

Witness duly sworn on 03.12.2024.

Further Cross Examination by Sri.PKB, Advocate for plaintiff:

15. We used to transport fly ash as per FIBC packaging for export. We transport fly ash for domestic market as per their requirement. I used to procure FIBC bags from manufacturers. I have documents in our possession to substantiate that, we procured bags from manufacturers. It is incorrect to suggest that, we have not packed fly ash meant for export in FIBC bags even though it is mandatory.

16. We claimed damages of Rs.1.5 crores from UPCL, Padubidri in O.S. No.408/2019 on the file of IV Addl. Civil Judge and JMFC, Udupi.

Question : Which dispute between plaintiff and defendant you are referring in Para 13 of your cross examination ?

Answer : I referred to incident dated 29.05.2019. Witness further volunteers, Port trust instructed plaintiff not to export fly ash from Mangalore Port for not clearing the dues payable by plaintiff to Port.

17. Port issued instructions to plaintiff and not to me as such I am not aware of exact date and month of such instruction issued by Port to plaintiff. According to me, Mangaluru Port Trust canceled our pass at the instructions of plaintiff (M/s Falcon) thereby our Cargo was not allowed inside the Port from the date of cancellation of the pass. I have not received specific instruction not to bring Cargo for Export either from M/s Falcon or from Mangaluru Port Trust.

18. It is incorrect to suggest that, I have not filed suit seeking damages from UPCL in Udupi. It is true to suggest that, suit against UPCL is no way connected to dispute between plaintiff and

defendants. I filed complaint against Bajaj Alliance General Insurance Company before State Consumer Commission due to repudiation of claim. I have not arrayed M/S Falcon Impex Corporation and New Mangaluru Port Trust as parties.

19. I have filed complaint in State Consumer Commission against Bajaj Alliance General Insurance Company for repudiation of claim with regard to Cargo (in transit and transit storage cargo). Bajaj Alliance General Insurance Company repudiated my claim on two grounds, they are 1. Storage was in violation of guidelines issued by NMPT via their plot allotment letter to M/s Falcon Impex Corporation. 2. Storage was made in open area instead of closed area. I have no impediment to produce claim repudiation letter/endorsement issued by Bajaj Alliance General Insurance Company before this court.

20. Ex.P.2/Notice was issued by my Advocate as per my instructions. I mentioned in Para 3 of the Ex.P.2 that, Canara Bank neglected in securing proper policy coverage. It is incorrect to suggest that, Bajaj Alliance General Insurance Company repudiated my claim for the reason that, policy does not cover claim of the defendant No.1. It is true to suggest that, the entire claim of our company was not covered in view of the negligence of Canara Bank as stated in Ex.P.2.

21. I have not filed any complaint against Canara Bank as the dispute between our company and Bajaj Alliance General Insurance Company is not resolved. I have not mentioned in my complaint filed against Bajaj Alliance General Insurance Company before the State Commission that, storage norms were violated by M/s Falcon Impex Corporation and I have incurred loss due to that.

22. It is incorrect to suggest that, I have not arrayed M/S Falcon Impex Corporation as party in original suit filed in Udupi court or in the Consumer complaint filed before State Commission as there was no fault or negligence on the part of M/s Falcon Impex Corporation. It is incorrect to suggest that, I am not straight forward in business and making false claims.

23. I am residing in Mangaluru since my childhood. I am aware that, usually May to October is the rainy season in this area. I am aware that, 29.05.2018 was the Rainy season. I am aware of the area in which fly ash was stored inside custom bound area as on 29.05.2018. I have not issued instructions to plaintiff not to store fly ash in unpaved area. Witness volunteers, storage is in the discretion of C and F agent.

24. I received notice from plaintiff for removal of Cargo from custom bound area after the incident. I instructed plaintiff that, fly ash having become totally a waste product, plaintiff is at liberty to shift the waste product to any place and make use of the same in Para 13 of reply dated 18.10.2018. I issued mail and called upon plaintiff to store the goods in as it is and where it is condition to the query of the plaintiff with regard to intended auction by the Port authority. I issued mail/Ex.P.30 dated 23.09.2019.

Further cross examination is deferred.

(Typed to my dictation in the open court.)

R.O.I. & A.C.,

**I Addl. District & Sessions Judge,
Mangaluru, D.K.**