

Presented on : 02/08/2001

Registered on : 02/08/2001

Decided on : 19/01/2007

Duration :- Y- 5 M-5 D-18

IN THE COURT OF Vth JOINT CIVIL JUDGE, SENIOR DIVISION,

PUNE AT : PUNE

(Presided over by Shri V.W. Sonawane)

Spl. Civil Suit No. 712 of 2001

Exh.

1] **TATA Engineering Locomotive Co.Ltd.**

Pimpri, Pune – 411 018;

2] **New India Assurance Co. Ltd.**

C/o.TATA Engineering Locomotive

Co.Ltd. Electronics Division,

Pimpri, Pune 411 018.

.....PLAINTIFFS

VERSUS

M/s. Mahavir Transport Ltd.,

Near Hotel Witecastle Building,

2nd Floor, Nasikphata Road,

Bombay-Pune Road, Pune 411 004.

.....DEFENDENT

SUIT FOR DAMAGES.

APPEARANCES :

[1] Shri Somalwar, Advocate for the Plaintiffs;

[2] Defendant – Exparte.

JUDGMENT

[Delivered in Open Court on 19th January 2007]

1. This is suit for recovery of Rs.1,76,985/- with future interest at the rate of 18% p.a. from the date of suit till its realisation from the defendant towards damages to the suit consignment.

2. In brief, it is case of the plaintiff that on 15/04/2000 plaintiff No.1 being manufacturer of the road vehicles entrusted 4 Tata Sumo vehicles duly insured by the plaintiff No.2 Company for transportation and to be carried as well as delivered from Pune to Daman, but during the transit while unloading Cargo, one chassis of the Tata Sumo vehicle damaged severely. Thereby plaintiff No.1 lodged a policy claim with plaintiff No.2 for a sum of Rs.3,87,939/- by executing Letter of Subrogation authorising it to take legal action against the defendant/ transporter. The Survey Report shows the damage caused to the suit consignment to the amount of Rs.2,48,000/-. The defendant had also issued damage certificate in favour of the plaintiff but ultimately fails to pay the claim of the plaintiff. Hence, suit is for recovery of Rs.1,76,985/- plus surveyor's fee and notice charges and costs, preferred by the plaintiff.

3. In view of the order dated 18/07/2006 passed below Exh.1 the suit proceeded exparte against the defendant.

4. The following points arises for my determination. Its reasons and findings are noted by me as follows :

<u>POINTS</u>	<u>FINDINGS</u>
1] Do plaintiffs are entitled for suit claim as prayed ?	.. Yes.
2] What order and decree ?	..As per final order.

REASONS

5. In order to prove the suit claim on behalf of the plaintiff No.1 one Rajagopal Ayer, examined at Ex.34. He has deposed in his

affidavit of Exam-in-Chief and pointed out certain documents i.e. suit consignment issued by the Consignor in favour of the Consignee disclosing the value of the Tata Vehicles damaged in the accident, which also disclosed the status of the Insurance Company. It is at Ex.3/4. The claim bill submitted by the plaintiff No.1 to plaintiff No.2 as per assessment of the damages caused to the vehicle in view of the survey report is at list Ex.3/5. The damage certificate dated 11/10/2000 issued by the defendant/Transport Company shows damages caused to the vehicles due to branches of tree while it was unloading from Cargo. It is at list Ex.3/6. Letter of Subrogation executed by the Consignee and claim to the insurance as per letter dated 2/11/2000 with offer to settlement on the basis of total loss caused to the vehicles is also submitted on record. One Ashish Ajmera had taken the survey of the damaged suit consignment and by taking salvage value approx. submitted his report at list Ex.3/3. The plaintiff No.1 on the basis of assessment noted by the said Surveyor issued a statutory notice under Section 10 of the Carriers' Act dated 28/4/2000 to the defendant / transporter and claimed the damages. The receipt of surveyor's fee and other charges issued by said Surveyor-Ashish Ajmera is submitted at list Ex.3/8. The plaintiff No.2 Insurance Company has also taken the survey of the damage caused to the suit consignment independently and placed the report on record at list Ex.3/9. Immediately after accident the statement of the driver from the Public Carrier was

recorded alongwith accident report dated 27/4/2000 is also placed on record. The learned counsel for the plaintiffs has issued a legal notice as per list Ex.3/3 on 31/5/2001 against the defendant Company which was properly served to the defendant as per postal acknowledgment at list Ex.3/14. All these documents clearly shows that the defendant has not resisted the suit claim or any of the document submitted by the plaintiffs on record. Neither oral evidence lead by the plaintiff has been challenged nor the defendant has noted his appearance in this case. In such circumstances, the oral and documentary evidence adduced by the plaintiffs cannot be disbelieved. Hence, I reply the Point No.1 in the affirmative and proceed to pass the following order:

ORDER

- 1] The suit is decreed with costs.
- 2] The defendant so hereby pay an amount of Rs.1,76,985/- [Rupees One Lac Seventy-Six thousand Nine Hundred Eighty-Five only] to the plffs jointly and severally with future interest at the rate of 18% p.a. from the date of suit till its realisation of the entire amount due.
- 3] Decree be drawn accordingly.

PUNE
DATE : 19/01/2007

(V.W. Sonawane)
Vth Addl. Small Causes Judge,
& Civil Judge, Sr. Division,Pune

I affirm that the contents of this PDF file Judgment are same word for word as per original Judgment.

Name of Steno : Shri S.K.Pandit

Name of Court : Shri V. W. Sonawane.

Vth Addl. Small Causes Judge & C.J.S.D.,Pune

Date : 19/01/2007