

SUPREME COURT OF INDIA

Economic Transport Organization,

Vs.

Dharwad Distt. Khadi Gramudyog Sangh

S.L.P.(C) No.1318 of 1999

(M. Jagannadha Rao and M. B. Shah, JJ.)

31.03.2000

ORDER:-

1. The petitioner is a common carrier governed by the Carriers Act, 1865. It contends that under Section 14(1)(d) of the Consumer Protection Act, 1986 the Consumer Fora can direct payment of compensation to the consumer for loss or injury suffered by the consumer due to the 'negligence' of the opposite party and hence the burden of proof is on the complainant. It is contended that Section 9 of the Carriers Act which imposes burden on the defendant or the common carrier to prove absence of negligence cannot, therefore, be applied so as to shift the onus to the carrier to prove absence of negligence.

2. In view of the recent Judgment of this Court dated 28th March, 2000 in Patel Roadways Limited v. Birla Yamaha Limited, in C.A. No. 9071 of 1996 (reported in 2000 AIR SCW 1047), we are of the view that the liability of the common carriers is that of the insurer. It was held there that Section 9 of the Carriers Act, 1865 applies to matters before the Consumer Fora under the Consumer Protection Act. It was also held that the principle underlying Section 9 of the said Act relating to burden of proof is a principle of common law and has been incorporated in Section 9 of the Carriers Act. Even assuming that Section 9 of the Carriers Act, 1865 does not apply to the cases before the Consumer Fora under Consumer Protection Act, the principle of common law above-mentioned gets

attracted to all these cases coming up before the Consumer Fora. Section 14(1)(d) of the Consumer Protection Act has to be understood in that light and the burden of proof gets shifted to the carriers by the application of the legal presumption under the common law. Section 14(1)(d) has to be understood in that manner. The complainant can discharge the initial onus, even if it is laid on him under Section 14(1)(d) of the Consumer Protection Act, by relying on Section 9 of the Carriers Act. It will, therefore, be for the carrier to prove absence of negligence. It has been held in like circumstances that a defendant in a suit on the basis of a negotiable instrument can discharge the onus lying on him under Section 118 of the Negotiable Instruments Act by relying on another presumption under Section 114 of the Evidence Act under which if a plaintiff does not produce the accounts in his personal custody an adverse inference can be drawn against the plaintiff. *Kundanlal v. Custodian, Evacuee Property*, AIR 1961 SC 1316.

3. With the above observations and following the abovesaid Judgment in the case of *Patel Roadways* (2000 AIR SCW 1047), we dismiss the special leave petitions accordingly.

Petitions dismissed.