

(1932) 02 AHC CK 0004
In the Allahabad High Court

Chhotey Lal Panna Lal

APPELLANT

Vs

R.K. Railway and Another

RESPONDENT

Date of Decision : 15-02-1932

Acts Referred:

Citation : (1932) 02 AHC CK 0004

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is a civil revision from a decree of the Court of Small Causes dismissing the plaintiff's claim for refund of an excess amount charged by the railway company. A consignment of planks was dispatched from Shah-jahanpur which is on the R.K.R. line to Agra on the B.B. & C.I. Railway line under several receipts. For the sake of convenience we may take up one receipt No. 74156, by way of illustration. The weight charged was 272 maunds, which was obviously the carrying capacity of the whole wagon and the rate at which the freight was charged was As. 2-9. Apparently the consignment was not weighed at the receiving station but was weighed at Pilibhit and again at Agra and the actual weight was noted at one of these two stations. The railway authority at Agra demanded freight at the rate of Rs. 4-8 per maund on the ground that there had been an undercharge. The plaintiff paid the amount under protest. Subsequently he was given a refund of a small amount, but not the whole of the excess amount charged. Accordingly he brought the suit to recover Rs. 470 which he was compelled to pay in addition to what had been charged at Shahjahanpur. It may also be noted that the receipt granted to the consignor was on Risk-Note Form B and the consignment was dispatched at owner's risk. Part of the journey was across the B.B. & C.I. Railway on which planks can be carried both at owner's risk and at risk of the railway company. There was no demand made by the railway for any excess amount as regards the part of the journey on the B.B. & C.I. Railway. There is therefore no dispute about it; before us.

2. According to the Goods Tariff for the R.K.R. Railway, planks are included under the classification "wrought timber" and not "unwrought timber." There is also no doubt that for wrought timber there is only one class of rate fixed, namely, those at the company's risk, and none at the owner's risk. There is also no doubt that the booking clerk at Shahjahanpur charged the plaintiff at the rate of Re. 0-2-9 which was not the rate notified in the tariff for wrought timber and the consignor handed over the goods to the company at owner's risk. The contention on behalf of the railway company is that there being only one rate for wrought timber and no separate rate for unwrought timber, the clerk had no authority to charge at a rate lower than Re. 0-4-8 fixed for wrought timber, he had no right to accept goods at the lower rate merely on the ground that they were understood to be carried at owner's risk; and that as a mistake was made by the clerk concerned the company is entitled to recover the full amount authorized. On the other hand the learned advocate for the applicant contends that the company had originally charged a lower rate at owner's risk and is therefore not entitled to alter the basis of that rate and charge on the supposition that the goods were to be carried at the risk of the company and therefore the amount charged was at the wagon rate and the company cannot alter the basis of the contract by demanding freight at the maund rate. It was laid down by the Pull Bench in the case of *Chunni Lal v. The Nizam's Guaranteed State Ry. Co. Ltd.* [1907] 29 All. 228 that a railway company

is not entitled to alter the basis of the contract by demanding freight calculated per maund when the goods had been accepted for carriage at the wagon rate for the whole distance.

3. Apparently in that case the rate originally charged was Rs. 270 per wagon load for the whole distance. This case has naturally been followed by this Court in subsequent cases of *Allaudin v. G.I.P. Ry. Co.* [1916] Ind.Cas. 104 and *Gulab Dei Vs. G.I.P. Railway*, . On behalf of the railway company it is however pointed out that in the present case the clerk had not charged at the wagon rate, i.e., so much per wagon for the entire distance, but that the charge was so much per maund per mile. Our attention has been drawn to Rule 16 (General Rules, 1926) under which the company is entitled to have the goods re-weighed and to charge for the actual weight even though it be different from the computed rates. It is also pointed out that if there had been goods of mixed quality, namely, both wrought and unwrought timber, the company was entitled to charge at the highest class of rate for the entire weight, under Rule. 77 (General Rules, 1926). It is therefore argued that the mistake was due to a wrong classification of the goods on the part of the clerk concerned. It is suggested that the goods being planks were admittedly wrought timber, but the clerk committed a mistake in supposing that they were not wrought timber and did not charge at Re. 0-4-8 the rate for wrought timber. But it has to be conceded that there was no rate like Re. 0- 2-9 for unwrought timber at all. In our opinion the mistake was not merely one of a wrong classification, and even if it have been such a mistake it would not have helped the company in this particular case.

4. Under Rule 59 (General Rules, 1926) the Railway Board have fixed certain maxima and minima for various classes of goods beyond which limits the railway companies cannot be allowed to go without the previous sanction of the Railway Board. Within these limits the railway can fix their own rates which are notified in the form of railway tariffs. For class 1 the maximum rate is 38 pie per maund per mile and the minimum rate is "10 pie per maund per mile. Between these limits the railway company earn fix any rate it considers competent, having regard to the extent of the trafic. It cannot be denied that from time to time the railway company alters the rates within these limits, but all such alterations are entered in the tariff which is notified. The rate charged at Shahjahanpur, namely, 0-2-9 was more than the minimum rate of 10. The rate demanded at Agra, namely, 0-4-8 per maund was the maximum Amount, namely, "38. It is therefore obvious that the R.K. Ry. Co., could without any previous sanction of the Railway Board have fixed Re. 0 2-9 as the rate of wrought timber and notified the same in the tariff which they issued. But it is a fact that no such rate had been notified and the actual rate notified was that of Re. 0-4-8 for wrought, timber. The mistake made by the clerk therefore was not that he mistook the planks to be unwrought timber (as there was no separate rate for unwrought timber) but the mistake was that he charged at a rate lower than that mentioned in the tariff.

5. So far as the rules and notifications of railway companies issued under the authority of the Railway Board are concerned, one might possibly have assumed that there was constructive notice to the public. The same assumption cannot be made as regards the rate entered in tariffs issued by Railway Company without reference to the Railway Board. In order to fix knowledge of the rate mentioned therein, it must be shown that the attention of the other contracting party was specifically drawn to it, inasmuch as the question of notice is a question of fact and not of law. As pointed out above it would have been open to the railway company without previous sanction of the Board to charge at the rate of Re. 0 2-9 for wrought timber. In some cases, e g., Secy. of State Vs. B. Harbans Prasad Vaish, , the railway companies have allowed concession rates to individual traders within the prescribed limits. It therefore cannot be said that the charging at the rate of Re-0 2 9 was contrary to any rule or regulation issued by the Railway Board which had the force of law. The breach committed by the clerk was of a provision in the tariff issued by the railway company itself, of which the consignor cannot be deemed to have constructive notice.

6. It seems to us that in these circumstances the railway company must be deemed to be bound by the rate of contract entered into on their behalf by their agent, viz., the booking clerk. The consignor believed that he was sending the goods at his own risk at the rate of 0-2-9. There was another route by which the goods might well have been consigned, and the company therefore should not be allowed to go back upon its own contract and charge a higher rate. The consignor was not responsible for the mistake made by the clerk in not charging at the tariff rate, because private instructions issued by a principal to an agent are not binding on a third party unless the latter has notice. We are therefore of opinion

that the railway company was not entitled to demand any freight in excess of what had already been charged. It is not necessary for us to suggest how the claims between the two companies on whose lines the goods were carried are to be adjusted.

7. We have remarked above that even if there had been a mistake in the re-classification of goods the company would not be entitled to demand a higher freight in this particular case. Under the rules issued by the Railway Board the company can seek protection if there was a mistake in re-classification. This was also the case before the Full Bench *Chunni Lal v. Nizam's Guaranteed State Ry. Co. Ltd.* [1907] 29 All. 228. But unfortunately for the company the conditions of the contract noted on the back of the receipt left out the word "re classification." It was stated therein that the railway company has the right of re-measurement, re-weighment and recalculation of charges at the place of destination. That paragraph does not contain the word "re-classification" which occurs in Rule 15. On behalf of the railway company it is suggested that that word had been left out owing to a misprint. The fact remains that the term of the written contract as notified to the consignor did not protect the company from a mistake made in re-classification of goods. We therefore doubt very much whether the company would be justified in adding to the terms of this particular contract by interpolating the word "re-classification" in para. 6, simply because it occurs in the rate though it does not find any place in the written contract relied upon.

8. It may be noted that in two receipts the plaintiff was charged at the right rate at Shahjahanpur. The counsel for the parties are agreed that on the basis of our finding the plaintiff is entitled to a decree for Rs. 320. We think that the plaintiff is entitled to interest at the Court rate of 6 per cent per annum, from the date of institution of the suit till realization. We direct that the parties should receive and pay costs in proportion to success and failure.