(2014) 01 JH CK 0078

Jharkhand High Court

Case No: Appeal from Original Decree No. 433 of 2006

Balram Transport Corporation	APPELLANT
Vs	
Oriental Insurance Company Ltd., Steel Authority of India Ltd. and M/s. P.N.A. and Associates, Investigator and Marin Claim Recovery Agent	RESPONDENT

Date of Decision: Jan. 23, 2014

Acts Referred:

- Carriers Act, 1865 - Section 10, 9

Citation: (2014) 2 JLJR 381

Hon'ble Judges: Dhrub Narayan Upadhyay, J

Bench: Single Bench

Advocate: Amar Kumar Sinha, Advocate for the Appellant; G.C. Jha for Respondent No. 1, Advocate for the Respondent

Judgement

Dhrub Narayan Upadhyay, J.

This appeal has been preferred by the appellants against the judgment dated 12.4.2006 (decree signed on 24.4.2006) passed by Subordinate Judge-II, Bokaro in connection with Money Suit No. 4 of 1998, whereby suit was decreed in favour of plaintiff/respondent No. 1 with costs and appellant/defendant No. 1/was directed to pay Rs. 4,45,850/- together with interest @ 6% pendente lite and future interest from the date of filing of suit till final realisation of the decreetal amount. The appellant was also directed to clear the entire amount with interest within two months failing which respondent/plaintiff shall be entitled to realise the same through the process of Court.

2. The plaintiffs/respondent No. 1 and 2 (Plaintiffs) have filed a suit in the Court of Sub Judge at Bokaro by filing plaint stating therein that plaintiff - Oriental Insurance Company Limited (hereinafter referred to as-Insurer) engaged in carrying on

general insurance business through its branches spread throughout India. The plaintiff No. 2 - Steel Authority of India limited (SAIL), Bokaro [hereinafter referred to as consignee] having its office at M.G. Road, Steel City, Bokaro, have assigned their rights and remedies to plaintiff No. 1 and have executed letter of subrogation, special power of attorney in favour of plaintiff No. 1 - insurer. The defendant No. 1, being a common carrier within the meaning of Carriers Act, 1865, has been doing business of carrying goods as pubic carrier through its branches in India having its registered office at Balidih Industrial Area, District Bokaro. On 26.4.1995 the consignee entrusted with defendant No. 1 goods i.e. G.C. sheets-8 m.m. weighing 21.640 M.T. valued at Rs. 4,51,800/- vide consignment note No. 563 dated 26.4.1995. The aforesaid consignment of G.C. Sheets was carried through defendant No. 1 by Truck No. GJ7U-7392, Stock Yard, SAIL, BSO, B.S. City, Bokaro to Chandigarh Railway Station Road, Stock Yard, but the consignment was to be delivered to insured plaintiff No. 2 at his Chandigarh Stock Yard. This fact came to the knowledge of plaintiff No. 1/respondent No. 1 on 5.9.1995 when the Branch Manager of plaintiff No. 2 insurer wrote a letter vide No. BKS/RM95-96 dated 28.8.95 to the Oriental Insurance Co. Ltd. (R-l). The aforesaid fact was brought to the knowledge of defendant No. 1/appellant who also lodged an F.I.R. on 2.8.1995 vide Marafari P.S. Case No. 71 of 1995 against the owner and driver of said truck on which the goods were loaded. No delivery certificate vide letter No. FL/BOK/7 & 8/95 dated 28.8.1995 issued by plaintiff No. 2 through their Manager (Finance), namely, S. Sridhar was brought to the knowledge of appellant/defendant No. 1 and a claim for Rs. 4,51,800/- was lodged. The appellant/defendant did not take cognizance and ignored the claim for payment of Rs. 4,51,800/- and kept silence on the matter. It was further contended that respondent plaintiff No. 2 had taken insurance policy through respondent/plaintiff No. 1 covering any or all kinds of risk against damage of goods or loss of the consignment vide policy schedule any where in India from Bokaro by road vide Policy No. 3332701/0/0/M-OP-SDP/001/94-95 (Para.-11 of the Plaint). The goods were insured and therefore respondent No. 1/plaintiff No. 1 had paid the claim of Rs. 4,45,850/- to the respondent No. 2/plaintiff No. 2 and thereafter the suit for recovery for said sum of Rs. 4,45,850/- was filed against appellant defendant No. 1 making M/s. PNA & Associates as Investigator as proforma defendant No. 2.

3. After service of notice the appellant/defendant appeared before the Court below and filed written statement denying his liability and contended that suit is bad in law for want of notice u/s. 10 of The Carriers Act and is liable to be dismissed on this ground alone. The plaintiffs have no cause of action and the appellant was not negligent in any manner in sending the goods. It was the practice that the appellant used hired trucks form open market and in this case too the truck was hired from the market by which the goods were sent for Chandigarh. It is the owner and driver of the truck who committed breach of trust and misappropriated the properly for which Marafari P.S. Case No. 71 of 1995 was lodged. It has been also made clear

that M/s. Ambala Jagdhari Roadline of Singh Nagar, Katras Road, Jharia had provided the'' said truck No. GJ7U-7392. In course of investigation, the goods i.e. G.C. Sheets were recovered and it was informed to plaintiff No. 2 to get it released but action taken by them is not known to the appellant/defendant. The appellant had also denied and admitted the respective contention of the plaintiff parawise in the W.S.

4. M/s. PNA & Associates, Investigator and Marin Claim Recovery Agent was made proforma defendant No. 2 and he also appeared and filed W.S. on 20.1.2000 admitting case of the plaintiff.

After going through the pleadings following issues were framed by the trial court:-

(i) Whether the suit is maintainable in its present form or not?

(ii) Whether plaintiff has got valid cause of action for the suit or not?

(iii) Whether the suit is barred by limitation or not?

(iv) Whether the suit is bad for non-joinder of necessary parties or not?

(v) Whether plaintiff is entitled to get decree for Rs. 4,45,850/- against defendant or not?

(vi) To what relief or reliefs for which plaintiff is entitled to get?

The parties had adduced oral and documentary evidence in support of their respective claims and after adjudication the suit was decreed in favour of the respondent No. 1 and the decree was drawn aforesaid.

5. It is argued on behalf of the appellant that no notice as required u/s 10 of The Carriers Act 1865 was ever served. The carrier had not acknowledged receipt of the consignment, rather it was directly loaded on truck bearing registration No. GJ7U-7392. There was no negligence on the part of appellant in sending the goods. It was owner and driver of the said truck who had committed criminal beach of trust and misappropriated the property for wrongful gain for which Marafari P.S. Case No. 71 of 1995 was registered. During investigation consignment was recovered and it was duly informed to the respondent but the step taken by them is not known. The suit was wrongly framed and no cause of action against the appellant had ever arisen. The learned Sub Judge has committed gross error by not addressing the issues highlighted above and therefore the impugned judgment and decree are liable to be set aside.

6. On the other hand, learned counsel appearing for the respondents/plaintiffs have raised objection and submitted that it was not a case of Section 10 of The Carriers Act, rather section 9 is applicable and it has well been discussed by the trial court in the impugned judgment. It is not denied that aforesaid truck was supplied by the appellant and the consignment was acknowledged by them. Since the respondent

No. 1 was under obligation of the policy to compensate the loss if incurred by respondent No. 2 and the respondent No. 1 has performed his part of obligation and then filed this suit for recovery of the said amount from the appellant. The evidence, oral and documentary, have well been discussed in the impugned judgment which needs no interference.

7. I have gone through the lower court record from which it appears that the plaintiffs had examined three witnesses, namely, P.W. 1 Purna Chandra Pingura, P.W. 2 Nirmal Kumar Das and P.W. 3 Sadhan Kumar Mishra and proved the documents as per exhibits list whereas the appellant/defendant No. 1 examined only one witness Ashok Kumar Singh as D.W. 1 and failed to bring any document in support of his case. The learned Sub Judge while deciding Issue No. 5 which appears to be the main issue, had discussed oral evidence as well as documents proved and marked exhibit. The witnesses examined had clearly stated that Balram Transport Corporation (appellant) used to carry goods on contract from the premises of SAIL for its delivery to different destination and the goods so dispatched were duly insured with respondent No. 1. The consignment in issue was also dispatched and the truck was loaded with G.C. Sheets at the instance of appellant and the goods were sent for its delivery to Chandigarh. When the consignment did not reach its destination, information was given to the appellant and demand was also placed.

I have gone through Sections 9 and 10 of The Carriers Act, 1865 which reads as follows:-

9. Plaintiffs, in suits for loss, damage, or non-delivery, not required to prove negligence or criminal act. In any sit brought against a common carrier for the loss, damage or non-delivery of goods (including container, pallets or similar article of transport used to consolidate goods) entrusted to him for carnage, 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 (including container, pallets or similar article 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.

The distinction between application of these two sections is apparent. The words "Non delivery of goods" as it appear in Section 9 of the Act, do not appear in Section 10 and service of notice is mandatory in the event of loss or injury to goods. This plea of Section 10 is also not available to the appellant because the documents on record indicate that non delivery of goods was well brought to the knowledge of the appellant and demand against loss was also placed but the same remain unattended. The learned Sub Judge has also discussed other issues in the impugned

judgment.

8. I find no merit in this appeal and accordingly the same stands dismissed and the judgment dated 12.4.2006 (decree signed on 24.4.2006) passed by Subordinate Judge-II, Bokaro in connection with Money Suit No. 4 of 1998 stands upheld. The office is directed to prepare decree accordingly.