

PATEL ROADWAYS LTD.

v

BIRLA YAMAHA LTD.

MARCH 28, 2000

[S. SAGHIR AHMAD AND D.P. MOHAPATRA, JJ.]

Consumer Protection Act, 1986 :

Sections 21 and 22 : Consumer Disputes Redressal Agencies—Jurisdiction of—Complaint against common carrier against loss or damage to goods entrusted for transportation—Held, maintainable.

Sections 2(d), (g), (o), 21, 22 and 25—Deficiency in service—Liability of common carrier—Goods entrusted for transportation—Consignment destroyed by fire in godown of carrier—Held, carrier liable for the loss—Liability is that of insurer but subject to act of God and accidental fire is not an act of God—Further, negligence on the part of the carrier need not be established by complainant—Carriers Act, section 9.

Carriers Act, 1865—Section 9—Applicability of—Proceedings before consumer dispute redressal agencies—Held, word ‘Suit’ in Carriers Act includes proceedings before consumer forum.

Words and Phrases :

Suit—Act of God—Meaning of.

Respondent booked consignments with appellant for transportation. Goods booked were destroyed in a fire which took place in appellant’s godown. Respondent filed a complaint before National Consumer Forum. Appellant was held deficient in performance of service as common carrier. Hence, this appeal.

It was contended for the appellant that Section 9 of the Carriers Act does not apply to the proceedings under the Consumer Protection Act but only to suits filed in civil court; and as the respondent failed to discharge the burden to prove negligence, the complaint should be dismissed.

Dismissing the appeal, the Court

A HELD : 1.1. The Consumer Disputes Redressal Agencies provided in
 the Consumer Protection Act are forums vested with powers of adjudica-
 tion of all types of consumer disputes and also complaints for loss or
 damage to goods entrusted to a carrier for transportation. Finality is
 attached to the orders of the redressal agencies and provision is made for
 B execution and implementation of the orders passed by them treating such
 orders as decree of the court. Further, the scheme of the statute is to
 provide hierarchy of redressal forums for attending to the grievances of
 consumers regarding deficiency in service. [673-H; 674-A]

C 2.1. The liability of a common carrier under the Carriers Act is that
 of an insurer. In a case of claim of damage for loss to or deterioration of
 goods entrusted to a carrier is not necessary for the plaintiff to establish
 negligence. Even though the general principle in cases of tortious liability is
 that the party who alleges negligence against the other must prove the same
 but this principle has no application to a case covered under the Carriers
 Act. This is also the position notwithstanding a special contract between the
 D parties. [680-G]

E 2.2. The absolute liability of the carrier is subject to exception of
 loss or damage caused due to act of God. An act of God will be an
 extraordinary occurrence due to natural causes, which is not the result of
 any human intervention and which could not be avoided by any amount
 of foresight and care but an accidental fire though it might not have
 resulted from any act of or omission of the common carrier, cannot be
 said to be an act of God. [676-H]

F *Ross v. Hill*, 2 CB 890; *Akhil Chandra Saha & Ors. v. Indian General
 Navigation and Railway Co.* Vol.XXI, (1915) Cal. LJ 565; *Dekhari Tea Co.
 Ltd. v. Assam Bengal Railway Co. Ltd.*, AIR (1920) Cal. 758; *M/S. Mooljee
 Sicka & Co. v. Sardar Naharsingh*, AIR (1959) MP 351; *I.G.N. & Rly. Co. Ltd.
 v. Eastern Assam Co. Ltd.*, AIR (1921) Cal. 315; *P.K. Kalasami Nadar v. K.
 Ponnuswami Mudaliar & Ors.*, AIR (1962) Mad. 44; *Rivers Steam Navigation
 G Co. Ltd. v. State of Assam*, AIR (1962) Assam 110; *D.V. Patel v. G. Wagle*, AIR
 (1963) Bom. 208; *Vidya Ratan v. Kota Transport Co. Ltd.*, AIR (1965) Raj.
 200; *Muralidhar Mohanlal & Ors. v. Rivers Steam Navigation Co. Ltd.*, AIR
 (1967) Assam 79; *The Associated Traders & Engineers Pvt. Ltd. v. Delhi Cloth
 & General Mills Ltd. & Ors.*, ILR (1974) 1 Delhi 790; *M/s. Road Transport
 Corporation & Ors. v. Kirloskar Bros. Ltd.*, AIR (1981) Bom. 299; Kerala
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Transport Co. v. Kunnath Textiles, (1983) KLT 480; *R.R.N. Ramalinga v. Narayana*, AIR (1971) Kerala 197 and *Banwari Lal Podar v. Road Transport Corporation*, AIR (1989) Patna 303, approved.

Bharathi Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Ltd., [1996] 4 SCC 704, distinguished.

Irrawady Flotilla v. Bugwandas, (1891) ILR 18 Cal. 620, cited.

Sarkar on Evidence, 15th Edn. (1999) pg.1724; *P. Ramanatha Aiyar's Law Lexicon* (1997) Edn., referred to.

3.1. A proceeding before the National Commission comes within the term 'suit'. The term 'suit' is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. Even though the proceedings before National Commission is ordinarily a summary proceeding but that does not mean that the proceeding before the Commission is to be decided ignoring the express statutory provisions of the Carriers Act in a proceeding in which a claim is made against a common carrier. [682-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9071 of 1996.

From the Judgment and Order dated 26.4.96 of the National Consumer Disputes Redressal Commission, New Delhi in O.P. No. 43 of 1994.

Harish N. Salve, Ashok H. Desai, Shanti Bhushan, R.K. Jain, Prakash Shah, Jay Savla, J.K. Das, R.K. Virmani, Ravinder Zadoo, C.S. Ashri, N. Menon, Ms. M. Ogra, Ms. Renna Bagga and Rabindra Singh for the appearing parties.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. The core question that arises for determination in this appeal is whether Section 9 of the Carriers Act, 1865 (Act 3 of 1865) is applicable to a proceeding under the Consumer Protection Act, 1986 (68 of 1986). The answer to this question depends on the interpretation of Section 9 of the Carriers Act and its inter-action with the relevant provisions of the Consumer Protection Act.

The factual matrix of the case relevant for determination of the issue may be stated thus : The respondent M/s Birla Yamaha Limited booked 237

A consignments containing 267 generator sets at Ghaziabad in the State of Uttar Pradesh, with the appellant M/s Patel Roadways Limited for transportation. The freight charges were duly paid by the consignor to the carrier and necessary lorry receipt was issued by the latter in favour of the former. The goods booked by the respondent were destroyed in a fire which took place in the godown of the appellant shortly after booking of the consignments. The respondent made a claim for the value of the goods, for refund of freight charged and compensation for the loss. Some correspondence between the parties followed. Since no satisfactory solution was arrived at between them the respondent filed a petition before the National Consumers Disputes Redressal Commission ('the Commission' for short) in 1994 which was registered as Original Petition No.43/1994. The respondent claimed Rs.56,00,799 along with interest. The said sum comprised of Rs.50,78,231 as cost of 267 generator sets, Rs.22,568 as freight charged and Rs.5,00,000 as general and special damages on account of harassment and undue loss of time. It was alleged in the complaint, inter alia, that the carrier having accepted the responsibility of transportation of the consignments and safe delivery of goods failed to deliver the same. Thus there was deficiency in the service to be rendered by the appellant as carrier.

On being noticed by Commission the appellant appeared and filed their counter affidavit. Therein the appellant did not deny the entrustment of the goods, the booking particulars and issue of lorry receipt, as averred in the complaint. The appellant, pleaded that the consignments were lost in fire which was an accident beyond their control, and therefore, there was no deficiency in service and the complaint was not maintainable. It was further pleaded by the appellant that the loss having taken place for reasons and in circumstances beyond their control they were not liable to make good the loss either under the contract between the parties or under general law.

Both the parties filed affidavits and documents in support of their case. The Commission on assessment of the materials on record held inter alia, that the respondent was entitled to receive from the appellant Rs.51,00,799 i.e. Rs.50,78,231 towards cost of the generator sets and Rs.22,568 being the refund of freight charges. The Commission rejected the claim of Rs.5,00,000 towards general and special damages. The Commission in its order placed reliance on the provision in Section 9 of the Carriers Act to hold that the appellant are deficient in the performance of their service as common carrier, as the goods entrusted have not been at all delivered in accordance with the

contract of carriage for consideration evidenced by the receipts. The Commission also held that Section 9 relieves the complainant from the burden of showing that the loss or non-delivery was owing to any negligence or criminal act; and that the loss to the goods sent is prima facie evidence of negligence. Feeling aggrieved by the said order the appellant filed this appeal under Section 23 of the Consumers Protection Act.

The main thrust of the submissions of Shri Ashok Desai, learned senior counsel appearing for the appellant was that Section 9 of the Carriers Act in terms does not apply to a proceeding under the Consumer Protection Act. According to Shri Desai the provision applies only to suits filed in civil court and not to redressal forums under the Consumer Protection Act which adjudicate disputes in a summary manner. The further submission of Shri Desai was that since Section 9 is not applicable in this case the general law that the burden to prove negligence lies on the party who alleges it, is applicable in the case. Since the respondent has failed to discharge the burden the complaint should have been dismissed.

Shri Shanti Bhushan, learned senior counsel for the respondent, on the other hand, contended that the expression 'suit' in Section 9 of the Carriers Act should be understood in its generic sense and should not be given a restrictive meaning. The Commission, submitted Shri Shanti Bhushan, was right in applying the provision of Section 9 in the proceeding. The further contention raised by Shri Shanti Bhushan was that a common carrier is also an insurer under general law, and therefore, even keeping aside the provision of Section 9 its liability for making good the loss of the goods in its custody squarely lies on the carrier.

The Carriers Act is intended not only to enable common carriers to limit their liability for loss of or damage to property delivered to them to be carried but also to declare their liability for loss of or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents. Therefore, the Act is not only protective of the interest of the common carriers but also enhances the credibility of the business with general public.

In Section 2 of the said Act 'common carrier' denotes a person other than the Government, engaged in the business of property under multinodal transport document or of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately.

A In Section 3 of the said Act it is declared that no common carrier shall be liable for the loss of or damage to property delivered to him to be carried exceeding in value one hundred rupees and of the description contained in the Schedule to this Act, unless the person delivering such property to be carried, or some person duly authorised in that behalf, shall have expressly declared to such carrier or his agent the value and description thereof.

B

In Section 4 of the said Act it is laid down that such carrier may require payment for the risk undertaken in carrying property exceeding in value one hundred rupees and of the description aforesaid, at such rate of charge as he may fix. In the proviso the carrier is required to give notice of the rate of charge by exhibiting it in the place where he carries on the business of receiving property to be carried.

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In Section 6 of the said Act it is laid down that the liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to the Act, shall not be deemed to be limited or affected by any public notice; but any such carrier, not being the owner, by special contract signed by the owner of such property so delivered or by some person duly authorised on that behalf by such owner, limit his liability in respect of the same.

D

Section 8 of the said Act provides, inter alia, that notwithstanding anything hereinbefore contained, every common carrier shall be liable to the owner for loss of or damage to any property (including container, pallet or similar article of transport used to consolidate goods) delivered to such carrier to be carried where such loss or damage shall have arisen from the criminal act or any of his agents or servants and shall also be liable to the owner for loss or damage to any such property other than property to which the provisions of Section 3 apply and in respect of which the declaration required by that section has not been made, where such loss or damage has arisen from the negligence of the carrier or any of his agents or servants.

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G Section 9 of the said Act on which reliance has particularly been placed by the appellant reads :

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“9. In any suit brought against a common carrier for the loss, damage or non delivery of “goods (including containers, pallets or similar article of transport used to consolidate goods) entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such

loss, damage or non-delivery was owing to the negligence or criminal act of the carrier, his servants or agents.”

A

In Section 10 provision is made regarding prior notice of loss or injury to be given within six month of the time when the loss or injury first came to the knowledge of the plaintiff beore filing of the suit.

B

Coming to the provisions of the Consumers Protection Act, 1986 - In Section 2(d) thereof “consumer” is defined to mean any person who..... (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and include any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.”

C

In Section 2(g) “deficiency” is defined to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

D

Section 2(o) defines “service” to mean service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing, construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

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F

In section 3 of the Act it is declared that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Chapter III of the Act contains the provisions regarding “Consumer Disputes Redressal Agencies”.

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In section 9 establishment of three agencies i.e. District Forum, State Commission and National Consumer Disputes Redressal Commission is provided for.

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A In Section 13 the procedure to be followed by the District Forum on receipt of a complaint is laid down.

In Section 15 provision is made for appeal by any person aggrieved by an order made by the District Forum to the State Commission.

B In Section 17 the jurisdiction of the State Commission is laid down and in Section 18 it is laid down that the provisions applicable to State Commissions are akin to the same as provided in sections 13 and 14 and the rules made thereunder for disposal of complaint by the District Forum.

C In Section 19 it is provided that any person aggrieved by an order made by the State Commission may prefer an appeal to the National Commission.

D Section 21 which contains the provisions regarding jurisdiction of the National Commission lays down inter alia, that subject to the other provisions of the Act the National Commission shall have jurisdiction - (a) to entertain - (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs and (ii) appeals against the orders of any State Commission; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity.

E Section 22 of the Act which provides for power of and procedure applicable to the National Commission reads:

F "22. Power of and procedure applicable to the National Commission - The National Commission shall, in the disposal of any complaints or any proceedings before it, have

G (a) the powers of a civil court as specified in sub-sections (4), (5) and (6) of section 13;

H (b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clauses (a) to (I) of sub-section (1) of section 14,

and follow such procedure as may be prescribed by the Central Government.” A

In Section 23 provision is made for an appeal by any person aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (I) of clause (a) of section 21 to the Supreme Court. B

In section 24 a declaration is made that every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions, of this Act, be final.

Section 25 makes provision regarding enforcement of orders by the forum, the State Commission or the National Commission. Therein it is laid down, inter alia, that every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or National Commission, as the case may be in the same manner as if it were decree or order made by a Court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction C D

- (a) in the case of an order against a company, the registered office of the company is situated, or E
- (b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

And thereupon, the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.” F

From the provisions of the Consumer Protection Act noted in the foregoing paragraph the position is clear that the consumer disputes redressal agencies, i.e., District Forums, State Commissions and the National Commission are vested with powers of adjudication of all types of consumer disputes. No exception is made in case of consumer disputes in which the allegations made in the complaint regarding deficiency of service causing damage to or loss of the goods are contested. Indeed finality is attached to the orders of the redressal agencies and provision is made for execution and implementation of the orders passed by them treating such orders as decree of the court. It is G H

A relevant to state here that on perusal of the provisions of the Act it is clear that the scheme of the statute is to provide heirarchy of redressal forums for attending to the grievances of consumers regarding deficiency in service promptly and give finality to the orders passed by the agencies. Therefore, it is difficult to accept the contention that the dispute redressal agencies provided
B in the Consumer Protection Act are not forums which have jurisdiction to entertain the complaints in which claims for loss or damage to goods entrusted to a carrier for transportation is seriously disputed. The contention raised by Shri Desai in this regard is accordingly rejected.

C Coming to the question of liability of Common Carrier for loss of or damage to goods, the position of law has to be taken as fairly well settled that the liability of a carrier in India, as in England, is more extensive and the liability is that of an insurer. The absolute liability of the carrier is subject to two exceptions; an act of God and a special contract which the carrier may choose to enter with the customer.

D In Sarkar on Evidence (Fifteenth Edition 1999) at page 1724 under the heading "Negligence" it is stated "As a rule negligence is not to be presumed; it is rather to be presumed that ordinary care has been used. The rule does not apply in the case of common carriers, who, on grounds of public policy, are presumed to have been negligent if goods entrusted to their care have been
E lost or damaged or delayed in delivery" (Ross v. Hill, 2 CB 890; Jones s 15). The law will conclusively presume that the carrier has been guilty of a negligence unless he can show that the loss or damage was occasioned by what is technically called the "act of God", or by King's enemies."

F In *Akhil Chandra Saha and Others v. Indian General Navigation and Railway Co.*, Vol XXI (1915) Cal. LJ 565 a Division Bench of the Calcutta High Court held that a common carrier in this country is liable as an insurer i.e., he is responsible for the safety of the goods entrusted to him in all events except when loss or damage arises from act of God or king's enemies; but his
G liability for loss or injury in respect of the goods carried may be varied by the contract. The Court further held that the burden of proof on absence of negligence is upon the common carrier, on the theory that the loss or damage to the goods is prima facie proof of negligence.

H The same High Court in the case of *Dekhari Tea Co. Ltd. v. Assam Bengal Railway Co. Ltd.*, AIR (1920) Calcutta 758 considered a case where

a railway company entered into a contract with the plaintiff-firm for the carriage of certain goods to a port and thence to England. Owing to a breach on the railway line, the goods had to be transported by river and in steamers and flats belonging to a steamship company under an agreement with the railway company. While the goods were in a vessel of the steamship company, a fire broke out and about one-fourth of the goods were destroyed. The plaintiff instituted the suit to recover from both the railway company and the steamship company the value of the goods destroyed. The High Court held that although there was no contract between the steamship company and the plaintiff the company was nevertheless liable as a common carrier for the loss incurred by the plaintiff. Comparing the provisions of the Indian Carriers Act, 1865 with the English Act of 1830 the Court observed:

“However this may be, the Indian Carriers Act, 1865 when compared carefully with the English Act of 1830, does I think purport and intend to make a common carrier liable to the owner of the goods as such, though not as an insurer. This English Act is very carefully worded; it refers to the person or persons sending or delivering the goods (Ss. 1 and 2) as the party entitled to recover damages in respect of such loss (s.7) S.8 of the Indian Act was undoubtedly drawn with S.8 of the English Act before the draftsman. The changes are conspicuous and intentional. The English Act says that nothing in that Act shall protect the carrier from liability for loss or injury to goods arising from felonious acts of the carrier’s servants. The Indian Act says that notwithstanding anything in that Act contained every common carrier shall be liable to the owner where the loss has arisen from the negligence or criminal act of the carrier or any of his agents or servants. The Indian section not only puts negligence and crime on the same footing; the whole structure of the clause is different: it affirms or creates a liability and gives the benefit of it to the owner. The English section makes the carrier in no case liable where he was not liable before. There can be, I think, no doubt that the clause of the Indian Act must be taken to mean advisedly what it says:

“The person entitled to recover in respect of such loss” is the phrase taken from the English Act and used in S.5, by the Legislature when that phrase is adequate to the intention. The word “owner” in S.8 is the product of a reforming zeal which found the corresponding English section to stand in need of drastic alteration.”

A The Madhya Pradesh High Court in the case of *M/s Mooljee Sicka and Co. v. Sardar Narharsingh*, AIR (1959) MP 351 considering the scope of sections 8 and 9 of the Carriers Act held :

B “The mere occurrence of the fire, under circumstances such as the present is evidence of negligence, the truck with the coal-gas plant on it being under the management of the defendant No.1’s servants; and as they have not been produced to show how the fire originated and no explanation offered, the respondent has not discharged the onus cast upon him by law of showing that there was no negligence and that being so, the plaintiff was entitled to recover.”

C The Court also quoted the following observation of Rankin, J. in *I.G.N. and Rly. Co. Ltd. v. Eastern Assam Co. Ltd.*, 33 Cal LJ 71 = AIR (1921) Cal 315:

D “When a defendant is called upon to prove that he was not negligent he is not really called upon to prove a negative. He is called upon to prove that he took reasonable care... The task is burdensome not because the thing to be proved is a negative but because the field within which care has to be proved is quite indefinite and the presumption being against the carrier the defendant’s positive proof must cover the whole field.”

E In *P.K. Kalasami Nadar v. K.Ponnuswami Mudaliar and Ors.*, AIR (1962) Madras 44 a Division Bench of the Madras High Court relying on the Privy Council decision in *Irrawady* case (supra) held that where loss has occurred to cotton bales in transit ‘cotton’ being one of the goods not mentioned in Carriers Act, 1965 and in respect of which the liability of the common carrier (in that case the owner of the lorry) is not limited by a special contract the owner of the goods in a suit against the common carrier for loss/damages or non-delivery of articles or goods entrusted to the carrier is not required to prove negligence; the reason being that the liability of a common carrier is that of an insurer; it therefore follows that, notwithstanding the fact that there is no negligence on the part of the common carrier he is liable to compensate, the owner of the goods for loss of the goods that occurred during transit. In the said decision the Court considered the question whether loss of goods by accidental fire can be said to be an act of God. The Court observed that an act of God will be an extraordinary occurrence due to natural causes, which is not the result of any human intervention and which could not be

avoided by any amount of foresight and care, e.g. a fire caused by lightning; but an accidental fire though it might not have resulted from any act of or omission of the common carrier, cannot be said to be an act of God.

In *Rivers Steam Navigation Co. Ltd. v. State of Assam*, [AIR 1962 Assam 110] a Division Bench of the Assam High Court considered the case of consignment of goods not perishable by nature in respect of which there was no special contract as to the time for delivery and the goods suffered deterioration due to delay caused by abnormal time taken for transit. The Court held that the plaintiff consignee who claimed damages need not prove negligence on the part of the carrier. Relying on the principle that there was an obligation on the carrier to carry the goods safely and in the absence of any special contract the goods must be delivered within a reasonable time.

A similar view was taken by a Division Bench of the Bombay High Court in the case of *D.V. Patel v. G. Wagle*, AIR (1963) Bom 208.

In the case of *Vidya Ratan v. Kota Transport Co. Ltd.*, AIR (1965) Rajasthan 200 interpreting sections 8 and 9 it was held by the Rajasthan High Court that in a suit against common carrier in respect of loss of goods delivered to him for transportation there need not be any privity of contract between the owner of the goods and the carrier. It is sufficient if the carrier has accepted the goods for transmit and has failed to deliver them. Thereafter to escape his liability which is normally absolute, he has to show that there was a special contract made by the owner of the goods or his duly authorised agent, even if, the necessity of having the contract in writing is thought to be a technical provision .

In the case of *Muralidhar Mohanlal and Others v. Rivers Steam Navigation Co. Ltd.*, AIR (1967) Assam and Nagaland 79] considering the provisions of sections 6,8 and 9 of the Carriers Act, the High Court held that these sections are based on English common law and also the common Carriers Act of England. The Court placed reliance on Privy Council in *Irrawady Flotilla v. Bugwandas*, (1891) ILR 18 Cal. 620] in which the legal position was stated in the following words :

“A common carrier is responsible for the safety of the goods entrusted to him in all events, except when loss or injury arises solely from act of God or the Queen’s enemies or from the fault of the consignor, or inherent vice in the goods themselves. He is, therefore, liable even

A when he is overwhelmed and robbed by an irresistible number of persons. He is an insurer of the safety of the goods against everything extraneous which may cause loss or injury except the act of God or the Queen's enemies and if there has been an unjustifiable deviation or negligence or other fundamental breach of contract on his part, he will be liable for loss or injury due to the Queen's enemies or, it would seem, due to act of God.

B
C
D This responsibility as an insurer is imposed upon a common carrier by the custom of realm, and it is not necessary to prove a contract between him and the owner of the goods in order to establish liability. Failure on the part of the carrier to deliver the goods safely is a breach of the duty placed upon him by the common law; and therefore an action of tort lies against him for such breach, the owner not being bound to prove any contract. Where, however, there is a contract, liability may arise either at common law or under the contract, and the contract may limit the carrier's responsibility.

E A common carrier is liable for loss or injury caused wholly by the negligence of other persons over whom he has no control; as where the carrier's barge runs against an anchor wrongfully left in the water by a stranger, or where the goods which he is carrying are destroyed by accidental fire or by rats, or where they are stolen from him, even though taken by force.

F
G The general obligation of a common carrier of goods to carry the goods safely whatever happens renders it unnecessary to import into the contract for carriage a special warranty of the roadworthiness of the vehicle or the seaworthiness of the vessel, for if the goods are carried safely the condition of the vehicle or vessel is immaterial, and, if they are lost or damaged it is unnecessary to inquire how the loss or damage occurred; where however, a common carrier of goods is seeking relief from liability by reason of one of the excepted perils the condition of the vehicle or vessel is material in determining the question of negligence, and if the carrier fails to prove a sufficient and proper conveyance and loss or damage results therefrom he will be liable."

H A similar view was taken in the case of *The Associated Traders &*

Engineers Pvt. Ltd. v. Delhi Cloth & General Mills Ltd. & Ors., ILR (1974) 1 Delhi 790] in which the Court took note of the position that in common law the liability of a common carrier is equivalent to that of an insurer.

Similar view has also been taken by Bombay High Court in *M/s Road Transport Corporation and Others v. Kirloskar Brothers Ltd.*, AIR (1981) Bom 299.

In *Kerala Transport Company v. Kunnath Textiles*, (1983) Kerala Law Times 480 a Division Bench of the High Court of Kerala considering the question whether, if the defendant has failed to deliver the goods not on account of any negligence or carelessness, would the defendant be liable; answered the question in the affirmative. The Court reiterating the position of a carrier in India as noted above held that it is only those causes which can be traced to natural causes as opposed to human agency that can be said to be acts of God and that can therefore be an answer to claim for absolute liability. The Court further held that if the defendant was trying to answer the liability on the basis of the terms of the special contract he would have to show what reasonable protection he took against the fire. The Court placed reliance on the decision in *R.R.N. Ramalinga v. Narayana*, AIR (1971) Kerala 197 .

A similar view was also taken by the Patna High Court in the case of *Banwari Lal Podar v. Road Transport Corporation*, AIR (1989) Patna 303. Therein it was held that from a perusal of the sections 8 and 9 of the Carriers Act, 1965 it is clear that the burden of proof that there was no criminal act or negligence on the part of the carrier or its agents or servants is upon the plaintiff.

Our attention was also drawn to a decision of this Court in *Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd.*, [1996] 4 SCC 704 wherein this Court considered the question when parties have contracted and limited their liabilities, whether the State/National Commission could go behind the terms of the contract and give relief for damages in excess of the limit prescribed under the contract. This Court interpreting the provisions of sections 2(1)(g), 19 and 23 of the Consumers Protection Act, 1986 held :

“It is true that the Act is a protective legislation to make available inexpensive and expeditious summary remedy. There must be a

A finding that the respondent was responsible for the deficiency in service, the consequence of which would be that the appellant had incurred the liability for loss or damages suffered by the consumer due to deficiency in service thereof. When the parties have contracted and limited their liabilities, the question arises: whether the State Commission or the National Commission under the Act could give relief for damages in excess of the limits prescribed under the contract?"

XXXXX XXXXX XXXXX

C It is true, as contended by Mr.M.N. Krishnamani, that in an appropriate case, the Tribunal without trenching upon acute disputed question of facts may decide the validity of the terms of the contract based upon the fact situation and may grant remedy. But each case depends upon its own facts. In an appropriate case where there is an acute dispute of facts necessarily the tribunal has to refer the parties to original civil court established under the CPC or appropriate State law to have the claims decided between the parties. But when there is a specific term in the contract, the parties are bound by the terms in the contract."

E This decision is of little assistance to the appellant since the contentions raised by them before us herein were not considered by this Court therein.

F From the conspectus of views taken in the decisions of different High Courts noted above it is clear that the liability of a common carrier under the Carriers Act is that of an insurer. This position is made further clear by the provision in section 9, in which it is specifically laid down that in a case of claim of damage for loss to or deterioration of goods entrusted to a carrier it is not necessary for the plaintiff to establish negligence. Even assuming that the general principle in cases of tortious liability is that the party who alleges negligence against the other must prove the same, the said principle has no application to a case covered under the Carriers Act. This is also the position notwithstanding a special contract between the parties. These principles have held the field over a considerable length of time and have been crystallized into accepted position of law. No good reason has been brought to our notice to persuade us to make a departure from the accepted position. Therefore we reiterate the position of law noticed above. The consequential position that follows is that the contention of Shri Ashok Desai learned senior counsel, that

the respondents herein having failed to establish negligence on the part of the appellant, their claim for damages should be rejected, cannot be accepted.

The question that remains to be considered is whether the principles of law discussed in the preceding paragraph is applicable in a proceeding before the consumer disputes redressal agency, particularly the National Commission. In this regard the contention of Shri Desai is that the use of the term 'suit' in section 9 of the Carriers Act shows that the provision is applicable only to cases filed in civil court and does not extend to proceedings before the National Commission which is a forum which is to decide complaints by consumers following a summary procedure. Elucidating the point Shri Desai submitted that in a proceeding before the National Commission the general principle that the burden to prove negligence lies on the party alleging negligence should be applicable though the position may be different in a suit filed in a civil court. The term "suit" has not been defined in the Carriers Act nor is it provided in the said Act that the term "suit" will have the same meaning as in the Civil Procedure Code. Therefore, the ordinary dictionary meaning of the term will have to be taken for ascertaining its meaning. In P. Ramanatha Aiyar's Law Lexicon 1997 Edition some of the references of the term are:

"Suit - Prosecution of pursuit of some claim, demand or request; the act of suing, the process by which one endeavours to gain an end or object; attempt to attain a certain result; the act of suing; the process by which one gains an end or object, an action or process for the recovery of a right or claim; the prosecution of some demand in a Court of Justice; any proceeding in a Court of Justice in which plaintiff pursues his remedy to recover a right or claim; the mode and manner adopted by law to redress Civil injuries; a proceeding in a Court of Justice for the enforcement of a right.

The word "suit" in Ss.51 to 55 Act IX of 1879, Court of Wards Act, does not mean only what is usually called a "regular suit." It embraces all contentious proceedings of an ordinary civil kind, whether they arise in a suit or miscellaneous proceedings.

Suit Action. "Suit" is a term of wider signification than action; it may include proceedings on a petition.

(Emphasis supplied)

A From the above it is clear that the term "suit" is a generic term taking
within its sweep all proceedings initiated by a party for realisation of a right
vested in him under law. The meaning of the term "suit" also depends on the
context of its user which in turn, amongst other things, depends on the Act
or the Rule in which it is used. No doubt the proceeding before a National
B Commission is ordinarily a summary proceeding and in an appropriate case
where the Commission feels that the issues raised by the parties are too
contentious to be decided in a summary proceeding it may refer the parties to
a civil court. That does not mean that the proceeding before the Commission
is to be decided ignoring the express statutory provisions of the Carriers Act
C (section 9) in a proceeding in which a claim is made against a common carrier
as defined in the said Act. Accepting such a contention would defeat the object
and purpose for which the Consumers Protection Act was enacted. A proceed-
ing before the National Commission, in our considered view, comes within the
term "suit". Accordingly we reject the contention raised by Shri Ashok Desai
in this regard.

D Shri Desai also raised a contention on the amount awarded by the
National Commission under the impugned order. He urged that the respondent
by its conduct led the appellant to believe that the goods entrusted for
transportation are insured and having been led by such representation the
E appellant had not insured the goods. This, according to Shri Desai is a
circumstance which should be taken as a mitigating factor for quantification
of the damage. In the impugned order the National Commission taking note
of the stipulations in the delivery receipt which was signed by both the parties,
confined the amount of damages to the value of the consignment destroyed/
not delivered. This contention in our view needs no in-depth consideration for
F the reason that there is no material placed before us to show that at the time
of booking of the consignment any representation as stated by Shri Desai was
given by the respondent to the appellant. Shri Shanti Bhushan pointed out that
the question regarding insuring the consignment was raised after the incident
of non-delivery or loss of the consignment took place when the respondent
G asked the appellant to issue a certificate of non-delivery of the consignments.
Then the respondent ascertained though it had insured all its consignments in
bulk the amount stated in the policy had been exceeded by the date the
consignments in question were booked, and therefore the insurance policy was
not of any avail so far as non-delivery/loss of the consignments in question
H is concerned. It follows that this contention raised by Shri Desai is also to be

rejected.

A

On the discussion in the foregoing paragraphs all the contentions raised on behalf of the appellant having been negatived the appeal is dismissed. There will, however, be no order as to costs.

N.J.

Appeal dismissed.

B