint:

Territorial jurisdiction: Place where principal office is situated (whether or not business actually carried on there) or place where business is carried or giving Rise of Corporation situated as such -Explanation to Sec. 20 relates to clauses (a) & (b) and not to clause (c) - This Court has territorial jurisdiction as cause of action has arisen in Delhi as defendant approached plaintiff in Delhi and appointed him as agent at Delhi and Commission payable at Delhi as per term and condition of agreement.

13. It is important to mention here that aforesaid statement of PW1 has also been corroborated in the testimony of DW 1, which shall demolish the defence of the defendant as set up in the written statement. The relevant portion of the statement is re-produced as under:

The office of the defendant no.1 also situated in Delhi.

Further-more, in the instant case, the goods were insured at Delhi and the claim was settled at Delhi and the payment was also made by the plaintiff to the defendant no.2 at Delhi, therefore, I have no hesitation to hold that part of cause of action certainly arose at Delhi. So, the issue no. 1 is decided against the defendant and in favour of the plaintiff.

7. No fault can be found with the aforesaid findings inasmuch as the Courts at Delhi had territorial jurisdiction because part of the cause of action had arisen at Delhi. The appellant had issued the transportation receipt, as agreed by the counsel for the appellant, at Delhi, the goods were also to be transported to Delhi, the Insurance Company/respondent/plaintiff had also paid the amount

under the Insurance Policy to the defendant no.2/owner at Delhi. Once there are these undisputed facts, the Courts at Delhi would have territorial jurisdiction.

8. In view of the above, I do not find any fault with the impugned judgment and decree for the same to be set aside in this appeal. The appeal therefore being devoid of merits is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.