

(1991) 09 MAD CK 0031
In the Madras High Court
Case No : S.A. No. 1576 of 1981

The Manager, Doars Transport (P.) Ltd.	APPELLANT
Vs	
The Canara Bank and another	RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Carriers Act, 1865 — Section 3, 8, 9

Citation : (1993) ACJ 602 : AIR 1992 Mad 324 : (1992) 1 MLJ 453

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : S. Sampathkumar, for the Appellant; P.B. Ramanujam and A.K. Kumarswamy, for the Respondent

Judgement

1. The second defendant in O.S. 24 of 1978 on the file of Additional District Munsif, Erode, has filed this second appeal, against the Judgment in

A.S. 190 of 1979 on the file of District Judge, Erode in which the learned District Judge has allowed the appeal and passed a decree, directing the

second defendant to pay the suit claim with cost.

2. The plaintiff's case is briefly as follows :

The plaintiff is a firm doing business in handloom goods at Chennimalai. The first defendant is doing banking business at Chennimalai and is

discounting bills with lorry receipts. The second defendant is a lorry transport company, having its branch office at Chennimalai. On 22-2-77, the

plaintiff despatched two gunny bales of handloom bed sheets, valued at Rs. 3,120/- through the second defendant from Chennimalai to Kanpur

under lorry receipts Nos. 10267 and 10268. The second defendant undertook to carry the consignment to Kanpur and deliver the same to the

consignee viz., M/s. Ravi-kumar and Company, Kanpur on production of lorry

receipts bearing endorsement of the first defendant and State Bank

of India, Kanpur. The lorry receipts were discounted with the first defendant. The first defendant is responsible for transshipment of bills with lorry

receipts to State Bank of India, Kanpur. The mode of transshipment is by registered post. The first defendant is responsible for delivery of the bills

with lorry receipts to M/s. Ravikumar and Company, Kanpur. The said bills and lorry receipts did not reach State Bank of India, Kanpur. The

plaintiff learnt that the said bills covered by the lorry receipts were surrendered to the second defendant by one Motilal Kishanlal Gupta and he had

taken delivery of the goods. The first defendant collected Rs. 3,120/- and handling charges from the plaintiff. Defendants 1 and 2 are responsible

for the loss of consignment. It must be due to the negligence or connivance of the servants of the defendants. Hence the suit against both the

defendants.

3. The first defendant resists the claim on the following grounds :

It is true that lorry receipts and bills were discounted with this defendant at Chennimalai. The usual practice of this defendant is that if the value of

the bill is below Rupees 5,000/-, to send the document only by recorded delivery post. Only if specifically instructed by the party, it would be sent

by registered post. The plaintiff has not given any specific instruction to send the document by registered post. There was no negligence or

connivance on the part of the servants of the first defendant. Hence this defendant is not liable.

4. The second defendant resists the claim on the following grounds :

It is true that on 22-2-77, the plaintiff had despatched two gunny bales of handloom bedsheets through this defendant lorry for carriage from

Chennimalai to Kanpur. The value is not admitted. This defendant agreed to deliver the consignment at Kanpur to the consignee bank or to their

order. Accordingly this defendant had delivered the consignment at Kanpur to the last endorsee of the consignee copies, in the normal course of

business. So this defendant is not liable. The liability of this defendant has come to an end, the moment, the consignment reached the destination

and delivery was effected to the last endorsee of the consignee copies.

5. The plaintiff had examined P.W. 1 and has filed Ex. A.1 to A.6. The defendants had examined D.Ws. 1 and 2 and have filed Exs. B.1 to B.3.

On a consideration of the materials placed before him, the learned Additional District Munsif had held that the first defendant is solely responsible

for the wrong delivery of the suit consignment and has decreed the suit against the first defendant alone. He has also held that the liability of the

second defendant is over as soon as he delivered the goods to the last endorsee, as per the parcel way bill and so the second defendant is not

liable for the claim and has dismissed the suit as against the second defendant. Aggrieved by this Judgment, the first defendant had filed an appeal

in A.S. 190/79 on the file of District Judge, Erode. The learned District Judge had discussed the evidence at length and held that the first defendant

had acted with reasonable diligence and misconduct or negligence cannot be attributed to the first defendant and has allowed the appeal and

thereby dismissing the claim as against the first defendant. The learned District Judge has also found that there was no negligence or misconduct on

the part of the second defendant but yet has held that the liability of the common carrier is as an insurer and when it is seen that the goods did not

reach their due destination but had been taken delivery of from the second defendant by some unauthorised person, the second defendant-carrier,

as an insurer, is bound to make good the loss to the plaintiff and has passed a decree directing the second defendant to pay the suit claim with

costs to the plaintiff. Aggrieved by this judgment, the second defendant in the trial Court filed this second appeal.

6. The second appeal is admitted for consideration of the following substantial questions of law :

(1) Is the appellant, a common carrier, liable as an insurer even when delivery has been effected against documents duly discharged?

(2) Is the lower Court right in holding that on the terms of Section 9 of the Carriers Act, the appellant is liable to make good the suit claim?

7. Questions : The plaintiff firm is carrying on business in handloom goods at Chennimalai. The first defendant is Canara Bank, Chennimalai. The

second defendant is lorry transport company having its branch office at Chennimalai. On 22-2-1977, the plaintiff had despatched two gunny bags

of handloom bedsheets valued at Rs.3,120/-through the second defendant from Chennimalai to Kanpur under lorry receipts Nos. 10267 and

10268. The lorry receipts and bills were discounted with the first defendant Canara Rank. The first defendant had sent the same through recorded

delivery post to State Bank of India, Kanpur, But that had not reached State Bank of India, Kanpur. It was found that the said bills covered by

said lorry receipts were surrendered to the second defendant by Motilal Kishanlal Gupta and delivery was taken by them. The above factors are

not in dispute. On the ground of negligence or connivance on the part of the servants of the defendants for the loss of the consignment, the plaintiff

has laid the claim against both the defendants. The trial Court has found that there was no negligence on the part of the second defendant and that

there was negligence on the part of the first defendant in not properly sending the goods and lorry receipts to the State Bank of India, Kanpur and

allowed it to fall in the hands of some miscreants and has decreed the suit against the first defendant alone. On appeal, the lower appellate Court

has held that there was no negligence on the part of the first defendant and has decreed the suit against the second defendant alone. Now the

second defendant has filed this second appeal, challenging the judgment of the lower appellate Court. The lower appellate Court has formulated-

point No. 2 as follows :

Whether there was any negligence and misconduct on the part of the second respondent, its employees in delivering the consignment at Kanpur?

In para 13 of its judgment in which point No. 2 has been discussed, the lower appellate Court has held as follows :

The wrong delivery of the goods by the second respondent-carrier at Kanpur cannot be said to have been made due to any negligence or misconduct on its part or on the part of its employees.

Lower down in the same para, the learned District Judge has stated as follows :

There being nothing inherently or prima facie suspicious in these endorsements and there being no evidence to show that the second respondent

had been informed before effecting delivery of the goods about the loss of the lorry receipts, it does not appear that the second respondent acted

negligently or misconducted itself in effecting delivery of the goods according to the apparent tenor of the endorsement found on Exs. B.1 to B.2.

Exs. B.1 and B.2 are consignee copies of the lorry receipts Nos. 10267 and 10268 respectively bearing endorsements of State Bank of India in

favour of M/s. Ravikumar and Co., and that of Ravikumar and Co., in favour of Motilal Krishan Lal Gupta A partner of Motilal Kishanlal Gupta

had signed on these two lorry receipts and had taken delivery of the consignments. After holding categorically that there was no negligence or

misconduct on the part of the servants of the second respondent, and answering the point No. 2 accordingly, the lower appellate Court had

proceeded further and had held under point No. 3 that however the liability of the common carrier is an insurer and when it is seen that goods did

not reach their due destination, but had been taken delivery of from the second defendant by some unauthorised person by the criminal interception

of the bills and lorry bills, the second respondent-carrier as an insurer is bound to make good the loss to the first respondent-plaintiff. By giving

such a finding, the lower appellate Court has held that second defendant-second respondent is liable for the suit claim to the plaintiff. The learned

Counsel for the appellant would contend that when it was found that there was no negligence or misconduct on the part of the second defendant,

the logical corollary should be to absolve the second defendant from liability but the lower appellate Court is wrong in holding that as an insurer,

the second defendant is liable for the suit claim. In this regard, the learned Counsel would rely upon the ruling reported in *Amin and Co. Vs.*

Southern Roadways Ltd., Madurai, In it, it was held that the carrier could not be held responsible if original way bill was produced by someone

who was not authorised by the plaintiffs to take delivery, unless there were other extraordinary circumstances which should have put the

defendants on caution requiring them to take more precautions than that was normally expected. In the instant case, it is the positive finding of fact

by the lower appellate Court that there was no negligence or misconduct on the part of the servants of the second defendant. While so, normal

consequence should be that the second defendant is not liable for the suit claim, since the carrier should not be held liable in such circumstances.

Sections 8 and 9 of the Carriers Act, 1865 are relevant sections in this regard. They read as follows :

8. Notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property

delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or

servants and shall also liable to the owner for loss or damage to any such property other than property to which the provisions of Section 3 apply

and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.

9. In any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.

As per Section 8, any carrier shall be liable for loss or damage where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servants or where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants. The

second defendant cannot be made liable by virtue of Section 8 of Carriers Act in view of the positive finding of the lower appellate Court that there

was no negligence or misconduct on the part of the servants of the second defendant. Section 9 provides that the plaintiff need not prove that such

loss or damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents. The duty is not cast upon the

plaintiff to prove these factors but the common-carrier can prove that non-delivery was not due to its negligence or criminal act of his servants. The

finding of the lower appellate court is there was no such negligence or misconduct. While so, neither under S. 9, the second defendant can be

made liable. The above position has been pinpointed in the ruling referred to by me supra. Looking the case from any angle, the finding of the

lower appellate court that as an insurer, the second defendant is liable though there was no negligence or misconduct on the part of the servants of

the second defendant, cannot be sustained. So the second defendant is also not liable for the suit claim. Regarding the first defendant, the claim as

against the first defendant was dismissed by the lower appellate court and there was no appeal as against that finding. In view of the above, the suit

against both the defendants is liable to be dismissed.

8. In the result, the second appeal is allowed, setting aside the judgment of the lower appellate court and consequently the suit is dismissed. In the

circumstances, parties are directed to bear their respective costs throughout.

9. Appeal allowed.