

(2012) 09 DEL CK 0267
In the Delhi High Court
Case No : CS (OS) 2036 of 2000

The New India Assurance Co. Ltd.

APPELLANT

Vs

Patni Roadlines and Another

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Carriers Act, 1865 — Section 10
Penal Code, 1860 (IPC) — Section 406

Citation : (2012) 09 DEL CK 0267

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Ramesh Kumar, for the Appellant;

Judgement

Valmiki J Mehta, J.—The subject suit for recovery of Rs. 31,02,400.00 has been filed by the plaintiff-insurance company as an

attorney/subrogee against the defendant no. 1/transporter/carrier inasmuch as the consigned goods were found missing/stolen during the course of

transportation. The facts of the case are that the defendant no. 2 engaged defendant no. 1 as a carrier/transporter to transport the consignment of

Tulsi Mix Gutka to M/s Swastic Incenses, S.P. Mukherjee Marg, Delhi. The 306 cases of suit consignment were dispatched on 21.9.1997 by

defendant no. 1's truck bearing registration no. GJ-6V 4224. The consignment was dispatched from the defendant no. 2's factory at Noida vide

invoice nos. 560, 561 and 563 dated 21.9.1997 for Rs. 10,20,340.55, Rs. 10,31,582.99 & Rs. 6,33,314.82 respectively vide goods receipt

number 900557. The consignment did not reach the destination and the defendant no. 2 took up the matter with defendant no. 1 by sending letters

dated 23.9.1997 and 8.10.1997, which failed to evoke any response. The

defendant no. 2 thereafter filed a police complaint on 23.9.1997 with the Gautam Buddh Nagar Police Station, Noida and FIR No. 076338 dated 8.10.1997 registered u/s 406 I.P.C. The carrier/defendant no. 1 was given notice dated 13.10.1997 u/s 10 of the Carriers Act, 1865 by registered post AD claiming the amount of loss of Rs. 26,85,238.36. The plaintiff got the loss surveyed in terms of the surveyor's reports dated 29.1.1998 and 13.4.1998 and who came to the conclusion that the defendant no. 1 had mis-appropriated the entire cargo and sold the same at Ahmedabad. The police recovered 55 Cases and 8 Jars which were delivered to the defendant no. 2 by the order dated 27.11.1997 of the concerned Joint Judicial Magistrate, First Class, Patam, Gujrat.

2. Since the consignment was insured with the plaintiff under Marine Insurance Policy (Cargo) No. 21/310702/00848 dated 8.4.1997 for the period 01.4.1997 to 31.3.1998, the plaintiff paid and settled the claim of defendant no. 2 for a sum of Rs. 22,00,284 and made the payment on 16.11.1998. The defendant no. 2 on receipt of the compensation executed a power of attorney as also a letter of subrogation dated 21.2.2000 in favour of the plaintiff, who has therefore filed the subject suit for recovery against the defendant no. 1.

3. Defendant no. 2 is a proforma party. Defendant no. 1 failed to appear after service and was proceeded ex parte.

4. Plaintiff to prove its case has filed affidavit by way of evidence of Sh. S.P. Bhatnagar PW-1. PW-1 has deposed to and proved the factum of

grant of insurance policy. PW-1 has also proved the invoices which have been exhibited as Ex. PW1/1 to Ex. PW1/3. The sending of the

communications to the defendant no. 1 has also been deposed to. Service of the notice u/s 10 of the Carriers Act dated 13.10.1997 along with

postal receipt have been proved and exhibited as Ex. PW1/4 and Ex. PW1/5. The Survey Reports dated 29.1.1998 and 13.4.1998 have been

proved and exhibited as Ex. PW1/6 and Ex. PW1/7. The final payment receipt dated 16.11.1998 to the defendant no. 2 for a sum of Rs.

22,00,284/- is exhibited as Ex. PW1/8. The subrogation letter and power of attorney dated 21.2.2000 have been exhibited as Ex. PW1/9 and Ex.

PW1/10.

5. In view of the fact that the plaintiff has proved its claim by filing an affidavit

by way of evidence, proving the necessary documents, and to which there is no cross-examination on behalf of the defendant no. 1 who was proceeded ex parte, I am of the opinion that the plaintiff has proved its case of recovery of amount of Rs. 31,02,400.00 against the defendant no. 1. The suit of the plaintiff is therefore decreed for a sum of Rs. 31,02,400.00 alongwith pendente lite and future interest at 9% per annum simple till payment. Plaintiff will also be entitled to costs in terms of the Rules of the Court. Decree sheet be prepared.