

Witness duly sworn on 15.01.2025

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

Question : C and F agent availed plot in custom bound area as per the requirement of Exporter ?

Answer : As per the terms of the contract entered into between C and F agent and Exporter.

25. Area would be decided based on quantity to be exported by the Exporter. There is no mention with regard to quantity of fly ash to be stored in the custom bound area for the purpose of Export in Ex.P.18/Agreement. I am not aware of area of plot and nature of plot allotted to plaintiff/C and F agent by NMPT for storage and stacking of goods to be exported by me. I came to know about area and nature of plot allotted to plaintiff only after 29.05.2018. Plaintiff used to send invoices raised towards plot rent.

26. There is no mention as to nature of plot in the invoices which were raised by the plaintiff. I never raised dispute with regard to invoices raised by the plaintiff stating that, invoices raised were not in order. I came to know about Ex.P.11 only after incident occurred on 29.05.2018 i.e., at the time of claiming insurance by Defendant No.1.

27. Ex.P.46 bears my signatures and they are marked for the purpose of identification as Ex.P.46(a) to (c) respectively. Ex.P.46 is the set of bills issued by plaintiff to Defendant No.1 and there is description with regard to nature of storage area for which rent levied. There is description of the plot as 2000 Sq. mtrs of open paved area in Bill/Tax invoice dated 13.12.2017 marked as Ex.P.46. Open paved area means area without roof.

Question : You are aware that, fly ash is being stored in open paved area much prior to 29.05.2018 ?

Answer : I deny the suggestion. Witness volunteers, open paved area meant to be used only for storage or stacking of fly ash only prior to shipment as pre-shipment operation.

Question: Have you raised any objection as to storage of fly ash as mentioned in bill dated 13.12.2017 ?

Answer : We did not raise objection as it is not required and it was under my knowledge that, as fly ash has to be stored in the open paved area since its part of pre/post shipment operation. Witness volunteers, we exported 10,225 metric tones of fly ash to united states of America in November/December 2017.

28. After agreement marked as Ex.P.18 dated 14.07.2017, we shipped 4 containers to Dubai as a sample and thereafter we shipped 10,225 metric tones of fly ash to USA in November/December 2017. We exported 5 shipments after the agreement marked as Ex.P.18, it is not possible for me to depose exact quantity of fly ash exported through plaintiff as C and F agent.

29. Defendant No.1 had communication with plaintiff through email address magmamangalore@gmail.com. Ex.P.19 is the communication from Defendant No.1 to plaintiff. I issued letter to Traffic Manager of Defendant No.2 on 01.06.2017 as per Annexure produced along with Ex.P.19. It is true to suggest that, in the said letter addressed to Traffic Manager, I mentioned that, cargo was damaged due to heavy rain on 29.05.2018 and also sought clarification as to any other provisions to claim losses against the unforeseen natural peril.

30. I mentioned in line No.8, Para 4 of Ex.P.2 that, loss was attributable to rain and storm. It is incorrect to suggest that, we never attributed negligence of plaintiff with regard to loss of goods in all our initial communications transpired between parties to lis after the incident dated 29.05.2018. It is incorrect to suggest that, only to make wrongful gain, defendant No.1 alleging negligence on plaintiff only after repudiation of insurance claim of Defendant No.1 by Bajaj Allianz General Insurance Company. Incident dated 29.05.2018 was occurred due to act of God and negligence of C and F agent.

31. I am aware of concept of force majeure when we entered into agreement with plaintiff as per Ex.P.18. We incorporated concept of force majeure in Ex.P.18. It is incorrect to suggest that, contention of the defendant No.1 that, loss of goods was due to negligence of plaintiff is not correct.

32. Plaintiff transported 2800+ metric tones of fly ash from UPCL packaging Area and Godown of defendant No.1 to covered godown owned by plaintiff in Baikampady Industrial Area in the month of July/August 2017. I have not paid rent to the plaintiff for storage of fly ash in Baikampady godown as it was included in the Package. Fly ash/goods will be allowed inside NMPT premises only when Export is planned.

33. NMPT provides transit shed free of cost for 21 days prior to arrival of vessel. Arrival of the vessel and berthing of the vessel will be decided in the berth meeting held every week in the presence of officers of the NMPT, C and F agent and agent of the

vessel owner. C and F agent has no unilateral authority to fix date for berthing of vessel and date of export.

34. It is true to suggest that, date for berthing of vessel and date for departure of vessel including stevedore has to be fixed with the knowledge of the Exporter, witness volunteers, in this case date for berthing and date for departure of vessel was not fixed nor communicated to the exporter.

Question : Have you raised objection with the plaintiff or with the officers of the NMPT with regard to fixation of date for berthing and date of departure by the plaintiff without communicating the same to the defendant No.1 prior to institution of suit ?

Answer : It was not in our knowledge as such there was no occasion for us to raise objection.

35. Five shipments/Export done by plaintiff as C and F agent only with my consent. In case of default in exporting goods stored in transit shed within 21 days, that goods will be treated as shutout cargo. It may be true to suggest that, C and F agent is bound to remove cargo from NMPT after treating the cargo as Shutout cargo. C and F agent has to bear all the expenses for removal of cargo from NMPT premises after treating the cargo as shutout cargo on his own and exporter is not bound to pay expenses for removal of cargo.

Question : Whether cargo to be exported by Defendant No.1 through plaintiff treated as shutout cargo on any occasion ?

Answer : I do not know.

36. It is incorrect to suggest that, cargo becomes shutout cargo as defendant No.1 has failed to export cargo on scheduled date. It is incorrect to suggest that, C and F agent obliged to pay shifting charges for shifting shutout cargo from NMPT premises to outside as we failed to export cargo on scheduled date from NMPT. I do not remember case number of consumer complaint filed by defendant No.1 pending before State Consumer redressal forum. Witness volunteers, I have no impediment to produce case papers before this court.

Further cross examination of DW-1 is deferred.

(Typed to my dictation in the open court.)

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

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