A

P. RAMA RAO

v.

P. NIRMALA AND ORS.

DECEMBER 5, 1996

B

[K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

Carriers Act, 1865 :

Section 10—Suit against carrier—Notice for—Limitation period—
C *Petitioner a contractor with Indian Oil Corporation carrying on transportation of petroleum products—Respondent-owner of a truck engaged for oil delivery—Accident of truck—Leakage of oil—Suit filed by petitioner for recovery of amount of short delivery along with interest—Suit decreed by Trial Court and confirmed by First Appellate Court—On appeal High Court set*
D *aside the decree against Insurance Company on the ground that notice under Section 10 was not issued—Appeal—Held, the owner of the truck had an insurance policy with the respondent-Oriental Fire & General Insurance Co. Ltd.—Ultimately, the liability was sought to be fastened on the insurance company as insurer, for the liability of common carrier—As a result, notice has to be issued, when the damage was caused to the goods which were being*
E *carried due to an accident covered under the policy of insurance—So, a notice under Section 10 was required to be issued to the Insurance Company within six months from the date of the knowledge of the injury to or loss of the goods entrusted for carriage before filing the suit—Admittedly, such a notice was issued after the expiry of six months from the date of the accident—Therefore*
F *the suit against the Insurance Company would not lie, though a suit may lie against the common carrier—Notice issued by the Indian Oil Corporation to the petitioner as well as common carrier and the Insurance Company would not be construed to be a notice under Section 10.*

G CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 25126 of 1996.

From the Judgment and Order dated 6.12.95 of the Andhra Pradesh High Court in L.P.A. 239 of 1993.

H A.T.M. Sampath for the Petitioner.

The following Order of the Court was delivered : A

This special leave petition is from the judgment of the Division Bench of the Andhra Pradesh High Court dated December 6, 1995 made in LPA No. 239 of 1993.

The admitted position is that the petitioner is a registered contractor B with the Indian Oil Corporation for transportation of the petroleum products within Andhra Pradesh from Vishakhapatnam to Hyderabad. It would appear that he engaged one P. Nirmala, the owner bearing truck No. DHL 2182 and entrusted 12000 Lts. of oil for delivery at Hyderabad on July 9, 1982. It is now not in dispute that on account of the accident of C the truck there was a leakage of oil. As a consequence, only 1755 Lts. were delivered resulting in shortage of the rest, namely 10245 Lts. The suit was filed by the petitioner for recovery of a sum of Rs. 66,212.36 with interest against P. Nirmala, the truck owner and the insurer, Oriental Fire and General Insurance Company Ltd., respondent No. 4 in the special leave petition. The Trial Court decreed the suit and on appeal the learned single D judge confirmed the same. The Division Bench allowed the appeal and set aside the decree as against respondent No. 4 on the ground that notice under Section 10 of the Carriers Act, 1865 (for short, the 'Act') was not issued and, therefore, the suit against the insurer would not lie. Thus, this special leave petition. E

Shri A.T.M. Sampath, learned counsel for the petitioner, contends that since the petitioner is not the carrier, the need to issue notice does not arise. However, even if it is to be so, such a notice has been issued within six months by the Indian Oil Corporation, marking a copy to the Insurance Company. So, the suit is within limitation. We find no force in F the contention. Section 10 of the Act reads as under :

> "No suit shall be instituted against a common carrier for the loss of, or injury to, goods entrusted to him for carriage unless notice in writing of the loss or injury has been given to him before the G institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff."

Admittedly, notice was issued by the petitioner on July 5, 1983 after the expiry or six months' time. A reading of Section 10, it would make it clear that no suit shall be instituted against common carrier for the loss of H

A or injury to goods entrusted to him for carriage, unless notice in writing of the loss of or injury to the goods has been given to him before the institution of the suit within six months of the time when the loss of or injury to the goods first came to the knowledge of the plaintiff. The admitted position is that P. Nirmala, the owner of the truck had an
B insurance policy with the 4th respondent-Oriental Fire & General Insurance Co. Ltd. Ultimately, the liability is sought to be fastened on the insurance company as insurer, for the liability of common carrier As a result, notice has to be issued, when the damage was caused to the goods which is being carried due to an accident covered under the policy of insurance. So, a notice under Section 10 is required to be issued to the
C Insurance Company within six months from the date of the knowledge of the injury to or loss of the goods entrusted for carriage before filing the suit. In fact, admittedly, such a notice was issued on July 5, 1983, namely, after the expiry of six months from the date of the accident, namely, July 9, 1982. The appellant-petitioner stepped into the shoes of the carrier, i.e.,
D P. Nirmala. Notice issued by the Indian Oil Corporation to the petitioner as well as common carrier and the Insurance Company would not be construed to be a notice under Section 10. Under these circumstances, it must be held that the suit against the Insurance Company would not lie, though a suit may lie against the common carrier.

E The special leave petition is accordingly dismissed.

T.N.A. Petition dismissed.