
(1998) 07 AP CK 0029
In the Andhra Pradesh High Court
Case No : AS No. 22 of 1995

Prakash Road Lines (P) Ltd. and Another	APPELLANT
Vs	
H.M.T. Bearing Limited, Hyderabad	RESPONDENT

Date of Decision : 16-07-1998

Acts Referred:

Carriers Act, 1865 — Section 2, 9
Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (2001) ACJ 40 : AIR 1999 AP 106 : (1998) 5 ALD 198 : (1998) 5 ALT 378 : (1998) 3 APLJ 124

Hon'ble Judges : T. Ranga Rao, J;P. Rama Krishnam Raju, J

Bench : Division Bench

Advocate : Mr. Ravi S, for the Appellant; Mr. A. Krishna Murthy, for the Respondent

Judgement

P. Ramakrishnam Raju, J

1. The defendants are the appellants. The 1st defendant is a company registered under Companies Act with its registered office at Bangalore, which is a "common carrier" within the meaning of Section 2 of the Carriers Act, 1865 (for short "the Act"). The 2nd defendant is a branch of the 1st defendant-Company at Hyderabad.

2. The respondent plaintiff had entrusted to the 2nd defendant at Hyderabad on 24-1-1983, 26-2-1983, 9-3-1983 and 23-3-1983 some consignments of bearing valued at Rs. 1,45,726-71 ps., for the purpose of transporting them from Secunderabad to Delhi and for safe delivery to the consignee as per the lorry receipts/way bills. The 2nd defendant accepted those consignments and issued lorry receipts concerning those consignments. The plaintiff was informed through letter dated 15-4-1983 addressed by the 1st defendant that the consignments booked by the plaintiff were burnt in a fire accident on the intervening night of 4/5-4-1983. The plaintiff accordingly demanded the defendants to pay the value of the consignments. Which is a sum of Rs.1,45,726-71 ps., towards the loss

sustained by it. The 1st defendant, however, informed the plaintiff that the defendants are prepared to meet the loss to an extent of 10% out of the declared value in the first instance, but later raised the same to 20%. The plaintiff did not accept the said proposals, but insisted on payment of the value of the goods with interest at 18% per annum and as there was no positive response from the defendants, the plaintiff filed the suit.

3. The 2nd defendant in its written statement stated that their head office is located at Bangalore and that it is a branch office of the 1st defendant, which was entrusted with the consignments by the plaintiff. It is stated that the true value of the consignments was not known to them, but the declared value of the consignments is only Rs.1,25,152/- but not Rs.1,45,726-71ps. The consignments were accepted subject to the jurisdiction of the Bangalore Courts and the terms and conditions of the consignment were clearly noted in the lorry receipts. As there was fire accident in the Delhi branch it was informed to the plaintiff on 15-4-1983 by way of a letter. As the consignment was booked at owner's risk, the defendants are not liable for any loss or damage to the plaintiff. The defendants are not liable to pay any amount towards damages since no negligence was proved on their part. In spite of the defendants taking all reasonable care and precautions for the safety of the goods, fire broke out, for which the defendants cannot be made liable. Some of the consignments were lying in the godown for 20 and 30 days as the plaintiff did not lift them within the reasonable time and "when once the goods reached the destination safely but they could not be lifted due to the lethargy on the part of the plaintiff, the defendants are at no fault and, as such, there is no negligence attributable to them.

4. Before the lower Court the Plaintiff examined two witnesses besides marking Exs.A1 to A18 while two witnesses were examined on behalf of the defendants. On a consideration of the entire evidence on record, the lower Court decreed the suit as prayed for but with future interest at 6% per annum on the principal amount of Rs.1,45,726-71 ps., from the date of the suit till the date of the decree.

5. Mr. S.Ravi, learned Counsel appearing for the appellants, submits that the decree passed by the lower Court cannot be sustained as the said Court has no territorial jurisdiction to entertain the suit in view of the fact that a stipulation was made in the lorry receipts that the dispute shall be subject to Bangalore jurisdiction only. It is also his contention that inasmuch as it is mentioned in the lorry receipt that delivery is at owner's risk, the owner alone has to take the risk and it is no part of the duty of the carrier to reimburse the loss. He further submits that the goods have reached the destination safely, but the plaintiff has failed to take delivery of the goods within a reasonable time and, consequently, the goods remained in the godown of the defendants and as fire broke out the goods were damaged and so it is due to the lethargy on the part of the plaintiff the goods could not be taken delivery of and, as such the defendants cannot be

made liable for the loss or damage.

6. "Common carrier" as defined u/s 2 of the Act denotes a person engaged in the business of transporting property for hire from place to place for all persons indiscriminately. Section 9 of the Acts fixes the liability on the "common carrier" for any loss or damage or non-delivery of goods entrusted to him for carriage and the plaintiff need not establish that such loss, damage or non-delivery was due to the negligence on the part of the carrier, his servants or agents. Therefore, it is clear that the common carrier has the responsibility under the statute to ensure safe delivery of the goods at the destination. In the case of loss or damage or non-delivery of goods, the plaintiff need not establish that the loss or damage or non-delivery occurred due to negligence on the part of the carrier, his servants or agents. In this case admittedly, the goods were damaged due to fire accident that occurred during the intervening night of 4/5-4-1983 before delivery to the consignee. Therefore, the plaintiff is entitled to recover the loss or damage that occurred to it due to the non-delivery of the goods entrusted by it to the defendants.

7. The learned Counsel for the appellants submits that the lorry receipt clearly contains a note "subject to Bangalore jurisdiction only". No doubt, the defendants got printed this note at the bottom of the lorry receipts under Exs.A12 to A14. It is not in dispute that this note is not signed by the plaintiff. However, it is the contention of the learned Counsel for the appellants that inasmuch as the plaintiff has obtained the receipt, paid the fare, entrusted the goods and sought for recovery of the goods under the said receipt, it must be deemed to have accepted to the said condition that any dispute shall be subject to Bangalore jurisdiction only. u/s 20 CPC, a suit can be instituted where any of the defendants resides or carries; on business or where the cause of action arises, wholly or in part. Therefore, law provides an option to the plaintiff to choose its forum where more than one Court has jurisdiction to try the suit. It is open to the parties to choose one of the forums for filing the suit by agreement and exclude the other forums, but it is not competent to the parties to invest jurisdiction on a Court when it has no jurisdiction as consent cannot confer jurisdiction. In this case, extending the above principle the learned Counsel for the appellants contends that the parties have by consent agreed to approach the Court at Bangalore and therefore, the Subordinate Judge's Court, Ranga Reddy district has no jurisdiction. The note (subject to Bangalore jurisdiction only) printed in the lorry receipt is not signed by the plaintiff. There is no evidence that this condition was brought to the notice of the plaintiff and he has acceded to the said clause. It must be remembered that people often sign order forms containing lot of printed material without caring to read or knowing what is printed and if everything that is printed on such form is taken as part of the contract, without anything further, it would be reading more terms into the contract for which there had been no consensus ad idem between the parties. Therefore, it is always necessary that the Courts should insist that the printed material or the note made thereunder should be made known to the parties

before the same is read into the contract as one of its integral terms. Therefore, we are of the view that mere presence of a printed note at the bottom of the lorry receipt does not form part of the contract, which can be enforced in a Court of law, in the absence of a proof that the same was brought to the notice of the plaintiff and that it has accepted it is a term of the contract. In *M/s. Patel Roadways Pvt. Ltd. Vs. The Republic Forge Co. Ltd.*, this Court took the view that in the absence of proof that the parties agreed that only a particular Court should have jurisdiction, it cannot be postulated that such a condition should be deemed to be an integral part of the agreement. To the same effect is another decision this Court reported in *M/s.B.A. Transport Co. vs. Bankatlal*, 1982 (1) APLJ 284. These decisions have been approved by a Full Bench of this Court in *M/s. East India Transport Agency, Hyderabad Vs. National Insurance Co. Ltd.* and another, in view of the Full Bench decision, this issue is no longer *res Integra*. Therefore, following the Full Bench decision, we have no hesitation in coming to the conclusion that the mere fact that a note is printed in the lorry receipt or consignment note, the same cannot be deemed to have been incorporated as one of the integral terms of the agreement.

8. The next contention of the learned Counsel for the appellants is that the goods are transported at owner's risk and therefore, the plaintiff cannot claim any damages. The printed form of lorry receipt/way bill shows that the goods are transported at carrier's risk, but the word, "carrier" as printed was struck off and the word "owner" was written. Even here, there is no evidence whether this modification in the lorry receipt was brought to the notice of the plaintiff and whether it was accepted. The reasons given by us in this Judgment in respect of the note regarding jurisdiction of the Court also equally apply to this contention also. Apart from that, Section 9 of the Act positively imposes an obligation on the part of the defendants to transport the goods to the destination and deliver them safely to the consignee and the plaintiff has no duty to establish or prove any negligence on the part of the defendants in this regard. Therefore, this submission also, in our view, has no force.

9. The next contention raised by the learned Counsel for the appellants is that inasmuch as goods were safely transported to the godown and it is the plaintiff that has failed to collect the goods within the reasonable period. The plaintiff cannot claim any compensation for loss or damage that occurred to the goods. This contention in our view, has no force. Under the Act no such distinction is possible in respect of the goods that are lost or damaged during the transit or while they were in the custody of the carrier before delivery after the goods reached the destination. u/s 9 of the Act the liability to answer for the loss, damage or non-delivery is the same whether it occurred during the transit or after the goods have reached the destination and while they were kept in the godown of the carrier. Therefore, the defendants cannot escape their liability on the ground that the plaintiff has failed to collect the goods within a reasonable time. May be the defendants are entitled to collect demurrage charges if there is delay in collecting the goods by the plaintiff or the defendant may be entitled to

dispose of the goods after following the procedure for disposal of the goods in case the plaintiff or the consignee fails to take delivery of the same before the stipulated date according to the terms of the contract. But, the liability of the defendants for the loss or damage that occurred to the goods cannot be evaded merely because the plaintiff or the consignee did not collect the goods immediately on reaching the destination. Hence, this submission also has no force in our view.

10. The learned Counsel for the defendants, however, feebly raised a contention that there is no negligence on the part of the defendants inasmuch as fire broke out accidentally during the night, for which they are not reasonable. In our view Section 9 of the Act is a complete answer for this contention. Proof of negligence is not sine quo non for claiming damage by the plaintiff in the case of loss or damage to the goods transported by a carrier. On the other hand, Section 9 is categorical in its terms that no such liability to prove any negligence by the carrier can be placed on the plaintiff, who seeks to recover loss or damages that occurred to his goods.

11. For all the above reasons, we do not find any ground to interfere with the findings of the lower Court. The appeal therefore fails and it is accordingly dismissed, but in the circumstances without costs.