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 8" day of D€C.€II1b€1'. 2009 PRESENT . TI-IE HON'BLE MR. JUSTICE N A

 $AND _ fj _ L.$

THE HON'!-'SLE 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';

Door No.1O9, T.VChan(i.17a:an = .LayQ%..n.' "RMC:'Roa.d. I3Veii'.Fiff1L£:§€:ajé'."~}§ép1*<:s-émed Hereinby its Pa1'U1__i:r_Sr; Khan ...AppeI1am ~VV'(ByV 'VS1fi",G.V"€3VhaI1ka1' Goud, Advocate] A

_ 'V'N_ati611;ii'Textiles Corporation K,'f{V.""and M} Linmed, No.20/2 Nagé._;)A;321 Mansion. K.I'"'l. Road ..Shar~i'thinaga1*. Bangalore M 560 027 .. By its Unit Mills Sri Yaliamma Cotton "WOOIQI1 and Silk Mills, Tolhunse ii/' Davangere Taluk. by its Subrogee the 2"" Plaintiff.

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'portidents (By Sri O .}Tv'£a11(3Vsl1.. A'd._roe;1--€:e for R2: Responder1f'§';41 s'er:\V/ed}, _ Ttus zaryx { dt 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 dt 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--oo 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'it.;.' .. " >
- 3. The first plaintiff is the Corporation and the second Company Ltd, The first plaintif'flobt.:ained ajoolicty.

Insurance with Inland iron] llplaintifi covering the risk of tife:';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

over India to its Unit Mills and Marketingtinits tii__i'oLighQ-tit India. The defendant. is a common carrier engaged in the business of carriage of goods from one place on hire or reward. The Unit Mills at the Eirst. "_.Yellamma Cotton Woolen and Silk Mills. 'l'e.Ia.l'iunse.';L:..DaS}anaggei'e Taiuk entrust.ed on Ii.07.l994 the SC'I*i't'3CI1;!.I.f,'.-iZ"."I\u00e8_{\u00bb0}{\u00bb0}O(jS under stock transfer memo to its sales depot. at niei.a"gaon of Nasik Dist,riet, Maharashtra State. for Ly.

transportation from Davanagere to Melagaon V_\ri_de the defendants goods consignment note hearing dated 11.07.1994. The Schedule -~A vehicle bearing No. CTU 3804s.: "Fhe 'toe. defendant got wet in rain water delivered the wet and damaQ;e_d'-bValesA'tri_theV Melagoan and the Same the goods consignment. note of damaged goods were got. assessed Uii"ol,tgh and surveyor.

Sri. RR. Melitta fthjevllsaidllsunreyrir inspected the da1nal5Ied'- survey report cum assessment of loss rep«ci1"1.=_l._' Filed a claim with the defendant ()r1u3?2.0~8.i99'4'~Alr'hit>l4: was duly served on the deiendant. on .A '26.:O8,l9S4f'and there was no reply. However. the defendant said damage by letter dated 20.07.1994.

Thereafter» the first plaintiff lodged their claim with the second np,1aintif1".for the loss of goods due to the above said reason. The "'._set.*ond plaintifl\(\subseteq\) after coxnpliance of at\) the formalities of the \(\sigma\)"CC)T1ditiol1S oi" the above referred policy, settled the Claim of the 'JV first plaintiff for Rs.2.45.408-00. The payment was made through cheque and the relative disbursement. yo.u_ehder_vwas obtained. Thereafter the first plaintiff right. title, interest in the schedule goods in favour of t.he:'\(\sigma\).__seo'ond company. The suit is filed hay "the sec;.r._)nd of the unit of the first plaintiff. ff

4. The defei'1'da1j1t _asm_ae':ll;.oVri*1-moii clarrifer is legally bound to reimburse the loss vxt;he'_1plai11t':ii'f because of its Iiegligeitt .aeli:vi:'n..loss. as the defendant failed to take due careland preeautionélllifahieh a prudent man could take while trat,t's1ljorti11gltheilgoods entrusted to it and also failed i.o .A '1*e.ir;1btl1':se,tii..e loss. The second plairtiifi proposed 60% of the ~los_s_«and"_~vsei'it:"letters to defendant. to settle the matter out of the defendant did not respond. Therefore the hi AAp?:esen'L".s1.1it was filed for recovery of a sum of Rs.2,45.408-Oo. ""._being the aniount ofioss sustained by the first plaintiff. \\/T (3

5. After service of summoris. the del'eridlaht. filed detailed written statemeiit. It was specifically the allegations in the plaint that the carrier engaged in the business place to another on hire or Vreyvardl§'----\§/last specifiCa'lly false. They admitted that U11itV"iiitlLills a t r i i § 1 a h § i 1 1 V § ; ; ; e V V t i t h e f i r s t p l a i n t i f f o n l1.07.l994%'er1trt_isteddo-:tthe--ly'dE';.ehedille¥Al'goods Lilld□' stock and t.ransfei' memo Melagoan of .Nasik District, Mahgarashtra from Davanagere to l\/lelagoéii railed'"é1'e~iTe1ict;ftnt"s.._QCRNote bearing No.OO353 dated 1 l.'7.lV992€t theme and the schedule A. goods were loaded ihi.y_a-,Vehit:le'« bearing No.CTU 3804 are hereby admitted t.r"L:eVa--1'1d=.eo1<i'ect. However. they denied the damage olv7V:i._lhe;b_goo.dS ()r1"aee--o'L1ni of rain, delivery of wet and damaged 'ybalye and said damage being assessed by surveyor and his report. They also denied lodging of the Claim plaiiitill with the defe-iida1'1t and thereafter claim it *he__i'ng settled by the deferidazitz. They have denied their liability ,, to. rriake good the said loss.

6. Alter denying the allegations made in the plaint, they have out their case in detail. They contend that defendant is a transport commission agent and been engaged in introducing the goods owner to the any such transporters for the purpose of goods from one place to another it.

On 11.07.1994, the ol"ficia1s_ot' pi\u00a3,mtiI';'s approached this defendant to av.tr11_el'c.i"or lpnrposellof transportation of theirtproduietlllirontltkiyanagere Melagaon. The defendant introduceddO--fA'_'thet__truck bearing No. cm 13804.,'A"sits.__°Mui<gi1d,_1:ar.' Behal. S/o KG. Behai of Davanagere tor of the said consignment". by recen/i"11g his eornitiisston. After the truck was taken by the first .pl'el1l1I1tVit7£'«_ ofiiciallly to their Mill premises. their workers lloadedstne and sent a stock transfer memo to the official of this Vdei'\(\xi\)g;mdAa11t' through the truck owner. Accordingty for the purpose of payment of hire or transportation charges a.nd for 1,/.llj,,v*ertifi.;?ation of the goods in the truck by the tax authorities, this ll u defendant, issued a goods consignment note for tiansportation of the said goods with risk of the owner. Accordingly the second plaintiff transported his goods through oi' the owner as stated above. in short, this ~21' common carrier as alleged by the p;la » in _t.it'f his neither the owner nor common l:C."'r'lI'l'§.L€lI"':l()l"' No. CTU 3804. Any of thel__e'iaui'n1slltnade_b□rlllt»h:e--»...p}alintii'i'*in collusion with each other is n_ot:A'inavihtainablehasvliiagainst this defendant. This dei'endalnE, is agent. This defendant has 'i1{)v'l\[\] I1():'.IL"'l'f';'(..Zl-gt'? between the plaintiffs alleged claim and disbtilrvsentenf□"fifigze' were transported at the owners risk. lIl'S_tl(',h the first plaintill" has no right to nial; e"a.ny elair_n'beea'use the transportation was not made at V ' the CE1;i'.*t'VAl{"l'l;S,.'_l'lSl{. In Case of any claim made by the owners of the heViYo.i'e any insurance eonipany and before settlement oi"*-ai1yv_v::lain=1; the claim should be approved and eonfirmed by the ealirier or transporter, otherwise there will be no lawful ll settlernent of any claims, it at all there being any claim, it should be made against the owner of the vehicle. Muralidhar Behal. The defendant contends that he is not liable to pay anything to the plaintifl' as Claimed by the plaint.itl'. The suit is defective. The plaint is not properly veri ded and

7. The alleged da.mage caused of percolation of rain water is concerned, the control of human agency. by.' llamalies of the first plaintiff pac1];.,eil.larid the first plaintiff company. even touching the cover ol"*~the _«golodsl;f?-yo'-3,gl1e t.rans"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 _CiI'C1ll'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 01' 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'i1neI1t,. 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 Iimitation. Therefore. they sought for dismissal of the silii.

8. On the aforesaid pieadings, the fi'; inaled the following issues:

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.heVVi3ransii'? Whether Pihciintiffezh'□rt--h}erj"prove assessment of V " T. a sum o__fRs.2.45.408/- with ' the the Defendant?

WhetherDeikenaani, proves that he is not {table to VPirzuirViii'[f's'V' claim. since transportation vehicle of xscI1.ediiie"V goods was owned by third person i 'Miiralidfiar Behalf?

Whether this Court has no territorial jun'sd.ict'ion to entertain the Suit as stated in W.S. Para No.5? ta/r

- 5. Whether Plaintt□s Suit is defective due to non impleading of the owner of goods vehi_Cl.e_l even barred by limitation'?
- 6. What reliefs the parties are eritit_le__djto?'
- 9. To substantiate 'the'~e1ain1A.'v-on -Vgoiaint . the official of the insu___rance c_o_rrip.211'iy_ was 'exa.mir\$§ed as P.W-1 by name Ajay Kumar"S'riarri3.a.{_' Adproduced 9 documents which are marked as Vto_:[.beha1[' of deferidams. one p_a:'tiie1* of the defendants firm was examiried "as produced B~Register extract of A.R_fT_,C. olTice. llavariagelre as Ex.D~1. showing the ownership . , oi"-tklie i.t17u(tlg ii1\>'olve'ti"i:'1 the trarisaction. ' trial Court on appreciation of the aforesaid '=oral'azidudLoeiT::ii1enta1~y evidence on recrord held that the plaintiff has that A schedule goods entrusted to defendant for 2 "L.ransportai.io1i to lvlelagaon were got wet due to rain in the 'X/, t.r2msit.. The plainti has also proved the toss ot'_.__'darI121ge eemsed to the goods in d sum of is within the knowtedge of the defendant.

failed to establish its ease of C<)n'm___1tssiQr1 truck in question was owned by 'd the defertdant. is 'liable t.'d___15'e1y the'V-rttorteyfdttdttj __fivteiq Court has territorial jLtrisdicttortxtie:_adj_t,1dieate_:t:t1eVAvvdtspute. The suit of the p1ai1'1tift' is no1':tdeAfectt'i;fe; t'o'15r:ot"tmpteadirlg the owner of the goods vehtele. v_tt1:efé;t:1tt is not barred by time.

11. dd said judgment. and decree of the t1'tatC<)_;1rt, t'.t1e_ det'e11d.:mt 113\$ preferred this £tpp€:2'd.

A.'1't1e'VIe'etrtied Counsel for the appeitant assatltng the .4\P3,d''"'de(:1*ee of the trial Court contended that the de_Ienda13te"\\$y'aVs onty E1 eommisstort agent and not a transporter. Theretforite the defendant cannot. be held liable for the toss or .det1"tjage Caused to the goods while t.ransi.t. Seeondty. it was; contended ihai. the defendant. received ihe ctolisign\Pexit exli for i.ransport.ation with an express condition that \Pies:\ferifamoutle ies:\ferifamoutle nt!.\\$1111 will not be liable for any such occasioned'\forall du1'i:\forall vi'it'\af:\sinv;\circ*., Therefore, even if there is any cliani\(\epsilon\) ige, .;the' \(\circ\) goods were?' transported ai. the risk of the first 'liable to make good the loss.

13. In the light of _i'.heu._aierese1'id-[.scis and rival contentions, the pointsihai. agrise£fo19'e§m»si:1eraiion are: defendant is a i ._ cVummI."Sesi<")n_. or a public carrier ? A{2'}a ".--«i1¥ie3r1 there is an express stipulation in agreemeni ihai" the defendant is not i to make good the loss, wheiher the ma! Court' wasjiistified in decreeing the suit Qf the piainiiff'?

POINT NO: 1 I4. Ex.P--i. the Goods Consignment. Note--"'--..Ioearing No.oO353, which bears the signature of D.Ww1 Partner of Shiva Transport. Agency. shows Rs.4.71.0vOo 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, 30e 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'f'Q1f'i1"V'}..\YA1'tE1'E1iCH1'c1f Behal. the owner of the truck. The defeI1d_.;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*eal'i'er. ihe present suit. is fiied. The defendant as a public carrier, is bound to answer the Claim of the piai'1=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'o1'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 Reiian.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:YI'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 coLve1'ed;:Li:iiI1 tjf1"e%.¢bags wet which was beyon___d'.

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

"i'hefefo--re«.' danlage to "the goods enuusied is not in V ---liabiiity to pay the damages is avoided on {he .gro'uI1d thfagieeeithe 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 eireuiilstanees beyond its control such as, iv accident, fire, delay. etc... Damage to the goods \k';'iLS--«.>110l 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 }:l>lub:li'e1_Mbea1;r":er_f. ' tliat. goods entrusted were not lwivth iarpaulin and therefore not all the (lamaged, it is only 66 bags out ..Qlf::i5Q «V:",;<il\sot: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\forall '/, I') accept. and carry the

goods according t.o his public: p_;'oi'ession and, secondly. he owes the duty to deliver the goQk:ls:'jsai'eVly at the destination. The carrier may fail to d_e:ii--verA«V'thie--. geod.s because they might have been lost *e.n.__route of n.ia.yA.delivei'. ll them in a damaged condition. In ;'eith.ei~A.ease._h'eis liahle'f'?1.iy'yT'he 2 principle of English Law is that-,_the eat'i*1er is.:'ali3.so.1tiyteiy liable for any loss or destruction oi_'__th-eV_go_ods;.' undertakes the liability of an insurer. sl1o:{iid'4eiVtl1e1*__deli\/er the goods or pay compensation for, w--i--ei.1f'=loss_aQr'Hdest1':iie.tion. The liability under the _;"iet."'i.s not eonvi.vr'aet.t'1"a"l. Thus the liability of the eai'rie1" yii=i_ti'e-__o'i' the law and not by Virtue of the Contract which he with the consignor. The position A pLtbliC'Atf.A?'1i'Fié1T_ is absolute and that of the insurer. Therefore, "liable the damages sustained by the consignor when liie' v.raS unable to transport. and deliver the Consignment ' iinythe 'eor1dii.ioI: in which it. was entrusted to him. lo of laxi} the "'ean.ie as in England. 'l"'herefore the liability of

18. For {'.he aI'oresa1id reasons. we do 110€'.''':~;ee any ilifirmity in 1.he_jL1c1g111ent and decree passed by_t.h,e »1~r'iaE'V;~CeyL1rt.. the trial Couri on proper appreciatiorl 'o-1:fVd¢.rae1--..and.. docunlemary evidence on record; keeping in .n_i1ng:!_Vt11'e Eegaleé. position and the legal evidence on 1"e__eo'rdf□\$ righ}'i3* decereed the suit of the piaimiff. In the :*esu.1.fZV--ewe pelss {he :If<)1lAVi3V'Wui1'ig' ordery Appeal dismissed, coéfs.