ANDHRA PRADESH HIGH COURT

Indian Drugs and Pharmaceuticals

Vs.

Savani Transport

City Civil Court Appeal No. 84 of 1976

(Gangadhara Rao, J.)

25.08.1978

JUDGMENT

Gangadhara Rao, J.

1. I am reluctantly dismissing this appeal. The Indian Drugs and Pharmaceuticals Ltd. is the plaintiff and Savani Transport (P) Limited is the defendant. The plaintiff manufactures Drugs and Pharmaceuticals at Hyderabad. It transpires from evidence that the plaintiff entrusted 495 cartons of medicines consisting of Apidin Tablets and APC tablets to the defendant's branch at Hyderabad on 11th Nov., 1971 to be transported to their Ahmedabad Branch. When they were entrusted, they were in good condition. The Ahmedabad Branch received the goods, but found 26 packages (17 cases of Apidin Tablets and 9 cases of APC tablets) in a damaged condition. So, they sent back the damaged packages to the plaintiff through defendant's lorry on 25th Nov., 1971. They found oil marks on the outward packages of the cardboard carton and bad smell emanating from the packages and they were unfit for human consumption. At Hyderabad, those cases were opened in the presence of M. Santosh Kumar, Central Branch Manager of the defendant-company. On 15th Dec., 1971 the plaintiff issued a notice to the defendant-company to make good the loss. There was no reply from the defendant. On 20th Dec., 1971 another notice was issued by the plaintiff to the defendant-company stating that Apidin tablets were salvaged and, therefore, claiming only Rs. 7016-15 towards the costs of 216 tins of APC tablets, 50 percent of the packing material of the Apidin Tablets and the freight charges. The defendant did not give reply to that notice. On 25th January, 1972 the plaintiff issued a lawyer's notice, Ex. A-42 to the defendant, to which the defendant gave the reply, Ex. A-43 on 23rd February 1972 denying his liability to pay any damages. Therefore, the plaintiff filed this suit.

2. The defendant resisted the suit stating that originally the plaintiff informed them that a lorry load was available, but subsequently, they were informed that the goods were not of full lorry load and the freight would be paid on the basis of weight load. The Representative of the plaintiff had no objection if the goods of other parties were also taken in the lorry to make up the full lorry load. Therefore, the defendant loaded in that lorry not only the goods of the plaintiff, but also the goods belonging to third parties. When the goods were delivered at Ahmedabad on or about 18th Nov., 1977, they were received by the consignee without any objection. He denied

that the goods were damaged in transit due to his negligence. He said that 26 cases were booked again on 25th Nov., 1971 from Ahmedabad to Hyderabad and at Hyderabad they were delivered to the plaintiff. He stated that there was no negligence on his part. He also contended that the suit was barred by time since it was not filed within six months from the date when the plaintiff came to know of the loss or injury.

3. The learned Additional Judge, City Civil Court, Hyderabad who tried the suit, found that a portion of the same goods was sent back to Hyderabad from Ahmadabad as a separate consignment, and the plaintiff had failed to prove that the defendant was negligent in handling the goods entrusted to him as a Public Carrier. He also found that the suit was not in time. Consequently, he dismissed the suit.

4. In this appeal filed by the plaintiff, it is submitted that when once the learned Judge has found that part of the same consignment was sent back to Hyderabad he should have held that the negligence on the part of the defendant was proved. He submitted that the learned Judge had wrongly cast the onus upon the plaintiff to prove that the defendant was negligent, on the other hand the statutory presumption is upon the defendant to prove that he was not negligent. He also submitted that the learned Judge has misconstrued Section 20 of the Carriers Act.

5. It was contended by the learned counsel for the respondent that there was no evidence to show that 26 cases were delivered at Ahmadabad in a damaged condition, that no one connected with the Ahmadabad branch was examined, that after retaining the goods with them for one week, the Ahmadabad branch returned the goods and, therefore, the plaintiff has failed to discharge the initial burden that the goods that were transported were in a good condition and they were delivered at Ahmadabad in a damaged condition. He also contended that the suit was not filed in time.

6. First, I will take up the question whether the suit is barred by limitation. Section 10 of the Carriers Act, 1865 reads as follows :-

> "Notice of loss or injury to be given within six months.- No suit shall be instituted against a common carrier for the loss of or injury to goods entrusted to him for carriage, unless notice in writing of the loss or injury has been given to him before the institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff."

The marginal note is significant. It only speaks of giving notice of loss or injury within six months. It does not speak of any period of limitation.

7. A reading of the Section shows that a suit cannot be instituted against a common carrier for the loss of, or injury to, goods entrusted to him unless notice in writing of the loss or injury is given to him. That notice must be given before the institution of the suit and it must be given within six months when the loss or injury first came to the knowledge of the plaintiff. Thus, really Section 10 does not prescribe the period of limitation for filing the suit under the Act. It only prescribes that a notice should be given before filing the suit and it should be given within six months when the loss or injury first came to the knowledge of the plaintiff. The learned counsel for the

respondent has submitted that because the conjunction "and" is used in the Section, it means that a notice should be given before instituting the suit and the suit should also be filed within six months when the loss or injury first came to the knowledge of the plaintiff do not agree. A plain reading of the Section does not lead to that conclusion. What the conjunction "and" means is that not only the notice in writing should be given before the institution of the suit, but it should be given within six months when the loss or injury first came to the knowledge of the plaintiff.

8. The Article of limitation that applies to a case of this kind is Article 10 of the Limitation Act. It provides that against the carrier for compensation for losing or injuring the goods, the period of limitation is three years and it runs from the date when the loss or injury occurs.

9. The suit referred to in Section 10 of the Carriers Act is a suit against a common carrier for the loss or injury to goods. Article 10 of the Limitation Act also speaks of compensation for loss or injury to goods. The learned counsel for the respondent submitted that under Article 10 of the Limitation Act, the suit should be filed within three years when the loss or injury occurs; but in Section 10 of the Carriers Act, the words used are "within six months of the time when the loss or injury first came to the knowledge of the plaintiff", and in view of the difference in the language, a special period of limitation is prescribed under Section 10 of the Carriers Act for filing the suit. This argument is based on a misunderstanding that Section 10 of the Carriers Act itself prescribes a period of limitation for filing the suit. On the other hand, when we compare the language of Section 10 and Article 10, it becomes obvious that both refer to loss or injury to goods and while Section 10 relates to notice, Article 10 relates to limitation.

10. In this connection, the learned counsel for the respondent relied upon the decision of A.D.V. Deddy, J. in C.R.P. No. 1298/1970 dated 23rd March, 1971 (Andh Pra). It is true that in that decision, the learned Judge held that under Section 10 of the Carriers Act, a suit against the common carrier for loss or injury to the goods entrusted to him should be instituted within six months of the time when the loss or injury first came to his knowledge. With respect, I must state that the learned Judge has not correctly interpreted the Section. But it is unnecessary for me to refer this question to a Division Bench, for there was no discussion about it in his decision and also because the language of the Section is so plain.

11. Next, I take up the contention of the appellant that when once the learned Judge has found that part of the same goods were sent back to Hyderabad, he should have held that the negligence on the part of the defendant was proved. In this connection, it is necessary to refer to the relevant provisions of the Act. Section 8 of the Carriers Act, to the extent it is relevant, provides that every common carrier shall be liable to the owner for loss of or damage to any property delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act of the carrier or any of his agents or servants and shall also be liable to the owner for loss or damage to any such property, Section 9 says that in any suit brought against a common carrier for the loss, damage or non-delivery of goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non delivery was owing to the negligence or criminal act of the carrier, his servants or agents. Therefore, Section 9 relieves the plaintiff from the burden of showing that the loss or damage or non delivery was owing to any negligence or criminal act of the carrier, his servants or agents. The burden of proving the absence of the negligence is on the carrier. The reason is that the liability of the common carrier is that of an insurer. Even if there is no negligence on the part of the common carrier, he is liable to

compensate the owner of the goods for the loss of the goods that occurred during the transit. This position is well settled by the decisions of the Courts. (See *P.K. Kalaswami Nadar v. K. Ponnutswami Mudaliar*[1]*, Vidya Ratan v. Kota Transport Co. Ltd*[2]*., Tugan Ram v. Dominion of India*[3]*,* Commrs. for the *Port of Calcutta v. General Trading Corporation Ltd*[4]*.,* and *R.K. Abdulla Yelinje Mammi v. M/s. Kadambalithava Chennakeshava*[5]*,*

12. But, unfortunately, this case has been badly conducted by the plaintiff. The relevant legal evidence has not been placed before the court to come to the conclusion that when the goods were handed over at Ahmadabad branch, they were in a damaged condition. In the plaint, it is stated that the plaintiff has consigned through the defendant-transport service at Hyderabad, only 26 cases, while it transpires from evidence that actually 495 cases were entrusted to them. The Ahmadabad branch received the goods on 18th Nov., 1971. They found 26 cases to be in a damaged condition and, therefore, they entrusted those cases to the defendant's branch at Ahmadabad on 25th Nov., 1971 to be taken back to Hyderabad. This is evident from Exts. A-5 and A-6. In the letter, Ex. A-34 dated 26th Nov., 1971 written by the Depot. Manager, Ahmadabad to the plaintiff, it is stated that they had found 17 cases of Apidin tablets and 9 cases of APC tablets were damaged because they were mixed up with other chemicals carried by the carrier, and so, they could not keep them in their stores or use them. It is also stated that it was reported to the Agent, who brought the stores and he had certified accordingly, and therefore, the goods were returned to Hyderabad on 25th Nov., 1971. Ex. A-35 is alleged to be a certificate signed by the Agent of the defendant at Ahmadabad to the effect that 476 cases were received in good condition, and 19 cases detailed therein were received in damaged condition. But the original is not produced in the Court. It is stated that it was lost. Only a copy is produced to show that it was signed by the carrier agent for the Savani Transport and also by the Assistant Store Keeper, IDPL, Ahmadabad. In the letter, Ex. A-33, dated 7th Dec. 1971 written by the Ahmadabad Branch to the plaintiff, it is stated that originally, they found that only 19 cases were damaged, but thereafter, they could detect 26 cases in bad condition and, therefore, they were returned. This evidence shows that the Ahmadabad branch received 495 cases on 18th Nov., 1971, they found 26 cases out of them in a damaged condition and they returned them to Hyderabad to the plaintiff through the defendant's lorry on 25th Nov. 1971. But the person connected with Ahmadabad branch, who received the goods, checked and found originally 19 cases in a damaged condition in the presence of the Agent of the defendant and who subsequently detected 7 more cases in a damaged condition was not examined in this case. The original of Ex. B-35 which is alleged to have been signed by the Agent of the defendant is not produced in the court. Only a copy is produced and it is not also proved. I cannot rely upon that document and hold that 19 cases were checked in the presence of the Agent of the defendant at Ahmadabad and were found to be in a damaged condition. For the first time, it is only on 15th Dec., 1971 under Ex. A-38 the defendant was informed about the damage. It is not disputed that the Ahmadabad branch received the goods on 18th Nov.,

[1] AIR 1962 Mad 44 [3] AIR 1966 All 260 [5] AIR 1963 Ker 198
[2] AIR 1965 Raj 200 [4] AIR 1964 Cal 290

1971 and retained those goods with them till 25th Nov., 1971, when they returned the 26 cases. In these circumstances. I have to hold that the plaintiff has failed to establish that when the defendant handed over 495 cases at Ahmadabad branch. 26 out of them were found to be in a damaged condition. The plaintiff has relied upon the letters written by the Ahmadabad branch to the plaintiff's office to show that the Ahmadabad Branch had received the goods in a damaged condition, But the author of the letters had not been examined. Therefore, they are not properly

proved. First, the plaintiff has to prove that he had received part of the goods in a damaged condition at Ahmadabad. That he has failed to do so. If so, the liability of the defendant does not arise. There is evidence to show that 26 cases were returned to Hyderabad by Ahmadabad branch, but even when they were booked at Ahmadabad, they were in a damaged condition and they were received in the same condition at Hyderabad. But that will not make the defendant liable for damages. In these circumstances, I hold that the plaintiff had failed to prove that damage was caused to the goods when they were received at Ahmadabad. In this view of the matter, it is unnecessary for me to decide the question whether the quantum of damages claimed is proper. Consequently, I see no grounds to interfere with the judgement of the lower Court, and I dismiss this appeal, but in the circumstances of the case, I direct each party to bear his costs in this appeal.

Appeal dismissed.