

(1951) 12 GAU CK 0001
In the Gauhati High Court
Case No : First Appeal No. 9 of 1950

Chauthmal Agarwalla

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 19-12-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 151, 152, 161

Citation : AIR 1952 Guw 140

Hon'ble Judges : T.V. Thadani, C.J.; Haliram Deka, J

Bench : Division Bench

Advocate : S.M. Lahiri and P.K. Gupta, for the Appellant; D.N. Medhi, Govt. Advocate (Sr.), for the Respondent

Final Decision : Dismissed

Judgement

Thadani, C.J.—This is a first appeal from the judgment & decree of the Additional Subordinate Judge, Upper Assam Districts dated 23rd of December, 1949 by which he dismissed the plaintiff's suit with costs.

2. The plaintiff, Chouthmal Agarwalla, brought a suit against the Governor-General of India in Council on 6th December, 1945 claiming a sum of rupees seven thousand odd as compensation for the value of potatoes which had become unfit for human consumption during their transportation from Shillong to Dibrugarh. As a result of the condition of the potatoes the plaintiff refused to take delivery and after complying with legal formalities he brought the present suit. The defendant Railway denied liability on various grounds.

3. On the pleadings the trial Court framed the following issues: --

- (1) Whether the plaintiff has any cause of action against the defendants?
- (2) Is the suit maintainable in its present form?
- (3) Has the plaintiff right to sue?

(4) Whether legal and valid notices under S. 77 , Indian Railways Act and under S. 80, Civil P.C. were served in this suit?

(5) Whether the consignor executed risk note "A" exonerating the Railway from liability for the condition in which the consignment might be delivered at destination and for any loss arising from the same except upon proof of misconduct on the part of the Railway Administration or their servants?

(6) Whether the consignor executed risk Note "B"?

(7) Is the defendant liable to pay any compensation to the plaintiff?

(8) If so, what amount the plaintiff can recover from the defendant?

(9) To what relief, if any the plaintiff is entitled to in this suit?

4. Mr. Lahiri for the plaintiff-appellant has not argued any other questions before us than those involved in the 5th and 6th issues. The facts material to the determination of the 5th and 6th issues are these :-

The consignment in question was covered by risk notes "A" and "B". The question of the risk note "B" does not arise as the goods were tendered for delivery to the plaintiff who, however, refused to take delivery of the consignment. So far as risk note "A" is concerned, the consignment note at page 40 of the Paper-Book shows that the potatoes were in good condition when they were consigned. The short question therefore for determination is whether the Railway Administration is liable for the deterioration of the potatoes caused by the delay in the arrival of the consignment at Dibrugarh.

5. The liability of a Railway Administration is governed by S. 72 of the Indian Railways Act. S. 72 expressly states that the responsibility of a Railway Administration for the deterioration of goods shall subject to the other provisions of the Indian Railways Act, be that of a bailee under Ss. 151, 152 and 161 of the Indian Contract Act, 1872. The reasons for the delay in the delivery of the consignment have been stated by the learned Judge in his judgment. The consignment was booked on the 7th October, 1944; it reached Lumding on 11th October 1944, where it was found that the wagon in which the potatoes were carried was not fit to proceed further; on its arrival the wagon was found damaged and had to be detached for repairs; World War 2 was in progress at the material time and there was dearth of wagons; the American Army Staff which then had the control of the entire transportation in this part of the country took immediate steps to repair the wagon; the wagon however could not be repaired in time and the consignment was transferred from the damaged wagon to a new wagon on the 21st of October, 1944; the consignment reached Dibrugarh on 24th October, 1944.

6. Mr. Lahiri contends that there was an obligation upon the Railway Administration to inform the consignor or the consignee that the potatoes were deteriorating as a result of delay and to ask for instructions. But assuming there

was such an obligation, as to which we express no opinion, the argument is based upon the supposition that the Railway Administration knew that the potatoes were going bad. There is no evidence on the record to show that the Railway Administration at any time had knowledge of the fact that the potatoes were going bad. The potatoes were apparently packed in closed sacks and were booked as seed potatoes, and it is common knowledge that seed potatoes can remain in good condition for a considerable length of time. If, then, the Railway Administration had no knowledge of the fact that the potatoes were going bad, the question of conveying information to the consignor or the consignee does not arise.

7. The plaintiff could succeed only on proof that the Railway Administration had not exercised the quantum of care which is prescribed by S. 151 of the Indian Contract Act. As there is no evidence that the Railway Administration knew of the condition of the potatoes in transit, the question of exercising care in the sense that it was bound to convey information of the deteriorating condition of the potatoes to the consignor or the consignee, does not arise.

8. Mr. Lahiri has referred us to Macnamara's "Law of Carriers by Land" (Third Edition) at p. 47 where it is stated.

In cases of accident and emergency a carrier, if possible, should obtain instructions from the owner of the goods carried, but if that is not possible, he is authorised to act as an agent of necessity, and as such to do all that is necessary to secure the safety of the goods entrusted to him. In such a case he is entitled to charge the owner of the goods with the expenses properly incurred in so doing.

The concept of agent of necessity is not applicable to a case where the liability of a Railway Administration in India is governed by certain express limiting provisions contained in S. 72 of the Indian Railways Act. Sub-section (3) of S. 72 of the Indian Railways Act expressly says :

Nothing in the common law of England or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

9. Mr. Lahiri has also referred us to a decision reported in "Indian General Steam Navigative and Rly. Co. Ltd. v. Abdul Rehman", 26 Cal. WN Clxx at notes portion of" the report at p. Clxx. The facts of that case however, are quite different. Manifestly the question of liability in that case was determined on the supposition that the steamer company were the agents of the plaintiff in the matter of the carriage of goods before they were transhipped to the A. B. Railway Company.

10. Our conclusion then is that as the Railway Administration had no knowledge of the deteriorating condition of the potatoes, the question of the failure of the Railway Administration to convey information of the deteriorating condition of the potatoes to the consignor or the consignee is not want of such care, as would

make the Railway Administration liable, assuming that conveying of such information was an obligation upon the Railway administration as to which as we have said before we express no opinion.

The result is that the appeal is dismissed with costs.

Deka, J.

11. I agree.