

(1954) 12 CAL CK 0015
In the Calcutta High Court
Case No : Civil Revn. Case No. 2801 of 1953

Chhatumull Chowthmull

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 23-12-1954

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161, 211
Railways Act, 1890 — Section 47(1), 72
Railways Rules, 1890 — Rule 3

Citation : AIR 1955 Cal 264 : 59 CWN 504

Hon'ble Judges : K.C. Das Gupta, J; Debabrata Mookerjee, J

Bench : Division Bench

Advocate : Priti Bhushan Burman and Manohar Saha, for the Appellant;
Bhabesh Narayan Bose, for the Respondent

Judgement

K.C. Das Gupta, J.—The petitioner brought this suit for recovery of damages for the loss of 10 maunds 16 seers of jute. His case is that on 23-8-1951, the delivered 125 bales of four maunds of jute per bale to the Station Master, Gaibandha, on a railway in Eastern Pakistan, for carriage to Cossipore Road Station on the Eastern Railway in the Union of India and that when the consignment, after being unloaded from the railway wagon at Cossipore Road was lying in the goods shed under the care of the Eastern Railway, it got soaked in rain on account of the negligence of the Eastern Railway and resulted in the loss of 10 maunds 16 seers. The defendant denied negligence but also pleaded that there was no contract between the plaintiff and the defendant and further that as the consignee had not taken delivery of the consignment within a reasonable time, the Railway was not liable. There was also a plea of want of notice u/s 77, Railways Act, and Section 80, Civil P. C.

2. The trial Court had accepted the defence " contention that there was no proper service of notice u/s 80, Civil P. C., and further that there was no contract between the plaintiff and the defendant.

3. Before us, the learned Advocate for the defendant has admitted that the service of notice u/s 80 was sufficient and has asked us to decide the case on the basis that the defendant withdraws the objection on the ground of lack of notice.

4. The first question for consideration is whether there has been any contract with the Eastern Railway which the plaintiff can enforce. It was the Pakistan Railway which accepted the goods at Gaibandha Station, agreeing to carry it to a place outside the Pakistan Railway. It is argued that what arrangements it made for carriage of the goods after it reached the border between India and Pakistan"" was no concern of the consignor; and that what happened was that the Pakistan Railway engaged the Eastern Railway as a sub-contractor for performing part of its contract with the plaintiff. If that were the position, it is reasonable to think that payment to the Eastern Railway for its charges would be made by the Pakistan Railway.

From the railway receipt, however, it appears that the payment to the Eastern Railway was made not by the Pakistan Railway but by the consignor. It appears clear that after the goods were received by the Pakistan Railway from the consignor and were carried by the Pakistan Railway to the border, the goods were received by the Eastern Railway from the, Pakistan Railway. From these circumstances, the proper conclusion, in my opinion, is not that the Pakistan Railway as a principal made a contract with the Eastern Railway but that, it made the contract with the Eastern Railway as an agent of the consignor for carriage of the goods to Cossipore Road Station and delivery to the consignee. The plaintiff as the principal can, therefore, enforce the contract

5. It" is argued, however, that even if the respondent be liable on a contract of carriage of the goods to Cossipore, the liability ceased on the-consignee refusing to take delivery of the consignment within a reasonable time. The argument is that the contract was to carry and to deliver and that the Railway has performed its contract if it has carried and has offered it for delivery. It has been held in a number of cases to which reference will be made presently that if the consignor's representative fails to take delivery within a reasonable time after it is ready for delivery by the carrier, the liability of the carrier ceases. It is important to consider, however, the further question whether after the liability of the carrier strictly so-called has ceased, there has or has not arisen liability on a further contract of bailment, arising from the fact that the Railway continues to keep the goods. It is helpful to remember In this connection the definition of bailment in Section 148, Contract Act, and the explanation thereof "A "bailment" is the delivery of goods by one person to another for some purpose upon a contract that they shall when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person" delivering the goods is called the "bailor". The person to whom. they are delivered is called the "bailee".

Explanation: If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes bailee and the owner becomes the

bailor, of such goods although they may not have been delivered by way of bailment."

The question in this case is whether when the goods remained in the possession of the Eastern Railway after their liability as carrier had ceased the Railway was holding them as a bailee on a contract of bailment. It is necessary to consider in this connection Clause (f) of Sub-s. (1) of Section 47, Railways Act, which provides that every Railway Company shall make general rules consistent with the Act for the purpose among others of regulating the terms and conditions on which the Railway administration will warehouse or retain goods at any station on behalf of the consignee or owner. It is interesting to remember further that it was under this provision of the law that rules were made as early as 3-7-1902, providing for the terms and conditions under which the Railway Administration will warehouse and retain goods. The opening words of the rules run :

"In exercise of the power conferred by Section 47(3), Railways Act, 1890 (Act 9 of 1890), the Governor General in Council is pleased to sanction the following rules, made for and to be applicable to, all Railways in British India under Sub-section (1) Clause (f) of the said section, for regulating the terms and conditions on which Railway Administrations will warehouse or retain goods at any station or Depot on behalf of the "consignee or owner."

It proceeds thereafter to make different rules as regards wharfage, demurrage and other matters. Rule 3 of the rules for wharfage requires consideration. It is in these terms :

"(i) A wharfage charge may be levied in respect of all goods not removed from Railway premises before closing time of the day following that on which they are made available for delivery.

(ii) The charge referred to in Sub-rule (1) shall not exceed per day or part of a day, one anna per maund or part of a maund, calculated

(a) where freight is levied on weight, upon such weight; and,

(b) where freight is levied on the vehicle in or on which the goods are carried upon the carrying capacity of such vehicle.

(iii) The goods shall be warehoused either under cover or in the open as space may be available." In the present case it appears that at the time when delivery was taken the consignor had to pay Rs. 1178/- on account of certain bales and Rs. 1228/- for the remaining 63 bales. It seems to me that even if these charges had not been levied it would have been reasonable to hold that in the absence of a clear contract to the contrary, the Eastern Railway when it kept the goods in its goods shed, kept them as bailee; but whether or not that be so, it cannot, I think, be said in the face of these facts of realisation of wharfage charges under the rules which purport to regulate the terms and conditions upon which the Railway Administration will warehouse goods on behalf of the consignee or the owner, that the Railway was not acting as bailee. In my judgment this is a clear

case of fresh contract of bailment as warehousemen.

6. Reliance was placed on the decision of -- Lalji Raja and Sons Firm Vs. The Governor General of India in Council, (A), where the Court expressed the view that where consignee had refused to take delivery within a reasonable time, the liability of the Railway had ceased. It does not appear, however, from the report whether in that case wharfage or demurrage charge was paid. In the Judgment there, is no consideration "of the question whether the fact that a contract of bailment could be implied from the realisation of wharfage or demurrage charges under the rules framed u/s 47(1) (f), Railways Act.

7. There is some reference to this in a case decided by the Allahabad High Court, viz., -- B.N.W. Railway Co. and Another Vs. Mul Chand, (B). In disallowing the claim for damages the learned Judges observed :

"The principles governing this question are contained in a clear statement by Chief Justice Cockburn in the course of the Judgment in --"Chapman v. G. W. Rly." (1880) 5 QBD 278 (C). The contract of the carrier being not only to carry but also to deliver, it follows that the custody of the goods as carrier must extend beyond the period of their transit. A reasonable time must be allowed for the exigencies of traffic and for the convenience of the consignee to whom delivery has to be made. And when the carrier is ready to deliver, the recipient is allowed reasonable time, and no more, to take delivery. But he cannot for his own convenience or by his own laches extend the liability -of the carrier beyond a reasonable time. In that case the goods having arrived at their destination both on the 24th and of the 25th of the month, were destroyed by fire on the 27th on which date also at a later hour the plaintiff who was the consignor and consignee called for the goods. It was held that the liability of the Company as carriers had ceased..... No explanation of the delay between the unloading on the 13th of May, and the so called breach of duty on the 22nd of May, was attempted by the plaintiff or required" of the defendants. It is clear that the contract of carriage was over. To hold otherwise, would be to impose a wholly unreasonable burden upon carriers."

Their Lordships thereafter proceeded to say:

"The Railway Company might be responsible as warehousemen, when a somewhat different set of considerations would arise, if any evidence had been led to show that such an arrangement was either expressly or impliedly made. The "charge for demurrage does not necessarily give rise to such an implication, nor would any duty rest upon the Company for breach of which" they have been held liable by the lower Appellate Court until such an arrangement had begun."

With due reverence to the learned Judges who decided this case, I am of opinion that they entirely overlooked the provisions of the law under which charges for demurrage and wharfage are realised. As has been mentioned, these charges are realised under the rules made u/s 47(1)(f), Railways Act, for warehousing goods on. behalf of the owner.

8. Our attention was drawn to the observations made by Zafar Ali J. in -- "Secretary of State v. Har Kishan Das" AIR 1926 Lah 575 (2) (D), where his Lordship says: ""It is not the business of the Railway Administration to work as a warehouseman or a bailee for hire. Its proper function is that of a public carrier and it is only in connection with the performance of its duty as a carrier that it is held responsible as a bailee. The duty as a carrier is discharged on the arrival of the goods at their destination and it is not for the Railway Administration to keep the goods after that as a warehouseman or a bailee for hire. The consignee on the other hand is expected to take delivery within a time fixed by the rules and if he neglects to do so the Railway Administration can claim demurrage and not hire."

In this case also the learned Judges omitted to notice the provisions of Section 47(1)(f), Railways Act, and the fact that it was under the rules for regulating the terms and conditions on which the Railway Administration will warehouse or retain goods on behalf of the consignor or" owner that, the charges are realised. In the face of this it is not possible for the Railway Company to say that they have not worked as warehousemen.

9. I have, therefore, come to the conclusion that the Eastern Railway is liable under the Indian Contract Act as bailee on a contract of bailment for warehousing the goods and is, therefore, liable for the loss.

10. In paras 9 and 10 of the written statement the defendant made the following statement: "9. The suit consignment was received at destination in due course as alleged in the plaint but no one on behalf of the consignee having turned up to effect delivery of the same they were Kept in goods shed. There was a heavy shower in Calcutta on 13-9-51 which not only flooded the goods shed but the whole town of Calcutta a circumstance over which the Railway had no control It was "Vis Major". The alleged damage by wet was apparently due to heavy rains and the consignee"s own laches and negligence in not effecting delivery of the consignment when the goods reached destination and were available for delivery. It was incumbent on the consignee to watch and take delivery. The alleged short certificate was granted without prejudice and the Railway never admitted its liability for the alleged loss and/or damage in the damage certificate. 10. This Railway took as much care and caution as was required of a prudent bailee so long as the goods remained in its custody and are in no way liable for the alleged loss and/or damage. They are also not guilty of gross negligence and laches as falsely alleged. This defendant denied its liability to pay Rs. 728/-or any " portion thereof, denies that the value of the goods was at Rs. 76/- per maund and denies all other allegations."

11. A somewhat inconsistent case was later made by an amendment of para 9 by adding the following words:

"This defendant further begs to submit that the consignment was received at destination in "STU" (Santahar) seals in tact wagon and on unloading the

contents", some of the bales were found in damage by wet condition and as such this Railway is not at all liable for the alleged loss and/or damage. Message was duly issued to all concerned."

12. If the Eastern Railway could have proved that when it received the goods it was already damaged there might have been some scope for the argument that the loss had not been due to negligence on their part. Apart from the fact that the case as originally " made in para 9 of the written statement, was that the goods were damaged when the goods were in the goods shed, the Railway has produced no evidence to show that the goods were already damaged when it came into their possession as warehousemen.

13. In these circumstances I am of opinion that the plaintiff's suit must be decreed for the full amount of Rs. 728/-.

14. I would accordingly make this Rule absolute, set aside the order passed by the learned Courts below and order that the suit be decreed with costs here and below.

15. Debabrata Mookerjee, J.

I agree.