

(1964) 02 MAD CK 0010

In the Madras High Court

Case No : Civil Revision Petition No. 1178 of 1961

Radhakrishnan Reddiar

APPELLANT

Vs

Venkatesan Chettiar and Another

RESPONDENT

Date of Decision : 07-02-1964

Acts Referred:

Carriers Act, 1865 — Section 8

Citation : AIR 1964 Mad 476 : (1964) ILR (Mad) 393 : (1964) 77 LW 247

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : K.S. Desikan and K. Raman, for the Appellant; S. Sitarama Iyer and S. Rajarama Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Venkatadri, J.—This revision petition arises out of an action by the first respondent herein against the owner of a bus, the first defendant and

the conductor of the bus, the second defendant, for the recovery of a sum of Rs. 303-37, being the value of a bag of betel-nuts which was lost by

the negligence of the first defendant and his servant, while he was travelling in his bus from Panruti to Tirukoilur. It is in record that the first

respondent herein paid extra charges for his luggage to be carried to his destination. The luggage was handed over to the conductor who stowed it

on the top of the bus. On arriving at the destination, the first respondent found" his baggage missing and immediately reported it to the conductor,

and afterwards also to the owner of the bus. The defendants attempted to trace the baggage, but subsequently they disowned their liability.

According to them, it was the duty of the passenger to take care of his luggage, and it was due to his carelessness and negligence that the luggage

was lost.

The first respondent herein filed the present suit for recovery of the value of the baggage of betel nuts. The learned District Munsif held that the first

defendant was a common carrier, and, as such, he was liable u/s 8 of the Carriers Act, III of 1865, which provide that every common carrier is

liable to the owner for loss of, or damages to, any property delivered to such carrier to be carried, where such loss or damage has arisen from the

negligence or criminal act of the carrier or any of his agents or servants. The learned District Munsif decreed the suit as prayed for. It is against this

judgment and decree, the first defendant, the owner of the bus, has filed the present revision petition.

2. Learned counsel for the petitioner seriously contended before me that his client is not liable for the loss. According to him, the bus is intended

only to carry passengers, and it is, therefore, the duty of the passenger to take care of his luggage, while travelling in the bus, and that therefore, he

should not be held liable or responsible for the passenger's luggage, inasmuch as there is no privity of contract between the passenger and the bus

owner that he would safely deliver the luggage at the destination.

3. What are the duties of a public carrier is now the Question for consideration. The Indian Carriers Act presumes the general liability of common

carriers for the safe conveyance and due delivery of goods delivered to them. It makes no distinction between personal luggage and other goods of

merchandise. The Act is intended to protect both carriers as well as the persons who employ them. On the one hand there is the extraordinary

severity of the general law as to the carriers. On the other hand, there is the extreme leniency and one sidedness of the terms which carriers

secured to themselves by special contract-terms which are often submitted to by the customer without his being aware of what he is doing, it also

imposes liability on the carriers in case of loss or damage due to their negligence or criminal act or any of their agents or servants.

4. Dealing with the carrier's liability for passengers' luggage, Mr. Otte Krhnfreund in his book "The Law of Carriage by Inland Transport" at page

335 observes as follows:

In this, as in all other cases of common carrier's liability, the carrier does not insure against the four excepted perils; act of God, act of the

Queen's enemies, inherent vice and consignor's fault, to which, in this case, must be added the passenger's own fault. Of them the last is by far the most important. If luggage is carried by railway in the van of the train by which the passenger is travelling, or in a motor coach on the roof or in the dickey, the carrier is liable for the luggage in the ordinary way. With regard, however, to luggage taken by the passenger in the compartment or in the coach along with him, it may be that full control over such luggage is not given to the carrier. If the passenger himself takes charge of the luggage, the position of the carrier is modified; if a passenger has assumed in whole or in part the custody and control of his own luggage, the carrier is not liable for any loss or injury occurring during its transit which has been caused by the act or default of the passenger. Even in respect of luggage carried in the compartment or coach with the passenger the carrier remains liable as a common carrier, but there is this modification, that if the passenger has interfered with the carrier's control, the carrier is not liable for loss or injury due to that interference.

In *Corpus Juris Secundum* Vol. XIII, the law on the subject has been summed up in the following words at page 861 :

At common law a carrier is responsible as an insurer only for the personal baggage of a passenger, and not for merchandise" or other articles which properly constitute freight. Articles of merchandise which are not for the personal use of the traveler on his journey, but, which are carried for the purpose of sale or trade, are not ordinarily included in the term "baggage"; the carrier is not obliged to carry them except on the payment of additional compensation, and in the absence of knowledge thereof cannot be held liable for them as for baggage, even though taken in a trunk, such as is usually used for holding personal effects, or mingled with other articles which are properly baggage. The liability of the carrier in such a case is that of a gratuitous bailee, and, in order to recover for loss of, or injury to the property carried, gross negligence or wilful injury must be shown. A carrier may, however, contract to carry as the baggage of a passenger merchandise which is not ordinarily regarded as a baggage, and if it does so, it is liable as a common carrier".

In the instant case, the petitioner, as the owner of the bus, collected extra charges for carrying the luggage in his carrier. The luggage was stowed

on the top of the bus by the conductor. The conductor has, thus, taken control of the respondent's baggage of betel nuts And, while the first

respondent was travelling in the bus he had neither control nor custody of the luggage. It is not the case of the petitioner herein that he entered into

a special contract with the first respondent, in order to relieve himself of the liability for loss of his luggage. In one of the earliest of decisions,

Brooke v. Pickwick, (1827) 4 Bing 218 , Best C. J. observed as follows :-

.....they attract customers under the confidence inspired by the extensive liability which the common law imposes on carriers, and then

endeavour to elude that liability by some limitation which they have not been at pains to make known to the individual who has trusted them.

In another case reported in 1 Conyas" Rep. 24, it was held that, where there was no express contract for the carriage, but by the custom and

usage, every passengers used to pay for the carriage of goods, the coachman was liable for the loss of goods. In Halsbury's Laws of England, 3rd

Edn. Vol. 4 page 434, the learned author sums up the law under the heading ""Carrier's liability"" thus:

The liability of common carriers in respect of articles carried as passengers" luggage is that of carriers of goods as distinguished from that of

carriers of passengers unless the passenger himself takes personal charge of the luggage. A carrier is liable for the safe custody of the hand luggage

retained by the passenger, unless he proves that the passenger took the luggage under his sole charge and that its loss was caused or contributed to

by the passenger's negligence.

In Raipur Transport Co., Raipur v. Ghansham Das, ILR (1955) Nag 786 :AIR 1956 Nag 145 the owner of a transport company was sued for the

loss of one bag of bidis in transit. The transport company contended that there was a contract to the effect that the goods were carried only at the

owner's risk, as shown in the ticket It was held that, where a carrier set up a special contract by reference to a condition printed on a ticket, he

could not succeed unless he could prove either that the. opposite party, when he accepted the ticket, knew of the condition or that everything

reasonably necessary to bring the condition to his notice had been done.

5. On a review of the entire case law on the subject, I am of opinion that the learned District Munsif has come to the right conclusion in decreeing

the suit of the first respondent herein. The revision petition¹ is" accordingly dismissed. No costs.