
(1929) 01 BOM CK 0008

In the Bombay High Court

Case No : Civil Revision Application No. 34 of 1928

B.B. and C.I. Railway

APPELLANT

Vs

Ganu Daji Mirmahamad

RESPONDENT

Date of Decision : 28-01-1929

Acts Referred:

Citation : (1929) 31 BOMLR 1087 : 122 Ind. Cas. 852

Hon'ble Judges : Murphy, J; Amberson Marten, J

Bench : Division Bench

Judgement

Amberson Marten, Kt., C.J.—In this case the defendants, the B.B. & O. I. Railway, apply in revision from the order of the learned Judge of the Court of Small Causes at Ahmedabad awarding a sum of Rs. 866-4-0 and costs against them in respect of a consignment of mangoes which were booked from Timarni station on the G.I.P. Railway to Ahmedabad station on the B.B. & C.I. Railway.

2. The claim against the first defendants, the G.I.P. Railway, was dismissed by the learned Judge, and on the last hearing on December 14, we directed that the present appeal by the B.B. & C.I. Railway should also be dismissed as against the G.I.P. Railway. But at that date the appellants had not served the plaintiff, and consequently the case had to stand over.

3. It is clear here that the contract with the railway company was to take these mangoes from Timarni in Madras to Ahmed, a bad station in Gujarat. What the railway company in fact did was that they took the goods from Timarni to Ahmedabad, but that then they carried them further to Viramgam station, a long way from Ahmedabad, and next sent them back to Ahmedabad where they were delivered. The learned Judge's finding is that this despatch from Ahmedabad to Viramgam and back was contrary to the terms of the contract, and that this over-carriage caused a delay of some three days whereby the mangoes were damaged, and he assessed the damages as nine-sixteenths of the consignment.

4. The ground on which the learned Judge held against the railway company was

that although the latter had risk-notes A and B in their favour, yet this carriage of the goods? beyond the destination and back again was not within the terms of the contract, and accordingly the railway company were not protected by these risk-notes.

5. The main question before us is whether the learned Judge was correct in this. But alternatively, if the risk notes did apply here, it is argued that he did not find specifically whether there was willful neglect by the railway company so as to exclude them from the benefit of risk-note B.

6. Now it will be noticed in the first place that in both these railway " risk-notes the goods are to be carried in transit from Timarni station to Ahtnedabad station. It is true that the exception is worded "for the loss" and so on "before, during and after transit over the said railway company." But that is the wording of the exception, The main contract is the transit of the goods from the one station to the other. Prima facie then one would have thought that if the goods having first been carried from the station of despatch to the station of delivery are next carried on to quite a different place not within the contemplation of the contract, then prima facie the original contract has been broken by the railway company, and that the risk notes would not apply, for they were only intended to cover a transit to, say, a place B and not to some other place beyond B.

7. But the applicant a have strongly relied on *Foster v. Great Western Railway* [1904] 2 K.B. 306 . There the goods in transit were sent from Brixham to Jersey via Southampton, and should have been taken out at Exeter but were carried on to Taunton before the mistake was discovered. There the Court thought that the railway company were protected. They accordingly distinguished another case of *Mallet v. Great Eastern Railway* [1899] 1 Q.B. 309. In that case the contract was to send the goods from Lowest of to Jersey by the Great Western Railway and Weymouth, but by a mistake the railway company sent them by another route to Jersey, viz., the Southampton route. There it was held that the company without the consent of the consignor had altered the contract and sent the goods by a different route. Consequently there was a delay in delivery, and the company was not protected because the delay referred to in the consignment note was a delay in the performance of the contract, which was not the case there, for the delay arose in consequence of the defendants doing something which was wholly at variance with the contract.

8. There is another case of *Gunyon v. South Eastern and Chatham Railway Companies'* Managing Committee [1915] 2 K.B. 370 . That was a case of cherries. They had to be sent by passenger train from Sittingbourne station, on the defendants' railway, to Glasgow. For that purpose they had to pass through London, and there the goods were sent forward by a goods train instead of a passenger train. On that it was held that the carriage of the fruit by passenger train was of the essence of the contract, and after the fruit been transferred to a goods train the contract was no longer being performed and the fruit was not being carried at owners risk. The defendants were, therefore, not relieved from

liability by the conditions in the consignment note.

9. A later case of *Neilson v. L. & N.W. Ry* [1921] 3 K.B. 213 is rather nearer the present one. There certain packages had to be carried from Llandudno to Bolton via Manchester. At Manchester the tie-on labels on the van had apparently got detached. At any rate the local inspector, although he had been advised of these goods, had apparently forgotten about them. He accordingly took the goods out of the van, and then sent them to various destinations shown on old labels which were on the packages. There it was held that (p. 214):?

as the defendant's servant intentionally sent the goods to place which were in fact not upon the contract route, the delay did not occur " during any portion of the transit" within the meaning of the consignment note, and that it made no difference in that respect that his intention in so sending them was the result of an honest mistake; the defendants were consequently not relieved from liability by the terms of the contract.

10. There Mr. Justice Greer, as he then was, says (p 225):?

In these circumstances, apart from authority, I should have no difficulty in holding that the defendants are not protected against the consequences of a delay which was caused by the intentional despatch of the goods to towns to which they were never meant to go, and I think it makes no difference that that intentional despatch was due to a careless mistake made by an official of the company. They were in fact intentionally despatched on a journey which was not the agreed journey or anything like the agreed journey.

11. It will be observed that the goods were deflected from their proper route before, they had reached their correct destination. In the present case we have goods deflected after they had arrived at their proper destination. To that extent possibly, therefore, the present case is the stronger of the two.

12. On the other hand in *Arunachellam Chettiar v. The Madras Railway Company* I.L.R.(1909) Mad. 120 the goods were consigned from station E to station K, but the ordinary practice was to send goods beyond station K to station C and then back again from C to K. In fact the goods were damaged while at station C. There it was held that the condition in the risk-note included the usual transit according to the practice of the railway company, and that the consignor must be taken to have known it or ought to have known it, and that as the railway company were merely carrying out their usual practice, they were protected under the risk. The judgment proceeded to add (pp. 121, 122):?

Even if it could be held that, as the damage occurred after the waggon first reached Kallai and had been carried beyond that station to Calicut, the B.B. & G.I. damage did not occur " during " transit to Kallai, it would not be possible to hold that it did not in that view occur " after" transit to Kallai. The words " before during and after transit" seem to cover the whole period from the time the goods were delivered to the defendants at Erode up to the time they were re-delivered

to the plaintiffs at Kallai.

But so far as the actual decision was concerned, there the Court held that the railway company was protected by the terms of the risk-note as the transit was within the contract.

13. The point we have to consider here is whether the company in carrying the goods from Ahmedabad to Viramgam was acting within the terms of the contract. The above are the more material authorities that have been cited to us, and we have to decide what is the right decision to come to on the particular contract which we have here. In my judgment the view that the learned trial Judge took was correct, viz., that in carrying the goods from Ahmedabad to Viramgam the company was not acting within the terms of the contract. In my judgment this was never within the contemplation of the parties, and accordingly the company is not protected by either the risk-note A or B.

14. Under these circumstances it is unnecessary to consider whether there was here willful neglect within the meaning of the proviso, Here it must be remembered that the corresponding clause in the English risk-notes appears to be a wider one, viz., willful misconduct. Nor need we consider the further point that was taken that as these goods were carried loose, there was no loss of the complete consignment, because some of the goods arrived in good condition; nor was there a loss of any of the complete packages, because there were no packages. Nor need we consider the further point that there was here no "loss" within the meaning of the proviso, when it is contrasted with the words "loss, destruction, or deterioration of, or damages to, the said Consignment."

15. I need not, therefore, refer to the two decisions of Secretary of State for India in Council v. Jiwan and Abdullah I.L.R(1923) . All. 380 and East Indian Railway Co. v. Gopi Krishna, Kashi Prasad ILR (1923) All 534 which were cited to us.

16. Then another point altogether was raised about the quantum of damages, and it was stated that the learned Judge was wrong in awarding damages on the proportion, viz., nine-sixteenths of the goods as weighed at the starting place, viz., 200 maunds, and that he ought to have calculated the damages on the weight taken at Ahmedabad on arrival of 136 maunds, Bengal, and that there was here no claim for absolute loss of goods as opposed to deterioration. Here the view of the learned Judge was that we ought not to go behind the consignment note, which showed the weight of the mangoes as 200 maunds, Bengal, and that the damages assessed by the plaintiff on that basis were not incorrect.

17. We agree with the learned Judge on this point also. The result will be that this application must be dismissed with costs. Separate sets of costs.

Murphy, J.

18. The facts are that a waggon loaded with mangoes, which was in transit from

Timarni in Madras to Ahmedabad, was overcarried to Viramgam, and had to be returned from that place back to Ahmedabad, a mistake which involved three days" delay in its arriving at Ahmedabad. A large proportion of the mangoes had meanwhile deteriorated, and the suit was for damages for this loss. The learned Judge of the Court of Small Causes at Ahmedabad held that the railway administration were liable for the damage, and that they were not protected by the risk-notes in forms A and B, under which the mangoes had been despatched by the consignor, his reason being that the journey from Ahmedabad to Viramgam and back was not within the terms of the contract. A risk-note in form A is used in cases where the goods intended for carriage are defectively packed, as in this case they were, being placed loose in the waggon, and it protects the railway company from all responsibility for the condition in which the goods may be delivered at their destination. A risk-note in form B is taken when the consignor wishes to send his goods at a reduced rate, and protects the railway company from all claims?

except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the willful neglect of the Railway Administration, or to theft by, or to the willful neglect of, its servants transport agents or carriers employed by them before, during and after transit over the said Railway.

19. Both these risk-notes are intended to have effect as between the station from which the goods are sent¹ and that of destination. I think it is clear that had the delay which resulted in the deterioration of these mangoes occurred between Timarni and Ahmedabad, the risk-notes in question would have saved the railway administration concerned from all liability. But here there was overcarriage of goods by about 200 miles beyond the station of destination involving a delay of three days and it seems to me that this overcarriage was not within the terms of the contract embodied in the risk-notes.

20. I also agree that the calculation of damages made by the Small Causes Court Judge is correct. I think his decree must be confirmed, and that this application must be dismissed with costs.