

A M/S. ECONOMIC TRANSPORT ORGANISATION ETC.
v
DHARWAD DISTT. KHADI GRAMUDYOG SANGH ETC.

MARCH 31, 2000

B [M. JAGANNADHA RAO AND M.B. SHAH, JJ.]

Consumers Protection Act, 1986 : Section 4(1)(d).

C *Consumer Fora—Case before—Applicability of section 9 of the Carriers Act, 1865.*

Carriers Act, 1865 : Section 9.

D *Common carrier—Negligence of—Loss suffered on account of—Complaint before Consumer Forum—Burden of proof—Held section 9 of Carriers Act is applicable to cases before Consumer Fora—Section 9 incorporates principle of Common Law relating to burden of proof—Section 14(1)(d) of Consumers Protection Act has to be interpreted in that light—Complainant before a Consumer Forum has to discharge initial burden—But onus to prove absence of negligence is on the common carrier.*

E *Patel Roadways Ltd. v. Birla Yamaha Ltd., [2000] 4 SCC relied on.*

CIVIL APPELLATE JURISDICTION : Petition for Special Leave to Appeal (C) NO. 1318 of 1999 Etc.

F From the Judgment and Order dated 10.7.98 of the National Consumers Disputes Redressal Commission, New Delhi in R.P. No. 975 of 1997.

Pawan Kumar Bhal, Harish Kumar, M.M. Kashyap, Mahabir Singh, R.S. Hegde, P.P. Singh, Bhargava V. Desai, Siddhartha Chowdhury and Rajeev Sharma for the appearing parties.

G The following Order of the Court was delivered :

H The petitioner is a common carrier governed by the Carriers Act, 1865. It contends that under Section 14(1)(d) of the Consumers Protection Act, 1986 the Consumer Fora can direct payment of compensation to the consumer for loss or injury suffered by the consumer due to the 'negligence' of the opposite party and hence the burden of proof is on the complainant. It is contended that

Section 9 of the Carriers Act which imposes burden on the defendant or the common carrier to prove absence of negligence cannot therefore be applied so as to shift the onus to the carrier to prove absence of negligence.

In view of the recent Judgment of this Court dated 28th March, 2000 in *Patel Roadways Limited v. Birla Yamaha Limited*, in C.A. No. 9071 of 1996, we are of the view that the liability of the common carriers is that of the insurer. It was held there that Section 9 of the Carriers Act, 1865 applies to matters before the Consumer Fora under the Consumers Protection Act. It was also held that the principle underlying Section 9 of the said Act relating to burden of proof is a principle of common law and has been incorporated in Section 9 of the Carriers Act. Even assuming that Section 9 of the Carriers Act, 1865 does not apply to the cases before the Consumer fora under Consumers Protection Act, the principle of common law above mentioned gets attracted to all these cases coming up before the Consumer fora. Section 14(1)(d) of the Consumers Protection Act had to be understood in that light and the burden of proof gets shifted to the carriers by the application of the legal presumption under the common law. Section 14(1)(d) has to be understood in that manner. The complainant can discharge the initial onus, even if it is laid on him under Section 14(1)(d) of the Consumers Protection Act, by relying on Section 9 of the Carriers Act. It will therefore be for the carrier to prove absence of negligence. It has been held in like circumstances that a defendant in a suit on the basis of a negotiable instrument can discharge the onus lying on him under Section 118 of the Negotiable Instruments Act by relying on another presumption under Section 114 of the Evidence Act under which if a plaintiff does not produce the accounts in his personal custody an adverse inference can be drawn against the plaintiff. *Kundanlal v. Custodian, Evacuee Property*, AIR (1961) SC 1316.

With the above observation and following the above said Judgment in the case of *Patel Roadways*, we dismiss the special leave petitions accordingly.

T.N.A.

Petitions dismissed.