

In the matter of :

(1) Sh. Madhusudan Sharma,
S/o Late Sh. Raghunandan Sharma,
R/o C-2/26, Rawalpindy Garden,
Chikambarpur, Sahibabad,
District Ghazlabad (U.P),
Presently residing at :
C/o Sh. S.N.Sharma,
Gali No.7, Sant Nagar,
Burari, Delhi-110084.

..... Plaintiff

VS.

(1) The Union Roadways Ltd.
Gali No.6, Paharganj,
New Delhi.
(2) The Union Roadways Ltd.
Tata Nagar, Jamshedpur.
Jharkhand.

..... Defendants

Date of institution of the suit : 27.09.2006
Date of reserving order : 08.07.2020
Date of pronouncement : 23.07.2020

JUDGMENT

1. This is a suit for Damages / Recovery of Rs.2 lacs with permanent injunction.
2. This is pertinent to mention here that the goods were delivered to the plaintiff and so, no issue was framed qua the relief of permanent injunction.
3. The brief facts of the case as per the plaintiff are that the plaintiff has been doing the business of plying commercial vehicle on hire basis. That the defendant is working as an agent and provide vehicle after obtaining the same through the broker for transporting the consignment of goods from one place to another. That defendant approached through a broker for truck bearing No.HR-38-E-6634 owned by the plaintiff for transporting consignment of Tisco Ltd. from Tata Nagar, Jamshedpur to Okhla, New Delhi. That the plaintiff agreed to the proposal for amount of Rs.26,550/-. That as per agreement truck was sent with driver namely Raju Pal at the office of defendant no.2, where it was loaded with Steel Plates on 15.06.2006 and started for its

destination and was to be reached at Okhla, New Delhi on or before 22.06.2006. That the truck was loaded with the goods weighing 15.392 tons. That on the way to destination on 17.06.2006, the truck was checked by ARTO, Naubatpur, Police check post and the weight was found to be overloaded more than 3 quintals (Approx.) That the same was booked and retained at PS in case No.36/2006 U/s 207 M.V.Act. That the plaintiff approached the court of Ld. CJM, Chandoli (U.P) but his application for Superdari was rejected. That after approaching the Hon'ble High Court of Allahabad, the truck was released on 25.08.2006. That the truck reached at Ghaziabad on 31.08.2006 and the defendant no.1 was intimated to take the goods after payment of agreed amount as well of the loss incurred to the plaintiff due to the fraud played by the defendant no.2. That despite intimation, the defendant did not turn up for taking the delivery of goods. That the plaintiff earns Rs1500/- per day by plying the trucks. That the plaintiff has to pay Rs.150/- per day for daily expenses for food etc. That the vehicle got detained till 25.08.2006. Thus, they are liable to pay damages for 82 days still 11.09.2006. That the plaintiff has to bear the litigation charges of Hon'ble High Court of Allahabad was Rs.8000/- and District Court and Rs.2000 telephonic call



charges. That the plaintiff has been in mental agony due to the negligence and fraud played by the defendant.

4. In the Written Statement, certain preliminary objections are taken by the defendant i.e the suit was without cause of action and that it was bad for non-joinder of necessary party.

5. No replication was filed by the plaintiff to the written statement filed by the defendant.

6. On the basis of pleadings, following issues were settled on 07.05.2007 :-

1. ***Whether the plaintiff is entitled to decree of damages, as prayed ? OPP***
2. ***Whether the suit is bad for non-joinder of necessary party ? OPD***
3. ***Relief.***

7. The plaintiff got examined himself as PW-1, who during his examination-in-chief relied upon several documents that is Ex-PW1/1 to Ex-PW1/6. The plaintiff also got examined Sh. Raju Pal (Ex-PW1/B), Sh. Ashok Khurana (PW3) and Sh. Ajay Yadav (PW3). Inadvertently, two

PWs are assigned at similar numbers i.e PW3. Plaintiff's evidence was closed on 20.12.2017.

8. That defendant got examined the only witness i.e Sh. R. K. Yadav as (DW-1). Defendant's evidence was closed on 22.05.2019.

Issue-wise findings are as under :-

9. **Issue No.1 and 2.**

Both the issues are inter-connected. Hence, to avoid repetition and for the sake of convenience both the taken up together. The onus to prove the issue no.1 was upon the plaintiff and that of the issue no.2 was upon the defendant. It is the plea of the plaintiff that he is doing the business of plying of commercial vehicles on hire basis. That the defendant approached the plaintiff through a broker for truck No.HR-38E-6634 for transporting of consignment from Tata Nagar, Jamshedpur to Okhla, New Delhi. That the plaintiff agreed for the proposal for Rs.26550/- and as per agreement, truck was sent with driver Raju Pal. That the truck was loaded on 15.06.2006 and was to reach the destination on or before 22.06.2006. That on the way of destination, on checking truck was found over loaded more than 3 quintals and was booked. That the truck was released on 25.08.2006. that the defendant

are liable to pay damages for 82 days till 11.09.2006, besides the telephonic and litigation charges for their negligence and fraud. It is the plea of the defendant that the suit is without any cause of action and that the same is bad for non-joinder of necessary party i.e Tata Iron and Steel Co. Ltd. (Tisco.).

10. In his evidence affidavit, the plaintiff (PW1) re-iterated and re-affirmed the contents of the plaint but while under cross-examination dated 15.09.2011, it was deposed by him that at the time of loading of the truck, his driver used to be present there and that it is his driver in whose presence the goods were being loaded in his truck. It is also deposed that the goods loaded in the presence of his driver were always accepted by him. It was also deposed that the goods loaded weighing 15.392 mt. tons was also loaded in the presence of his driver and therefore, the weight of goods was acceptable to him. It was also deposed by him that he has not objected for the name of one Ramesh entered in Ex-PW1/1 as the driver at the time of loading. It was also deposed by him that Ramesh was never his driver. It was also deposed that the freight charges Rs.26,550/- was an actual weight of goods i.e 15.932 mt. tons. It was also deposed that at the time of checking, ar



excess weight of 320 kg was found in his truck.

During his further cross-examination dated 20.10.2012, it was deposed that the truck was stopped and impounded for over loading. It was also deposed that the only charge against his truck was that it was over-loaded and the rest of the charges were false.

11. Sh. Raju Pal (Ex-PW1/B) during his cross-examination has deposed that the vehicle No.HR-38E-6634 was loaded in his presence and that he was the driver of the same. The witness has admitted his signature at point A, encircled in red ink on the Lorry Challan (Ex-PW1/1). It is pertinent to mention here that there appears the name of the Driver "Ramesh". It was also deposed by him that he had brought his original Driving License bearing No.R417611011 (Alwar), Rajasthan but a different Driving Licence bearing No.781/1996 was shown at the time of Lorry Challan (Ex-PW1/1) by the driver of the truck in question. So, it is also clear that there might be a different driver namely Ramesh on the truck in question with Driving Licence No.781/96 on the day of checking i.e 17.06.2006. The plaintiff has not given any explanation as to why the name of different driver is reflected in the Challan (Ex-PW1/1) and also as to how a different Driving Licence has come out on the day of



checking of the truck in question.

12. The plaintiff is supposed to prove his case on the sale of preponderance of probabilities. It is the plaintiff himself, who has to prove his case by standing on his own legs. In the case in hand, the plaintiff has claimed a sum of Rs.2 lacs with future damages but has not given any calculation of the same. Admittedly, the defendants were working as agent but the plaintiff did not join Azad Hind Roadways, who hired the truck in question. The suit is also found bad for non-joinder of necessary party as there was no direct contract between the plaintiff and the defendants. The plaintiff has also didn't disclose as to what were the other charges (for which the truck in question was booked / challaned by the traffic police) besides over weight. The reasons are best known to the plaintiff. In the absence of the specification of charges, it cannot be stated as to which one of those were false as deposed by the plaintiff (PW-1).

In the view of above, the court has no hesitation in holding that the plaintiff has failed to prove the issue No.1. Hence, both the issues are decided against the plaintiff and in the favour of defendants.



13. **Relief.**

In view of the findings on the above issues, the plaintiff is not found entitled to any relief. **Hence, the suit is dismissed.**

No order as to costs.

Decree-sheet be prepared accordingly.

File be consigned to record room after necessary compliance.

PRONOUNCED ON
23rd of July 2020.


(RAJINDER KUMAR)
SCJ/RC(WEST)/DELHI

CS No.9419/2016
Madhusudan Sharma Vs. The Union Roadways

(Through V/C Cisco-Webex)

23.07.2020

At 11:30 AM to 11:32 AM

Present : Sh. Shubham Devadiya, Ld. Trainee Judge.

Sh. Sunil Kumar, Ld. Counsel for plaintiff.

Sh. Dhananjay Shahi, Ld. Counsel for defendants.

Vide separate judgment of the even date, the suit is dismissed.

No order as to costs.

File be consigned to record room. A scanned copy of this order as well the Judgment be sent to the Coordinator, Computer Branch for uploading, as per procedure.


(RAJINDER KUMAR)
SCJ-cum-RC (West), THC
Delhi: 23.07.2020