

PETITIONER:
M/S. NEW INDIA ASSURANCE CO. LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT 20/01/1995

BENCH:
VERMA, JAGDISH SARAN (J)
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VERMA, JAGDISH SARAN (J)
BHARUCHA S.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 SCC (2) 417 JT 1995 (1) 550
1995 SCALE (1) 292

ACT:

HEADNOTE:

JUDGMENT:

J.S. VERMA, J.:

1. The suit giving rise to this appeal was filed by the appellant-New India Assurance Co. Ltd. and Respondent No. 3-NGEF Ltd. against the Union of India representing the concerned railway administrations impleading the Bihar State Electricity Board as a proforma defendant to recover the sum of Rs 1, 97,864/- together with interest as compensation for loss of goods during transit by rail. The trial court decreed the suit against the Union of India for recovery of Rs. 1.97,864/- together with interest at the rate of 6 percent per annum from the, date of suit till payment. The first appeal filed by the Union of India against the plaintiffs has been allowed by the Karnataka High Court and the judgment and decree of the trial court decreeing the suit have been set aside. Hence this appeal by Special Leave.

2. The Bihar State Electricity Board (Defendant No. 3) placed an order with NGEF Limited (Plaintiff No. 2) for supply of one 20 M.V.A. Transformer with accessories. NGEF Limited (Plaintiff No. 2) tendered the consignment on 15.6.1977 to the railway administration at Bangalore for carriage to, and delivery at Hajipur in Bihar, naming the Bihar State Electricity Board (Defendant No. 3) as consignee. The consignment was covered by an open insurance policy issued by New India Assurance Company (Plaintiff No. 1) under which insurer was liable to reimburse the consignor NGEF Ltd. (Plaintiff No. 2) for non-delivery or loss of the consignment during transit by rail. The consignment reached the destination on 31.7.1977 but was found to be damaged. It appeared that the damage was caused to the consignment in transit during its transshipment from a broad gauge wagon to a meter gauge wagon. Open delivery of the consignment was given by the railway on 31.8.1977 and a certificate of damage to this effect was issued by the railway

administration. The damage caused to the consignment was also surveyed and the surveyor gave his report estimating the loss at Rs. 1,96,849/The claim made by the Plaintiff No. 2NGEF Ltd., the consignor, under the insurance policy was settled by the insurer by payment of Rs. 1,96,849/-. The consignor, plaintiff No. 2-NGEF Ltd. had written a letter in favour of the insurer plaintiff No. 1 New India Assurance Co. Ltd. authorising the insurer to recover the damages from the railway administration. After the statutory notice, New India Insurance Company Ltd. as the insurer filed the suit for recovery of the said amount impleading the consignor as Plaintiff No. 2 and the consignee as the proforma Defendant No. 3. The consignee-Defendant No. 3 remained ex-parte and did not

552

contest the suit. The suit was contested only by the Union of India representing the railway administrations.

3. The defence of the railway administrations was that ownership of goods was in the consignee-Bihar State Electricity Board (Defendant No. 3) and, therefore, the plaintiffs i.e. the insurer and the consignor had no right to sue. The liability for payment of compensation was also denied.

4. It is significant that the Bihar State Electricity Board (Defendant No. 3) whose title to the goods was asserted by the railway administration, apart from, not contesting the suit had also intimated the railway administration by a letter that it had no right or interest in the goods and, therefore, it had no objection to recovery of the amount by the plaintiffs from the railway administration. The letter Ex. P-9 dated 09.12.1978 sent by the consignee (Defendant No. 3) was addressed to the railway administration and countersigned by the Station Master of the destination station at the time of giving open delivery of the goods. There was thus no dispute of title to the goods or right to sue between the consignor and consignee.

5. The trial court accordingly rejected this defence of the railway administration and held that the consignor (Plaintiff No. 2) had title to the goods and, therefore, was entitled to maintain the suit. It was also held that the damage to the goods was caused during transit by the negligence of the railway administration. The loss was assessed at the sum of Rs. 1,97,000/-. Accordingly, the suit was decreed in favour of the plaintiffs for recovery of Rs. 1,97,864/- with interest at the rate of 6 percent from Defendants 1 and 2, the Union of India representing the concerned railway administrations.

6. In the first appeal filed by the Union of India, the High Court has reversed the trial court's judgment and decree. The High Court affirmed the finding of the trial court that the loss during transit was occasioned by the negligence of the railway administration. However, it further held that the property in goods had passed to the consignee (Defendant No. 3-Bihar State Electricity Board) when the consignment was booked on F.O.R. basis and the consignor (Plaintiff No. 1) had no cause of action against the railway administration to make the claim for loss to the consignment during transit. The High Court held that the right to sue was only in the consignee (Bihar State Electricity Board-Defendant No. 3). For this reason alone the appeal was allowed resulting in dismissal of the suit.

7. We have no doubt that the judgment of the High Court is erroneous. Irrespective of the general rule relating to the consignor's right to sue the railway administration for

recovery of damages where the railway receipt names the consignee also, in the facts of the present case the plea of the railway administration to resist the consignor's right to sue is wholly untenable. Admittedly, there is no dispute between the consignor and consignee about the ownership of goods or the right to sue. The letter Ex. P-9 dated 09.12.1978 of the consignee bearing the counter signature of the Station Master of the destination station and handed over to the railway administration at the time of the open delivery of the consignment stated clearly that the consignee (Bihar State Electricity

553

Board) had no right or interest in the consignment and that it had no objection to recovery of the claim by the consignor from the railway administration. In such a situation there was no scope or occasion for the High Court to record a finding that the consignee had title to the goods. For this reason alone the finding of the High Court that it was the consignee alone, and not the consignor, who had the right to sue, is against the admitted facts and the relevant pleadings. The view taken by the High Court is clearly tenuous.

8. In *Union of India v. West Punjab Factory* (AIR 1966 SC 395) a Constitution Bench of this Court held that ordinarily it is the consignor who can sue if there is damage to the consignment since the contract of carriage is between the consignor and the railway administration- the mere fact that the consignee is different from the consignor, does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title of goods has passed to the consignee has to be decided on other evidence. In short, whether title to goods has passed from the consignor to the consignee is a question of fact in each case. The ordinary rule indicated was that the consignor who enters into contract of carriage with the railway administration can sue. It is difficult to appreciate how, in the present case, the High Court could have dismissed the consignor's suit particularly when the consignee had clearly intimated to the railway administration in writing that it did not claim any right or title in the goods.

9. Consequently the appeal is allowed. The judgment and decree passed by the High Court are set aside and that of the trial court decreeing the suit arc restored.

The plaintiffs would get the costs throughout from the Union of India representing the railway administration (Defendant Nos. 1 and 2).

554