



RSA No. 869 of 2000

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 869 of 2000 (O&M)

Reserved on: 02.09.2025

Pronounced on:04.09.2025

Asian Roadways Pvt. Ltd. & Anr.

...Appellants

Versus

National Insurance Company Ltd. & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. A.S. Randhawa, Advocate and
Ms. Tarranum Madan, Advocate
For the appellant.

Respondent No.1 ex-parte vide order dated 15.10.2024

Service of respondents No.2 & 3 already dispensed with.

DEEPAK GUPTA, J.

It is Defendant's Appeal against the decree for recovery passed by the trial Court and modified by the Appellate Court.

2. In order to avoid confusion, parties shall be referred as per the status before the trial Court.

3. Plaintiff No. 2 (*Respondent No. 2*), a Public Limited Company, booked 171 packages of Viscose fiber (Staple) yarn with the defendants (*appellants herein*) for transportation from Champdani (Calcutta) to Ludhiana under GR No. 00359 dated 19.09.1988. The goods were insured with Plaintiff No. 1 (*Respondent No. 1 – Insurance Company*). On delivery at Ludhiana, the goods were found to be damaged. The defendants issued a certificate dated 05.11.1988 admitting damage of the goods. Plaintiff No. 1 appointed a Surveyor, who assessed the loss at ₹ 81,430/-. The said amount was paid by Plaintiff No. 1 to Plaintiff No. 2, and a letter of subrogation was executed in favour of Plaintiff No. 1. A legal notice dated 12.11.1988 was

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issued to the defendants seeking compensation, but no payment was made, leading to the filing of the present suit.

4. The defendants denied liability and raised preliminary objections. It was pleaded that the loss was not due to their negligence but resulted from flash floods and heavy rains between Rajpura and Ludhiana. They claimed the damage was beyond human control (act of God) and hence they were not liable.

5. After framing issues and taking evidence, the Trial Court decreed the suit for ₹ 1,00,000/- (₹ 81,430/- as principal + ₹18,570/- as interest @12% p.a. from 01.02.1989 to 31.12.1990). Future interest was awarded @ 22% p.a. till realization.

6. The first Appellate Court found that the Surveyor's report was not proved in accordance with law since the Surveyor was not examined. The Appellate Court relied instead on Exhibit P3, a letter issued by the defendants themselves, admitting the damage and quantifying the loss at approximately ₹70,000/-. Accordingly, the first Appellate Court modified the decree and held the plaintiffs entitled to:

- ₹70,000/- as compensation
- ₹16,110/- as interest @12% p.a. from 01.02.1989 to 31.12.1990
- Future interest @12% p.a. on the decretal amount of ₹ 86,110/- till realization.

7. Before this court, the sole contention raised by appellants is that the Appellate Court wrongly ignored the part of Exhibit P3, which stated that the damage was caused by flash floods beyond human control (act of God). It was argued that in absence of negligence, the defendants could not be held liable.

8. It is noticed by this Court that in Exhibit P3, the defendants had clearly admitted the damage and quantified it at ₹70,000/-. The plea of "act of God" deserve to be rejected because no evidence was led by the defendants to prove it. Neither the driver nor the cleaner of the truck was examined, though they were the best witnesses to establish the defence.

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Only DW-1 Santokh Singh (Manager) was examined, who had no personal knowledge and admitted ignorance about Exhibit P3. As such, the Appellate Court has rightly drawn an adverse inference against the defendants for withholding material witnesses.

9. Consequently, it is held that the findings of First Appellate Court are based on proper appreciation of evidence and suffers from no illegality or perversity. Appeal is therefore dismissed as meritless.

(DEEPAK GUPTA)
JUDGE

04.09.2025

Jiten

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No