American Export Isbrandtsen Lines Inc. ... vs Joe Lopez And Anr. on 4 April, 1972

Equivalent citations: AIR1972SC1405, 1972(0)KLT709(SC), (1973)2SCC30, 1972(4)UJ767(SC), AIR 1972 SUPREME COURT 1405, 1973 2 SCC 30, 1972 KER LJ 502, 1972 KER LT 709

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Bench: K.S. Hegde, P. Jaganmohan Reddy

JUDGMENT

K.S. Hegde, J.

1. This appeal by special leave arises from a suit for recovery of a sum of Rs. 29,254.86 P. and interest. The appellants are original defendants Nos. 1 and 2 in the suit. Out of several issues framed in the suit, two issues were tried as preliminary issues. They are: (1) whether the suit is barred by limitation and (2) whether the plaintiff has any subsisting cause of action. The trial court decided both those issues in favour of the appellants. But the High Court in revision set aside the decision of the trial court and decided both those issues in favour of the plaintiff. Hence this appeal.

2. The suit in question came to be filed under the following circumstances. A consignment of tin plates was shipped for the plaintiff at New York in the ship belonging to the 1st defendant under a clean bill of lading, to be delivered at Cochin. It consisted of 15 skids of tin plates of gross weight 39100 lbs. At New York, the goods were shipped in ss. "Ex minister" (Flying Cloud) but at Colombo they were transhipped to another ship ss. Azumasan Maru." That ship arrived at Cochin on September 1, 1967 and left the port on September 7, 1967. But the goods were not delivered to the plaintiff. They had been mixed up with other goods and they were not discovered for quite a long time. On May 9, 1968, the second defendant conducted a survey at quay side. Another survey was conducted by the 2nd defendant at the plaintiff's godown on June 4, 1968. The survey disclosed that there was short delivery of 4.349 metric tons of tin plates and that the tin plates weighing 11.182 metric tons were rusty and damaged. Only 1.932 metric tons of tin plates were in sound condition. The delivery of the available goods was given to the plaintiff on May 9, 1968. The suit was filed on May 24, 1969. Between May 9, 1969 and May 23, 1969 the court was closed for summer vacation. The question for consideration is whether the suit is barred by limitation and the plaintiff has no subsisting claim against defendants Nos. 1 and 2 Defendant 2 is said to be the agent of defendant No. 1.

3. Paragraph 6 of Article 111 in Schedule to the Indian Carriage of Goods by Sea Act, 1925 (XXVI of

1925) provides thus :

> Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods described in the bill or lading.
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> The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey to inspection.
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> In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered.
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> In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

4. The question is whether the carrier's liability stood discharged in view of the third clause of paragraph 6 of Article III of the Schedule.

5. It may be noted that in this case, the claim is partly in respect of short delivery and partly in respect of the damage said to have been caused for the goods delivered. According to the plaintiff the cause of action for the suit arose only when the goods were delivered i.e. on May 9, 1968. But according to Defendants 1 and 2. cause of action for the suit, at the latest, arose on September 7, 1967. If the plaintiff's contention is correct then the suit is within time and if on the other hand the contention of Defendants 1 and 2 is correct, then the suit is clearly barred by time as against them and the 1st defendant is discharged from all liability in respect of loss or damage. According to the plaintiff his case comes within the expression "within one year after the delivery of the goods" in Clause (3) of paragraph 6. But according to Defendants 1 and 2, the case falls within the expression "one year after the date when the goods should have been delivered" in the same paragraph. The question is which of the two contentions is correct. The scope of Clause (3) of paragraph 6 of Article III in the Schedule to the Indian Carriage of Goods by Sea Act, 1925 came up for consideration before this Court in East & West Steamship Co. v. Ramalingam Chettiar . Dealing with the scope of the expression "all liability in respect of loss or damage" in Clause (3) of paragraph 6, this Court observed :

> It has to be noticed that before providing in the 6th paragraph an immunity to the carrier from "all liability in respect of loss or damage" in certain circumstances the Legislature had in the earlier paragraphs laid on the carrier the duty of making the ships sea-worthy, properly manning, equipping and supplying the ship, and making the holds and all other parts of the ship fit and safe for the reception, carriage and preservation of the goods; properly and carefully loading, handling, stowing,

carrying, keeping and carrying for and discharging the goods carried and provided That ordinarily the bill of lading should show the quantity of weight of the goods or the number of packages or pieces, "Loss or damage" which paragraph 6 speaks of should therefore reasonably be taken to have, reference to such loss or damage which may result from the carrier not performing some or all of the duties which had been mentioned earlier. One of those duties is to discharge the goods carried in accordance with the quantity or weight or the number of packages or pieces as mentioned in the bill of lading. The shipper and the consignee of goods are more concerned with the duty of the carrier to discharge the goods in proper order and condition and in full than anything else. Indeed the other duties cast on the carriers so far as the owners of the goods are concerned, are really incidental to this duty of discharging the goods in full and in good order and condition When in the context of the previous paragraphs of Article 111 the 6th seeks to provide an immunity to the carrier "from all liability in respect of loss or damage" after a certain time, it is reasonable to think that it is loss or damage to the owner of the goods, be he shipper or the consignee, which is also meant, in addition to the "loss of the goods". When the goods themselves are lost, e.g. by being jettisoned, or by being destroyed by fire or by theft, there will be failure to discharge the goods in full and loss to the owner of the goods will occur. Even where the goods are not lost the carrier may fail to discharge the goods in full or not in proper order and there also loss will occur to the owner of the goods. In such a case, even though there may not have been "loss of the goods" the goods are lost to the owner. The word "loss" as used in paragraph 6 is in our opinion intended to mean and include every kind of loss to the owner of the goods whether it is the whole of the consignment which is not delivered or part of the consignment which is not delivered and whether such non-delivery of the whole or part is due to the goods being totally lost or merely lost to the owner by such fact of non-delivery there is in our opinion "loss" within the meaning of the word as used in paragraph 6.

Proceeding further the Court observed :

When the object of this particular paragraph and the setting of this paragraph in the Article after the previous paragraphs are considered there remains no doubt whatsoever that the learned judges of the Bombay High Court were right in their conclusion that the loss or damage in this paragraph is a wide expression used by the legislature to include any loss or damage caused to shipper or consignee in respect of which he makes a grievance and in respect of which he claims compensation from the shipping company.

The Court further held that :

The date on which the goods should have been delivered clearly contemplates a case where the goods have not been delivered. The clause gives the owner of the goods one year's time to bring the suit-the year to be calculated from the date of the delivery of the goods where the goods have been delivered and from the date when the goods

should have been delivered where all or some of the goods have not been delivered.

Proceeding further the Court observed :

> There is nothing however to justify the conclusion that the consignee is bound to avail himself of the right to claim as tenant in common. The breach of contract remains and the claim for compensation for such breach is in no way affected. Neither authority nor principle therefore supports the contention of the learned Solicitor General that where the goods are in existence but cannot be delivered because they have been mixed up with the cargo of other owners there has been no "loss" within the meaning of the third clause of the 6th paragraph of Article III.

6. Dealing with the scope of the expression "when the goods should have been delivered in Clause (3) of paragraph 6, the Court observed :

> But whether the delivery has to be made to the consignee at the ship's side or is made on the quay side there can be little doubt that the carrier's duty is to start the delivery of goods as soon as the ship arrives at the port of destination and to complete the delivery before the ship leaves the port. In a particular case the carrier may not do his duty. That cannot however alter the fact of the existence of his duty to complete the delivery between the arrival of the ship at the port and the departure of the ship from the port. If as regards any particular goods this duty remains unperformed at the time when the ship leaves the port there can be no escape from the conclusion that the point of time when the ship leaves the point is the latest point of time by which the goods should have been delivered.

Dealing with the same topic, the Court further observed ;

> But whether the delivery is to be made to the consignee or to anybody else on his behalf of the duty of the ship's master is to start the delivery as soon as possible after the ship's arrival at the port and to complete it before the date of departure from the port. Before the ship has actually left the port it is not possible to say that the time when delivery should be made has expired. Once however the vessel has left the port it cannot but be common ground between the carrier and the consignee that the time when delivery should have been made is over. It is this point of time viz., the time when the ship leaves the port, which in our opinion should be taken as the time when the delivery should have been made.

7. From the passages quoted above, it is clear that this Court had come to the conclusion that if by the time ship leaves the port, the goods shipped or any part thereof had not been delivered, it will be a case of non-delivery of the goods on the date when the goods should have been delivered. In that decision this Court has taken the view that the last date for filing the suit for "loss or damage" is one year from the date the ship It ft the port. The cause of action for filing the suit for "loss for damage" is one. Quite clearly, the claim in respect of short delivery is clearly barred by time. If we are to

accept the contention of the plaintiff that his claim in respect of the damage caused to the goods delivered to him arose only on the date when the goods were delivered to him, then it means that the plaintiff had two causes of action under Clause (3) of paragraph 6, one relating to the less and another relating to damage. From the language of the clause in question it is not possible to accept that contention. As observed by this Court in the decision referred to above that the time when the ship leaves the port should be taken as the time when the delivery should have been made. Any delivery which has not been made by the date comes within the mischief of Clause (3) of paragraph 6. We think that the question of law arising for decision in this case is covered by the ratio of the decision of this Court in The East & West Steamship Company's case (supra).

8. We accordingly allow this appeal, set aside the order of the High Court and restore that of the trial court. But we are told that the plaintiff has also made claim against the Insurance company which has been impleaded as a party defendant. It is contended on behalf of the plaintiff that the claim, against the Insurance company is not governed by the provisions of the Indian Carriage of Goods by Sea Act, 1925. We are unable to go into that question as the relevant material is, not before us. It is for the trial court to go into that question and decide the same. Taking into consideration the circumstances of the case, we make no order as to costs.