application was filed on May 31, 1971, i.e., within 30 days from the date when the petitioner came to know about the decree. In the circumstances, the application is within limitation.

(9) For the reasons recorded above I accept the revision petition and set aside *ex parte* decree on payment of Rs. 150 as costs. No order as to costs of this petition. The parties are directed to appear before the Subordinate Judge, Amloh, on April 3, 1978.

*N. K. S.*

*Before R. N. Mittal, J.*

JULLUNDUR EX-SERVICEMEN MOTOR TRANSPORT COOPERATIVE SOCIETY LTD.,—*Defendant—Appellant.*

*versus*

THE GENERAL ASSURANCE SOCIETY LTD. ETC.,—*Plaintiffs—Respondents.*

*First Appeal from Order No.* 149 of 1971.

February 28, 1978.

*Carriers Act (III of* 1865)—*Sections* 9 *and* 10—*Arbitration Act (X of* 1940)—*Sections* 13(*b*) *and* 30—*Suit against common carrier for damage to goods entrusted—Plaintiff—Whether has to prove negligence of the carrier or his agents—Notice under section* 10—*Whether necessary before filing the suit—Fact regarding service of such notice—Whether to be mentioned in the plaint—Such notice served by the assured—Serving of another notice by the insurer—Whether necessary—Opinion given by the Court under section* 13(*b*)—*Arbitrator—Whether bound by such opinion—Application for setting aside an award—Court—Whether can examine such award on merits.*

*Held,* that if a suit is brought against a common carrier for loss, damage or non-delivery of the goods entrusted to it, it is not for the plaintiff to prove that the loss, damage or non-delivery was due to the negligence of the carrier, his servants or agents. Negligence is presumed by loss of or injury to goods. Section 10 of the Carriers Act, 1865 enjoins on the plaintiff to serve a notice on the carrier within six months before filing a suit regarding loss of or injury to goods entrusted for carriage. To maintain a suit for damages for loss of or injury to the goods against a common carrier, a notice under section 10 must be given to it. If without serving notice on the carrier a suit is brought, it is liable to be dismissed. Thus service of notice is a *sine qua non* for instituting a suit against a carrier.

(Para 8)

*Held*, that section 10 of the Act does not provide that the fact regarding service of notice should be mentioned in the plaint.

(Para 11).

*Held*, that the insurer is entitled to institute a suit in the name of the assured after making payment of the claim to him. The rights of the insurer flow from those of the insured. Where a notice under section 10 has been served by the assured, it is not necessary for the insurer to serve another notice on the carrier.

(Para 14).

*Held*, that the opinion of the court under section 13(b) of the Arbitration Act, 1940 is not binding on the Arbitrator but if he accepts it, it cannot be held that he misconducted himself. It is for him to give or not to give reasons for it. An award cannot be set aside because the Arbitrator did not give reasons in it for accepting the opinion of the Court.

(Para 12).

*Held*, that where the award of the Arbitrator is assailed under section 30 of the Arbitration Act, the Court is not deciding the matter on merit. It is a well settled proposition of law that the Court has no jurisdiction to go into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the award is proper. The award can, however, be set aside on the ground of error of law on the face of it. The award ordinarily is final and conclusive. The Civil Court which is entrusted with the powers to set aside an award under section 30 does not exercise appellate powers. It also cannot go into the matter as to how the evidence of the parties has been appreciated by the Arbitrator. It can only interfere with the award if the Arbitrator has misconducted himself or the proceedings.

(Para 15).

*Petition under section 39(V) of Act X of 1940 for revision of the order of the Court of Shri S. N. Parkash, Senior Sub-Judge, Hissar, dated the 30th of April, 1971, dismissing the petition with costs.*

*Claim :—Suit for the recovery of Rs. 48,000 by way of damages.*

*Claim in Revision:—For reversal of the order of the Lower Court.*

*C. M. No. 716-CII of 1977.*

*Objection under Section 30 read with Section 33 of the Arbitration Act, praying that objections be accepted and the Award be set aside with costs throughout.*

*C. M. No. 862-CII of 77.*

*Application under section 14 of the Indian Arbitration Act praying that after the award has been filed in this Hon'ble Court the same be made a rule of the court and decree for Rs. 46,060 be passed in terms of the award with future interest on the amount due at the rate of 12 per cent P.A. till the date of realisation.*

M. K. Mahajan, Advocate, *for the appellant.*

L. M. Suri, Advocate, *for the respondent.*

JUDGMENT

*R. N. Mittal, J.*

(1) Briefly the facts of this case are that Messrs Fatehabad Cotton, Ginning and Pressing Factory, plaintiff No. 2, a registered firm under the Indian Partnership Act, booked two consignments of cotton, comprising 100 bales and 75 bales, from Mandi Dabwali, situated in the erstwhile State of Punjab (now in Haryana), to Rampur (Uttar Pradesh), with the Jullundur Ex-Servicemen Motor Transport Co-operative Society Ltd. (defendant),—*vide* two receipts, dated May 26, 1967. It got the consignments insured with the General Assurance Society Ltd. (Plaintiff No. 1). These were burnt at Delhi-U.P. border. The burnt goods were sorted out, surveyed and disposed of under the supervision of all the parties concerned. It is alleged that plaintiff No. 2 suffered a loss of Rs. 48,689. Plaintiff No. 1, it is further alleged, settled and paid the claim of plaintiff No. 2, who executed deed of subrogation in favour of plaintiff No. 1. Both the plaintiffs after having given up a claim of Rs. 689 instituted a suit for the recovery of Rs. 48,000.

(2) The defendant filed an application under section 34 of the Arbitration Act for stay of proceedings in the suit on the ground that according to the terms of agreement between plaintiff No. 2 and the defendant, the disputes between them were to be referred to the arbitration. The trial Court,—*vide* order, dated April, 30, 1971, dismissed the application. The defendant came to this Court in appeal (F.A.O. No. 149 of 1971) against the order of the trial Court. The parties entered into a compromise in the appeal and referred the matter to the arbitration of Mr. Amrit Sagar Mahajan, Advocate, Chandigarh. While he was dealing with the matter, he met with an accident and died. Consequently it was referred to Mr. Ram Lal Aggarwal, Advocate, as Arbitrator.

(3) The defendant raised an argument before Mr. Ram Lal Aggarwal, that no notice under section 10 of the Carriers Act, 1865, had been served by any of the plaintiffs on the defendant within six months and, therefore, the plaintiffs' claim was liable to be rejected. On behalf of the plaintiffs it was argued that the letter, dated June 13, 1967, Exhibit P.W. 9/1/A satisfied the requirements of the said section. The Arbitrator having felt difficulty in deciding the matter and finding it to be of considerable importance, referred it for the opinion and advice of this Court under section 13(b) of the Arbitration Act,—*vide* order, dated January 9, 1976. The matter was decided by Harbans Lal, J., who,—*vide* order, dated August 9, 1976, held that notice, dated June 13, 1967, Exhibit P.W. 9-1/A satisfied the requirements of section 10 of the Carriers Act.

(4) The matter again came up before the Arbitrator. The plaintiffs' further gave up their claim before him to the tune of Rs. 2,629. The Arbitrator on February 18, 1977, passed an award for the recovery of Rs. 46,060 in favour of the plaintiffs and filed it in this Court on February 19, 1977. The defendant filed objections against the award under section 30 read with section 33 of the Arbitration Act, pleading *inter alia* that the Arbitrator did not take into consideration the pleadings of the parties, that the letter Exhibit P.W. 9/1/A, dated June 13, 1967, of plaintiff No. 2, can, by no stretch of imagination, be treated as a statutory notice under section 10 of the Carriers Act, that the Arbitrator had not applied his independent judicial mind with regard to the said notice and accepted the opinion of the Court given under section 13(b) of the Arbitration Act, that the opinion of the Court, dated August 9, 1976, was wrong and unwarranted and that the Arbitrator acted beyond his jurisdiction. The plaintiffs contested the objections. On the pleadings of the parties, the following issues were framed:—

1. Whether the objections haev been filed against the Award within time ?

2. Whether the objections fall within the purview of section 30 of the Arbitration Act? If not, with what effect ?

3. In case issue No. 2 is proved in favour of the objector whether there are sufficient grounds for setting aside the Award ?

4. Relief.

(5) The award was filed in this Court on February 19, 1977 and the objections were preferred by the defendant on March 21, 1977. It is not disputed by the respondent that the last date for filing the objections was March 21, 1977. In the circumstances the objections are within limitation. I decide issue No. 1 accordingly.

(6) It is contended by the learned counsel for the defendant that the whole dispute was referred by the Court to the Arbitrator. At time of deciding the case, he urges, it was necessary for him to take into consideration the allegations in the plaint, but he had not done so. According to the counsel, the plaintiffs had pleaded that the goods had been destroyed due to negligence and carelessness of defendant and it was for them to prove it, but they failed to do so. He argues that consequently, no award for recovery of the amount could be made in favour of the plaintiffs.

(7) I have given a thoughtful consideration to the argument of the learned counsel but regret my inability to accept it. No doubt, it is true, that the plaintiffs had averred that the goods were destroyed by fire on account of negligence of the defendant and its servants and that the Arbitrator had to decide the matter taking into consideration the pleadings of the parties and the evidence led before it. It is, however, an established principle of law that the Arbitrator need not give reasons in the award. In order to decide the question, it will be relevant to refer to the preamble and a few sections of Carriers Act. The preamble provides that the purpose of the Act was not only to enable common carriers to limit their liability for loss or damage to property delivered to them to be carried, but also to declare their liability for loss or damage to such property occasioned by the negligence or criminal acts of themselves, their servants or agents. Section 9 deals with burden of proof in case of loss, damage or non-delivery of goods entrusted to carriers and section 10 with service of notice to the carrier of loss of or injury to the goods. These sections read as follows:—

> "9. *Plaintiffs, in suits for loss, damage or non-delivery, not required to prove negligence or criminal act.*—In any suit brought against a common carrier for the loss, damage or non-delivery of 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.

10. *Notice of loss or injury to be given within six months.*—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 institution of the suit and within six months of the time when the loss or injury first came to the knowledge of the plaintiff."

(8) From a reading of section 9, it is evident that if a suit is brought against a common carrier for loss, damage or non-delivery of the goods entrusted to it, it is not for the plaintiff to prove that the loss, damage or non-delivery was due to the negligence of the carrier, his servants or agents. Negligence is presumed by loss of or injury to goods. Section 10 enjoins on the plaintiff to serve a notice on the carrier within six months before filing a suit regarding loss of or injury to goods entrusted for carriage. To maintain a suit for damages for loss of or injury to the goods against a common carrier, a notice under section 10 must be given to it. If without serving notice on the carrier a suit is brought, it is liable to be dismissed on this ground. Thus service of notice is a *sine qua non* for instituting a suit against a carrier.

(9) In view of the aforesaid position of law, the question to be determined is whether a notice under section 10 had been served by the plaintiffs on the defendant or not. The plaintiffs have produced on record a letter, dated June 13, 1967, Ex- P.W. 9/1/A sent by plaintiff No. 2 to the defendant. The dispute arose between the parties whether it could be considered a notice under section 10 of the Carriers Act. The Arbitrator having felt difficulty in deciding the matter referred it for opinion of this Court under section 13(b) of the Arbitration Act,—*vide* order, dated January 9, 1976. It was decided by Harbans Lal, J. on August 9, 1976, wherein it was held that the notice Ex. P.W. 9/1/A fully satisfied the requirements of section 10 of Carriers Act. The Arbitrator followed the aforesaid view and held accordingly. The award in my view cannot be assailed on this ground. For the reasons given above, the argument of Mr. Mahajan has no substance and is rejected.

(10) It is then argued by Mr. Mahajan that the letter, dated June 13, 1967, Ex. P.W./9/1/A was not mentioned in the plaint and consequently whether it was a notice or not was not a question involved in the case. He further argued that the matter, therefore, could not be referred by the Arbitrator for opinion of this Court under section

13(b) of the Arbitration Act. Even if, he submits, the reference by the Arbitrator be held to be proper, he acted illegally in following the advice without giving reasons for holding Ex. P.W. 9/1/A as notice under section 10.

(11) I am not convinced with this argument of the counsel also. Section 10 does not provide that the fact regarding service of notice should be mentioned in the plaint. Wherever the legislature wanted that the fact regarding service of notice should be mentioned it provided so. In this regard reference may be made to section 80 of the Code of Civil Procedure wherein it is said that the plaint shall contain a statement that a notice under section 80 had been served. Even if there was no mention of Ex. P.W. 9/1/A in the plaint, the plaintiffs had the right to prove that a notice under section 10 of the Carriers Act was duly served upon the defendant. The plaintiffs proved that Ex. P.W. 9/1/A was served in the defendant. The Arbitrator, as already stated, referred the matter as to whether Ex. P.W. 9/1/A was notice under section 10 or not for the opinion of the Court under section 13(b) of the Arbitration Act. In my view, in doing so no illegality was committed by him. It will be relevant to point out here that the fact that letter Ex. P.W. 9/1/A was written by plaintiff No. 2 to the defendant finds place in the plaint.

(12) The second limb of the argument is whether the Arbitrator was bound to follow the opinion given by the Court. It is true, that the opinion of the Court is not binding on the Arbitrator but if he accepts it, it cannot be held that he misconducted himself. It is for him to give or not to give reasons for it. An award cannot be set aside because he did not give reasons in it for acepting the opinion of the Court.

(13) Mr. Mahajan then sought to argue that the opinion of the Court is erroneous. He referred to statement of Dewan Chand Gupta, Zonal Manager of plaintiff No. 1, P.W. 8 wherein he stated that he did not know if notice under section 10 of the Carriers Act had been issued or not. From the statement, he wanted me to infer that no notice under section 10 had been served by plaintiff No. 1. I have examined the argument carefully but do not find any merit in it. From a perusal of notice Ex. P.W. 9/1/A, it is evident that it was given by plaintiff No. 2 to the defendant. Plaintiff No. 1 is not claiming any independent right but doing it through plaintiff No. 2.

The Supreme Court in *Union of India* v. *Sri Sarada Mills Ltd.* (1) has held that subrogation does not confer any independent right on underwriters to maintain in their own name and without reference to the persons assured an action for damage to the thing insured. The Bombay High Court in *The Oriental Fire and General Insurance Co. Ltd.* v. *American President Lines Ltd.* (2), observed as follows:

> "Subrogation is not the same thing as a transfer by operation of law. It is not a transfer at all. It is an act of being substituted in the place of another only to a limited extent and such limitation has implicit in it the disability of not being able to sue in the name of the subrogee. Therefore, an insurer of goods who pays the loss under a marine policy and gets subrogated to the rights and remedies of the insured, is not entitled to sue a carrier of goods or other wrong doer or tortfeasor in his own name to recover compensation for loss or damage due to the assured. In practice, the commonest way in which the principle of subrogation is applied to insurance is for the insurer to pay the claim to the assured and then to institute proceedings in the name of the assured, but for the insurers own benefit, against the party utimately liable".

(14) I am in respectful agreement with the above observations. From the above observations, it is evident, that the insurer is entitled to institute a suit in the name of the assured after making the payment of the claim to him. It cannot be disputed that the rights of the insurer flows from those of the insured. In the present case, it has already been held above that a notice has been served upon the defendant by plaintiff No. 2. In my opinion, after the service of notice under section 10 by the assured, it was not necessary for insurer to serve another notice on the carrier. I, therefore, repel the contention of Mr. Mahajan.

(15) The next contention of Mr. Mahajan is that there is enough evidence on record that the goods caught fire not on account of any negligence on the part of the defendant. He submits that the finding of the Arbitrator on the aforesaid matter is not correct. This argument has also not impressed me. The award of the Arbitrator is

(1) A.I.R. 1973 S.C. 281.
(2) 1968 A.C. J. 296.

being assailed under section 30 of the Arbitration Act. This Court is not deciding the matter on merit. It is a well settled proposition of law that the Court has no jurisdiction to go into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the award is proper. The award can, however, be set aside on the ground of error of law on the face of award only. The award ordinarily is final and conclusive. The Civil Court, which is entrusted with the powers to set aside an award under section 30 does not exercise appellate powers. It also cannot go into the matter as to how the evidence of the parties has been appreciated by the Arbitrator. It can only interfere with the award if the Arbitrator has misconducted himself or the proceedings. After taking into consideration the aforesaid circumstances, I am of the opinion that the award cannot be set aside on this argument of the learned counsel. I, therefore, reject the contention.

(16) Lastly Mr. Mahajan argues that there is no evidence on the record to prove that plaintiff No. 1 issued any policy in favour of plaintiff No. 2. He urges that if no policy was issued by plaintiff No. 1, then no award could be made by the Arbitrator in favour of the said plaintiff. He further argues that in the receipt issued by the defendant to plaintiff No. 2, one of the conditions was that the defendant would not be liable for any loss or damage due to fire. According to him the goods had been destroyed by fire and the plaintiffs are not entitled to damages in view of the aforesaid condition.

(17) I have gone through the award. The Arbitrator in the award has given the points which were raised before him. These pleas were not taken by the defendant. It cannot be allowed to raise these in the application under section 30 in this Court for the first time. In the aforesaid view, I am supported by a Division Bench judgment of this Court *National Electric Supply and Trading Corporation Private Ltd.* v. *Punjab State and another* (3), wherein it was observed that where a party has raised no objection at the proper stage and has in fact allowed the Arbitrator to proceed with the case, it cannot be permitted subsequently to take objection and impute misconduct to the Arbitrator in that regard. It was the duty of the defendant to have raised these points before the Arbitrator. As already observed, a Court while exercising its powers under section

(3) A.I.R. 1963, Pb. 56.

30 of the Arbitration Act is not acting as an appellate Court. It has been settled by the Supreme Court in *Union of India* v. *A. L. Rallia Ram* (4), an award being a decision of an arbitrator whether a lawyer or a layman chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous. The award of the arbitrator is ordinarily final and conclusive, unless a contrary intention is disclosed by the agreement. The award is the decision of a domestic tribunal chosen by the parties, and the civil courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement.

(18) Mr. Mahajan referred to *Union of India* v. *Bungo Steel Furniture* (5) and *Orissa Mining Corpn.* v. *P. V. Rawlley* (6). It is suffice to say that the above cases are distinguishable and Mr. Mahajan cannot derive any benefit from the observations therein.

(19) After taking into consideration the arguments of the learned counsel, I do not find any substance in the above said arguments. No other point was raised before me.

(20) For the reasons recorded above I dismiss the objections with costs and make award the rule of the Court. Counsel fee Rs 150.

*N. K. S.*

*Before R. N. Mittal, J.*

SANT RAM,—*Appellant.*

*versus*

BABY RENU,—*Respondent.*

*Civil Misc. No. 250-CI of 78.*

*In Regular First Appeal No. 1485 of 77.*

March 2, 1978.

*Punjab Courts Act (VI of 1918) as amended by the Punjab Courts (Haryana Amendment) Act (XX of 1977)—Section 39—Suits Valuation Act (VII of 1887)—Section 8—Plaintiff in a money suit granted future interest till the date of realisation—Defendant in appeal*

(4) A.I.R. 1963 S.C. 1685.

(5) A.I.R. 1967 S.C. 1032.

(6) A.I.R. 1977 S.C. 2014.