IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/10/2009

C O R A M

THE HONOURABLE Mr.JUSTICE C. NAGAPPAN

Appeal Suit No. 214 of 2004

M/s. Parakh Roadlines (Bombay)
408, Bharat Chambers,
52-C, Baroda Street
Mumbai 400 009. ... Appellant/Defendant

Vs

1. M/s. National Polyplast (India) Ltd,
rep. By its Agent The National Insurance
Company Limited
having Administrative Office at
Thiru Complex,
44, Pantheon Road, Egmore
Chennai 8.

2. The National Insurance Company Ltd.,
Administrative Office
No.3, Milton Road
Kolkatta 700 001. ... Respondents/Plaintiffs

Appeal against the judgment and decree dated 27.8.2002 made in O.S.No. 5905 of 1998 on the file of IV Addl. Judge, City Civil Court, Chennai.

For Appellant ... Mr. Shandeep Sha
for M/s. Shah & Shah

For Respondents ... Mr. N.Venkatraman
for M/s. Nageswaran &
Narichania

J U D G E M E N T

The defendant has preferred the appeal challenging the judgment and decree dated 27.8.2002 made in O.S.No. 5905 of 1998 on the file of IV Additional Judge, City Civil Court, Chennai.

2. Briefly, the case of the plaintiffs is that the first plaintiff purchased one Windsor Injection Moulding Machine with

accessories from M/s. DGP Windsor India Ltd. under Invoice dated 14.8.1995 to the total value of Rs.54,76,185/- and the machine was loaded in two vehicles as provided by the defendant Common Carrier by Consignment Note dated 14.8.1995 for safe carriage by road and door delivery to the first plaintiff at Madras and the lorry carrying the Injection unit left on 14.8.1995 enroute Madras via Bangalore and on 20.8.1995, the lorry met with an accident at about 1.00 a.m. and the Injection Moulding Machine fell down and sustained extensive damage and on being notified about the accident, the second plaintiff as underwriter of the consignment, appointed an independent surveyor, who issued a preliminary survey report dated 26.8.1995, and the consignor's representative also certified that the unit be sent back to the manufacturer for appropriate assessment of the damage sustained and for rectification and repair. It is further stated by the plaintiffs that the further survey was conducted and the survey report dated 15.10.1995 was issued and after carrying out repairs and reconditioning, the machine was sent through another carrier to Madras under Consignment Note dated 26.10.1995 at a cost of Rs.35,560/-, being the freight charges. According to the plaintiffs, the transportation charges from the accident spot at Bommasandra to Thane including the crane hire charge works out to Rs.42,500/- and on 15.12.1995, the defendant Common Carrier issued a certificate acknowledging the damage sustained by the consignment, which was in its custody, while in transit. It is further stated by the plaintiffs that on 3.1.1996, the first plaintiff sent a figured notice of loss / claim to the defendant by registered post acknowledgement due and the same was served under Postal Acknowledgement Card on 10.1.1996. According to the first plaintiff, it sustained a pecuniary loss of Rs.8,04,577.23/- as a result of negligence on the part of the defendant and the defendant is obliged to make good the loss. It is further stated by the plaintiffs that the suit consignment was insured with the second plaintiff for transit risk and on receipt of a claim bill from the first plaintiff, it was indemnified by the second plaintiff by paying a sum of Rs.8,18,602/-, which includes the survey fee, and by virtue of the said settlement under the policy of insurance, the second plaintiff is entitled to file and maintain the suit against the defendant on its own name and to avoid any technical defence, the suit is filed by both the plaintiffs. It is further stated in the plaint that the second plaintiff after settlement entrusted the claim papers to its recovery agent M/s. V.N.C. Narichania (P) Ltd. and the recovery agent lodged a claim on 22.8.1996 with the defendant's administrative office at Bombay and a reply dated 9.1.1997 was sent by the defendant through its advocates denying its liability and again, the matter was taken up with the Carrier through its Claim Protection & Financial Indemnity Corporation and the defendant offered a sum of Rs.30,000/- at the first instance in full settlement and that was rejected by the plaintiffs and again, it offered a sum of Rs.40,000/- and that was also not accepted and hence, the plaintiffs have filed the present suit seeking for a judgment and decree directing the defendant to pay the second

plaintiff a sum of Rs.8,04,577/- with interest at 18% per annum from the date of suit till realisation and for costs.

3. The defendant filed written statement denying the suit claim and stated that the suit is not maintainable for want of territorial jurisdiction since no part of the cause of action has arisen within the jurisdiction of the trial Court. It is further stated that the suit is liable to be dismissed as barred by the law of limitation. According to the defendant, the suit is liable to be dismissed since no statutory notice as required under Section 10 of the Carriers Act was given by the plaintiffs to the defendant and the alleged subrogation is invalid in law and not binding on the defendant and the Power of Attorney is also not valid since there is no right of subrogation and the second plaintiff has no privity of contract with the defendant to maintain the suit and the plaintiff has no title to the goods and it cannot maintain the suit. It is further stated by the defendant that there was no damage to the consignment and no survey was conducted and the alleged survey said to have been conducted by the plaintiff was without notice or knowledge of the defendant and it cannot be admitted in evidence as against the defendant and the suit is liable to be dismissed.

4. The trial court framed five issues and the plaintiffs examined P.Ws.1 and 2 and marked Exs.A1 to A26 on their side and the defendant examined D.W.1 and no document was marked on its side. The trial court, on a consideration of oral and documentary evidence, held that the plaintiffs have proved the suit claim and the defendant is liable to pay a sum of Rs.7,62,077/- to the second plaintiff and granted the decree for the said sum together with interest at 18% per annum from the date of plaint till the date of decree and further interest at 6% per annum from the date of decree till realisation. Challenging the judgment and decree, the defendant has preferred the present appeal. For the sake of convenience, in this judgment, the parties are referred to as arrayed in the suit.

5. The points for determination in the appeal are -

(1) Whether the suit is not maintainable for want of territorial jurisdiction.

(2) Whether the plaintiffs have substantiated their claim and are entitled for the relief sought for.

POINT No.1:

6. The learned counsel appearing for the appellant/defendant submits that the consignment was entrusted with the defendant for safe carriage by road and door delivery to the first plaintiff at Madras and the defendant in Ex.A3 Consignment Note has stated 'Subject to Bombay Jurisdiction' and the accident took place at Bommbasandra in Bangalore – Hosur National Highway, 17 kms. away from Bangalore and no part of cause of action has arisen

within the jurisdiction of the Court at Madras and hence, the suit is not maintainable.

7. Per contra, the learned counsel for the respondents/plaintiffs submits that in para 2 of the plaint it is averred that the defendant is having a Principal Office at 121, Coral Merchant Street, Madras 600 001, within the jurisdiction of the trial Court and there is no denial of the same in the written statement and the witness examined by the defendant as D.W.1, in the cross-examination has admitted that he is employed at Madras and the counsel further contended that the consignment was sent to Madras and the subrogation took place at Madras and the same is mentioned in the cause of action part of the plaint and a specific part of the cause of action has arisen within the jurisdiction of the Court at Madras and the suit is maintainable. In support of his submission, the learned counsel for the respondents/plaintiffs relies on two decisions of this Court.

8. It is not in dispute that the first plaintiff entrusted the Injection Moulding Machine purchased by it from M/s. DGP Windsor India Ltd. with the common carrier, namely, the defendant, for safe carriage by road and door delivery at Madras. Ex.A2 is the Invoice dated 14.8.1995 under which the first plaintiff purchased the machine. Ex.A1 is the Inland Transit Policy of Insurance taken by the first plaintiff with the second plaintiff for transporting the machinery to Chennai. Ex.A3 is the Consignment Note issued by the defendant to the first plaintiff and 'Subject to Bombay Jurisdiction' is found mentioned in it. This Court in the decision in REVATHI CP EQUIPMENT LTD.. by its power agent Messrs. ORIENTAL FIRE AND GENERAL INSURANCE CO. LTD. & ANOTHER V.. MESSRS. PATEL ROADWAYS PVT. LTD., COIMBATORE AND OTHERS [1988-1-O.W.252] held that where the suit was laid claiming the relief under the Carriers Act, the term relating to jurisdiction found in the consignment note would have no relevance and when a specific part of the cause of action had arisen within the jurisdiction of the trial court, the suit is maintainable. Admittedly, the present suit has been laid invoking the common law liability under the Carriers Act and it is stated in the plaint that the defendant is Common Carrier and therefore, both in law and on facts the defendant is bound to take proper care of the goods entrusted to it and deliver the consignment in good condition to the consignor.

9. The plaintiffs have specifically averred in the plaint that the defendant has subordinate office at Madras and there is no denial in the written statement. The witness of the defendant, DW.1 Bajurang Bare was employed at Madras as admitted by him in his testimony. Since the suit consignment was insured by the first plaintiff to the second plaintiff for transit risk, the first plaintiff lodged a claim bill at Madras and the second plaintiff indemnified the same by paying a sum of Rs.8,18,602/- to the first plaintiff at Madras. Ex.A13 is the claim bill and Ex.A14 is the

Settlement voucher of the claim. Ex.A15 is the Letter of Subrogation. A Division Bench of this Court dealt with a case similar in facts to the present one and held in the decision in BOND FOOD PRODUCTS PRIVATE LTD., AND ANOTHER V.. M/s. PLANTERS AIRWAYS LTD. [2004 (4) CTC 103] that the term "cause of action" used in Section 20(c) of the Code of Civil Procedure denotes the whole bundle of material facts based on which the plaintiffs seek the relief as prayed for and the Letter of Subrogation was executed at Madras and therefore it is evident that part of cause of action has arisen within the jurisdiction of trial court at Madras and the suit filed was maintainable. The ratio in the above decision is applicable to the facts of the present case. The Letter of subrogation was executed by the first plaintiff in favour of second plaintiff to lay the suit and part of cause of action arose within the jurisdiction of the trial Court and the suit is maintainable. The point is answered accordingly.

POINT No.2:

10. The entrustment of the consignment by the first plaintiff with the defendant to transport the same to Madras after insuring the same, is not in dispute. During the transit, the lorry met with an accident and the Moulding Machine fell down and sustained damage and the first plaintiff notified the accident to the second plaintiff and as underwriter, the second plaintiff appointed a licensed independent Surveyor and he went to the accident spot and submitted Ex.A4 the Preliminary Survey Report. The damaged machine was sent back to the manufacturer for assessment of the damage, rectification and repair. A further survey was conducted and the Surveyor was examined as P.W.2 in the case. Ex.A6 is the Final Survey Report.

11. The learned counsel for the appellant/defendant submits that no notice of survey was given to the defendant before the assessment of damages and no reliance can be placed on the report. Per contra, the learned counsel for the respondents/plaintiffs submits that the carrier failed to employ a Surveyor for the assessment of damages on its own and it is only the plaintiffs, who conducted the preliminary survey and the final survey, and they have also examined the Surveyor as a witness on their side and they have proved the damages.

12. Notice was not given to the defendant Carrier before conducting the survey, was raised as a contention before the Division Bench of this Court in the decision referred above and the Bench held that there was nothing which prevented the Carrier from employing a Surveyor for assessment of damages and that was not done and the Carrier failed to prove that it has not committed negligence and in those circumstances, the report of the Surveyor and his testimony with respect to the assessment of quantum of damages have to be accepted. As already seen, in the present case also the

defendant Carrier did not employ a Surveyor on its own for assessment of damages.

13. As per Section 9 of the Carriers Act, it is for the defendant to prove that there was no negligence on its part. The Supreme Court in the decision in NATH BROS. EXIM INTERNATIONAL LTD. V.. BEST ROADWAYS LTD. [2001-1-L.W. 756] laid down that the liability of a Carrier to whom the goods are entrusted for carriage is that of an insurer and is absolute in terms, in the sense that the carrier has to deliver the goods safely, undamaged and without loss at the destination indicated by the consignor and in a suit for recovery of damages, the burden of proof will not be on the owner or the plaintiff to show that the loss or damage was caused owing to the negligence or criminal act of the carrier. In the present case, there is a failure on the part of the defendant Carrier to prove that there was no negligence on its part.

14. The further contention of the learned counsel for the appellant is that the suit is not maintainable as there was no resolution from the Board of Directors authorising institution of the suit as contemplated under Order XXIX Rule 1 C.P.C. No such plea was taken by the defendant in the written statement. In the plaint averments it is stated that the suit consignment was insured with the second plaintiff for transit risk and the first plaintiff lodged a claim bill and the second plaintiff indemnified the first plaintiff and therefore, the second plaintiff is entitled to file and maintain the suit against the defendant Common Carrier in its own name but however, with a view to avoid any technical defence being raised by the defendant, the suit is filed by both the plaintiffs. The learned counsel for the respondents submits that the plaint was signed and verified by the Divisional Manager of the second plaintiff and he was duly authorised by the company to sign and verify the pleadings and, in any event, it is only a technicality, which does not go to the root of the matter. In support of his submission, he relies on the decision of the Apex Court in UNITED BANK OF INDIA V.. NARESH KUMAR AND OTHERS [AIR 1997 SC 3]. Their Lordships of the Supreme Court in the decision, referred above, considered the scope of Order 6 Rule 14 and Order 29 Rule 1 C.P.C. in relation to suits filed by or against Public Corporations and laid down as follows -

> " 9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be

> defeated on account of a procedural irregularity which is curable.
>
> 10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6, Rule 14 together with Order 29, Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and *de hors* Order 29, Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6, Rule 14 of the Code of Civil Procedure."

The second plaintiff as a company is a juristic entity and its Divisional Manager has signed the plaint on its behalf and that could be sufficient compliance with the provisions referred above. Hence the contention raised by the learned counsel for the appellant is devoid of merit.

15. The plaintiff examined its Assistant Manager as P.W.1 and he has testified about the suit claim. Ex.A8 is the invoice relating to the material cost incurred while repairing and reconditioning the damaged parts. The claim for damages is based on Ex.A6 Final Survey Report and its author was also examined as P.W.2 and he was cross-examined by the defendant. In fact, before filing the suit, the first plaintiff issued notice under Section 10 of the Carriers Act and Ex.A11 is the said Notice and Ex.A12 is the Postal Acknowledgement Card evidencing the receipt of the notice by the defendant. Thus the plaintiffs have substantiated their claim for damages. Though the plaintiffs have sought for the cost of transportation charges including crane hire charges of the machinery from the accident site to Thane at a cost of Rs.42,500/-, the same was not granted by the trial Court since no evidence was let in with

regard to the said charges.

16. The plaintiffs have prayed for interest at the rate of 18% per annum from the date of suit till the date of realisation. The trial Court has granted the Decree for a sum of Rs.7,62,077/- with interest at 18% per annum from the date of suit till the date of Decree together with subsequent interest at 6% per annum from the date of Decree till realisation. The learned counsel for the appellant submits that the interest awarded at 18% per annum is excessive. The said contention is repelled by the learned counsel for the respondents/plaintiffs stating that it is a commercial transaction and they have sought for 18% further interest on the suit claim in the plaint and the trial Court has awarded only a lesser interest. It is needless to say that the defendant as a Common Carrier is transporting the goods on hire charges and it is a commercial transaction. Though the trial Court awarded interest at 18% per annum from the date of suit till date of Decree, it has awarded subsequent interest only at 6% per annum till realisation. In the facts and circumstances of the case, the interest awarded cannot be termed as unjust and excessive. The conclusion of the trial Court that the plaintiffs have substantiated their claim is based on proper appreciation of oral and documentary evidence and it does not call for any interference by this Court. The point is determined accordingly.

17. There are no merits in the appeal and the same is dismissed. However, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

pb

To

1. IV Additional Judge, City Civil Court, Chennai.
2. Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.Nageswaran & Narichania, Advocate Sr 57766
+1cc to Mr.Shah & Shah, Advocate Sr 57988

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A.S.No. 214 of 2004