
(1979) 10 AP CK 0011
In the Andhra Pradesh High Court
Case No : A.S. No. 697/77

Savani Transport Pvt. Ltd.	Vs	APPELLANT
C. Ahmed Sharif Saheb, Partner Hidayat and Co.		RESPONDENT

Date of Decision : 15-10-1979

Acts Referred:

Carriers Act, 1865 — Section 10, 8, 9
Specific Relief Act, 1963 — Section 10

Citation : (1981) ACJ 98

Hon'ble Judges : Madhava Reddy, J

Bench : Single Bench

Advocate : S. Balchand, for the Appellant; M. Adinarayana Raju, for the Respondent

Final Decision : Allowed

Judgement

Madhava Reddy, J.—This appeal is by the Plaintiff, whose suit O.S. No. 227/72 on the file of the Subordinate Judge's Court, Vijayawada, for recovery of damages of Rs. 8,122/- was dismissed. A few facts necessary for the appreciation of the contentions of the parties may be briefly stated.

2. The Plaintiff-company are carriers doing their business among other places, at Vijayawada. The Defendant also is a carrier. The Plaintiff-company entrusted 50 bales of jute twine to the Defendant through the driver of its lorry No. APV. 5319, one A. Rama Rao, for carriage from Vijayanagaram to Vijayawada under their booking invoice No. 6529 dated 9.11.1971. The Defendant undertook to carry the said goods and acknowledged the same by signing the booking invoice No. 6529. The driver of the Defendant-carrier transported the goods in the said vehicle from Vijayanagaram and effected delivery of the same to the Plaintiff. Most of the bales were received in a damaged condition, particulars of which were given in goods receipt No. 6724 dated 13.11.1971 issued to the driver at the time of delivery. The condition of the goods when delivered to the Plaintiff at Vijayawada was acknowledged by the driver under the said receipt by affixing his

signature. The driver also promised to reimburse the Plaintiff for the loss or damage. The Plaintiff averred that the Defendant was liable for all the acts of negligence, malfeasance and misfeasance of its driver. The goods in the ordinary course of transport ought to have reached Vijayawada within 10 hours of the entrustment, but actually reached on 13.11.1971. The damage to the goods was as a result of an accident met by the lorry reroute and the goods being left by the Defendant unattended in the open. The jute twine bales fell into a canal and were completely soaked. The Plaintiff further pleaded that the goods having been entrusted to the Defendant's driver, the Defendant was under an obligation to deliver the same in the condition in which they were entrusted and the damage occasioned by the negligence of the Defendant's driver must be made good by the Defendant. Upon a notice being issued, the Defendant denied his liability and refused to reimburse the Plaintiff for the damage suffered. The damage was stated to be Rs. 8,322.00 and after adjusting the balance of the freight payable to the Defendant, the suit was laid for the recovery of Rs. 8,122.00 with future interest at 6%.

3. In his written statement, while admitting the fact of entrustment of 50 bales of jute twine to the driver of the Defendant's vehicle to be carried to Vijayawada, the Defendant denied that his driver had any authority to enter into a contract of carriage and, that in any event, it was in excess of the authority vested in the driver who was a mere employee of the Defendant. It was assessed that the accident was not the result of any negligence on the part of the driver. It was occasioned by the abrupt burst of the left front tyre. The driver immediately informed- the Plaintiff as well as the Defendant about the accident, but the Plaintiff did not choose to take any steps to ensure the safety of the goods. Ultimately, the driver with great difficulty got the lorry lifted and the goods reloaded in the lorry as required by the Plaintiff and transported the same to Vijayawada. At that time the Plaintiff inspected the bales and was satisfied about their condition and sent the same to Bombay without any objection. It was stated that in the circumstances, the plea that the goods were damaged as a result of the accident cannot be sustained. It was also denied that the driver acknowledged the damage to the goods by signing the receipt. He was not a well-educated person and mere affixture of his signature on the receipt cannot bind him as acknowledgment of the contents thereof. The Defendant also pleaded that the Plaintiff did not employ the Defendant's vehicle on its own account. The contract was in effect between the Defendant and the owner of the goods. The Plaintiff acted only as an agent of the owner of the goods, the owner of the goods being Aruna Jute Mills, as such the Plaintiff-company is not entitled to maintain the suit for damages. The Plaintiff-company itself being a common carrier and having entrusted the goods for transport to another common carrier cannot maintain the suit. The Defendant sought leave of the Court to read the contents of the reply notice as part of the defence.

The trial Court settled the following issues:

1. Whether the contract of carriage pleaded in the plaint is true, valid and binding on the Defendant ?
2. Whether the invoice No. 6529 dated 9.11.71 and the receipt No. 6724 dated 13.11.71 are true and binding on the Defendant ?
3. Whether the Plaintiff sustained any damage at all as alleged in the plaint and if so to what extent ?
4. Whether the Plaintiff is entitled to claim damages against the Defendant?
5. Whether the suit is bad for non-joinder of parties ?
6. Whether the accident is due to the negligence of the Defendant's driver ?
7. To what relief ?

4. On behalf of the Plaintiff-company the manager of its Vijayawada Office and the Divisional Manager of the company were examined as P. Ws. 1 and 2 and Exs. A-1 to A-8 were marked. For the Defendant, the Defendant himself and the driver of his vehicle APV 5319 were examined as D. Ws. 1 and 2. No documents were marked on behalf of the Defendant.

5. The learned Subordinate Judge, on an appreciation of the evidence on record, held on issue No. 1 that the contract of carriage was true and that the Plaintiff entrusted 50 bales of jute twine to the driver of the Defendant for carriage from Vijayanagaram to Vijayawada under Ex. A-1 invoice and that the said contract of carriage is true, valid and binding on the Defendant. He also held that the Plaintiff-company sustained damages to the tune of Rs. 8,322.00 and that this damage was suffered by it due to the negligence of the Defendant's driver. He also held that the suit is not bad for non-joinder of parties. However, he dismissed the suit holding that the Plaintiff-company which is not the owner of the goods is not entitled to claim damages against the Defendant in the suit as the Plaintiff did not plead special contract and establish the same and a suit against a common carrier cannot be maintained by a person other than the owner of the goods in the absence of a special contract.

6. Before I proceed to consider the several contentions of the parties, certain facts which are evident from the pleadings may be noticed to clear the ground for the appreciation of the contentions raised. Both, the Plaintiff and the Defendant are, no doubt, carriers of goods. They operate lorry service. In the plaint, it was averred that 50 bales of jute twine were entrusted by the Plaintiff for carriage from Vijayanagaram to Vijayawada under Invoice No. 6529 dated 9 11.1971 and the Defendant, through his driver, undertook to transport the same by signing the invoice. Even while stating that the Defendant is liable as a carrier, the Plaintiff-company alleged that "in pursuance of the contract of carriage the Defendant is under a duty to deliver the goods at the destination station in good condition and safe. The driver of the Defendant was negligent and because of his acts of misfeasance and nonfeasance the vehicle met with accident, as alleged in

their reply notice and as such all the goods have become damaged...." The Plaintiff also stressed that it is the duty of the carrier to effect delivery at the destination in good condition and if he fails to do so, he is liable to pay damages as claimed.

7. In view of these averments, Mr. Balchand, learned Counsel for the Appellant, contends that the suit is not merely based on the rights and liabilities of the parties arising under the Carriers Act, but also under the contract between them as evidenced by the invoice marked as Ex. A-I, as such, even though the Plaintiff is not the owner of the goods, it is entitled to maintain the suit for damages on the strength of the special contract and on the strength of the entrustment of the goods by it to the Defendant. On the other hand, Mr. Adinarayana Raju, learned Counsel for the Defendant-Respondent, argues that the several averments in the plaint would only show that the Plaintiff was basing its claim on the liability incurred by the Defendant under the provisions of the Carriers Act and as such, the Plaintiff, which is admittedly, not the owner of the goods, is not entitled to maintain the suit against another common carrier.

8. The Carriers Act, 1865, was enacted not only to enable common carriers to limit their loss of, and damage to, property delivered to them to be carried, but also to declare their liability for loss of, or damage to, such property occasioned by the negligence or criminal acts of themselves, their servants or agents. Section 8 of the Act renders the common carrier liable for loss or damage caused by negligence or fraud of himself or his agent. If D.W. 2, the driver of the Defendant, was guilty of negligence, then u/s 8 of the Act the Defendant would be liable for loss or damage to property delivered to him to be carried. However, the carrier is liable u/s 8 to the owner and to none-else. Section 9 of the Act enables the Plaintiff to claim damages for loss, from a common carrier even without specific proof of negligence or criminal act on the part of the common carrier. Section 10 imposes an obligation upon the Plaintiff claiming damages for loss or injury to issue a notice before the institution of suit and to issue the same within six months of the loss or injury. It is not necessary to notice the other provisions of the Act. Suffice to note that the claim for damages under the Carriers Act may be made only by the owners of the goods and the liability of the Defendant whose act of negligence resulted in the loss or damage is only towards the owner and the owner can recover damages without proof of negligence of the driver. If the present suit were to be based only on the Carriers Act and if there be no proof of entrustment of the goods by the Plaintiff and no special contract, then undoubtedly, the suit by the Plaintiff which is admittedly not the owner of the goods would not be maintained. But the provisions of the Carriers Act do not prohibit the parties from entering into a contract, nor does it absolve a common carrier from the liability undertaken by him under such contract, if any. In fact, the Carriers Act makes the carrier liable to the owner for loss or damage even if there be no specific contract between them and even if the goods were not entrusted to the carrier by the owner. In fact, this is an exception to the general rule relating to contracts that unless there is privity of

contract, no claim for damages for loss lies.

9. D.W. 2, is admittedly the driver of the Defendant's vehicle APV 5319. Though the Defendant in his evidence as D.W. 1 has denied that D.W. 2 had any authority to enter into any contract with the Plaintiff to carry the goods from Vijayanagaram to Vijayawada, even D.W. 1 had to admit in his evidence that "my lorry was hired by Plaintiff's company from Vijayanagaram to Vijayawada through my driver in November 1971." D.W. 1 admitted that he does not know whether the hirer took the signature of the driver after preparing the list of goods loaded in the lorry. The Defendant does not travel in a loaded vehicle. He deposes that only after consulting him over the phone, the driver may fix another load on his return journey. Though he asserts that in the absence of any instructions, the driver will detain the lorry, it is difficult to believe the Defendant's assertion that the driver had no authority to accept a load of goods for transport from one destination to another. Whatever may be* his authority in other cases, the fact remains that D.W. 2 signed Ex. A-I which clearly discloses that he undertook to transport 50 bales of jute twine from Vijayanagaram to Vijayawada in lorry No. APV 5319. In doing so he was only acting on behalf of the Defendant, the owner of the vehicle.

10. The driver, D.W. 2 in his deposition has admitted having affixed his signature to Ex. A-I. He deposed that his lorry was engaged for hire by the Plaintiff's branch at Vijayanagaram. On that day the Defendant was not present at Vijayanagaram. The 50 bales of jute twine were loaded into the lorry at Aruna Jute Mills. Ex. A-I which is the invoice signed by D.W. 2 clearly gives the particulars of the goods loaded in the lorry, the lorry receipt number, the date of loading, description of the goods, weight of the goods, the consignor's name, the name of the consignee, and the amount payable by the owner of the goods to the Plaintiff company and by the Plaintiff-company to the Defendant. The goods loaded in the lorry No. APV 5319 are identified with reference to lorry receipt number. The lorry receipt number is the one issued by the Plaintiff-company to the owners of the goods, when the owner of the goods entrusted the same to the Plaintiff-company for transport from Vijayanagaram to Bombay.

11. It is in the evidence of P.W. 1, the Manager of the Plaintiff-company at Vijayawada branch, that they were engaged by D.W. 2 to transport 50 bales of jute twine from Vijayanagaram to Bombay and these goods were initially transported in lorry APV 5319 from Vijayanagaram to Vijayawada and then from Vijayawada to Bombay in another vehicle. When these goods were delivered by the lorry at Vijayawada, the condition of the goods was noted in the receipt, Ex. A-2 and the signature of the driver was taken in token of the acknowledgment of the defects in delivery. P.W. 1 asserted in his evidence that the Plaintiff's branch at Vijayanagaram entrusted the goods to the driver of the Defendant; that these goods belong to Aruna Jute Mills and they were entrusted to the Plaintiff-company for transport to Bombay. Aruna Jute Mills were sending these goods to their own branch at Bombay. This evidence clearly discloses that Aruna Jute Mills

who were the owners of the goods had entrusted the goods to the Plaintiff-company for being transported from Vijayanagaram to their own branch office at Bombay. In token of having received the 50 bales of jute twine, the Plaintiff-company had issued lorry receipts Nos. 9288, 9289 dated 9.11.1971 as recorded in Ex. A-I. For this service they were to receive in all a sum of Rs. 1401/-. Having come into possession of the goods, the Plaintiff-company entrusted the same to the Defendant for transport from Vijayanagaram to Vijayawada. The conditions subject to which these goods were entrusted to the Defendant are clearly mentioned in Ex. A-I itself. Condition No. 3 thereof which is relevant for our present discussion, reads as follows:

We are bound to make good the loss in case of shortage of these goods. If company has to incur or suffer any expense on account of detention, delay or damage of goods consigned through us, we shall make good all such expenses to the company. We have read and fully understood the above rules and conditions and we hereby undertake to abide by them.

The signature of the driver, D.W. 2, is affixed to this invoice. The company referred to in Ex. A-I is the Plaintiff-company. When it is not disputed that the Defendant's lorry was engaged for transport by the Plaintiff-company, and not by Aruna Jute Mills, which is the owner of the goods, then the owner of the Mills does not come into the picture at all. No doubt, as pointed out by the learned Counsel for the Respondent, the goods were in the mill premises of Aruna Jute Mills and were loaded into the Defendant's lorry at the mill premises ; but none-the-less it was at the instance of the Plaintiff-company that the goods described in Ex. A-I were in the legal custody of the Plaintiff-company which had issued the lorry receipts 9288 and 9299 dated 9.11.71 to the consignees. Only on production of that lorry receipt the consignees could get delivery of the goods at Bombay. After the issue of the lorry receipts by the Plaintiff-company to Aruna Jute Mills, Aruna Jute Mills who were the consignees of the jute twine bales could not claim legal custody of the said bales. When after the issue of these lorry receipts the goods were loaded into the lorry of the Defendant, it must be held that it was the Plaintiff-company, who having the legal custody of the goods, had entrusted the same for purposes of transport, to the Defendant. In the face of Ex. A-I and the evidence of D. Ws. 1 and 2 themselves, it is not open to them to contend that Aruna Jute Mills had entrusted these goods to the Defendant for transport. Nor can it be contended that the Plaintiff-company was acting as the agent of Aruna Jute Mills. The Plaintiff-company having issued the lorry receipts for the goods of Aruna Jute Mills, was itself under a legal obligation to safely transport these goods to Bombay. In so doing, it was not acting as the agent of Aruna Jute Mills, but as a person who had contracted with Aruna Jute Mills to transport these goods. The act of the Plaintiff-company in entrusting the goods to the Defendant is not that of an agent of Aruna Jute Mills. Once this actual position is clear, the liability incurred on account of the damage caused to the goods and the right of the parties to recover the damages for the loss can easily be ascertained.

12. In Halsbury's Laws of England, Volume 5, Fourth Edition in paragraph No. 345 it is stated as follows:

The liability of a common carrier for loss, injury or delay in respect to the goods carried may be varied by contract.

In paragraph No. 393 it is further stated that the terms and conditions of any particular contract of carriage are to be ascertained by the application of the general law of contract.

13. Hence merely because the Defendant is a common carrier the general law of contract is not abrogated. In condition No. 3 of the invoice which forms the contract between the Plaintiff and the Defendant it is clearly stipulated that the defendant would be liable to make good the loss occasioned to the Plaintiff-company. If there were no agreement, then under the Carriers Act perhaps the Defendant would have been liable only to the owner but in view of the stipulation contained in the invoice, the Defendant is liable to make good the damage at the instance of the Plaintiff as well.

14. Mcgfevor on Damages (Thirteenth Edition) in paragraph No. 142 at page 844, referring to the case of Ceouch v. L.N.W. Rly. (1849) 2 C & K 789 states that the person who contracts for the carriage of goods which are not his own property is nevertheless entitled to their full value in an action for breach of contract arising out of their loss or destruction. It is so held in Geouch V; L.N.W. Rly. (1849) 2 C & K 789 where the Plaintiff was himself a carrier of parcels and had sub-contracted certain carriage to the Defendant. He was held entitled to the full value of the goods upon their loss.

15. In Freeman v. Birch 114 E.R. 596 where a laundress sent linen, which she had washed, to the owner, by the carrier whom she paid and the carrier having lost, it was held that the laundress was entitled to sue the carrier for the loss. It would be seen that although laundress was not the owner of the linen, the laundress was held entitled to sue for the carrier for the loss, for she had entrusted the linen with the carrier.

16. In Dunlop v. Lambert (1839) 6 CI. & Fin. 600 it was held that a person other than the owner may employ the carrier on his own account; in such a case he may sue the carrier on such contract. The special contract supersedes the necessity of showing the ownership of the goods.

17. It would thus be seen that a person who is in possession of the goods or entitled to the possession of the goods, may entrust the "said on his own to the carrier and if any loss is occasioned to such goods by any act or omission of the carrier or the negligence of the carrier, the person who has entrusted the goods is entitled to claim damages for the loss. One need not be the owner of the goods to claim damages if there be a special contract; the carrier would be liable under the contract. In this case, the Defendant would be liable because he had obtained possession of the goods as a result of the entrustment by the Plaintiff

and also because of the special contract under Ex A-I.

18. Mr. Audinarayana Raju the learned Counsel for the Defendant-Respondent, however, contended that the rights and liabilities of a common carrier are outside the Contract Act and are governed by the principles of English Common Law as modified by the Indian Carriers Act. In the decision reported in Sukul Bros. v. H.K. Karvarana AIR 1958 Cal. 730 a Bench of the Calcutta High Court held as follows ;

The duties and obligations of a common carrier are governed by the English Common Law as modified by the provisions of the Indian Carriers Act. By the common law, common carrier is bound to deliver the goods within a reasonable time and to insure their safety during carriage, and until delivery; act of God and the King's enemies only excepted. The obligation is not founded upon contract but on the exercise of public employment for reward. The duty arises irrespective of the contract. The owner of the goods may sue the common carrier for breach of the common law duty in an action of tort.

This does not any way detract the liability of the carrier towards the person who has entrusted him with the goods even if such person is not the owner. It merely makes the common carrier liable to the owner, although there is no direct contract between him and the owner of the goods. That liability is imposed in England under the English common law and in India under the Contract Act as modified by the Carriers Act. In that judgment what all was laid down further was that "the Indian Carriers Act, while restricting the power of a common carrier of exempting himself from his common law liability, by Section 8 affirms or creates a liability and gives the benefit of that liability to the owner. Only the owner can take advantage of the benefit of that section. The Plaintiff who himself is a common carrier who undertakes to carry the goods of a person, and who engages the Defendant common carrier to carry them, not himself being the owner is not entitled to maintain a suit u/s 8 of the Indian Carriers Act against the Defendant.

This again does not in any way affect the right of the person who has entrusted the goods on his own to a common carrier even if the person so entrusting is himself a common carrier provided he has engaged the Defendant carrier on his own account and not on behalf of the owner.

This is recognised even in that very judgment in these words. "Whether the Plaintiff has employed the Defendant carrier on his own account is a question of fact. The ordinary inference is that the contract of carriage is between the carrier and the owner in whose favour the common law duty exists. In a proper case such is the inference even when the owner is not the consigner. *Cork Distilleries Co. v. Great Southern and Western Rly. Co. (Ireland)* (1874) 7 H.L.269 (277) (F). The person whose property the goods are is prima facie the party with whom the contract is made. *Mullinson v. Carver* (1943) 1 L.J. OS 59 (G). In *Dekhari Tea Co. Ltd. v. Assam-Bengal Rly. Co. Ltd.* AIR 1920 Cal. 758 at 762 (H), Rankin, J.,

observed:

As to goods the law will presume when it can that the carrier's contract is with the owner: *Dutton v. Solomonson* (1803) 3 B & P 582 .

The presumption is a presumption of fact and is reputable. *Murphy v. Midland Great Western Rly. Co. of Ireland* (1903) 2 I.R. 5 at 30 (H). A person other than the owner may employ the carrier on his own account and then may sue the carrier on such contract. The special contract supersedes the necessity of showing the ownership of the goods, *Dunlop v. Lambert* (1839) 6 CI. & Fin. 600 . "The onus is upon him who alleges that there is such special contract.

19. This decision while enunciating the general law with regard to the right of the owner to recover damages for the loss occasioned by a common carrier, even though there is no privity of contract between them as envisaged by English common law as modified by the Carriage Act recognised the right of the person who has entrusted the goods to a common carrier on the basis of a special contract to recover damages for the loss occasioned by such carrier. There is nothing in that judgment which negatives the right of the Plaintiff who is a common carrier to damages if that claim is based on special contract or on the footing that the goods were entrusted to the common carrier not on behalf of the owner but on behalf of themselves.

20. Very strong reliance was placed on a judgment of the learned single Judge of this Court in *Narasa Reddy v. Chinna Venkatasubbaiah* 1963 (2) An. W.R. 190 . That is apparently a somewhat similar case to the one on hand. The Plaintiff therein was the owner of a motor lorry and was a resident of Proddatur. The first Defendant was also a resident of Proddatur and was also the owner of another motor lorry. The second Defendant was in the employment of the 1st Defendant at the material time as his driver. A merchant of Proddatur by name Rangarao, placed an order with Messrs Syed Trading Company, Madras manufacturers of Gopuram Beedies, for the supply of two bags of Gopuram Beedies. The company entrusted the consignment of Beedies to Sri Subrahmanyam Lorry Service which in turn, entrusted the goods to the Plaintiff, who transported them from Madras to Proddatur. There the Plaintiff entrusted these goods to the 2nd Defendant for their transport to Tadipatri, where the consignee had his place of business. The 2nd Defendant failed to deliver the goods to the consignee. In the suit instituted for the recovery of the value of the two bags of Beedies the court held:

While restricting the powers of a common carrier of exempting himself from his common law liability, Section 8 of the Carriers Act creates a liability and gives the benefit of that liability to the owner. It is only the owner that is entitled to the benefit of that section.

The Plaintiff who is himself a common carrier undertook to carry the goods belonging to Messrs Syed Trading Company from Madras to Proddatur and there he engaged the 1st Defendant, another common carrier to carry the goods from Proddatur to Tadipatri. The Plaintiff not being the owner of the goods, is not

entitled to maintain a suit u/s 8 of the Carriers Act against the 1st Defendant.

21. But even in this judgment the learned judge recognised that if the Plaintiff a common carrier were to employ the 1st Defendant another common carrier on his own account the suit for damages would be maintainable. The learned Judge observed that whether the Plaintiff has employed the 1st Defendant as carrier on his own account or not, is a question of fact. In this case there being no doubt that the ownership of the goods vested in Syed Trading Company, there is no question of the Plaintiff sustaining a claim against the first Defendant for recovery of damages for the loss occasioned by the non-delivery of the consignment at Tadipatri. The further contention therein was that even assuming that the Carriers Act would apply, the Plaintiff's claim rested on an alternative ground, namely, that he, though not as the owner, as the person for the time being in possession of the goods, had entrusted them to the 2nd Defendant as the agent of the first Defendant and as such was entitled to claim damages u/s 10 of the Specific Relief Act. This contention was rejected on the ground that this alternative basis of the claim was not pleaded by him in the plaint, and not on the ground that if the entrustment of the goods by the Plaintiff to the Defendants was on his own account still he would not be entitled to claim damages. On the contrary the learned single Judge did not agree with the observations of a decision in *Sukul Bros. v. H.K. Kavarana* AIR 1958 Cal. 730 wherein the Judges of the Division Bench of the Calcutta High Court had observed that a person, other than the owner, may employ the carrier on his own account and then may sue the carrier on such contract, and that the special contract, if proved, supersedes the necessity of showing the ownership of the goods, but that the onus is upon the Plaintiff who alleges that there is such a special contract and then proceeded, to hold in that case that it was impossible to find that there is a special contract. As discussed above the evidence in the present case discloses that the Aruna Jute Mills had entrusted 50 bales of jute twine to the Plaintiff company for carriage of the goods from Vijayanagaram to Bombay and obtained lorry receipts. The goods thus passed from the custody of the Aruna Jute Mills to the Plaintiff-company. It was the duty of the Defendant to safeguard the goods and on their own responsibility transport the goods either in train or in motor vehicles of their own or of others. It is for discharging this obligation that they entered into a contract with the Defendant through his driver D.W. 2 under Ex. A-I which contained a special condition that for any loss occasioned to the goods, the Defendant would be liable to the Plaintiff-company. Firstly for the reasons that the goods were entrusted by the Plaintiff-company to the Defendant, and secondly for the reason that there is a special contract in condition No. 3 of Ex. A-I, the Defendant is liable to make good the loss to the Plaintiff-company, even though the Plaintiff-company which entrusted these goods was not the owner thereof and the Plaintiff-company is entitled to maintain the suit. The two decisions relied upon by the learned Counsel for the Defendant do not in any way detract from the conclusion I have reached. The provisions of Section 8 of the Carriers Act vest an additional right in the owner of the goods to claim damages

although there is no privity of contract between him and the common carrier with which aspect of the matter we are not concerned in the present appeal. It may, however, be noted that the owner of the goods as evidenced by Ex A-6 had claimed damages for the loss occasioned and recovered the same from the Plaintiff-company as evidenced by the receipt fix. A-7 dated 19.5.1972. That the goods suffered damage cannot seriously be questioned or doubted. As the lorry met with an accident, the bales of the jute twine fell down from the lorry into the canal. The receipt of the goods signed by the Defendant's driver Ex. A-2 dated 13.11.1971 clearly shows that 20 bales were in a wet condition, 3 bales were slightly damaged and 5 bales were slightly in wet condition. The consignment was jute twine and if it is allowed to continue in a wet condition it would be wholly damaged. P.W. 1 has deposed that due to wetting of goods the jute twine became useless. The Plaintiff settled the claim and paid the amount as evidenced by Ex-7. The driver of the Defendant's lorry has unequivocally acknowledged that the goods were received in a defective condition, at Vijayawada. Merely because he is not well educated, his written acknowledgment cannot be given a go-by. He was an experienced driver who was handling these goods in the ordinary course of his duties. He would have certainly realised the effect of affixing his signature to the receipt wherein there is a clear acknowledgement that the goods are damaged. The Plaintiff being an experienced company it would not have settled the claim of the owners unless it was genuine especially at a time when it was not certain that these damages could be recovered from the Defendant. I, therefore, see no reason to disagree with the finding of the lower Court that the goods were damaged and the extent of the damage was Rs. 8,322/-. I am clearly of the view that while confirming the findings of the court below, the findings on issue Nos. 4 and 7 must be reversed and it must be held that the Plaintiff is entitled to recover from the Defendant damages of Rs. 8,122/- as pleaded by him. The suit is accordingly decreed with interest at 6% per annum from the date of the suit until realisation.

22. In view of the above discussion, this appeal succeeds and is accordingly allowed with costs.