

(1993) 01 MAD CK 0065
In the Madras High Court
Case No : A. No. 404 of 1983

Prakash Roadlines Pvt. Ltd.

APPELLANT

Vs

United India Fire and Genl. Ins. Co. Ltd. and Another

RESPONDENT

Date of Decision : 06-01-1993

Acts Referred:

Carriers Act, 1865 — Section 2, 9

Citation : (1994) ACJ 1069 : (1993) 1 LW 672

Hon'ble Judges : M. Srinivasan, J;A. Thangamani, J

Bench : Division Bench

Advocate : V. Balasubramaniam, for the Appellant; S. Sampath Kumar and A.P.S. Kasthurirangan, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, J.—The second plaintiff carries on business in manufacturing textile machineries, diesel engines, machine tools, etc. and he purchased aluminium alloy flakes from Associated Textile Engineers Private Limited, Ahmedabad. The goods were despatched from Odhav, Ahmedabad, to the second plaintiff at Coimbatore through the defendant's transport company. They were entrusted to the defendant on 16.5.1978. The lorry met with an accident on 26.5.1978 on the way and the entire goods were lost. After exchange of notices, the second plaintiff along with the insurer (first plaintiff) filed the suit in the court of the Subordinate Judge, Coimbatore, for recovery of a sum of Rs. 78,886.08. The suit was contested by the defendant mainly on the ground that there was no negligence on the part of the defendant and the court at Coimbatore had no jurisdiction to try the suit. Both the contentions were negated by the trial court and a decree was passed as prayed for. The aggrieved defendant has preferred this appeal.

2. It is contended before us that the court at Coimbatore has no jurisdiction to try the suit as there is an express clause in the lorry receipts that any dispute is subject to Bangalore jurisdiction. The said clause is printed at the bottom of the

lorry receipts. It is argued that excepting in the courts at Bangalore, no suit could be filed in any other court. There is no merit in the contention as the court at Bangalore has no jurisdiction at all to deal with the matter. The contract was entered at Ahmedabad and the goods were entrusted at Ahmedabad. The goods were to be delivered at Coimbatore. Hence the court at Ahmedabad as well as the court at Coimbatore will have jurisdiction. But the court at Bangalore will not have jurisdiction just because the head office of the defendant is situate at Bangalore. Even assuming that the court at Bangalore has jurisdiction, the clause in the lorry receipt will not prevent the plaintiffs from instituting the suit at Coimbatore as the jurisdiction of the court at Coimbatore is not excluded by the contract. It is well settled that if two courts have jurisdiction, the plaintiff may be prevented by agreement from instituting the suit in one court and not in the other. But, in the present case, the clause merely says subject to Bangalore jurisdiction. That will not in any way exclude the jurisdiction of the court at Coimbatore.

3. The position of law is clearly set out by the Supreme Court in *M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company*, . There is no need to elaborate a discussion on the question any further, in view of the fact that the judgment of the Apex Court governs the situation. Hence the contention of the defendant that the court at Coimbatore has no jurisdiction is rejected.

4. It is next contended by learned counsel for appellant that there is no evidence on record to prove negligence on the part of the defendant. It is submitted that unless the defendant is negligent, he cannot be made liable for damages as claimed by the plaintiff. It is argued that the only evidence on the side of the plaintiff is that of PW 1 and it does not in any way prove negligence of the defendant. Reference is made to the evidence of DW 2, the driver of the lorry. According to his evidence, he had taken all the necessary precautions to keep the lorry in good condition and there was no reason whatsoever for the outbreak of the fire. DW 2 has stated that he does not know the reason for fire, when he was driving the lorry, he saw all of a sudden fire in the rear and when he got down he found that the rear door was burning. According to his evidence, he tried to stop the fire by overturning the lorry. But he could not do so. He attempted to throw mud and sand besides pouring a bucket of water. According to him, the fire could not be extinguished and the entire lorry was burnt.

5. The evidence of DW 2 is not sufficient to show that there was no negligence whatever on the part of the defendant. The plaintiff cannot certainly give evidence as to what happened on the way in between Ahmedabad and Coimbatore. The burden is only on the defendant transporter to prove that there was no negligence on its part. The defendant must establish by adducing evidence before court that there was absolutely no negligence on its part. If the defendant raised the plea that the fire was not due to any negligence on his part but due to the act of God or vis major and proved the same, it could be accepted. In the absence of such plea, it has to be inferred that the defendant

was negligent because the fire was due to a mistake in the lorry or due to some careless act of the driver or cleaner.

6. This aspect of the matter had been considered by a Division Bench of this court in *Kalasami v. Ponnuswami* AIR 1962 Madras 44. Dealing with a similar contention, the Bench observed:

A common carrier is one who undertakes for reward to carry for hire from one place to another goods of those persons who choose to employ him. Section 2 of the Carriers Act, 1865, defines him as a person other than the Government engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately. The duty of a common carrier is to receive for carriage all goods offered, provided they are of the proper kind and properly packed, and he has the convenience to carry them. The employer would be bound to pay hire as stipulated. The common carrier employed would be bound to provide safety of the goods during the carriage till delivery, unless prevented by an act of God, enemies of the State or unless the loss of or damage to goods arises from inherent defect in the goods or by reason of their packing... Thus, a common carrier, to whom goods are entrusted for transport, should provide a reasonably fit and proper vehicle for carriage of the goods entrusted, carry them safely, load and unload them properly and deliver the same at the destination. A common carrier being thus under an obligation to deliver the goods safely would be liable to what happens to them during the time when he is in custody. His liability, therefore, is said to be that of an insurer.

7. The judgment of the Bench was followed in *Gunakumar, P.S. v. V. Ramamurthy Metal Decorating Industries Pvt, Ltd.* 95 LW 147.

8. Learned counsel for the appellant placed reliance on the judgment of a learned single Judge reported in *The Manager, Doars Transport (P.) Ltd. Vs. The Canara Bank and another*, . That was a Second Appeal in which the lower appellate court had found that there was no negligence whatsoever on the part of the carrier. Sitting in the Second Appeal, the learned single Judge accepted the finding of the final court of fact and held that in view of that finding, the carrier could not be made liable u/s 9 of the Carriers Act. The ruling does not in any way help the appellant in the present case.

9. In view of the evidence on record, we agree with the court below that the defendant is responsible for the fire accident and he is liable to pay the damages claimed by the plaintiffs.

10. An attempt is made by learned counsel for the appellant to challenge the quantum of damages awarded by the court below. According to him, the evidence is not sufficient. But, we do not find any merit in this contention. The records show that the value of the goods has been mentioned and it has been paid by the first plaintiff to the second plaintiff. Hence, there is no substance in the contention.

11. The appeal fails and is dismissed. No costs.