HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

CITY CIVIL COURT APPEAL No.78 OF 1992

JUDGMENT:

1. The suit was filed for recovery of Rs.55,765-92 ps. The allegations in the plaint go to show that the 2nd plaintiff, who is the Consigner, has sent a consignment to M/s. Sain Dass and Brothers, who is the Consignee, about 1,41,810 eggs and the consignment was entrusted to the defendant, who is a common carrier, at Hyderabad to be delivered at Kanpur to the consignees. The consignment was accepted without any objection. The 1st plaintiff has issued a policy of insurance in favour of the 2nd plaintiff. The eggs have been transported in the truck No.UHH 505 and when the truck reached near Chitora on Sagar - Nagapur road, it met with an accident and entire goods were damaged. A claim was made on 03.01.1983 by the Consignee and the 2nd plaintiff also made a claim with the 1st plaintiff. The damages were assessed by the surveyor and the 1st plaintiff had paid the amount to the 2nd plaintiff and obtained a subrogation as the amount was not paid. The suit filed for recovery of the amount.

2. The defendant has filed written statement contending that the plaintiffs are not the owners of the goods and they have no *locus standi*. The 2nd plaintiff is a partnership firm which is not registered and therefore the suit is not maintainable. M/s. Sain Dass and Brothers, who is the Consignee, is a necessary party. There was defect in the package. There was no negligence on the part of the defendant or his employee. The valuation made by the surveyor is not correct. No notice was given to the defendant.

Therefore, in view of the above circumstances if any amount was paid by the 1st plaintiff to the 2nd plaintiff, the defendant is not liable to pay the said amount.

3. On the basis of the above pleadings, necessary issued have been framed for trial and after considering the evidence of P.w.1 and Exs.A.1 to A.11 and D.Ws.1 and 2, the Court below has dismissed the suit. Aggrieved by the said judgment, the present appeal is filed.

4. The points that arise for consideration are:-

i) Whether the 2nd plaintiff is the owner of the goods and whether the 1st plaintiff has got rights of subrogation?

ii) Whether the plaintiffs are entitled for the suit claim?

POINTS:

5. The Court below, while considering the issue with regard to the ownership, has found that since the 2nd plaintiff is not proved to be the owner and as the Consignee of the goods is M/s. Sain Dass and Brothers, the payment by the 1st plaintiff to the 2nd plaintiff is not valid and the terms of the policy will be only between the 1st plaintiff and the 2nd plaintiff and the defendant can not be forced to pay the said amount. In fact, there is no serious dispute in the written statement about the use of the truck, the accident and the damages. The lower Court found that the defendant is a carrier and evidently, under Section 8 of the Carriers Act *(for short 'the Act')*, he will be liable for negligence, in the absence of negligence, under Section 9 of the Act, the liability is there.

6. The point that has to be considered is whether the 2nd plaintiff can be treated as the owner of the goods and whether the discharge under the policy made by the 1st plaintiff to the 2nd plaintiff binds the defendant.

7. The counsel for the appellant relied upon a decision of this Court reported in between **K.Venkata Rao v. Commercial Goods Transport Firm, Vizianagaram**[1] wherein the right to sue is not restricted to owner of the goods and if a carrier has entrusted with goods to another for transport, he can also file a suit. Reliance was also placed on the decision reported in between **The Union of India v. The West Punjab Factories Limited, and The Union of India v. Ishwaranand Saraswat**[2] wherein it was held that the suit for damages to goods, Consigner can file when the title to goods has not passed to Consignee. It was also further considered as to when the delivery is said to have been effected. Reliance was also placed on a decision of this Court reported in between **Globe Transport Corporation v. National Insurance Company Limited and another**[3] wherein under Section 8 of the Act, with regard to common carrier, the circumstances under which the owner can sue, were considered and if the title is transferred before the delivery date, the purchaser is entitled to demand delivery. In fact, on these principles of law there can not be any serious dispute. The fact that has to be established by the appellants is that the 2nd plaintiff is the Consignor. If he is the Consignor and booked the goods, there can not be any problem at all. But when once this fact is denied under the contractual obligation between the 2nd plaintiff

and the defendant, it is necessary for the 2nd plaintiff to prove as to how the transaction has taken place. The 2nd plaintiff has filed only Exs.A.1 and A.4 which is the letter, dated 03.01.1983 claiming damages from the defendants and Ex.A.4 the letter of subrogation. It is not the case of the 1st plaintiff that any claim has been settled with the Consignee though the 2nd plaintiff claims that he is the Consignor. It is for the 2nd plaintiff to prove by documentary evidence as to when he booked the goods meant for delivery to the Consignee. The L.R. receipts are not filed and the correspondence between the 2nd plaintiff and the Consignee is also not filed. The Court below considered Ex.A.1 and was of the opinion that the truck was engaged by the Consignee, but not by the Consignor and this is also clear from the report under Ex.A.4. Therefore, the fact of the

2nd plaintiff entrusting consignment intended to be delivered to the 2nd plaintiff is not established merely because the 2nd plaintiff has taken a policy of insurance with regard to goods, when the truck was not proved to have been engaged by the 2nd plaintiff. Though as a owner of the goods, the 2nd plaintiff made claim for the loss even before the title was passed to the Consignee, the evidence on record, as found by the Court below, clearly shows that neither side has let in any evidence to determine the ownership of the consignment in accordance with the principles laid down under Sections 19 to 24 of the Sales of Goods Act. On consideration of Exs.A.1 and A.4, the Court was of the opinion that the Consignee was treated as owner of the goods.

8. As already stated above, even accepting contentions raised by the counsel for the appellant that the 2nd plaintiff being

the owner can claim damages for the loss under the policy, the evidence on record does not show that in fact the goods were booked by the 2nd plaintiff as a owner and that he was the Consigner. When once this fact is not established, the other contentions need not be considered. In fact, as rightly found by the Court below, the 1st plaintiff has not examined the 2nd plaintiff or anybody connected with the 2nd plaintiff to speak about the ownership of the suit consignment. Therefore, when once the ownership of the 2nd plaintiff is not established, the payment by the 1st plaintiff and the subrogation claim by him against the defendant can not be considered.

9. In view of the above circumstances, I find no merits in the appeal.

10. Accordingly, the appeal is dismissed. No costs. The miscellaneous petitions, if any, pending in this appeal shall stand closed.

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JUSTICE N.R.L.NAGESWARA RAO,

Date: 29.04.2013
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1 AIR 1982 AP 203
2 AIR 1966 SC 395
3 1990 ACJ 310