

Karnataka High Court

Shiva Transport vs National Textiles Corporation on 8 December, 2009

Author: N.Kumar And C.R.Kumaraswamy

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 8th day of December, 2009

PRESENT .

THE HON'BLE MR. JUSTICE N A

AND __ f j __ L.

THE HON'BLE MR. JUSTICE C ZRT f REGULAR FIRST v.r~;?EAL"N.o'." 2.77 :2 BETWEEN: 4
A H Shiva Transport. Fleet g ' H' and Transport Contractors' ;

D o o r N o . 1 O 9 , T . V C h a n (i . 1 7 a : a n = . L a y Q % . . n . ' " R M C : ' R o a d .
I 3 V e i i ' . F i f f i L £ : \$ € : a j é ' . " ~ } \$ é p 1 * < : s - é m e d H e r e i n b y i t s P a 1 ' U 1 __ i : r _ S r ; K h a n ... A p p e I a m ~
V V ' (B y V ' V S 1 f i " , G . V " € 3 V h a I 1 k a 1 ' G o u d , A d v o c a t e] A
_ ' V ' N _ a t i 6 1 1 ; i i " T e x t i l e s C o r p o r a t i o n K , ' f { V . " " a n d M } L i n m e d , N o . 2 0 / 2 N a g é . _ ;) A ; 3 2 1 M a n s i o n .
K . I " " l . R o a d .. S h a r ~ i ' t h i n a g a 1 * . B a n g a l o r e M 5 6 0 0 2 7 .. B y i t s U n i t M i l l s S r i Y a l i a m m a C o t t o n
" W O O I Q I 1 a n d S i l k M i l l s , T o l h u n s e i i / ' D a v a n g e r e T a l u k . b y i t s S u b r o g e e t h e 2 " " P l a i n t i f f .

2 National Insurance Company Limited, having its registered Office At No.3, Middleton Street
Calcutta -- 700 071 ~ Represented by its 1 Regional Office, .

Chigateri Mercantile Buildirtg Davangere. _ _ _ by its Divisiortai NIaI'lE1g€I:'*~__ V' t
V}.'.Res'poridents (By Sri O .}Tv'£a11(3Vsl1.. A'd._roe;1--€:e for R2: Responder1f'\$';41 s'er:\V/ed},
_ Ttus zaryx {□d thidcf Sectunz EH3 of (zpc: agahist the judgment a;11Ci"«T:._decre_e ;; dated
"30~9_g2002 passed In OS DkL103/1997 o□the rue of □□il Add□hnn□(nvu Judge (Sr.Dn.}.
E'21vajig.e1'e;!--«deeaéeeihgAt-hezsuit for recovery of damages. TthisétRFA'=Coh:iin:,g\$'zyirt for
hearing this day, N. KUMAR J delivered the foltowingz %tgJUDGMENT

V T. is by the ciet"er1d2mt challe-r1gi11g the judgment deC1'ee--.Voi£ the trial Court which has
decreed the suit of the p1aintivfi":.fo1* a sum of Rs.2,45,408--00 with cost and future V' iraterest. at
18% pa. from the ciate of the suit till realisation. Lu

2. For the purpose of convenience. the vpa1_ftfie_Vs are referred to as they are refe1*red to in the
c)1'iginal__sti'tit.;.' .. " »

3. The first plaintiff is the Corporation and the second Company Ltd, The first plaintiffIobt.:ained
ajoolicty.

Insurance with Inland iron] llplaintifi covering the risk of t1fe:';1.sport.at'ion:'oi:"go'odslrom Un.it
Mills and Marketing Divisions to any where in India and \r'iee--lt!e--rsa inter depot, inter division,
i_n1.ei'"~sho_wi7oonIilti.espa':.Ches and inter processing units and from various"siipf)i--i.ei's. ali

Sri. RR. Melitta fthjevllsaidlllsunreyrir inspected the da1nal5Ied'- survey report cum assessment of loss rep«ci1"1.=_l._' Filed a claim with the defendant (Or1u3?2.0~8.i99'4'~Alr'hit>l4: was duly served on the deiendant. on .A '26.:O8,l9S4fand there was no reply. However. the defendant said damage by letter dated 20.07.1994.

4. The defendant is legally bound to reimburse the loss because of its negligence. As the defendant failed to take due care and a prudent man could have taken while the goods entrusted to it and also failed to exercise due loss. The second plaintiff proposed 60% of the loss to the defendant. To settle the matter out of the defendant did not respond. Therefore the plaintiff was filed for recovery of a sum of Rs.2,45,408-00/- being the amount of loss sustained by the first plaintiff.

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7. The alleged damage caused of percolation of rain water is concerned, the control of human agency. by. 'llamalies of the first plaintiff pac1l;.,eil.larid the first plaintiff company. even touching the cover ol"*~the _«golodsl;f?-yo'-3,gl1e t.trans"porter or his employee will iitg□aiay oi7lfei'i.{.e and if there is any change in the Coverage or -the"ti:ah«s'porte1* will be held liable. Under such _Ci'l'Cill'i1Sxt:'c11"i(J.&*3S. "eitl'1:er the transporter or his employee will 3l.Q.t:.'j_l1 the""go--o.ds al'ter coverage and seal from the startirig ' ,poi.z1t.~._ 29tt"de"st_inaiioii point the employees o1' the first plaintiff '--w.ill.7reino_ve"the seal by making a note in the godown stock register tliere2il'tei' removing the coverage and unload the V *oo_1sigi'i1ne1t,. Hence. the alleged negligent act on part of this dlefendant is mere imagination by the plaintiff to suit' their EV/o H} Claim. Sufi is barred by limitation. Therefore. they sought for dismissal of the sili.

Whether Plaintiffs prove 'Af "goods entrusted to D'ef_er1dar'ii_ 'jor 1\$ransVport.a;i'ion "in Malegoan were gc;:'u}e-; due torain fin t.heVV3ransii'? Whether Pihciintiffezh'□rt--h}erj"prove assessment of V " T. a sum o fRs.2.45.408/- with ' the the Defendant?

Whether Deikenaani, proves that he is not liable to V Pirzuir Viii's 'V' claim. since transportation vehicle of xsc I. ediii "V goods was owned by third person in ' Miiralidfiar Behalf?

Whether this Court has no territorial jurisdiction to entertain the Suit as stated in W.S. Para No.5? ta/r

5. Whether Plaintiff's Suit is defective due to non impleading of the owner of goods vehicle even barred by limitation?

6. What reliefs the parties are entitled to?

9. To substantiate the claim of the plaintiff, the official of the insurance company was examined as P.W-1 by name Ajay Kumar. He produced 9 documents which are marked as V to : [behalf] of defendant. one page of the defendant's firm was examined "as produced B Register extract of A.R.F.T., C. of Tice. It varies as Ex.D-1. showing the ownership. , on the 17th of June 1971 the transaction. The trial Court on appreciation of the aforesaid evidence on record held that the plaintiff has that A schedule goods entrusted to defendant for 2 "L. transport. It is to be noted that the goods were got wet due to rain in the X/, t. 2 ms. The plaintiff has also proved the loss of the goods in the sum of Rs. 1216. The plaintiff is within the knowledge of the defendant.

failed to establish its case of C/n truck in question was owned by the defendant. is liable to the 15th of June 1971 the V-rtort of the defendant. The Court has territorial jurisdiction. The suit of the plaintiff is not affected; the 15th of June 1971 the owner of the goods vehicle. The suit is not barred by time.

11. The said judgment and decree of the trial Court, the defendant is preferred this appeal.

A. The learned Counsel for the appellant submitted that the defendant is not a transporter. Therefore the defendant cannot be held liable for the loss or damage caused to the goods while in transit. Secondly, it was contended that the defendant received the goods for transportation with an express condition that the defendant will not be liable for any such loss or damage. Therefore, even if there is any negligence, the goods were transported at the risk of the first liable to make good the loss.

13. In the light of the above facts and rival contentions, the question arises whether the defendant is a common carrier or a public carrier? Answer: "The defendant is not liable to make good the loss, whether the trial Court was justified in decreeing the suit of the plaintiff?"

POINT NO: 14. Ex.P-i. the Goods Consignment. Note--". The receipt No. 00353, which bears the signature of D.W. Partner of Shiva Transport. Agency. shows Rs. 4,71,000/- received as Freight

céh-ai'''ge's«c noted in the document. like desti>f;.;tt.i'o_1i'.V 2 Malagaon, particuiars of ._i_s' yarn [Cotton], 7.5 tons was, 3oe de.1'i\}ered door. et.c.. shows that the goods vtfei*e plaintiff to the defendéinit'. -tfoifj trét:t9:spo'1't,sitio1i«'é;s'''the defendant: was a public earriei; in which the goods were loaded.

do not beio1"1g t.o"--de['eiicigiitt and it belongs to Mui'alidhai* Beha]. as "clcétrV£1*o.n1"Ex.£)--1. the first piaintiff has no privity of co'nt'ra5c'tA with the of the truck. Goods were entrusted to ' V1V.h'c--.cdefei1datn'i for transportation. who in turn has hired the .v'eih_ice1e' 'i':i'fQ1f'i1"V}\.YA1'tE1'El1iCH1'c1f Behal. the owner of the truck. The defe11d_.;tnto.VA.:~h'as coiiected the freight charges and not the con1rniVs:si()n for bring about the eontore3.ct'.. Ex.P--3. the letter tt/ Io executed by the first piaintift' in favour of the second plairitiff. It is the1*éal'i'er. ihe present suit. is fiied. The defendant as a public carrier, is bound to answer the Claim of the pia1'i=i.t_.i'ff and make good the loss sustained by them in resp_ee.i erltrusted for being t:1'ansported. Th.e.i'e_i'oi'e_-'the" "ti'i;1iV"CQtirt iwas _justified in holding that the deieiidant i2.ot~ o'o:ii-mis.sion . agent", it is a public ca1*1*:e_r',----.___t1-ansportationih A».Q{..tHiV1e3 entrusted were admitted ai1d__1_iabi_11";y oi",i.'h--e':pub1:iC Carrier is absolute and is liabie to*--.}:iayA the 2saVid*--afmo'u_nt. POIN'i'_ No: 2 ' _V I5. ' i Reian.C"'e.Vis,. on Clause 5 which is on the back sidegoi' E}x.P~2;"\,7qh'ieli reads as under: ' A. The "" "Company is not responsible for ~.___'Ci:fcvz,£in.si'ance beyond its control such as accident', « fire etc. "

The fact that the goods entrusted for trar1spo1't.a_'Li_or1 was damaged. is admitted in the ietier written at reads as under:

"" This is to 1'z1j'orm y()li:¥'I}'1Cli:'4I'ii'£§3"CQTiSiQ'-hiiigffiihxx: A booked under m..-£:~ iv delivered in wet cofidvii.'i{}f1 {E36 150 bags} due to i1eaoy«.fainVs. e'oer;V:fii:o1,Lwa£1 we have coLvei'ed;:Li:iiI1 tjf1"e%.¢bags wet which was beyon__d' .

the "eof1,;5ignr☐.r1t" booked under we not liable for any ;;zame;gz£'j'z-o_ss.,;rtc;;a;---9:1 in this regard "

"i'hefefo--re«.' danlage to "the goods enuusied is not in V ---liabiity to pay the damages is avoided on {he .gro'uI1d thfagieeeeithe consignment was booked under the owners risk. .. The ciause set out above do not. show ih3.i' the goods were :seni« at the owner's risk. All that it. says i.s the Company is 110% V':I'esponsib1e for eireuilstanees beyond its control such as, iv accident, fire, delay. etc... Damage to the goods \k';iLS--«.>11ol on aeeount: of any aeeicient. fire or delay. It was 'oil'; aC--cfo.Li'iit of heavy rains and goods were not properly proizeelteoiticligiriiighthe transit. Even ii'. in spite of tE1Ff_Jéitill'I1.bl:ing. _eov_eredCtol'vthef goods. if the bags were wet. it beyond the Control of the }>lub:li'e1_Mbea1;r":er_f. ' tliat. goods entrusted were not lwivth iarpaulin and therefore not all the (amaged, it is only 66 bags out ..Qlf:i5Q «V:";.<il§ot:lldamaged. This is sheer carrier in not taking p1'opelr__A t.o him. Therefore under SCCEiOI1"9«Ol. the the public earrier is liable to itiaigjtelgood thl'e...cV_iaIi1'ag'es. A37'; ' _"E'he elelieliidaiit is a public carrier. The provision 'lrelalIir;g.__tov illteliiability of the common Carrier for the loss of or clarhage to 1-yytlie goods entrusted to him for carriage are to be foui'1dVvi.ri Sections 7. 8 and 9. The liability arises out of breach of duty. The earriei" owes two duties. He owes the duty to 1}"/, I') accept. and carry the

goods according to his public: p; 'oi'ession and, secondly. he owes the duty to deliver the goods to the destination. The carrier may fail to deliver the goods because they might have been lost on the route of navigation. In such a case, the carrier is liable for any loss or destruction of the goods; he undertakes the liability of an insurer. He is liable to deliver the goods or pay compensation for, loss of or damage to the goods. The liability under the contract is not confined to the liability of the carrier under the law and not by Virtue of the Contract which he has with the consignor. The position of the carrier is absolute and that of the insurer. Therefore, the damages sustained by the consignor when the carrier is unable to transport and deliver the Consignment entrusted to him, is recoverable as in England. Therefore the liability of

18. For the above reasons, we do not see any infirmity in the judgment and decree passed by the trial Court on proper appreciation of the documentary evidence on record; keeping in view the position and the legal evidence on the facts of the case, we decerned the suit of the plaintiff. In the result, the appeal is dismissed, costs to the plaintiff.