M/S. Transport Corporation Of India Ltd vs M/S. Veljan Hydrair Ltd on 22 February, 2007

Equivalent citations: 2007 (3) SCC 142, 2007 AIR SCW 1527, AIR 2007 SC (SUPP) 543, 2007 CLC 1655 (SC), 2008 BOMCRSUP 29, (2007) 1 WLC(SC)CVL 555, (2007) 2 CURLJ(CCR) 209, (2007) 3 ALL WC 2175, (2007) 78 CORLA 40, (2007) 3 MAD LJ 762, (2007) 2 ACJ 1308, (2007) 3 SCALE 423, (2007) 3 SUPREME 372, (2007) 4 CIVLJ 201, (2007) 136 COMCAS 377, (2007) 2 RECCIVR 587, (2007) 3 MAD LW 1

Bench: Tarun Chatterjee, R. V. Raveendran

CASE NO.:
Appeal (civil) 3096 of 2005

PETITIONER:
M/s. Transport Corporation of India Ltd

RESPONDENT:
M/s. Veljan Hydrair Ltd

DATE OF JUDGMENT: 22/02/2007

BENCH:
Tarun Chatterjee & R. V. Raveendran

JUDGMENT:

J U D G M E N T RAVEENDRAN, J.

This appeal is directed against the order dated 11.8.2004 of the National Consumer Disputes Redressal Commission ('National Commission' for short) affirming the order dated 14.6.2004 passed by the Andhra Pradesh State Consumer Disputes Redressal Commission ('State Commission' for short).

2. The appellant is a 'common carrier' as defined in the Carriers Act, 1865 ('Act' for short). The respondent entrusted a consignment (an Hydraulic Cylinder) measuring 2700 kg, covered by sale invoice dated 30.4.1996 to the Appellant for transportation from Patancheru to Bharuch, the consignee being "self." The Appellant issued Consignment Note/Lorry Receipt dated 10.5.1996 to the Respondent in that behalf, wherein the declared value of the consignment was shown as Rs.583440/=. As M/s Prakash Industries Ltd., Bharuch, the customer for whom the consignment was intended was not in a position to clear the consignment, the Respondent, by letter dated 8.11.1996 instructed appellant's Patancheru Branch to re- book the consignment from Bharuch to Patancheru. For this purpose, the respondent enclosed the original (consignee's copy) of the lorry

receipt as also its invoice dated 30.4.1996, with the letter dated 8.11.1996. The respondent assured that they will clear all dues including up and down freight charges at appellant's Patancheru office. In view of it, the appellant's Patancheru Branch instructed its Baruach Branch by letter dated 14.11.1996 to rebook the consignment and endorsed a copy of the said communication to the Respondent. The appellant sent a letter dated 22.11.1996 instructing the respondent to send the consignee copy with all freight and demurrage charges by a Demand Draft to the Bharuch office to enable the Bharuch office to re-book the consignment to Patancheru. The Respondent approached the appellant's Patancheru office several times and explained that it had already furnished the consignee copy and that it had also assured that payment will be made at Patancheru, and therefore, the consignment should be re-booked. Finally the Appellant's Patancheru office informed Respondent that the consignment was re-booked vide LR No. 21401 dated 22.1.1997 from Bharuch to Patancheru. As there was no information about the arrival of goods at Patancheru, inspite of constant follow up, the respondent sent letters dated 8.8.1998, 13.10.1998, 7.11.1998 and 8.12.1998 to the appellant, calling upon it to locate the consignment and deliver it, making it clear that if the consignment was not delivered, it will claim Rs.5,83,440/- being the cost of the consignment. Respondent also stated that it will not pay any charges for the consignment. The appellant sent a reply dated 15.12.1998 stating that "the matter is under process to locate the goods" and requested the respondent to "bear" with it for some more time to enable it to revert back with reference to the status of the matter. This was followed by letter dated 21.6.1999 wherein the appellant assured the respondent that "the matter is under inquiry" and that the status of the consignment will be confirmed within a short while. By another letter dated 3.7.1999, the appellant informed that "the process of locating the goods is going on" and requested the respondent to furnish another copy of the invoice as also the sketch of the machine. The respondent's Senior Officer, Marketing, (Sri Sriramamurthy) visited the appellant's office and furnished them. Even thereafter, the consignment was not delivered. Therefore, after serving a notice dated 27.10.2000, through counsel, demanding payment, the respondent filed a complaint before the District Forum on 5.7.2001, alleging that the non-delivery of consignment amounted to deficiency of service and therefore, the appellant was liable to pay Rs.5,83,440, being the cost of consignment with interest at the rate of 24% per annum from 8.11.1996 as damages for deficiency of service. Subsequently, as the District Forum did not have pecuniary jurisdiction, return of the complaint was obtained and re- presented before the State Commission on 17.8.2001.

3. The appellant did not dispute the factual position alleged by the Respondent. It resisted the claim on the following three grounds :

> (i) The respondent did not issue a notice under Section 10 of the Act, about the loss of the consignment, within six months of the time when the loss first came to its knowledge. Therefore, the complaint was barred under Section 10 of the Act.
>
> (ii) The cause of action arose on 8.11.1996 when the respondent instructed the appellant to re-book the consignment and on 22.1.1997, when the consignment was re-booked. The complaint, filed beyond two years from that date, was barred by limitation under section 24A of Consumer Protection Act, 1986 ('CA Act' for short).

(iii) The respondent did not pay the freight charges and that therefore, there was no 'consideration' for the contract for 'service'. Therefore, the appellant was not liable to pay any amount, either towards loss of the consignment or as damages, on the ground of deficiency of service.

4. The State Commission, allowed the complaint by order dated 14.6.2004. It held that the failure of appellant to deliver the consignment amounted to deficiency of service. The State Commission also held that having lost the consignment and failed to deliver the same, the Appellant could not put forth non-payment of freight, as a ground to avoid liability. The State Commission noted that the only question that arose for its consideration on the contentions urged was whether there was deficiency of service or not. The State Commission did not go into the other two questions relating to limitation and want of notice under section 10 apparently as the said contentions were not specifically urged at the time of arguments. The State Commission directed the appellant to pay the value of the consignment, (Rs.5,83,440/-) less the freight charges, with interest at the rate of 9% per annum from the date of booking, and costs of Rs.2000/-.

5. The appeal filed by the appellant against the order dated 14.6.2004 of the State Commission, was dismissed by the National Commission by a brief order dated 11.8.2004. It found no substance in the appeal, as hiring (for transportation of the goods) was covered by CP Act, and the appellant as carrier, did not deliver the consignment. In this appeal against the order of the National Commission, the appellant reiterated its contentions and also made a grievance that the State Commission and National Commission had failed to consider its contentions relating to maintainability and limitation, inspite of those contentions being specifically raised. On the contentions urged, the following three points arise for our consideration in this appeal :

(i) Whether the complaint was barred by the provisions of Section 10 of the Carriers Act, 1865?

(ii) Whether the complaint was barred by limitation under Section 24A of the Consumer Protection Act, 1986?

(iii) Whether there was no contract for service, as the respondent had refused to pay the freight charges?

Re : Point No.(i) :

6. Section 10 of the Act provides that no suit (or complaint) could be instituted against a common carrier for the loss of goods, unless a notice in writing, of the loss, had been given to the carrier before the institution, but within six months of the time when the plaintiff (or complainant) came to know about the loss. The appellant contends that the respondent can be said to have become aware of the loss of the consignment on 8.8.1988 (when it demanded delivery), but issued the legal notice demanding the value of consignment only on 27.10.2000 long after the expiry of six months from the date of knowledge. It further contended that even the notice dated 27.10.2000 did not purport to be one under Section 10 of the Carriers Act. Reliance is placed on the decisions of this Court in

Arvind Mills Ltd. v. Associated Roadways [2004 (11) SCC 545] to contend that the complaint is barred without a notice under section 10 of the Act.

7. Section 10 of the Act requiring notice, is extracted below:

> "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 containers, 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."

Section 10 requires a notice in the manner set out therein, for initiation of a proceedings against a common carrier for loss of goods or injury to goods entrusted for carriage. The notice need not say specifically that it is issued under section 10 of Carriage Act, 1865. It is sufficient if the notice fulfils the requirement of section 10, that is to inform the carrier about the loss or injury to the goods. Such notice under Section 10 will certainly be required where the common carrier delivers the goods in a damaged condition, or where the common carrier loses the goods entrusted for carriage and informs about such loss to the consignor/consignee/owner. The object of the section is to put the carrier on notice about the claim in respect of the loss or damage to the consignment so that it can make good the loss occasioned. But where there is no loss or injury to the goods, but the common carrier wrongly or illegally refuses to deliver goods and the person entitled to delivery initiates action for non-delivery, obviously section 10 will not apply. Similarly, where the common carrier informs the person entitled to delivery (consignor/consignee/owner) that the consignment is being traced and process of tracing it is still going on and requests him to wait for the consignment to be traced and delivered, but does not subsequently inform him either about the loss of the consignment, or about its inability to trace and deliver the consignment, the claim by the consignor/consignee, will not be for loss or injury to goods but for non-delivery of goods. The requirement relating to notice within six months in section 10 will not apply to a claim based on such non-delivery. In fact section 10 does not use the word 'non- delivery' of goods, but uses the words 'loss of, or injury to, goods'. A case of 'non-delivery' will become a case of 'loss' of consignment, only when the common carrier informs the consignor/consignee about the loss of the consignment.

8. In Arvind Mills (supra) relied on by the Appellant, this Court held that the word "suit" used in Section 10 will include a complaint under the Consumer Protection Act, 1986 and that in the absence of a notice under Section 10 of the Carriers Act, a complaint against a common carrier for compensation for loss suffered by the complainant cannot be entertained. But that decision did not relate a claim regarding non-delivery of the consignment, where the carrier failed to inform that the goods have been lost. The said decision does not, therefore, help the Appellant.

9. In this case, the appellant-carrier did not inform the respondent that the goods were lost. The respondent was constantly in touch with the appellant and demanding delivery. By letters dated 15.12.1998, 21.6.1999 and 3.7.1999, the appellant repeatedly informed the respondent that it was in the process of locating the goods, sought time to report about the status and requested the

Respondent to wait. Even when the respondent issued a notice through counsel on 27.10.2000 (served on 30.10.2000) demanding the cost of the consignment, the appellant did not say that the consignment was lost. In such circumstances, it is not possible to attribute knowledge of 'loss' to the person instituting the action for non-delivery. Therefore, there was no need to issue a notice under section 10, and non-issue of a notice under Section 10, did not invalidate the claim or the complaint.

Re : Point (ii) :

10. In the objection filed before the State Commission, the Appellant contended that the cause of action arose on 8.11.1996 and having regard to the limitation of two years prescribed under the CP Act, the complaint filed on 5.7.2001, was time-barred. However, in the special leave petition, the Appellant contended that the cause of action arose on 8.8.1998 and therefore, the claim ought to have been filed on or before 8.8.2000.

11. Section 24A of the Consumer Protection Act, 1986 provides that neither the District Forum nor the State Commission nor the National Commission shall admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. The term "cause of action"

> is of wide import and has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or the accrual of right to sue. It refers to all circumstances or bundle of facts which if proved or admitted entitles the plaintiff (complainant) to the relief prayed for. In the context of limitation with reference to a contract for carriage of goods, the date of cause of action may refer to the date on which the goods are entrusted, date of issue of consignment note, the date stipulated for delivery, the date of delivery, the date of refusal to deliver, the date of intimation of carrier's request to wait for delivery as the goods are being traced, the date of intimation of loss of goods, or the date of acknowledgement of liability.

12. In this case, the consignment was entrusted to the appellant on 10.5.1996. On 8.11.1996, the respondent instructed the appellant to re-book the consignment. On 8.8.1998, 13.10.1998, 7.11.1998 and 8.12.1998, the respondent demanded delivery. By letters dated 15.12.1998, 21.6.1999 and 3.7.1999, the appellant assured the respondent that it was in the process of locating the goods and requested the respondent to wait and assured that it will inform about the status. Thereafter the appellant did not inform the status. The complaint has been filed within two years from the date of receipt of the said letter dated 3.7.1999 and is in time. In fact in view of the request of the appellant to the respondent to wait till the consignment was traced, the limitation for an action would not start to run until there was a communication from the appellant either informing about the loss or expressing its inability to deliver or refusal to deliver, or until the respondent makes a demand for delivery or payment of value of the consignment after waiting for a reasonable period and there is non-compliance. Therefore, the complaint is not barred under section 24A of CP Act.

Re : Point No. (iii)

13. In Patel Roadways Ltd. v. Birla Yamaha Ltd. [2000 (4) SCC 91], this Court held that loss of goods or injury to goods or non-delivery of goods, entrusted to a common carrier for carriage, would amount to a deficiency of service and, therefore, a complaint under the Consumer Protection Act, 1986 would be maintainable. When a person entrusts a goods to a common carrier for transportation and the carrier accepts the same, there is a contract for "service", within the meaning of CP Act. Therefore, when the goods are not delivered, there is a deficiency of service. It is no doubt true that 'service' for purposes of CP Act does not include rendering of service free of charge. Where the contract for transportation is for a consideration (freight charge), the mere fact that such consideration is not paid, would not make the service 'free of charge'. There is difference between contract without consideration, and contract for consideration, which is not paid. If there is non-payment of the freight lawfully due, the carrier may sue for the charges, or withhold the consignment and call upon the owner/consignor/consignee to pay the freight charges and take delivery, or on failure to pay the freight charges, even sell the goods with due notice to recover its dues, where such right is available. But where the common carrier has misplaced or lost the goods and, therefore, not in a position to deliver the goods, it obviously cannot demand the freight charges, nor contend that non-payment of freight charges exonerates it from liability for the loss or non-delivery. When the carrier informs that the consignment is not traced and is under the process of being traced, obviously the owner/consignor/consignee cannot be expected to pay the freight charges. In the circumstances, the third point is also answered against the appellant.

Conclusion :

14. The State Commission ought to have awarded the entire cost of the consignment. It committed an error in deducting the freight charges from the amount payable to the respondent. There was no liability to pay the freight charges where the consignment is lost or where there is non-delivery. Be that as it may. As there was no appeal by the Respondent on this issue, there is no question of increasing the amount awarded.

15. As all the three contentions are rejected, and as we find no infirmity in the order of the State Commission, as affirmed by the National Commission, the appeal is dismissed with costs of Rs.5000/- payable to the Respondent.