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(1956) 12 CAL CK 0033

In the Calcutta High Court

Case No : Suit No. 2279 of 1951

Bhairuddin Nahata APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-12-1956

Acts Referred:

Contract Act, 1872 — Section 151
Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 72

Citation : AIR 1957 Cal 573

Hon'ble Judges : G.K. Mitter, J

Bench : Single Bench

Advocate : E.R. Meyer, for the Appellant;A.C. Ganguly, for the Respondent

Judgement

G.K. Mitter, J.—This is a suit by a consignee of goods for damages for non-delivery and/ or loss of the consignment against the Union of India.

2. On 29-4-1950 the plaintiff consigned to himself 201 bags of mustard seeds from Hathras Killah on the East Indian Railway. The goods were to be carried to Luckysarai. another station or the same Railway. For the non-delivery of the consignment the plaintiff claims a sum of Rs. 18.022-8-0, full particulars of the claim being given in paragraph 3 of the plaint. These include not only the cost of 455 mds. 5 srs. 8 ch. mustard seeds amounting to Rs. 15,614-7-3 ''but various other charges and expenses. As the plaintiff is not pressing his claim with regard to these other items, no further notice need be taken of them.

3. The Plea in defence which was ultimately pressed in this Court, is that the consignment arrived at the destination station and delivery of it was duly given to the consignee or his agent ; an alternative case was also made that if the plaintiff had not received delivery of the consignment covered by the railway receipt, the defendant should be absolved from all liability in respect of the loss or non-delivery to the plaintiff inasmuch as it took as much care of the goods as a person of ordinary prudence would take of his own goods in similar

circumstances. The defendant also denies any negligence on its part.

4. The issues settled are as follows:

1. What was the value of the goods consigned by the plaintiff ?

2. Was the delivery of the said goods given to the plaintiff or his agent?

3. Was the loss or non-delivery, if any, occasioned by the negligence of the defendant ?

4. Did the defendant take as much care of the said goods as a person of ordinary prudence would take of his own goods in the circumstances? If so is the defendant liable ?

5. To what relief, if any; is the plaintiff entitled ?

5. The plaintiff examined one Udayachand who said that he himself was responsible for booking the goods at Hathras Killah and taking the railway receipt from the authorities at that station. He produced the original railway receipt. According to him this document had been sent to the Central Bank of India for realisation of the money covered by a hundi in respect of the va1ue of the goods which was a little over Rs. 15,000. The hundi was not cleared and the railway receipt was returned to the plaintiff. He went on to say that he had gone to Luckysarai and from enquiries made at the railway station learnt from the officials there that the goods had already been unleaded and delivered to Gourisankar Mills on production of a railway receipt endorsed in their favour. He stated that he had informed the Railway authorities that he himself was in possession of the genuine railway receipt, and that thereafter the police had taken action in the matter, seized the goods from Gourisankar Mills and sold the same by auction for a sum of Rs. 14,000 or so. The cress-examination of this witness was directed to showing that when the plaintiff had come to know that the goods had been delivered to Gourisankar Mills, who had" no right or title to receive the goods, no steps had been taken by the plaintiff against them. The witness said, that the railway receipt which Gourisankar Mills had produced at the time of taking delivery had been shown to him but this fact was disputed by the goods clerk one Md. Kamruddin, a witness examined by the defendant. Udaychand said further that the plaintiff never had any transaction with Gourisankar Mills and that ha had no idea as to how the railway recent produced by Gourisankar Mills had come into existence. Clearly cross-examining, counsel suggested that the railway receipt produced by Gourisankar Mills was a forged document inasmuch as the genuineness of the document produced by the plaintiff was never questioned. The memorandum of the Central Bank of India showing that the hundi had not been honoured was brought out during the cross-examinations of the witness. This referred to a hundi which was stitched along with the document and in re-examination Mr. Mever asked the witness to produce the hundi which was for Rs. 15,964-6-0. The witness said that the hundi was in respect of the value of the goods covered by the railway receipt No.

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053098 dated 29-4-1950.

6. The defendant examined two witnesses. The first Md. Kamruddin stated that he had been working as a delivery clerk at Luckysarai in May 1950 and was responsible for affecting delivery of the goods covered by the railway receipt No. 053098 issued at Hathras Killah. The goods, according to this witness, were delivered to Gourisankar Mills on the production of the requisite receipt endorsed in their favour. The witness said that before giving delivery he had only looked into his delivery book to see whether there was any entry therein with regard to these goods. So far as the delivery of the goods was concerned he said that the entry in the Delivery Book had been made on thp production of the railway receipt by Gourisankar Mills. The entry contained the signature of one Luxmi Kanta Jha described as a representative of Shree Gourisankar Mills. According to witness. Gourisankar Mills used to have goods arriving at Luckysarai station quite frequently and Luxmi Kanta Jha was well known to witness. Being further questioned in examination-in-chief he said that he had no suspicion about the genuineness of the receipt produced at the time of delivery. HE also said that thereafter a man describing himself as the repressentative of Bhowarlal Harakchand (the name in which the plaintiff carries on business) had demanded the goods and had been told that delivery thereof had already been painted. This according to witness was followed by the goods being seized from the premises of Gourisankar Mills. Witness could not product the railway receipt which Gourisankar Mills had make over at the time of taking delivery of the goods and said that he had upon the document when notice enquiry was affect and that for the last time he had seen it in the custody of the police in the year 1950. In cross-examination be paid that he had known Luxmi Kanta Jha fairly well and that the latter used to come to him often for taking delivery of goods on behalf of Gourisankar Mills. According to witness three copies of all railway receipts used to be prepared simultaneously at the forwarding station, the first copy was kept at the forwarding station, the second copy was sent to the destination station and the third copy was made over to the person booking the goods. The second copy, according to witness, had been received by him at Luckysarai but according to usual practice it had been despatched to the Chief Accounts Officer, Calcutta, ten days after its receipt. According to such practice an entry was made in the delivery book giving details of the railway receipt as soon as the same was received from the forwarding station. He was, however, definite that the entry in the book referred to by him at first was made on the basis of the receipt produced by Gourisankar Mills. When he was asked as to why he had departed from the ordinary practice of making entries from the copy sent to the destination station he said that he did not see the previous entry relating to these goods at that time and that is why he had made the entry proved by him. The entry which the witness proved in examination-in-chief was marked as Ext. 2-A and the entry to which he was referred during his cross-examination was Ext, 2-B. The entry, Ext. 2-B, according to the witness, was rot made by him but by some one else at a time When he was on leave. Ext. 2-B is dated 8-5-1950

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and delivery of the goods according to the witness, was given on May 17. Cross-examining counsel suggested that the original receipt received at Luckysarai station should have been retained until 18-5-1950, according to the ordinary practice and if so, the copy produced by Gourishankar Mills could easily have been compared and checked. The witness said that if May 8 was taken into consideration as well as May 17, then ten days had elapsed and possibly the original railway receipt had been sent on to Calcutta even before delivery of the goods to the person entitled thereto.

7. The second witness on behalf of the defendant was one Ram Bahal Singh, an Assistant Sub-Inspector of Government Railway Police posted at Kiul at the relevant time. He produced a letter which was supposed to be a copy of that received from the station master, Luckysarai. According to this letter, the case was one of cheating and someone had produced a document which the station master had described as "a bogus railway receipt" to obtain delivery of the consignment. Witness could not produce this railway receipt which had been handed over by the Railway Staff. He merely said that he had brought a file from the Superintendent of Railway Police and that the culprit in this case could not be traced.

8. On this evidence there can be no doubt that the plaintiff was entitled to the goods, that they had not been made over to the plaintiff but delivered to Gourisankar Mills on the production of a spurious railway receipt. The value of the goods, according to the unchallenged evidence of Udaychand, was over Rs. 15,000.

9. Mr. Ganguly, argued that the defendant ought not to be held responsible for misdelivery caused by the production of a forged receipt. According to him once it was established that delivery had been given on the production of a receipt which approved to be genuine to the goods clerk the defendant must hp absolved from any liability, even if it should turn out that the document produced was not a genuine one. He draw my attention to several passages from the judgment of Coldman v. Hill (1919) 1 KB 443 (A), to support his argument. This was an appeal from the judgment of a Divisional Court on appeal from the County Court at Portsmouth. The plaintiff had sent seven cows, some of which were in calf, to be, agisted by the defendant. It was the duty of the defendant''s stockman to go round the marshes every day and count the cattle which were grazing. On a particular day the plaintiff went and took away a cow which had calved, and told the defendant''s man that he would come again to take away two other cows which were soon due to calve and bring two more in their place. On that day two of the plaintiff''s cows were stolen from the defendant''s land, and were never afterwards recovered or heard of. They were stolen without the defendant''s default, and. the question was whether on these facts the defendant could be held liable. The learned Judges of the Court of Appeal consisting of Bankes, Warrington and Scrutton L.JJ. came to the conclusion that the defendant was net responsible. Bankes L.J. referred to an unreported Judgment of Lord

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Halsbury in Morison v. Walton, wherein the learned Lord Chancellor had observed

"It appears to me that here there was a bailment made to a particular person, a. bailment for hire and reward, and the bailee was bound to show that he took reasonable and proper care for the due security and proper delivery of that bailment; the proof of that rested upon him."

Bankes L. J. also referred to the case of Broad-water v. Blot. (1817) Holt, NPC 547 (B), where Gibbs C. J. observed

"All the defendant is obliged, to observe is reasonable care. He does not insure; and is net answerable for the wantonness or mischief or others. ...... If there were want of due care and diligence generally, the defendant will be liable."

10. The assiduity of the learned counsel did not lead to the discovery of any case of a forced railway receipt and Mr. Ganguly contended that the. Union of India did not owe the plaintiff any higher duty than that of a bailee for reward and that if goods had been taken away by the practice of fraud on the railway the Union of India was not liable. I very much doubt whether the defendant would be absolved from liability merely because some one had used a forged railway receipt. After all the railway receipt is a document issued by the defendant and it was for the defendant to take proper steps to prevent misdelivery on forced documents. But even if I were to hold the defendant would not be liable in the case of a clever counterfeit -- a forgery which could not be detected by the use of reasonable diligence and ordinary prudence, the facts must be such as to lead to the conclusion that it was impossible for the railway employees at Luckysarai to detect and prevent the practice of such fraud. According to the procedure deposed to by Md. Kamruddin there should have been at Luckysarai station a railway receipt which was in all respects identical with the genuine railway receipt handed over at Hathras and which the plaintiff or an endorsee from him had to produce before delivery could be had. I find it difficult to believe that the writing on the spurious document would look so like that on the genuine one that a scrutiny by a careful person would not reveal the intrinsic difference between the two. If it bad been proved in this case that the document which was or should have been available at Luckysarai tallied exactly with the document produced by Gourisankar Mills the defendant might have been exonerated. It is quite clear that at the time when the goods were made over to Gourisankar Mills no care had been taken to compare the railway receipt produced by the Mills with the copy which should have been at Luckysarai. It is no answer to the plaintiff''s claim to say that under the prevailing practice or through some mischance the document meant to be kept at the destination station until delivery was effected, had been sent on to the Chief Accounts Officer within 10 days from the receipt thereof. The whole purpose of sending a copy to the destination station was to ensure against delivery on forged receipts and if this copy was parted with before delivery the rail way could hardly urge that it had taken due and proper care of the goods as a bailee. In this case it is possible to go one step further; the railway authorities does not produce the receipt which is now admitted to be a

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forged receipt and there is no knowing as to what- kind of document it was. The onus of establishing that the defendant had lost the goods even after taking all reasonable care of them as a man of ordinary prudence would do, lay on the defendant and that burden of proof, in my opinion, has not been discharged in this case. There is no force in the contention that it was the duty of the plaintiff to pursue the miscreant as soon as he came to know that the goods had been misdelivered under a forged railway receipt. I do not think it lies in the mouth of the bailee to suggest that the bailor has not taken such steps as might have enabled him to retrieve the goods even if they had been misdelivered. The law does not place such an obligation on the bailor. On the other hand, it is for the bailee to take proper care and the duty of recovering the goods from the wrong doer and restoring them to the lawful owner clearly lies or. him. It does not appear that the railway took the proper steps in this case.

11. In view of the above findings, the answers to the issues raised are as follows:

Issue No. 1: The value of the goods can be assessed at Rs. 15,000/- although more than that has been claimed in the plaint.

Issue No. 2: It has not been proved that the delivery of the goods was made to the plaintiff or his agent.

Issues Nos. 3 and 4 may he taken together: There can be no doubt that non-delivery in this case was occasioned by the negligence of the defendant and that the latter had failed to take as much care of the goods as a person of ordinary prudence would take of them in similar circumstances.

Issue No. 5: The defendant is liable to the plaintiff for the value of the goods and there must be a decree for Rs. 15,000/- against the defendant with interest on judgment at 6 per cent and costs. The decretal amount is to be paid within six months from date.

Certified for two counsel.

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