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Court : Kolkata

Decided On : Jan-14-1983

Reported in : AIR1984Cal230

Judge : Chittatosh Mookerjee and ;Amitabha Dutta, JJ.

Acts : Partnership Act, 1932 - Section 69(2); ;Carriers Act, 1865 - Sections 5 and 8; ;Contract Act, 1872 - Section 180

Appeal No. : A.F.A.D. No. 300 of 1974

Appellant : Sm. Umarani Sen and ors.

Respondent : Sudhir Kumar Datta and ors.

Advocate for Def. : S.P. Roy Chowdhury and ;Asoke De, Advs.

Advocate for Pet/Ap. : B.K. Banerjee, Adv.

Disposition : Appeal allowed

Judgement :

Chittatosh Mookerjee, J.

1. This second appeal is at the instance of the plaintiffs in a suit for recovery of Rs. 7086.44 p. as damages from the defendant Nos. 1 and 2. The learned Additional Subordinate Judge, Balurghat and decreed the suit in favour of the plaintiff. The

defendant No. 1's appeal was allowed by the learned Additional District Judge, West Dinajpore and the suit in question was dismissed.

2. the plaintiff's claim in the plaint was that they carried on business jointly under the trade name, Jaidurga Transport Company. The lower appellate court has found that the plaintiffs were members of an unregistered partnership firm. They were not the owners of the goods, which in pursuance of an alleged contract between the plaintiffs and the defendant No. 1 were made over, at Calcutta, for carriage by the defendant's truck and delivery at plaintiffs branch office at Raigunj. At the time of the delivery of the said consignment, 16 packages were not delivered on the ground that they were stolen from the truck of the defendant No. 1. Seven bales were found damaged by water. Both the trial Court and the lower appellate court have concurrently upheld the contention of the plaintiffs that the defendant No. 1 was a common carrier but the lower appellate court reversed the finding of the trial Court that the plaintiffs in their individual capacity had entered into the contract of carriage with the defendant No. 1 and, therefore, the plaintiff who were members of an unregistered firm had no locus standi to file the suit. The learned Additional District Judge, however, upheld the learned Subordinate Judge's finding that the plaintiffs had entered into with the defendant a contract for carriage of the goods in question and that out of the said consignment there was non-delivery of 16 packages and seven bales were delivered in damaged condition. The learned Additional District Judge, held that the plaintiffs were not entitled to any damages because they failed to prove the value of the undelivered packages and the quantum of loss of the damaged goods and the value thereof. In our view, the learned Additional District Judge rightly held that the plaintiffs as partners of an unregistered firm had brought the suit and, therefore, they were not entitled under Section 69(2) of the Partnership Act to enforce any right arising from a contract between the said unregistered firm, on the one hand, and the defendant No. 1, on the other. The plaintiffs did not claim to be the owners of the goods in respect of which they had brought the suit for recovery of damages from the defendants. Their case was that they had a transport business and they carried goods of their customers from one place to another through their own trucks and also through the trucks of other carriers. Pursuant to a verbal contract, a truck belonging to the defendant No. 1 and driven by the defendant No. 2 had carried

diverse goods under Challan No. 190 dated 19-4-71 from the plaintiff's Calcutta address to their branch office at Raigunj. The plain-tiffs pleaded that due to gross negligence and active misconduct of the defendants they had sustained loss as detailed in the schedule to the plaint The extent of damage was ascertained on the basis of payments made by the plaintiffs to their sundry customers who were owners of the loss and damaged goods and which had been entrusted by them to the plaintiffs for transport to the destination. Therefore, the plaintiffs not being owners of the goods in question were not entitled to sue the defendant No. 1, who was a common carrier for breach of the latter's duty under the Carriers Act.

3. The lower appellate court, however, has failed to consider that the owner of the goods which were either damaged or lost had made over them to the plaintiffs for carriage and the plaintiffs were bound to deliver them at their own risk to the said owners The plaintiffs on their own be-half had entered into contract with the defendant No. 1 for carriage of the said goods therefore, the plaintiffs had employed the defendant No. 1 on their own account We have already mentioned that the plain-tiffs had pleaded that they had entrusted the goods in question to the defendants for transport to the destination (vide paragraph 4 of the plaint). The concurrent finding by the two courts is that out of the said consignment the defendant had failed to deliver 16 packages and seven bales were delivered in damaged condition. Accordingly, the plaintiffs who were in the position of bailees were entitled to enforce the duty imposed by law upon the defendant No. 3 who was a common carrier and to sue the latter in tort for breach of their common law duty. S. R. Das Gupta and Bachawat, JJ., in Sukul Bros. v. H. K. Kavarana, AIR 1958 Cal 730, had left open the said point of law in view of their finding that the plaintiffs of the said suit had employed the defendant carrier on behalf of their principal and not on their own account (vide paragraphs 14 and 15 of the report).

4. In the instant case, upon the findings made by the two courts of fact, it ought to be held that the plaintiffs had employed the defendants on their own account by entrusting the said goods for carriage. The plaintiffs' further case was that they had to compensate the owners of the goods for the losses caused by said non-delivery and damages committed by the defendants.

5. S. R. Das Gupta and Bachawat, JJ. in Sukul Bros, 's case (supra), had observed 'Since the great case of Irrawaddy Flotilla Company Ltd. v. Bugwan Das, (1891) 18 Ind App 121 (PC), it is well settled that the duties and obligations of a common carrier are governed by the English Common law as modified by the provisions of the Indian Carriers Act. Under the Common law a common carrier is bound to deliver the goods within a reasonable time and to insure their safety, during their carriage and until delivery; act of God and the King's enemies only excepted. The obligation is not founded upon contract but on the exercise of public employment for reward. The duty arises irrespective of the contract. The owner of goods may sue common carrier for breach of the Common law duty in an action of tort'. Therefore, this court would be justified in applying the principles of English Common Law for deciding who may sue a common carrier for loss or of injury of goods. In Halsbury's Laws of England, 4th Edition, Vol. 5, paragraph 452, it has been stated 'Where goods have been delivered to a earner, and they are lost or injured, the owner of the goods is the proper person to sue for damages. A consignee who consigns only as agent, and has no property in the goods has no right of action unless it is given to him by the terms of the contract Nevertheless were the goods are at the consignor's risk until delivery to the consignee, the consignor may have a special property in the goods, as bailee, sufficient to entitle him to sue.''

6. Section 180 of the Indian ContractAct empowers bailor and bailees to suewrong-doers for conversion of goods entrusted to them. Therefore, we are unable toaccept the submission of Mr. RoyChowdhury, the learned advocate for thedefendant respondent, that the plaintiffsare not entitled to the benefits of Section 180 of the Indian Contract Act andthat the provisions of Carriers Act makethe said Section 180 inapplicable to commoncarriers. It is settled law that duties andliabilities of the common carriers in Indiaare governed by the principles of Commonlaw in England on the subject where theyhave been departed from the case of particular class of common carriers (videBritish and Foreign Marine Insurance Co.Ltd. v. India General Navigation and Rail-way Co. Ltd., (1911) ILR 38 Cal 28), Wehave already quoted from 5th Vol. of Halsbury's Laws of England (4th. Edn.) to indicate that under the English Common law theconsignor at whose risk goods are carriedmay have a special property, in the goodsas bailee sufficient

to entitle him to sue.Therefore, independently of Section 180 asbailee the plaintiffs could sue the defendantsfor deprivation or injury in respect of thegoods made over to the defendants forcarriage and delivery.

7. The lower appellate court found that the damages as alleged by the plaintiff had occurred and the defendant was responsible for the loss in question but the lower appellate court held that the plaintiff had failed to prove the value of the lost packages and the quantum of loss of the damaged goods and the value thereof. According to the tower appellate court, therefore, the plaintiff was not entitled to any decree from the defendant No. 1. At one stage, we were inclined to remit the matter back for enabling the parties to adduce evidence regarding the amount of damages suffered by the plaintiff. But the learned advocates for both parties have submitted that the matter is an old one and a remand at this stage would not be in the interest of justice. Mr. Syamaprasanna Roy Chow-dhury, learned advocate for the defendant-respondents, has conceded that Rs. 4000/-would be the total value, of the damaged goods. Mr. Roy Chowdhury has further submitted that his clients are prepared to pay the said sum of Rs. 4000/- as damages to the plaintiffs. Mr. Bidyut Kumar Banerjee, learned advocate for the plaintiff-appellants, has submitted that his clients are ready and willing to accept the said sum of Rs. 4000/- on account of damages suffered by them: Accordingly, no remand is necessary and we propose to pass a decree for sum of Rs. 4000/- in favour of the plaintiff-appellants.

8. We, accordingly, allow this appeal, set aside the judgment and decree of the lower appellate court. We decree the plaintiffs' suit for a sum of Rs. 4000/-against the defendant-respondents. In the circumstances of the case both parties will bear their respective costs throughout.

Amitabha Dutta, J.

9. I agree.

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