(2019) 02 SC CK 0401

Supreme Court Of India

Case No: Civil Appeal No. 1967 Of 2019

S.G.Sambandan & Co. Represented By T.S.Rajeshwaran		APPELLANT
	Vs	
United Indian Insurance Company Limited, A Subsidiary Of General Insurance Corporation Of India & Ors.		RESPONDENT

Date of Decision: Feb. 22, 2019

Acts Referred:

- Carriers Act, 1865 - Section 6,8, 9

Hon'ble Judges: Ashok Bhushan, J; K.M. Joseph, J

Bench: Division Bench

Advocate: S. Thananjayan, Promila, Ashok Kumar Sharma, Kshitij Mudgal, Deepak Jyoti Ghildiyal

Final Decision: Dismissed

Judgement

Leave granted.

This appeal has been filed against the judgment of the High Court dated 18.02.2011 dismissing Appeal Suit No.469/2002 filed by the appellant. The

parties shall be referred to as described in the plaint. The plaintiff No.2 purchased 9.430 Metric Tonnes of RBD Palmolein loose oil valued at

Rs.2,65,473.36 from ITC Agro Tech Limited, Port Area, Visakhapatnam on 23.08.1997. Thereafter, the said oil was entrusted to defendant No.1 for

transporting by road from Visakhapatnam to deliver at Kurnool.

Defendant No.1 carried on business as transporter and held itself out as being ready to carry goods for any person. Defendant No.1 accepted the said

consignment and issued lorry receipt No.506, dated 23.08.1997 and Signature Not Verifieddispatched the said Palmolein Oil in lorry tanker No.AEV

6999. The tanker belonged to defendant No.2 (appellant herein-owner of the Vehicle). The consignment was insured with plaintiff No.1/Insurance

Company for loss in transit under policy No.051100/21/26/11/10423/97, dated 10.07.1997. The appellant was not aware of the purchase of palmolien

loose oil valued at Rs.2,65,473.36 from ITC Agro Tech Ltd. as there was no contract between the appellant and the owner of the oil purchaser. On

24.08.1997, when the lorry reached near Khammam, it met with an accident and fell into a canal. The accident was reported in Khammam Rural P.S.

and police registered a case Cr.No.144/97 against the driver of the lorry. On account of the accident there was leakage of oil from the tanker and

quantity of 7599 Kgs. of oil was leaked out and mixture of oil and water weighing 1831 Kgs. was recovered from the accident spot. When lorry met

with an accident, plaintiff No.2 issued notices to defendant No.1 and defendant No.2 claiming damages. For the notices, defendant No.1 did not give

any reply. But a reply notice was issued on behalf of defendant No.2 under Ex.A4 dt.27.10.1997.

A suit being O.S. No.68/1998 was filed in the Court of Additional Civil Judge, Kurnool by M/s. Kanti Brothers impleading the appellant as defendant

No.2 and M/s. Edible Oil Tank Truck Owners Welfare Association as defendant No.1. Trial Court after marshalling the evidence and hearing the

parties decreed the suit in following manner:

In the result, the suit is decreed against D1 and D2 jointly and severally for a sum of Rs.2,55,250/- with costs and with future interest at 12% p.a. on

the amount of Rs.2,55,250/- from the date of the suit till the date of realization.

Aggrieved by the judgment and decree of the trial Court dated 14.12.2001, appeal suit was filed in the High Court by the appellant/defendant No.2.

The appeal was dismissed by the High Court vide its judgment dated 18.02.2011. Aggrieved by which judgment, the appellant has come up in this

appeal.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant submitted that there was no privity of contract between appellant and the plaintiffs. There being no privity of

contract, the appellant was not liable for any damages. He further submitted that there was no negligence on the part of the driver of the appellant. It

is further submitted that it was the defendant No.1 who alone was liable to pay damages, if any. Learned counsel for the appellant further submitted

that interest awarded by the trial Court is excessive i.e. 12% on amount of Rs.2,55,250/-from the date of the suit till the date of realization. One of the

submissions made by learned counsel for the appellant is that trial Court although passed decree against both the defendants jointly and severally but

High Court has observed that it was the appellant who alone was liable.

Learned counsel appearing for the respondents refuting the above submissions contends that the appellant being public carrier was fully liable to pay

the damages and decree passed by the trial Court has rightly been affirmed by the High Court. He further submitted that the submission of the

appellant that there was no negligence, cannot be accepted there being concurrent findings recorded by two Courts. It was the appellant's lorry, which

was carrying the goods, met with an accident. There is concurrent finding that it was the driver of the appellant who was negligent when negotiating

with the curve.

The findings recorded by the Courts below are based on appreciation of evidence, we are not persuaded to interfere with such findings recorded by

Courts below. Learned counsel for the respondents has rightly placed reliance on the judgment of this Court in Nath Bros. Exim International Ltd. V.

Best Roadways Ltd. - (2000) 4 SCC 553, in support of his submission that appellant being public carrier was fully liable even if they were not party to

the contract. In this context, he has referred to paragraphs 14, 16, 20 and 25. In paragraph 25 following has been laid down:

25. We have already reproduced the provisions of Sections 6, 8 and 9 above. Section 6 enables the common carrier to limit his liability by a special

contract. But the special contract will not absolve the carrier if the damage or loss to the goods, entrusted to him, has been caused by his own

negligence or criminal act or that of his agents or servants. In that situation, the carrier would be liable for the damage to or loss or non-delivery of

goods. In this situation, if a suit is filed for recovery of damages, the burden of proof will not be on the owner or the plaintiff to show that the loss or

damage was caused owing to the negligence or criminal act of the carrier as provided by Section 9. The carrier can escape his liability only if it is

established that the loss or damage was due to an act of God or enemies of the State (or the enemies of the King, a phrase used by the Privy

Council). The Calcutta decision in British & Foreign Marine Insurance Co. v. India General Navigation and Rly. Co. Ltd., the Assam decision in River

Steam Navigation Co. Ltd v. Syam Sunder Tea Co. Ltd., the Rajasthan decision in Vidya Ratan v. Kota Transport Co. Ltd. and the Kerala decision in

Kerala Transport Co. v. Kunnath Textiles which have already been referred to above, have considered the effect of special contract within the

meaning of Sections 6 and 8 of the Carriers Act, 1865 and, in our opinion, they lay down the correct law.

Now we come to the last submission of the counsel for the appellant that interest awarded was 12% per annum, we are of the view that ends of

justice will serve in modifying the rate of interest at the rate of 8% per annum. We order accordingly. Learned counsel for the appellant further

submitted that an amount of Rs.2,01,298/- has already been deposited in the High Court. It shall be open for the Insurance Company to withdraw the

said amount deposited in the High Court.

The appeal having been dismissed by the High Court, we are of the view that decree was not modified and therefore the decree remain jointly and

severally.

Subject to above, the appeal is dismissed.