
(1961) 11 AHC CK 0015

In the Allahabad High Court

Case No : Letters Patent Appeal No"s. 55 and 56 of 1951

Badri Das Gauri Dutt

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-11-1961

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1962 All 483 : (1962) 32 AWR 473

Hon'ble Judges : J. Sahai, J;B. Mukerji, J

Bench : Division Bench

Advocate : Shambhu Prasad, for the Appellant; D.D. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Mukerji, J.—These two special appeals have come up before us on leave granted by a learned Single Judge. The appeals raise the same point and we shall dispose them, as did the learned single Judge, by a common judgment.

2. The appellant, who was the plaintiff in both the suits out of which these appeals have arisen, booked two separate consignments of one bale of cloth each for carriage on the Bombay-Baroda route of the Central Indian Railway, as it then was; both the consignments were booked to "Self". The first consignment was booked at Ahmedabad on the 1st of May, 1943, for carriage to Basti. The second consignment was booked at Wadi Bunder on the 29th of May, 1943, for carriage to Basti.

3. The first consignment, which had been booked on the 1st of May, 1943, arrived at Basti on the 11th of May, 1943, while the second consignment, which had been booked on the 29th of May, 1943, arrived at Basti on the 11th of June, 1943. Both the consignments arrived in a "loose" and damaged condition. The plaintiff in both the cases claimed, what has been called, "Open Delivery" of the goods. The clerk in charge of the delivery section of the Railway at Basti stated that he could not give open delivery on his own initiative and that he had to get

permission for it from his higher authorities and that the delivery, if permitted, could only be made in the presence of a Traffic Inspector. The plaintiff apparently felt satisfied with the conditions which were put out to him by the delivery clerk at Basti and, therefore, he did not take delivery of the goods at the time when delivery could have been given. In both the cases "open delivery" was given on the 20th August, 1943, i.e., after a good deal of delay, in the case of the consignment which reached on the 11th of May, 1943, there was a delay of more than three months, while in the case of the consignment which arrived on the 11th of June, 1943, the delay was of more than two months. The plaintiff found that the goods had suffered damage and deterioration, and further that there was shortage of goods in both the bails, for in one bale there were 12 dhotis found missing while in the other two bales of voile were found missing; it was also observed that some of the bales had suffered damage due to rain water.

4. The plaintiff then filed two suits, which have given rise to these two appeals, to recover damages. The plaintiff claimed damages from the railway administration on three grounds, first, because of shortage of delivery, secondly, damage which had been caused by rain water, and thirdly, due to the delay in making open delivery, inasmuch as, this delay had brought about an adverse change in the price of the goods in the open market. The plaintiff failed to give the notice as required u/s 77 of the Indian Railways Act within the statutory period. Therefore, the courts below guillotined the damage claimed by the plaintiff on the two grounds, one, shortage in delivery, and secondly, deterioration which the goods had suffered due to rain water. The courts below, however, awarded damage to the plaintiff on the ground of delay caused by the railway administration in giving open delivery. The plaintiff's claim to the extent of Rs. 280/- was decreed in respect of one suit and to the extent of Rs. 553/- in respect of the other suit

5. On second appeal a learned single Judge of this Court came to the conclusion that neither of the two suits of the plaintiff could be decreed in respect of any damage because the plaintiff could have claimed, in the view of the learned single Judge, no damage for the delay that was occasioned in the railway administration effecting open delivery which had been asked for by the plaintiff.

6. The questions which have fallen for our determination, are, first whether there was any right in the plaintiff to claim open delivery, and secondly, if there was no such right, could the plaintiff get any damage merely because the railway administration had gratuitously offered to give open delivery, on the ground that there was delay in making this gratuitous open delivery.

7. In regard to the first question it cannot be contended that there was any legal right in the plaintiff to claim open delivery, or that the railway administration was bound under the law to give, what has been called, open delivery. Reliance was placed on Clause (4) of what was printed at the back of the Railway Receipt under which the respective consignments were booked for the purpose of contending that the railway administration was bound to give open delivery when

claimed. The relevant clause is in these words :

"That all claims against the railway for loss or damage to goods, must be made to the clerk in charge of the station to which they had been booked before delivery is taken and a written statement of the description and contents Of the articles missing or of the damage received, must be sent forthwith to the Chief Traffic Manager, Bombay, or to the District Traffic Superintendent of the district in which the forwarding or receiving station is situated; otherwise the railway will be freed from responsibility."

The aforequoted provision was a rule of guidance, at best, and not a rule of law. All that the clause emphasises is that the plaintiff, in case of loss or damage of goods should at the earliest give a written statement showing the nature of the articles missing or the nature of the damage sustained by the consigned goods. This clause in no way entitled the plaintiff to claim open delivery.

8. The question as to whether or not there was a right in the plaintiff to claim open delivery from the railway administration came up for consideration as early as the year 1913 when Tudball, J. in *Jwala Prasad and Co. v. G. I. P. Rly.* 1913 ALJ 772 held that:

"the railway was not bound to open the consignment and examine it before delivery and it was not a wrongful act on the part of the Railway Co. to refuse to give delivery in the way required by the plaintiff and they were not liable to him for any damages."

Since that year, namely 1913, the decision in *Jwala Prasad and Co.*'s case 1913 ALJ 772 has held the field and there has been in this Court no dissent to the view expressed in that case.

9. Learned counsel relied on *Secy. of State Vs. Madhuri Das-Narain Das*, to contend that a doubt had been cast on the view expressed by Tudball, J. in *Jwala Prasad and Co.*'s case 1913 ALJ 772. In our opinion, Niamatullah, J. who decided the aforementioned case expressed no such doubt, for the case that Niamatullah, J. determined was entirely different on the facts. In the case before Niamatullah, J. the servants of the railway administration had by some inadvertence or for some other reason wrongly described the plaintiff's goods and in that case the plaintiff wanted to have goods which he had despatched and not the goods which the railway administration wrongly offered to deliver to him as the goods despatched by the plaintiff.

10. The position of the railway when they agreed to oblige the plaintiff, in the present case, by making an open delivery was that of a volunteer at best and they could not be held liable in any way to give an open delivery to the plaintiff. The railway administration had not undertaken to give delivery within any fixed time, and they had clearly indicated to the plaintiff that the type of delivery which the plaintiff wanted could only be given under certain circumstances, then it must be held that the plaintiff with his eyes open took the risk of delay in the

railway administration performing the act which they had as a, volunteer undertaken. It was not the plaintiff's case that the goods had suffered any physical damage during the time when they were in the hands of the railway administration between the period of their arrival at destination and the time when actually open delivery was taken. Therefore, the plaintiff could not even claim damages on the ground that even though the railway administration acted as a volunteer they were under the law bound to act like a reasonable person and take reasonable care of the goods which were in their possession. We have, therefore, seen no justification for holding that the learned single Judge was in error in the view that he took in regard to the plaintiff's claim for damages for delay in making the open delivery.

11. For the reasons given above we have seen no merits in these two appeals which we accordingly dismiss, but in the circumstances of the case we direct the parties to bear their own costs of these appeals.