RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Mehta Transport Company

Civil Second Appeal No. 124 of 1982
(Sunil Kumar Garg, J.)

11.10.2001

ORDER

Sunil Kumar Garg, J.

1. This second appeal has been filed by the State of Rajasthan (plaintiff-appellant) against the judgment and decree dated 11-5- 1982 passed by the Dist. Judge, Dungarpur in Appeal No. 38/79 by which he dismissed the appeal of the appellant-plaintiff and upheld the judgment and decree dated 28-9-1979 passed by the learned Civil Judge, Dungarpur by which the learned Civil Judge dismissed the suit filed by the plaintiff-appellant against the respondents-defendants.

2. It arises in the following circumstances:

> That the State of Rajasthan (Plaintiff-appellant) filed a civil suit against the defendants-respondents in the Court of Civil Judge, Dungarpur on 1-7-75 stating that the defendant No. 1 was registered firm and defendant Nos. 2 and 3 were its partners and they were dealing in transport business.
> (ii) That the plaintiff-appellant booked a truck of the defendants for supplying pipes from Dungarpur to place Anjana in Dist. Banswara on 10-7-72 and Bilty of booking is numbered 1095 dated 10-7-72. The number of the truck which was carrying the pipes was RJJ 451. The pipes were loaded on the truck. When the truck was on the way towards Anjana, an accident took place and the truck capsized because of rash and negligent driving of the driver of the truck as a result of which some goods loaded in the truck were damaged, meaning thereby that some pipes of the plaintiff-appellant were got damaged. The defendants-respondents delivered sound pipes at Anjana, but damaged pipes were

transported back to Dungarpur and stacked at the godown of the defendants-respondents. It was duty of the defendants-respondents as per provisions of Carriers Act, 1865 (hereinafter referred to as the Act of 1865) that the goods which were loaded in the truck of the defendants-respondents should have been allowed to reach safely and in good condition at destination and since pipes were got damaged, therefore, the defendants-respondents were liable for that damage caused to the plaintiff-appellant because of the accident.

3. A notice under Section 10 of the Act of 1865 was also given by the plaintiff-appellant to the defendants-respondents. According to the plaintiff-appellant, the cost of damaged pipes was assessed at Rs. 6182 and thus, the plaintiff-appellant filed a suit for recovery of this amount against the defendants-respondents.

4. The suit of the plaintiff-appellant was contested by the defendants- respondents by filing a written statement on 1-12-75 admitting that there truck was booked by the plaintiff-appellant on 10-7-72 through Bilty, but the fact that the truck capsized because of rash and negligent driving of the driver of the truck was denied, but on the contrary it was averred that because of bursting of the front wheel, the truck in question capsized. It was further stated that in the truck, one Mansoor Khan a man of the plaintiff- appellant was also sitting at the time when the truck capsized. Hence, there was no negligence on the part of the driver of the truck and thus, the defendants-respondents are not liable for the damage caused to some pipes belonging to the plaintiff-appellant and the suit of the plaintiff-appellant be dismissed.

5. On the pleading of the parties, the learned Civil Judge framed following issues on 4-5-76 :

(Vernacular matter omitted - Ed)

6. In the trial, four witnesses were produced on behalf of the plaintiff- appellant and four witnesses were produced on behalf of the defendants- respondents and some documents were got exhibited.

7. The learned Civil Judge through his judgment and order dated 28-7-79 dismissed the suit of the plaintiff-appellant and gave the findings in following manner :

ON ISSUE NO. 1

i) The incident took place because of sudden bursting of the tyre as a result of which the truck overturned, therefore, there was no negligence on the part of the truck driver and similarly there was no responsibility of the owner of the truck and furthermore he treated that act as an act of God.
ii) Since no criminal act was done by the driver or owner of the truck, therefore, defendants-respondents were not held liable and looking to the fact that the matter was reported to the police, but no criminal liability was fastened on the truck driver, therefore, in these circumstances, issue No.1 was decided by the learned Civil Judge against the plaintiff-appellant and in favour of the defendants-respondents.

8. Since issue No. 1 was decided against the plaintiff-appellant the suit of the plaintiff-appellant was dismissed by the learned Civil Judge.

9. Aggrieved from the judgment and decree dated 28-9-79 the plaintiff- appellant preferred an appeal before the Dist. Judge and the Dist. Judge, through his judgment and decree dated 11-5-82 upheld the findings recorded by the learned Civil Judge through his judgment and decree dated 28-9-79 and dismissed the appeal.

10. Aggrieved from the judgment and decree dated 11-5-82 passed by the Dist. Judge, Dungarpur, the plaintiff-appellant preferred present second appeal before this Court and while admitting the second appeal, this Court on 11-11- 82 formulated following questions of law for determination by this Court :

1) Whether the first appellate Court was justified in dismissing the plaintiff's claim for loss on account of damage to the goods handed over to the carrier for transport?
2) Whether the defendants-respondents have been able to prove that they have taken reasonable care in or about the management of the tyres so as to show the absence of negligence and due diligence on their part?

11. The main contention raised by the learned counsel for the plaintiff- appellant is that the learned Courts below have committed error in holding that there was no negligence on the part of the driver and further holding that it was an act of God. Further-more, the defendants-respondents had not taken proper care in maintaining tyre etc. and, therefore, from this point of view also, the findings of both the Courts

below are perverse and they are liable to be set aside.

12. In this case, so far as the fact that the truck capsized as a result of which some pipes loaded in the truck were got damaged is concerned, there is no dispute on this point. As general rule 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 during the transit. For convenience Section 8 of the Carriers Act, 1865 is reproduced hereunder :

> 8. Common carrier liable for loss or damage caused by neglect or fraud of himself or his agent :- Notwithstanding anything hereinbefore contained, 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 other than property to which the provisions of Section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.

13. A common carrier is responsible for safety of goods except when loss is caused by an act of God. If the carrier wants exoneration from the liability he has to prove that he had taken such care which under the circumstances of the case, was reasonably and practically possible to ensure the safety of the goods.

14. Keeping these aspects in the mind, it is to be seen in the present case, whether there was any negligence on the part of driver when the accident took place. In this case, there is statement of D.W. 2 Majid Khan, MTO that the accident took place because of bursting of tyre (front left). It is also stated that the truck was new one. In these circumstances if the accident took place because of bursting of tyre, no negligence on the part of driver can be attributed. Similarly, it cannot be said that the defendants-respondents did not take proper care in maintaining the tyre of the truck etc.

15. Therefore, I am of the opinion that where the goods transported in the defendants lorry are damaged due to breakdown of the vehicle on the way, in such a case the damage which has taken place cannot be said to be result of negligent act of the driver

of that lorry or truck and in such a case the terms of goods consignment note also exonerates the carrier from any liability from damage and for that in the present case Bilty Ex. 5 may be seen where such condition is there.

16. Thus the above two substantial questions are answered in the following manner:

> QUESTION NO. 1.
> (1) That the first appellate Court was justified in dismissing the plaintiff's claim for loss on account of damage to the goods handed over to the carrier for transport.
> QUESTION NO. 2
> (2) That the defendants-respondents have taken proper care in the management of tyre etc.

17. Since both the substantial questions are answered against the plaintiff- appellant, therefore, this second appeal is liable to be dismissed. For the reasons mention above, the present second appeal filed by the plaintiff-appellant is dismissed after confirming the judgment and decree dated 11-5-82 passed by the learned Dist. Judge, Dungarpur and the judgment and decree dated 28-9-79 passed by the learned Civil Judge, Dungar-pur.
No order as to costs.

Appeal dismissed.