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IN THE SEYCHELLES COURT OF APPEAL

FRED KOLSCH Appellant

v/s

PHILIPPE LEFEVRE Respondent

Civil Appeal 11/92

Valabhji with Shah for appellant

Pardiwalla for respondent

Judgment of Goburdhun P.

In a plaint entered before the Supreme Court appellant averred that (1) he contracted with respondent to transport a container containing construction and household items from the harbour at New Port Victoria to his house at l'Intendance Street for a fee of SR1500 (2) the said container was placed and transported on a trailer loader belonging to respondent and operated by his servants or agents (3) the container and its contents were damaged due to the fault of respondent. Appellant estimated the damages suffered by him at SR88,220 which sum he claimed from respondent.

Respondent in his defence denied the allegations of appellant. He pleaded that he never contracted with appellant for the transportation of a container as alleged by appellant. He only "lent his trailer and the driver to one Jeffrey Esparon on the express condition that Jeffrey Esparon would be totally responsible for all eventualities and consequences". He also averred that " the driver was under the direct responsibility and control of Jeffrey Esparon and appellant and the loading was their sole responsibility".

After hearing evidence the learned ag. Chief Justice (as he then was) accepted the version of respondent, found the case of appellant not proved and dismissed the plaint.

The judgment of the trial Court is being challenged on several grounds. The main ground being that "the learned trial judge failed to apply to the case the law relating to carriers by land as set out in the Civil Code of the Seychelles". I need not reproduce the other grounds.

Mr Valabhji, learned counsel for appellant addressed the Court at length on the responsibility of a carrier of goods on land. I agree that in a case of a contract for carriage of goods the carrier has the responsibility to carry the goods safe and sound to their destination. The responsibility is absolute. Negligence needs not to be proved. In order to escape liability the carrier must prove that the loss or damage to the goods occurred through an inevitable accident or an act of God. A "destinataire" - even though not a party to a contract of carriage - may on his own name also sue the carrier in damages for all losses sustained by him. However, in my view, the deciding issue in this case is whether there was a contract of carriage of goods as alleged in the plaint or not. On this issue the learned ag. Chief Justice (as he then was) found that there was no such contract. In his view the "respondent's son only hired out his father's low-bed trailer with the driver and escort for a sum of SR1500. He was not responsible for loading or unloading the container on to the trailer".

The learned acting Chief Justice (as he then was) opted for the version of respondent after analysing the evidence from both sides. The relevant part of his judgment reads as follows:

"I believe Philippe Lefevre Junior and disbelieve William Rose whose testimony I found to be utterly unreliable. Rose's testimony was biased in favour of the plaintiff. He gave me the impression that he was using the witness stand to settle a score with Philippe Lefevre Junior for whom he had once worked. I also accept the version of Philippe Lefevre Junior who said that if he were to be wholly responsible for the operation, he would have charged a fee of SR6000 to Jeffrey Esparon. He charged only SR1500 because Jeffrey Esparon was to be responsible for overseeing the whole of the operation. Jeffrey Esparon, as supervisor at the quarry of UCPS had