

(2009) 09 DEL CK 0340
In the Delhi High Court
Case No : C.S. (OS) 785 of 2002

United India Insurance Co.

APPELLANT

Vs

Bombay Andhra Transport Corp.

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Carriers Act, 1865 — Section 10, 9
Consumer Protection Act, 1986 — Section 12

Citation : (2009) 09 DEL CK 0340

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Kishnu Mehra and R.K. Kadamb, for the Appellant; None, for the Respondent

Judgement

S. Ravindra Bhat, J.—The first plaintiff, an insurer, (hereafter "United India") sues the defendant, a transport carrier, for the sum of Rs. 20, 66, 699/- (Rupees twenty lakh, sixty six thousands, six hundred and ninety nine only). The second plaintiff (hereafter "Jupiter") executed a subrogation letter in favour of United India, after receiving the amounts under a policy issued by the latter.

2. The facts are that Jupiter, on 16.1.96, for valuable consideration of hire/freight charges entrusted to the defendant ("Bombay Transport" for short, hereafter) at Delhi, a consignment of 152 packages containing colour television sets independently packed, in a carton box with enough thermocol packing and taped externally with markings outside for handling valued at Rs. 16,94,131/- (Rupees sixteen lakhs ninety four thousand one hundred thirty one only). This CS(OS) 785/2002 Page 1 was under invoice No. 4226 dated 16.1.96 for Rs. 1,33,747/- for transportation from New Delhi to Chennai. M/s. Kerala State Electronics Development Corporation Limited (KELTRON) was the consignee. The invoice has been marked as Ex.PW-1/3. Bombay Transport accepted the said consignment in consideration of hire charges, through consignment note No. 11-7614 dated 16.1.96-Ex. PW-1/5. The said consignment was transported by the defendant in

their vehicle being truck-bearing registration No. DIG-6158.

3. It is contended that Bombay Transport delivered the consignment to KELTRON on 30.1.96 in a heavily damaged condition. While taking the delivery of the consignment, KELTRON duly endorsed at the back of the consignment note-that the 152 sets were received in a damaged condition. Jupiter lodged its claim on Bombay Transport, on 1.2.96, through letter Ex. PW-1/6; this was within the statutory period, prescribed u/s 10 of the Carriers Act, 1865. The said notice was duly received by Bombay Transport. The plaintiff relies on Bombay Transport's certificate dated 8.2.96, (Ex. PW-1/7) stating that it duly admitted that all the 152 Television sets were heavily damaged. By letter dated 22.2.1996, (Ex. PW-1/8) duly received by the Bombay Transport, Jupiter lodged its claim for Rs. 17 Lakhs on Bombay Transport, which, however neglected to settle it. United Insurance says that the consignment was duly insured by Jupiter with it and relies on Marine Policy (Cargo) bearing No. 201002-210025-95; it covered the risks, as per Inland Transit Clauses (all risks) and further extended to cover the risks of strike, riot and civil commotion etc. The policy of insurance is produced as Ex.PW-1/9. Jupiter, by its letter dated 31st January, 1996 (Ex. PW1/10) intimated the loss to United India, requesting it to depute a surveyor to assess the extent of damage. The plaintiffs claim that accordingly, United India deputed N. Ananthanarayanan & Co., licensed surveyors to survey and assess the loss. The said surveyors and assessing the loss, submitted their detailed report dated 15.3.96 assessing the loss at Rs. 12,59,162/-; the report is produced as Ex.PW-1/11.

4. It is claimed that since Bombay Transport neglected to settle the legitimate claim of Jupiter, despite, United Insurance settled it for Rs. 12,01,547/- (Rupees twelve lacs one thousand five hundred forty seven only) by cheque bearing No. 933162 for Rs. 11,33,625/- and cheque No. 933167 for Rs. 67,922/- on 20.12.96. Jupiter, in consideration of such settlement of its claim, executed a discharge voucher dated 20.12.96 acknowledging receipt of Rs. 12,01,547/- (Rupees twelve lacs one thousand five hundred forty seven only) in full and final discharge of their claim upon the plaintiff No. 1); this document is marked Ex.PW-1/12. Jupiter also executed a letter of subrogation, and Special Power of Attorney, dated 17-2-1996, assigning and abandoning to the United Insurance all actionable rights, title and interest in and to the said goods namely 152 colour television sets and proceeds thereof and all rights and remedies against the transporters/carriers whoever is liable in respect thereof. The Letter of Subrogation and Special Power of Attorney is also exhibited.

5. It is contended by the plaintiff that Bombay Transport, being a Common Carrier is also deemed to be the insurer of the consignment in question ensuring safe transportation and delivery of the consignment/goods entrusted to them by Jupiter. Therefore, say the plaintiff, it ought to have taken all precautions and care to safely deliver the consignment to the KELTRON. It is submitted that inordinate delay in the settlement of Jupiter's claim has rendered, Bombay

condition. Many of the boxes were in crumbled state. On checking the contents we found that the sets were in cracked and broken condition. Some of the pieces of the broken parts were falling out through the dilapidated packing. As they have to be handled very carefully (as the tube may lead to implosion) we started segregating and checking each set cautiously, even though it was time consuming. It was found that in most of the sets the cabinets were found to be in cracked condition. The CRTs were in broken state. The PCB got disturbed and developed cracks. The speakers, tuners and H.T. had dislodged from its position and were hanging precariously. Many of the small components such as connector, antenna strip, degaussing coil etc. were found lying here and there inside.

It was found that out of 152 Nos. delivered in damaged condition, 9 sets (having Sl. Nos. 46331, 46284, 46296, 46299, 46334, 46288, 46342, 46323, 46308) have been found to be in good condition, whereas all the remaining sets are in damaged condition. Analyzing further we found that in this 72 sets have been totally damaged beyond repairable limit since almost all the major parts are in cracked and broken condition. In the remaining 71 Nos. in all of them the picture tubes (CRT) have sustained damages at various degrees, such as at the pin portion, neck section and front area. Any damage to the picture tube leads to the rejection of the same. In the partially damaged 71 sets, apart from the damage to all the picture tubes, 55 Nos. of chassis have cracked, cabinet 58 nos., 45 Nos. of EHT, 42 Nos. of speaker Baffle, 28 Nos. of Tunner, 31 Nos. of Yoke connector, 30 Nos. of circuit frame have also damaged to various extent. The repacking for the partially damaged 71 sets have to be done since the boxes had also been in torn and dilapidated condition. Taking into the view of the nature and extent of loss, the damaged components cannot be rectified, but require replacement only.

These sets require entire dismantling, fixing of parts and reassembling with skilled technicians of this line.

CAUSE OF LOSS

From the FIR filed on 23rd January, 1996 at 10:30 AM, the following details are observed. Parasuram Singh, Driver along with his vehicle DIG 6758 left New Delhi for Madras after loading the consignment. When he reached near Virga, on 22.1.1996 at about 10.45 a.m. the front wheel spring broke and the wheel came out of the vehicle thereby leading to the vehicle turning upside down. This resulted in heavy damage to the goods. Lateron, FIR has been filed in Lalithpur Police Station and a copy of the FIR handed over.

In this connection, the carriers have also stated in their damage certificate dt. 8th February, 1996 about the accident enroute leading to damage to the equipments. WE came to know that after the repairs to the vehicle, the consignment was dumped into the same vehicle itself and brought to Madras and delivered after a week in highly dilapidated condition. Based on the copy of the FIR, damage certificate and the type and extent of loss, we are of the opinion that the damage to this consignment have occurred while in transit due to

accident to the vehicle carrying the goods, enroute.

xxxxxxxxxxxxx SALVAGE

The insured wanted to surrender the salvage since they were afraid that it might get mixed up with good sets, thereby leading to complications. The damaged picture tubes (CRT) has no salvage value at all. Moreover, storing the same is also highly hazardous. AS objected by M/s. KELTRON, because these tubes can lead to implosion as well as explosion where the damages to front portion had taken place. Hence, they were taken to a faraway place in an isolated area, dumped and destroyed after removing the sticker which denotes the serial Nos. with a crane, since this is the first time that the consignee is experiencing such a huge loss. In the case of the other items such as chasses, cabinet, EHT etc. it will fetch only a scrap value, whereas some of the unaffected items such as the small degaussing coils, connector etc. can fetch some value even then. In this connection, we contacted some dealers locally, but found that they were offering only a very negligible scrap value as it does not have a regular market. However, we have arrived at the salvage value of Rs. 500/- each for the total damaged 72 sets and Rs. 150/- for the partially damaged 71 Nos. As such, a total salvage value of Rs. 46,650/- has been arrived at. This we feel is very reasonable and hence the same may be deducted from the loss amount.

xxxxxxxxxxxxx VALUATION

In the case of the damaged parts that require replacement, the price list supplied by the manufacturer for them have been considered for assessment as it is found to be in order. Accordingly, the CRT Cost Rs. 4029/-, PCB Costs Rs. 2250/- and Cabinet Rs. 700/-. For the remaining smaller parts like EHT, Baffles, Tuner, Connectors, Frames & boxes the values have been taken respectively. For the totally damaged sets, we have taken the invoice value. The labour charge per set for dismantling and reassembling is arrived at for Rs. 350/- each as against the claim of Rs. 500/-. With respect to packing, the cost of box is Rs. 65/-, that of thermocole is Rs. 70/- and screws packing tape and polythene comes to Rs. 25/- each. But we have applied a net cost of Rs. 54/- only per packing.

RECOMMENDATION

We hereby recommend settlement of this claim for Rs. 12,59,162/- as the loss has occurred on account of an accident to the carrying vehicles enroute and the loss is admissible under the scope of cover of the policy of insurance.

This report is issued without prejudice, subject to the terms and conditions of the policy.

9. The plaintiff relies on Section 9 of the Carriers Act, 1865, to say that Bombay Transport, being a common carrier, was under a duty to ensure that goods entrusted to it reached the consignee, here, KELTRON, in proper condition. Failure of that duty would render the carrier liable, without proof of its negligence. Sections 9 and 10 of the Act read as follows:

9. plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act.--In any suit brought against a common carrier for the loss, damage or non-delivery of goods 1 [including containers, pallets or similar articles of transport used to consolidate 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.

10. Notice of loss or injury to be given within six months.--No suit shall be instituted against a common carrier for the loss of, or injury to, goods 4[including containers, pallets or similar articles of transport used to consolidate goods] entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff.

In *Arvind Mills Ltd. Vs. Associated Roadways*, the Supreme Court remarked that Section 9 is a procedural provision, enjoining that a presumption should be drawn about carrier's liability. *Hussainbhai Mulla Fida Hussain Vs. Motilal Nathulal and Another*, a Division Bench ruling of the Bombay High Court, establishes that the presumption of liability without proof of negligence arises, by virtue of Section 9 and the onus of proving an exception to that rule, is upon the carrier.

10. In this case, the plaintiffs have proved existence of an insurance policy, that it covered the consigned goods; the plaintiffs also proved that the consignment was accepted by Bombay Transport, for a consideration, and it issued a consignment note; the goods were to be delivered at Chennai, to KELTRON. The certificate issued by Bombay Transport, after the consignee protested about the condition of the goods, establishes that the goods were damaged while in the custody of the carrier. The insurer appointed a surveyor ;its report establishes the extent of damage. The insurer paid the insured (Jupiter) the amount, in accordance with the surveyor's valuation; Jupiter issued a subrogation letter authorizing United India, to claim the sum from the carrier. These are proved by clear documentary evidence. The defendant, on the other hand, has not cared to prosecute these proceedings, and enter its defence. In these circumstances, it did not discharge the onus which lay upon it, by virtue of Section 9 of the Carriers Act. The basic claim of the plaintiffs, therefore, has to succeed.

11. In this case, the plaintiff seeks interest @ 18 %. Although the claim is a liquidated and ascertained one, the court is of opinion that interest at that rate would not be justified. Therefore, the plaintiff is held entitled to a decree for Rs. 12,01,547/- (Rupees twelve lacs one thousand five hundred forty seven only) with interest at 10% p.a. from 1-1-1998 - since it approached the consumer forum in December 1997 - as well as pendente lite and future interest, at the same rate, till realization. The suit is decreed to the above extent, with costs; counsel's fee is quantified at Rs. 55,000/-.