New India Assurance Co. Ltd.

Vs

Economic Transport Corporation

Civil Appeal No. 10280 of 1995

(M.M. Punchhi, Sujata V. Manohar JJ)

11.01.1996

ORDER

1. This appeal by special leave against the judgment and order of the Andhra Pradesh High Court in Appeal No. 55 of 1989, decided on 1-11-1994, would merit dismissal.

2. Elaborate facts are not necessary to be set out. For details, reference can be made to the judgments and orders of the courts below. Suffice for our purpose that five consignments of microwave antennas were dispatched from Norway destined for Hyderabad en route Bombay by sea and onward to Hyderabad by road on lorries. Right from the beginning, the consignments were insured by the owner with the New India Assurance Company Limited, the appellant before us. Loading and unloading of the consignments for both modes of transport whether at the seaport at Norway or at the seaport at Bombay or from Bombay or at Hyderabad was done by the owners or by others under his directions. The delivery of the consignments taken at Hyderabad was smooth, inasmuch as no objection was raised by the owner to the carrier at that time as to the condition of the consignments. Five lorries had been employed for the purpose and the consignments were delivered on different dates between 29-8-1979 till 4-9-1979, whereupon the entire transaction was complete. The five packages were placed in wooden crates. On opening of the packages by the owner, the top layer of the goods in each consignment was found damaged. The owner approached the Transport Company for factual support when the goods were found in that condition and the Transport Company readily lent such support. On claim laid, a surveyor was appointed by the Insurance Company, who vide his report, surmised that presumably the damage had taken place due to rough handling during discharge, by clamping the supporting tackles to the topmost reflector in each crate instead of to the wooden crate. It is thereafter that the owner could successfully claim the assured money from the appellant. Then in turn, the appellant-Insurance Company joining with it the owner, directed an attack on the Transport Company on the basis that as a carrier, it was negligent in transporting the consignments to the door of the owner at Hyderabad. The owner, however, during the progress of the suit filed for the purpose became almost a drop-out from the litigation, for he never came forward to support the case of the Insurance Company either by production of supportive evidence or by appearing himself in the witness-box. On the other hand, the Insurance Company could only produce two witnesses and none of them could further its case beyond a point to show how and when the damage had occurred, apart from the survey report above referred to suggesting the manner in which the damage could have occasioned.

3. The trial court decreed the suit against the career-Transport Company. The carrier was directed to pay a sum of Rs 3,15,677.90 towards damages to the Insurance Company. The carrier took the matter in appeal before the High Court of Andhra Pradesh. A Division Bench of that Court reversed the judgment and decree of the trial court, which has given rise to this appeal.

4. As is evident, there were no direct contradicting facts. The litigation was fought on the basis of inferences to be drawn from those facts - much of those were in the realm of surmises and suppositions. The High Court culled out those facts and then came to hold that it was not proved that the damages to the goods transported had occurred during transit or during the period in which the consignment remained in the custody of the carrier. The surveyor's report, according to the High Court, only helped to ascertain the extent of loss, but could fasten no liability as it had plainly mentioned of a possibility and not a certainty, as to when the goods could have been damaged and in what manner. PW 2 Mr Chandramouley, who appeared to introduce the survey report in evidence, was not the author of it, but had only come to place it on record without holding any personal opinion about the possibility as to how the damage could have been caused. The carriers, thus, could not avail of the opportunity to cross-examine the surveyor who prepared the survey report, because, reportedly he had by then died. The High Court examined the question of the liability of the carrier in the way it was presented by the Insurance Company, the appellant. It started with the presumption that it was the carrier who had to discharge the burden that he was not responsible for the damage. The High Court came to conclude that in the peculiar facts and circumstances, presumption under Section 9 of the Carriers Act, 1865 relating to negligence did not arise and even if it did, it stood rebutted in the light of the facts found. Entertaining such view, the High Court upturned the decision of the trial court.

5. The facts found are eloquent. There is no other view that can be taken on the facts established. Learned counsel for the appellant tried hard to convince us to the contrary but remained unsuccessful. It appears that the Insurance Company is chasing a mirage. There is no occasion for holding the carrier liable when delivery of consignments had taken place without any complaint or reported damage at that juncture by the owners. The survey report too, was suggestive of the fact that the damage possibly had occurred while the goods were being loaded or unloaded, at the instance of the owners. That obviously could have been done when the lorries were stationary. The theory of damage occurring during transit was thus completely ruled out.

6. We therefore find no scope to interfere in this appeal. The orders of the High Court thus are sustained. The appeal therefore fails and is hereby dismissed, with costs.