

(1957) 04 BOM CK 0023
In the Bombay High Court
Case No : A.F.O.D. No. 579 of 1952

Chhangamal Harpaldas and Another

APPELLANT

Vs

Dominion of India and Another

RESPONDENT

Date of Decision : 18-04-1957

Acts Referred:

Contract Act, 1872 — Section 151, 152
Railways Act, 1890 — Section 72
Sales of Goods Act, 1930 — Section 2(4)

Citation : AIR 1957 Bom 276 : (1957) 59 BOMLR 704 : (1957) ILR (Bom) 647

Hon'ble Judges : Shah, J; Palnitkar, J

Bench : Division Bench

Advocate : G.S. Gupte, for R.B. Kotwal, for the Appellant; G.P. Murdeshwar, B.A. Chikarmani, for the Respondent

Judgement

Shah, J.—The plaintiffs, who are commission agents residing at Delhi have by this appeal challenged the decree passed by the Civil Judge, Senior Division, at Jalgaon in Special Suit No. 12 of 1950 dismissing their suit against the Dominion of India.

2. The facts which give rise to the claim made by the plaintiffs are briefly these : One Malhari Bhika loaded a wagon at Kajgaon station on the Central Railway with raw plantains and obtained Parcel Way Bill No. 7934/79 on 21st October 1948 for carriage of the consignment to Delhi. The goods loaded by Malhari Bhika were then sold to Peer Mahomed and Sons. The Parcel Way Bill was obtained in the name of Malhari Bhika as consignor and consignees were the plaintiffs. The Forwarding Note is Exhibit 93, dated 21st October 1948, and by that Forwarding Note Malhari Bhika requested the Station Master at Kajgaon to receive and forward by passenger train the parcel described therein to Delhi Junction Station at reduced rates as per Risk Note on the reverse signed by him. The consignment was booked at reduced rates. This consignment reached Delhi on 36th October 1948. It appears that between Kajgaon and Itarsi the wagon was attached to 39 Dn. Parcel Train and beyond Itarsi it was attached to a mixed

passenger train. In the normal course by passenger train from Kajgaon this wagon should have reached Delhi on 23rd October 1948. On arrival at the Delhi Station the contents of the wagon were found to be damaged and the loss was estimated as of the value of Rs. 2,700/-.

3. On 22nd October 1948, Peer Mahomed and Sons signed a Forwarding Note for a wagon-load of plantains from Kajgaon to Delhi. By the Forwarding Note the Station Master at Kajgaon was requested to forward the wagon by passenger train. Parcel Way Bill No. 7934/83, dated 22nd October 1948, was obtained in the name of Peer Mahomed and Sons as consignors and the consignees were the plaintiffs. This consignment was also booked at reduced rates. The wagon was loaded on 22nd October 1948 and between Kajgaon and Itarsi the wagon was attached to 33 Dn. Parcel train and at Itarsi it was attached to a mixed passenger train. In the normal course, if it had been carried by passenger train, the consignment should have reached Delhi on 24th October 1948. but it reached Delhi on 26th October 1948. and on opening the wagon the contents were found to be damaged. The loss was assessed at Rs. 4,125/-.

4. On 29th September 1948. Peer Mahomed and Sons had signed a Forwarding Note for a wagon-load of plantains from Kajgaon to Delhi. The Parcel Way Bill was No. 7933/63, dated 26th September 1948. The consignors were Peer Mahomed and Sons and the consignees were the plaintiffs. The wagon was attached to 39 Dn. Parcel Train up to Itarsi and from Itarsi it was attached to a mixed passenger train. In the normal course, the wagon should have reached Delhi on 1st October 1948 if sent by passenger train; but it reached Delhi on 5th October 1948. On arrival at Delhi the contents of the wagon were found to be damaged and the loss was assessed at Rs. 2,200/-. By this Forwarding Note in this case also Peer Mahomed and Sons had requested the railway administration to send the consignment by passenger train but it was sent by parcel train from Kajgaon to Itarsi. The goods were booked at reduced rates under a Risk Note.

5. The plaintiffs served notice upon the railway administration and the Dominion of India claiming Rs. 10,061/12/- as compensation for damage to the three consignments. In reply to the claim made by the plaintiffs it was asserted by the Superintendent of Claims by letters exhibits 141, 143 and 111 that the consignments were carried throughout by passenger train as per contract without any avoidable delay and that there was no misconduct on the part of the "railway administration". The railway administration having rejected the claim, the plaintiffs filed Special Regular Suit No. 13 of 1950 in the court of the Civil Judge, Senior Division, at Jalgaon against the Dominion of India as representing the Central Railway, for a decree for Rs. 10,061/12/- being the amount of compensation for loss suffered by the plaintiffs, and interest thereon. The plaintiffs also claimed interest at the rate of 12 per cent from the date of the suit on Rs. 9,025/-, the aggregate amount of compensation claimed by them.

6. The suit was resisted by the Dominion of India contending inter alia that the plaintiffs could not maintain a suit as they were merely consignees acting as

commission agents of the consignors and that they were not owners of the goods and as consignees they were entitled only to take delivery of the consignments as agents of the consignors and the plaintiffs had no cause of action for filing a suit for loss of the consignments. It was also contended that under the Risk Note the Railway administration was absolved from liability, that the claim was barred by the law of limitation and that in any event the compensation claimed was excessive and unreasonable.

7. The learned trial Judge held that the railway administration did not bind itself by agreement to carry the goods by passenger train and that in failing to deliver the goods within a reasonable time the railway administration was not guilty of misconduct or negligence. He also held that no cause of action had accrued to the plaintiffs and that in any event under the Risk Notes the railway administration was exonerated from liability to compensate the plaintiffs for loss that they may have suffered. He observed that the plaintiffs as mere commission agents and consignees under the Railway Receipt could not file a suit for compensation for damage to the consignment; and that the claim for compensation in respect of the third wagon was barred by the law of limitation. The learned Judge accordingly dismissed the plaintiffs' suit. In this appeal the plaintiffs have not challenged the decree passed by the trial court dismissing their claim for compensation for damage to the third consignment and have restricted their claim to Rs. 7,596-4-0 -- Rs. 3,000/- being compensation for damage to the first consignment and Rs. 4,596-4-0 being compensation for damage to the second consignment.

8. Mr. Kotwal on behalf of the plaintiffs urged that the trial court was in error in holding that no breach of contract was committed by the railway administration in not sending the goods by passenger train. In our view, that contention must be accepted. The Forwarding Notes expressly requested the Station Master at Kajgaon to despatch the goods by passenger train and in pursuance of these Forwarding Notes the Parcel Way Bills were made out. Even it was the case of the railway administration, as is evident from the letters Exhibits 141, 143 and 111, that the consignments of plantains had been sent by passenger train, it is undisputed that from Kajgaon to Itarsi the consignments had not been sent by passenger train but they were sent by parcel trains. 39 Dn. from Victoria Terminus, to which the wagons were attached, is only a parcel train. It is, therefore, difficult to accept the view of the learned trial Judge that there was no breach of contract committed by the railway administration in sending the wagons from Kajgaon to Itarsi by a parcel train. In a recent judgment delivered by us in First Appeal No. 303 of 1952 I (Bom) (A) we have taken the view that despatching a wagon attached to a parcel train, when the Parcel Way Bill was issued in response to a Forwarding Note requesting the Station Master to send the consignment by passenger train, amounted to a breach of contract. Evidently, there has been great delay between the dates of despatch of the wagons and the dates when they reached Delhi. There is no clear evidence as to when the 39 Dn. Parcel train reached Itarsi with the wagons, and there is also

no evidence as to how long the wagons were detained at Itarsi. In *B. B. and C. I. Rly v. Mahaniadbhai Rahimbhai* 31 Bom. LR 16 AIR 1929 Born 355, it was held by this court that if a consignment of perishable goods is sent by goods train, when it was agreed between the consignor and the railway administration that the consignment was to be sent by passenger train, a breach of contract is committed by the railway administration and that the railway administration is liable for loss suffered by the consignor.

9. The next question which falls to be determined is whether the plaintiffs as consignees of the goods can maintain an action for compensation for damage to the goods. Mr. Kotwal urged that a consignor, a consignee and the endorsee of a railway receipt are entitled to file an action for compensation against the railway administration for loss of consignment. It is not disputed that the consignor being a party to the contract with the railway administration is entitled to file a suit for compensation for loss suffered by him by reason of the breach of contract committed by the railway administration or by reason of misconduct on the part of the railway employees in dealing with the consignment. Again it has been held by this Court in *Union of India v. Taherali Isaji*. 58 Bom LR 650, that an endorsee of a railway receipt, when he is not merely an agent for collection of the goods but has title to the goods, can file a suit against the railway administration for compensation for loss or damage to the consignment, even though he is not a party to the contract of consignment. A railway receipt is by the definition contained in Section 2(4) of the Sale of Goods Act, a "document of title to goods", and title to the goods covered by a railway receipt may be transferred by delivering the goods with the intention of transferring the goods. But a consignee of the goods is not a party to the contract of consignment. At best, he is an agent of the consignor to take delivery of the goods covered by the railway receipt. In form, a railway receipt authorises the consignee to take delivery of the goods at the destination, and a consignee not being a party to the contract of consignment cannot file a suit for breach of the contract contained in the railway receipt.

10. In Macpamara's "law of Carriers by land", second Edition, at page 107, in Art. 135, it is observed as follows :

"Where goods delivered to a carrier to deliver to a consignee are lost or damaged through the default of the carrier; the proper person to sue is the person with whom the carrier has contracted"

and reference is made to *Davis v. James* (1770) 5 Burr. 280, *Moore v. Wilson*. (1787) 1 TR 659. *Dunlop v. Lambert* (1838) 6 CF 600 and *Mead v. South Eastern Rly. Co.* (1870) 18 WR 735. Then it is observed :

"In the case of goods the subject-matter of a contract of sale being so lost or damaged, and in the absence of any special contract between the carrier and the seller or buyer as the case may be, the proper person to sue the carrier is the person in whom the property in such goods is vested during transit."

11. In Halsbury's "Laws of England", Third Edition. Volume 4, page 196, Article 481, it is observed :

"Delivery to a carrier does not necessarily vest the property in the goods in the consignee; and so. If the property in the goods has never passed to the consignee, the consignor should sue for loss or damage. A carrier is usually the agent of a buyer to receive goods, but not to accept them"

"Delivery of such goods to a carrier does not vest the property in the buyer without his acceptance; the risk remains with the consignor, and the consignor should sue, and not the consignee". It is also stated in Article 483 that:

"although the property in the goods has not passed to the consignee, if he has made a special contract with the carrier for their carriage, or if the consignor has delivered the goods to the carrier as agent for the consignee, the latter is the person to sue; and this may be the case even though the consignor has paid the carrier, for, in the absence of any arrangement to the contrary, the consignor is always liable to pay the carrier."

2. Two propositions appear to be well-settled. The right of action to recover compensation for loss or damage to the goods ordinarily vests in the consignor. Where the goods lost or damaged in transit are the subject-matter of a contract of sale, the owner of the goods may in the absence of a contract to the contrary sue the railway administration. Therefore, a consignee who is in possession of a railway receipt duly endorsed by the consignor may maintain an action for compensation for loss of the goods covered thereby, but he can do so not because he is the consignee but because he is the owner of the goods. A consignor may sue for compensation for loss relying upon the breach of contract of consignment. An owner of goods covered by a railway receipt may sue for compensation relying upon his title, and the loss of goods by misconduct of the railway administration. But a bare consignee, who is not a party to the contract of consignment and who is not the owner of the goods, cannot maintain a suit for compensation for loss or damage to the goods. He has no cause of action *ex contractu* nor *ex delicto*.

13. Mr. Kotwal fairly conceded that the question raised before us has not been expressly decided by the Courts in India, but he submitted that there are observations in certain decisions which support his contention. In *Sri Ram Krishna Mills, Ltd. Vs. Governor-General in Council*, it was held by Mr. Justice Beevor that the consignee or the person to whom the railway receipt has been endorsed is the only person who can sue for non-delivery of the goods when goods have been delivered to the railway company for consignment. In that case Messrs. Baijnath Ramkisun had despatched to Dhanbad five tins of ghee from Begusarai Station to itself. The consignor did not endorse the railway receipt in favour of Sri Ram Krishna Mills Ltd., but Sri Ram Krishna Mills, Ltd., filed a suit for damages for failure to deliver the goods. It was held that the plaintiffs could not maintain a suit for damages. Mr. Justice Beevor after referring to a passage from the

judgment of their Lordships of the Privy Council in AIR 1938 52 (Privy Council) , observed :

"This suggests that the right to sue vests either in the consignee or in the person to whom the railway receipt has been endorsed, . . ."

But the learned Judge having held that the plaintiffs in that case, who were neither the consignees nor endorsees of the railway receipt and who claimed to be owners of the goods, could not maintain the action, the observation relied upon was, in our judgment, a dictum not necessary for the decision of the case.

14. In *Chunna Lal Vs. Governor General in Council*, , it was held by Mr. Justice Seth that a consignor, who sued for compensation for loss caused to him by non-delivery of goods alleging that the consignee was his commission agent, could not be non-suited "In limine without affording him an opportunity to substantiate his allegation that the property in the goods had not passed to the consignee. The actual decision in that case does not support the view contended for by Mr. Kotwal in this case. But the Court in that case relied upon a judgment of the Madras High Court, *Madras and Section M. Rly. Co., Ltd. v. Rangaswamy Chetty*. AIR 1924 Mad 517, wherein it was observed that a consignee alone could sue for loss caused by non-delivery of goods after the goods had been delivered to the railway company for consignment. After referring to that Judgment, the learned Judge observed that

"When goods are delivered to a Railway Company for transmission to a buyer, the property in the goods passes to the buyer and any loss that is occasioned thereafter is the loss to the buyer and no loss to the seller, and that the seller having suffered no loss, is not entitled to claim any damages from the Railway Company". That, however, is not a decision in support of the proposition that a bare consignee under a railway receipt may sue the railway administration for loss of the goods.

15. In AIR 1924 Mad 517 the head-note is:

"Consignee alone can sue for loss caused by the non-delivery of the goods after the goods have been delivered to railway company for consignment."

In that case, the consignors filed a suit for damages for loss of a consignment. On evidence it was found that in consigning the goods the plaintiffs had acted merely as agents of another person and had in consequence of non-delivery of the goods to the consignee not suffered any loss. On those facts it was held that the consignors were not entitled to maintain the action. The observation that a consignee alone can file a suit was plainly unnecessary for the decision of that case.

16. In AIR 1947 169 (Bom.) . it was held by Mr. Justice Bhagwati that the plaintiffs, who were consignors and who ultimately became endorsees of the railway receipt, could file a suit for loss of the goods. It was observed in that case that the endorsements made on the railway receipt by the plaintiffs had not

the effect of passing the property and that in any event the re-endorsement made by the endorsee in favour of the plaintiffs invested them with the right to receive the goods represented by The railway receipt from the railway company, and that as the contract of carriage had been entered into by the plaintiffs with the railway company the plaintiffs were the only persons entitled to maintain the suit against the railway company for compensation for loss of the goods. The case does not lay down that the consignee can file a suit for compensation for loss, and the principle of the case is plainly inconsistent with the dictum in the case in AIR 1924 Mad 17.

17. In *Erachshaw Desabhai v. Dominion of India*, it was observed that a consignee of goods has sufficient interest in the goods to entitle him to sue for compensation for loss arising out of misconduct of the railway administration, and in support of that observation. *Jalan and Sons, Ltd. v. Governor-General in Council* AIR 1949 EP 190, was cited. But it is evident from *Jalan and Sons*' case (N) that the plaintiffs were held entitled to sue as endorsees of the railway receipt and not as consignees. Again in *Erachshaw*'s case (M) the plaintiffs were held on facts to be owners of the goods and entitled to sue.

18. It is admitted that the railway receipts were never sent to the plaintiffs by the consignors and the plaintiffs were merely commission agent of *Peer Mahomed and Sons*. *Suganmal Harpal das*, who is a partner of the plaintiffs' firm, admitted in his evidence that he had not suffered any loss and that he was entitled merely to his commission in the sale proceeds. He also admitted in his evidence that the railway receipt was never sent to him. Evidently the plaintiffs were not even in possession of the railway receipt and could not be deemed to have become owners of the goods by negotiation of the railway receipt. They had otherwise no interest in the goods as owners and they were not parties to the contract with the railway administration,

19. Mr. Kotwal submitted that when a railway receipt is issued by the railway administration on consignment of goods there is a tripartite contract between the consignor, the consignee and the railway administration and that the breach of contract by the railway administration or misconduct of the employees of the railway confers a cause of action upon the consignee, in our view, this contention cannot be accepted. The contract incorporated in the railway receipt results from acceptance of the Forwarding Note by the consignor to the railway administration and which is expressly in the form of a request by it is on acceptance of the Forwarding Note that the railway receipt is issued. It is true that the consignor may direct the railway administration to deliver the goods covered by the railway receipt to the consignee, but the consignee does not thereby become a party to the contract. Unless he is the owner of the goods covered by the railway receipt, the consignee is an agent of the consignor for receiving the goods; and an agent or the consignor cannot sue the railway administration for loss of the goods;

20. It is well-settled that normally a person who is not a party to a contract is not entitled to maintain an action for breach of that contract. That rule, it is true,

is subject to certain well-recognised exceptions, e.g., a person who is not a party to a contract can sue on it if he is claiming through a party to the contract or if he is in the position of a cestui que trust or a trust or of a principal suing through an agent or if he claims under a family settlement See *National Petroleum Co. Ltd. v. Popat-lal Mulji*. 38 Bom LR 610: AIR. 1936 Bom 344. In this case, the plaintiffs do not fall within any of the excepted classes. Not being parties to the contract and not taking owners of the goods covered by the railway receipt, in our judgment, the plaintiffs had no right to maintain an action for compensation for loss of the goods.

21. The appeal is, therefore, dismissed with

22. Appeal dismissed.