

(2013) 09 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 31 of 2007

The Doon Tempo Operator's Union

APPELLANT

Vs

Arihant Industries Ltd.

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 1 ShimLC 193

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This Regular Second Appeal is directed against the judgment and decree dated 19.10.2006 passed by learned District Judge, Solan, camp Court at Nalagarh, District Solan in Civil Appeal No. 25-NL/13 of 2006. "Key facts" necessary for the adjudication of this Regular Second Appeal are that the respondents/plaintiffs (hereinafter referred to as the "plaintiffs" for convenience sake) filed a suit against the appellant/defendant (hereinafter referred to as the "defendant" for convenience sake) for recovery of Rs. 1,66,376/- along with interest at the rate of 12% per annum from the date of filing of the suit till realization. According to the plaintiffs, the defendant is stated to be a common carrier engaged in business of transporting for hire property from place to place for general public having its head office at Baddi. Plaintiff No. 2, M/s. Arihant Industries Limited, on 20.5.1999 booked goods for transportation by road, namely, 2500 kgs of yard rolled on cones and packed in card board boxes with the defendant from its factory at Baddi to be delivered at M/s. Arihant Yarn Agencies, Delhi. The booking was made through goods receipt No. 446 dated 20.5.1999. The total value of goods transported was Rs. 2,58,637/-. Plaintiff No. 2 had got the goods insured with plaintiff No. 1 vide open marine cargo transit insurance Policy dated 17.5.1999. The consignment was sent for transportation by defendant in its truck No. HP15-2807 from Baddi to Delhi. On 20.5.1999 at about 10.00 P.M., the aforesaid truck met with an accident and the entire

consignment comprising of 50 cardboard boxes containing cones of yarn fell out of the truck. All cardboard boxes were broken and damaged. The loss/damage in transit was reported to plaintiff No. 1 by plaintiff No. 2 and thereafter, registered Surveyor and Loss Assessor was deputed to assess the loss. The loss was assessed at Rs. 1,66,375.70 after deducting the salvage value of the damaged yarn. The claim was passed for Rs. 1,66,376/- by plaintiff No. 1 and the amount was paid to plaintiff No. 2 vide Cheque No. 220751 dated 5.7.1999. Plaintiff No. 2 also executed a letter of subrogation in favour of plaintiff No. 1 and subrogated all its rights and remedies against the defendant in respect of the aforesaid loss and consequent claim. Plaintiff No. 2 also executed a special power of attorney in favour of plaintiff No. 1.

2. The suit was contested by the defendant. The defendant denied that plaintiff No. 2 executed special power of attorney in favour of plaintiff No. 1. The defendant admitted that it was a common carrier and plaintiff No. 2 booked goods for transportation. It was denied that the goods were insured with plaintiff No. 1. Transportation of goods through Truck No. HP15-2807 was admitted by the defendant. According to the defendant, the accident took place due to rash and negligent driving of the vehicle coming from opposite direction. An FIR was also lodged.

3. Learned trial Court framed the issues on 2.1.2004 and decreed the suit of the plaintiffs vide judgment and decree dated 22.11.2005.

4. Defendant feeling aggrieved by judgment and decree dated 22.11.2005 filed an appeal before learned first appellate Court who vide judgment and decree dated 19.10.2006 dismissed the appeal. Hence, this Regular Second Appeal.

5. Mr. Sanjeev Kuthiala, Advocate, on the basis of substantial questions of law framed, vehemently argued that the accident in question took place on account of act of the God. He then contended that the parties were bound by specific clause in G.R. He also contended that the application under Order 6 Rule 17 CPC was wrongly dismissed.

6. Ms. Devyani Sharma, Advocate, supported the judgments and decrees passed by the learned Courts below.

7. I have heard learned Counsel for the parties and have also gone through the impugned judgments carefully.

8. The plaintiffs examined only one witness. It is not in dispute that the goods were booked by plaintiff No. 2 through defendant to be delivered from Baddi to Delhi through Truck No. HP15-2807. Plaintiff No. 2 insured the goods through Insurance, Ext. P4. According to the report of the Surveyor and Loss Assessor, the damage caused was assessed at Rs. 1,66,376/- vide Ext. P11. The amount was paid by plaintiff No. 1 to plaintiff No. 2 through cheque No. 220751 dated 5.7.1999, Ext. P13. Plaintiff No. 2 also subrogated all its rights and remedies to plaintiff No. 1 by way of letter of subrogation Ext. P14. Plaintiff No. 2 also

executed a special power of attorney in favour of plaintiff vide Ext. P15. The defendant has taken a contrary stand the manner in which the accident has taken place. The stand of the defendant in written statement was that the accident has taken place due to rash and negligent driving of the vehicle coming from the opposite direction. However, the defendant wanted to take a different stand by moving an application under Order 6 Rule 17 CPC for amendment of the written statement. This application was rejected. The defendant has not produced driver of the truck to prove the manner in which the accident has taken place. The defendant has placed strong reliance on FIR. The FIR has not been proved in accordance with law. The defendant has not produced any witness to prove the G.R. Learned first Appellate Court has rightly come to the conclusion that mere issuance of goods receipt will not amount to acceptance of the conditions contained therein. The defendant has not led any tangible evidence to prove that the truck met with an accident due to bursting of the tyre. The defendant has failed to prove that there was any special contract with the plaintiff No. 2 limiting its liability for loss and damage caused to the goods. The defendant could not be permitted to take contrary stand by introducing new case by moving an application under Order 6 Rule 17 CPC. The application was rightly rejected.

9. Their Lordships of the Hon''ble Supreme Court in Economic Transport Organization Vs. Charan Spinning Mills (P) Ltd. and Another, , have held that where the consignor establishes loss or damage or non-delivery of goods, it is deemed that negligence on the part of the carrier is established. The carrier may avoid liability if it establishes that the loss, damage or non-delivery was due to an act of God or circumstances beyond its control. 54. It is no doubt true that Section 14(1)(d) of the Act contemplates award of compensation to the consumer for any loss suffered by the consumer due to the negligence of the opposite party (the carrier). Section 9 of the Carriers Act does not lay down a proposition that a carrier will be liable even if there was no negligence on its part. On the other hand, it merely raises a presumption that when there is loss or damage or non-delivery of goods entrusted to a carrier, such loss, damage or non-delivery was due to the negligence of the carrier, its servant and agents. Thus where the consignor establishes loss or damage or non-delivery of goods, it is deemed that negligence on the part of the carrier is established. The carrier may avoid liability if it establishes that the loss, damage or non-delivery was due to an act of God or circumstances beyond its control. Section 14(1)(d) of the Act does not operate to relieve the carrier against the presumption of negligence created u/s 9 of the Carriers Act.

In view of the discussions and analysis made hereinabove, there is no question of law much less to say substantial question of law involved in the Regular Second Appeal and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs.