
(2001) 08 RAJ CK 0097
In the Rajasthan High Court
Case No : Civil First Appeal No. 83 of 1981

Dalpat Singh and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Railways Act, 1890 — Section 78B

Citation : (2003) 1 RCR(Civil) 591 : (2002) 4 RLW 2385 : (2002) 4 WLC 698 : (2002) 2 WLN 261

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : D.D. Thanvi, for the Appellant; Jitendra Singh, for Ravi Bhansali, for the Respondent

Final Decision : Allowed

Judgement

Tatia, J.—This is an appeal against the Judgment dated 5.5.81 by which suit of the plaintiffs Dalpat Singh and Virendra Singh against the respondents was dismissed for claim of Rs. 13,125/-.

2. As stated above, the suit was filed by plaintiffs Dalpat Singh and Virendra Singh alleging therein that plaintiff No. 2 was working as Manager in the Tea Estate in West Bengal for the last twenty years and after he left the service in the month of January 1974, plaintiff No. 2 booked 72 packages of house-hold goods from Binnaguri Railway Station no North Frontier Railway to be carried to Bhilwara on Western Railway via Lacknow, Agra, Achnera and Ajmer route vide invoice R.R. No, 083034 dated 9.1.74 in wagon No. N E 51642. The above wagon was loaded on 9.1.74 at the above station in the presence of plaintiff No. 2's servants and his Assistant manager Sh. A.S. Maroo before the then Assistant Station Master and his staff at Binnaguri. The gates of wagon were locked on both the sides by different size of big padlocks and were wrapped with cloths, stitched and sealed with wax by the plaintiff No. 2 before the Assistant Station Master, Binnaguri Railway Station. Thus goods were to be received by plaintiff

No. 1 who was the elder brother of plaintiff No. 2 and the plaintiff No. 2 is the owner of the goods whereas plaintiff No. 1 was only person who was to receive the goods obviously on behalf of plaintiff No. 2. According to the plaintiff, the above wagon no. NE 51642 reached at Bnilwara on 14.2.74 after very long time. Plaintiff No. 1 was called by Railway staff who had the keys of the wagon and the same was opened in his presence on 14.2.74, upon which it was found that locks of the rear side of the wagon was missing and the seals were found tampered with. On opening the gate of the wagon the goods were found disarranged and half of the wagon was found empty. The packages were unloaded on the platform, they were found short of eighteen packages. Out of 72 packages 54 packages were received at the destination station. The plaintiff submitted a list of 72 packages. The plaintiff also stated in the plaint that list of missing packages were submitted to the Station Master, Bhilwara on 15.2.74 by the plaintiff No. 1. It is also submitted that Station Master, Bhilwara gave certificate dated 2.3.74 certifying the short delivery of 18 packages. The plaintiff in his plaint gave details of the articles which were found missing and valued the above goods which is Rs. 10,500/- only. The plaintiff No. 1 submitted a claim for the short delivery of goods alongwith a list of short packages with valuation to the Station Master Bhilwara on 11.3.74. Thereafter the plaintiff served a notice u/s 78-B of the Railways Act on the defendants Railway Administration through their counsel on 18.5.74 which was received by plaintiff, but since the defendants failed to make payment of the above amount on lost goods booked at Binnaguri Railway Station, therefore the present suit was filed by plaintiffs for grant of decree for Rs. 13,1251-alongwith interest @ Rs. 1/- per cent and also claimed the cost of suit.

3. The defendant-respondents submitted written statement to the claim of plaintiff in the plaint. In the written statement, it is stated that number of packages were given by the consignor in his forwarding note as 72 and on that basis, the Railway Receipt was prepared. It was admitted the wagon was locked on both sides, but also it is submitted that wagon received intact at destination. At the same time in same para No. 5 of the written statement it is states that when the goods were counted they were found only 54 in number. The defendants submitted that at the time of delivery, the consignee neither produce the list of 72 packages booked nor produced the list of 18 packages booked nor produced the list of 18 packages delivering short and the list was given to the Station Master after one month i.e. on 14.3.77.

4. The defendants in their written statement submitted that missing packages were containing electronic instruments, crockery and glass-were which fall under the category of "Excepted Articles" and therefore, suit of the plaintiff is barred u/s 77 of the Indian Railways Act. It is also stated in the written statement that at the time of booking, plaintiff did not declare the value. It was admitted specifically that plaintiff produced the list of Short delivery packages to the Station Master and also admitted that notices were received by the respondents and therefore submitted that plaintiffs are not entitled for any relief therefore,

the suit of the plaintiffs be dismissed.

5. The trial Court framed as many as 8 issues in which issue No. 1 was with respect to whether Railway issued railway receipt on the basis of forwarding note? Issue No. 2 is whether the plaintiff No. 1 was a person who received the goods and plaintiff No. 2 sent the goods and issue No. 3 is with respect to the defence of defendant that there was no space in the wagon for keeping 17 more packages and the list submitted by plaintiff was submitted after one month. Issue No. 4 is with respect with to claim of plaintiff as claimed in para No. 9 of the plaint wherein the plaintiff gave description of the lost goods alongwith its value. Issue No. 5 is with respect to the fact whether suit of the plaintiff is barred u/s 77-B of the Indian Railways Act and issue No. 6 is with respect to entitlement of interest and issue No. 7 is with respect to the validity of notice served by the plaintiff to the defendants and issue No. 8 is of relief.

6. The plaintiff No. 1 appeared as PW-1, plaintiff No. 2 as PW-2, plaintiff witness A.S. Maroo as PW-3; whereas defendant examined witness DW-1 Amar Chand.

7. After hearing the arguments, trial court, dismissed the suit of the plaintiff. It was held by the trial court that the plaintiff failed to prove the value of goods while deciding issue No. 4 and on the basis of decision given on issue No. 3 held that plaintiff failed to prove which 1.8 packages were missing and it was also found that rivet and seal were found intact. In view of the decision given on issue No. 5, trial Court held that in view of Section 77-B, plaintiff is not entitled for value of item Nos. 3,4 and 5 and thereafter dismissed the suit of the plaintiff.

8. A bare perusal of issues framed by the trial Court and the findings recorded on issues, according to learned counsel for the appellant, findings cannot be allowed to stand in view of very many reasons. According to learned counsel for the appellant, when there are trust-worthy documentary evidence alongwith oral statement of the plaintiff and plaintiff's witnesses which are not even rebutted by the defendants, then the case of plaintiff is fully proved with respect to the fact that total 72 packages were booked by the plaintiff No. 2 and 18 packages were found missing particularly in view of certificate EX.4 dated 2.3.74 issued by even competent officer of the respondent. According to learned counsel for the appellant, when the respondents themselves have issued a certificate of missing articles, then findings recorded by trial court on issue No. 3 cannot be allowed to stand. According to learned counsel for the appellant, finding on issue No. 3 is based on assumptions and not on the basis of evidence available on record. Learned counsel for the appellant further submitted that no dispute was raised by defendant-respondent with respect to value of the goods or the goods given in para No. 9 of the plaint or they were not transported through Railway. A bare perusal of written statement would reveal that there is no specific denial of the facts and also there is no evidence in rebuttal; not only this, but there is no cross-examination of the plaintiffs about the value of goods shown in the plaint.

9. The learned counsel for the respondents vehemently submitted that the trial

court rightly dismissed the suit of the plaintiff and also submitted that goods which were alleged to have been booked were admitted in the plaint itself that they were covered under Schedule II of the Railways Act, 1890 and therefore, the suit for recovery of value of above goods is not maintainable in view of Sub-section (3) of Section 77 of the Act of 1890. It is also submitted by learned counsel for the respondents that plaintiff failed to prove the actual cost of the goods and also failed to prove that goods were not infact loaded in the wagon.

10. I have considered the rival submissions made at the bar and perused the record and judgment of trial court. I also perused the evidence⁴ of both the parties. The issue No. 1 was with respect to the fact whether railway receipt was issued on the basis of forwarding note of plaintiff? This was the defence taken by the defendants in their written statement by saying that receipt was issued on the basis of forwarding note of the consignor, probably this was the defence of the defendant that they were not aware whether goods were actually booked or not, but receipt was issued on the basis of consignor forwarding note. Be that as it may, the admitted fact remains that respondents themselves issued a receipt of loading 72 packages in the wagon. The trial court considered the evidence of PW-1 Virendra Singh and held that Ex.23 was forwarding note of the plaintiff and the receipt Ex.22 was issued by the plaintiff and the receipt Ex.22 was issued by the Railways. It is also taken note by the trial court that in receipt, it is mentioned that 72 packages were loaded in wagon No. 51642. The finding of trial court on issue No. 1 is absolutely vague. Mere fact whether relevant receipt was issued on the basis of forwarding note was not at all relevant for the purpose of deciding controversy between the parties. If defendant wanted to submit that railway receipt was issued to the plaintiff No. 2, only on the basis of forwarding note and in fact the goods mentioned in forwarding note or the good mentioned in the receipt issued by the railway were never put in wagon, then this must have been pleaded specifically. Mere saying that receipt was issued by the railway on the basis of forwarding note of plaintiff No. 2, without saying and proving by evidence that goods were actually not loaded, it cannot be accepted when the respondents themselves issued a receipt of loading of goods containing No. 72. In case the person or authority wants to take a different stand contradictory to the facts mentioned in their own document, then he is precluded to produce oral evidence contradicting the contents of documents and in case where some circumstances leading to the execution of document permissible to be seen, then those circumstances are required to be pleaded. Hence Here in this case there is no pleading with respect to any of the circumstance to prove that fact mentioned in the railway receipt of loading 72 packages was wrong fact, therefore, finding on issue No. 1 of the Judgment of trial Court cannot be allowed to stand in view of total lack of evidence on the part of defendants to prove this fact and also in view of lack of pleadings whereas by the evidence of the plaintiff it is proved that 72 packages were loaded and only 54 packages received.

11. While deciding issue No. 2 which was with respect to the undisputed fact whether plaintiff No. 2 was the owner of the goods and sent it through Railway

and plaintiff No. 1 was to receive the goods, the trial court very strangely again narrated the facts of missing packages. The trial court instead of giving specific finding that goods were booked by the plaintiff No. 2 and they were to be received by plaintiff No. 1, again held that it was found proved that Railway receipt was issued on the basis of forwarding note. The finding on issue No. 2 is set aside in view of decision given in issue No. 2 is set aside in view of decision given in issue No. 1 and there is no dispute with respect to facts alleged by the plaintiff it is held that plaintiff No. 2 sent the goods and plaintiff No. 2 was to receive the goods. This fact even in not a disputed fact in view of material available no record including the implied admission of the defendants.

12. The issue No. 3 was decided by the trial court against the plaintiff. The issue framed by the trial court was only that whether there was any spaces to contain 17 packages in the wagon and the list of 17 packages were submitted afterwards. While deciding this issue, trial court held that it cannot be said with certainty that 18 packages were found missing for which trial Court considered the various correspondence between the parties. The trial court considered Ex.D-1 wherein it was mentioned that 18 packages were short. The trial court has also considered Ex.4 dated 2.3.74 wherein it is mentioned that it cannot be ascertained what 18 packages were short as per Railway receipt. This was hardly a point under consideration while considering or deciding issue No. 3. The issue was with respect to whether wagon had capacity to contain 18 packages which were found to be missing as stated by the plaintiff. When there is direct documentary evidence in the form of Railway receipt issued by the department of the Railway itself, containing the fact that there were 72 packages in the wagon, then it hardly needs any further evidence from the plaintiff. It appears that the learned Judge of the trial court even did not care to look into the evidence of the defendant witness DW-1, the sole witness produced. Even witness of defence did not show that wagon was not having capacity to contain 18 missing packages. The trial court has not rejected the documentary evidence of Railway receipt and there was no reason to disbelieve the Railway receipt issued in favour of the plaintiff. There is no explanation even from the side of the defendant with respect to the Ex.4 issued on 2.3.74 by the Station Master, Bhilwara wherein there is specific admission that only 54 packages were found whereas Railway receipt was having mentioned of 72 packages. In addition to above, when there is no evidence produced by the defendants to show what was the capacity of the wagon and how much the remaining 54 packages occupied the space in the wagon, then there was hardly any reason for the trial court to decide the issue No. 3 against the plaintiff and in favour of the defendants. So far as giving of list by the plaintiff to the defendant after one month for which matter can be considered at the time of discussion on issue No. 4 because it has no relation with the fact whether wagon was having capacity to contain 18 missing packages or not but it can be a defence in rebuttal to issue No. 4. Therefore, finding on issue No. 3 is set aside and it is held that defendants failed to prove that there was no space to contain 18 packages which was found missing in the wagon.

13. The issue No. 4 is with respect to value of goods for which plaintiff has given details of each and every article in para No. 9 of plaint, which are as under:

(i) Four Tin Boxes packed in gunny bags containing woolen and cotton garments. Rs. 2000/-

(ii) Four Wooden Boxes packed in gunny bags containing steel Brass utensils. Rs. 2000/-

(iii) Two wooden Boxes covered with gunny bags containing crockery and glass wares. Rs. 1000/-

(iv) One package of Electrolux Refrigerator covered with gunny bag. Rs. 2000/-

(v) One package of Princess's Cooler (Gulmerg) covered with gunny bag. Rs. 1000/-

(vi) Three packages of Dunlop sofas covered with gunny bags (Dunlop) Rs. 1000/-

(vii) Two packages of Dunlop Mattress covered with gunny bags. Rs. 1000/-

(viii) One Sewing machine (Usha) covered with gunny bag. Rs. 500/-

Total 18 Packages Total Rs. 10500/-

14. In reply to this, defendants submitted in para No. 8 as under:-

"That para 9 of the plaint is emphatically denied. Most of these packages are of excepted articles and the plaintiff at the time of booking did not declare then nor their value nor paid the percentage charges. He is, therefore, not entitled to claim anything thereof."

15. This pleading of the plaintiff was replied by the defendants only by saying that plaintiff did not declare the value of the goods at the time of booking and did not declare the value nor paid the percentage charges and, therefore, plaintiff is not entitled to claim anything on this account. Same facts cannot be lost sight while deciding claim against the Government and Government machineries. The plaintiff booked the goods with the Railway. The Railway accepted the goods., issued a valid receipt of undertaking to send the goods from one place to another., they charged amount for that and thereafter now the Railway administration is saying that plaintiff is not entitled for claim even if proved, that too only because that plaintiff failed to declare the value of goods at the time of booking and plaintiff has not paid the percentage charges. At this stage, it can be said that even the authorised person of Railway who accepted the goods, issued the receipt to the plaintiff No. 2, on the basis of which plaintiff can safely rely upon that he has completed all formalities and therefore, receipt was issued to the plaintiff and goods were accepted by the Railway. It is not necessary that person sending goods must be a regular customer of the Railway for the purpose of sending goods. Here in this case, plaintiff was person in service and after being relieved from service, he sent his house-hold goods to a

distant place, therefore, it is not shown to be a business activity of a person. This was the duty of the Officer of Railway to accept the goods upon completion of formalities, if the were required. Here in this case another important fact is that contention of defendants cannot be accepted, it is absolutely bald allegation of non- disclosure of value of goods. When according to the respondents themselves, there are provisions in which the persons are required to disclose the identity of goods particularly provided in Schedule II of Railway Act, 1980, then this was they duty of defendants to plead specifically which item was required to be declared and if it was hidden and was not identifiable, then it should have been mentioned in the written statement itself, but when there is case of admitted loss of goods, such type of bald allegation cannot be permitted to be raised that too by Government authorities like Railway. If the declaration of value of goods was necessary for transporting of goods, then also, the respondent defendants have no right to take this defence in view of their own conduct and if it was required, then it was given go-bye by respondents themselves by accepting the goods taking charges for transportation and by issuing the receipt. The reasoning given by the trial court cannot be allowed to stand.

16. Now whether plaintiff has been able to prove the cost of goods shown by plaintiff in para No. 9 of the plaint or not? As mentioned above, the value of goods has not been denied by the defendants specifically, it appears that defendants were fully satisfied with the value of goods and, therefore, he did not challenge the value of goods by saying that value shown by plaintiff in para No. 9 of the plaint is highly excessive or this value cannot be of the goods shown in para No. 9. The plaintiff in his statement has stated that value of goods is Rs. 10500/-. He also in his cross-examination stated that value was on the basis of year 1974 and there is no cross-examination pointing out any of the item with respect to value of the item shown in para No. 9.

17. The reasoning given by the trial court that plaintiff filed to prove the cost of the goods, is absolutely wrong. The finding of trial court that wagons were having seal and rivet, is also not based on evidence. The plaintiff was hardly concerned with the fact of having the rivet and seal intact because there is admitted case by Railway Administration itself that goods were found short at the receiving end and there is no evidence by the defendant that goods loaded it the wagon from starting point were loaded less by the plaintiff and when there is no evidence to this effect and there is no evidence to the effect that rivet and seals were intact, except the words from the mouth of witnesses of defendant without producing any report with respect to condition of rivet and seal, when wagon reached at Bhilwara. This was the duty of the Railway Administration to first examine whether there were mark of tempering with the seal or not. It become more necessary when the wagon itself which was booked on 9.1.74 and reached on 14.2.74 and Railway Station Master himself found that packages were missing, then this is the duty of defendant to prove as a matter of fact that rivet and seals were intact. The plaintiff was required to only prove that he received

less goods than the booked goods. The plaintiff was hardly concerned how and where goods were lost by the Railway Administration. This was the duty of Railway Administration to transport the goods for the benefit of plaintiff No. 2, therefore, the trial court totally misdirected itself while deciding issue No. 4 and it appears that trial court was more concerned with the fact that when the list of goods was given to the Railway Administration ignoring this fact that goods were in power and possession and control of Railway Administration till they were delivered to the plaintiff and when the goods were to be delivered to the plaintiff, then it was duty of the Railway also to see, which of the packages were not found at destination and if packages were having numbers, which of packages is missing, which could have been found by simply taking note of the numbers of the packages and it was the duty of respondents. The plaintiff cannot be blamed for not preparing the list immediately or furnishing the list later. The respondents cannot escape from their liability on such type of false pleas. When it is found that articles were missing before receiving by the plaintiff No. 1 and 2, then this was for the defendant to explain whether goods were booked as per the quantity mentioned in the receipt or if not, this could have been proved by producing evidence not merely by creating some situation of doubt even which is not here in this case, therefore, the reasoning given by the trial court has no relevancy for the purpose of deciding issue. The finding on issue No. 4 is set aside and it is held that plaintiff is entitled for Rs. 10500/- for the cost of goods.

18. While considering issue No. 5, trial court taken note of Section 77(B). The item No. 3, 4 & 5 were held to be covered under the above provisions along with Rule 141 of the Goods Tariff General Rules. The trial court held that item No. 3 is admittedly crockery and glass ware, item No. 4 is Refrigerator and item No. 5 is Cooler and plaintiff has not declared those articles and value of those articles, therefore, in view of Section 77(B), the plaintiff is not entitled for above amount. Section 77(B) Sub-clause (1) reads as under:-

"77-B. Further provision with respect to the responsibility of a railway administration as a carrier of articles of special value :- (1) Notwithstanding anything contained in the provisions of this Chapter, when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration to be carried by railway and the value of such articles in the parcel or package exceeds five hundred rupees, the railway administration shall not be responsible for the loss, destruction, damage or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by railway, and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk."

19. In Second schedule, list of article is given which are to be declared and insured. Item No. K is with respect to "art pottery and all articles made of glass,

china or marble" and by inserting on 3.4.63, the transistors (radio component part); amplifiers; tape recorders; electronic and amplifiers; electronic instruments NOC, were included in the schedule. The trial court held that item No. 3 is admittedly crockery and glass were, item No. 4 is Refrigerator and item No. 5 is Cooler. These items were required to be declared as per Section 77(B) read with Schedule. Hence as mentioned above, declaration was required for electronic instruments and not for electric instruments. The Refrigerator and Cooler cannot be treated as electronic items particularly and there is additional fact that defendant did not choose to submit that they are the electronic items and, therefore, they should have been declared. The item No. 3, crockery and glass were given in para No, 9 of the plaint is amounting to Rs. 100/-. These items are covered under Clause (K) of Second schedule of the Act of 1890, therefore, in view of admitted fact of articles, mentioned in item No. 3 of para No. 9 of the plaint, plaintiff is not entitled for amount of item No. 3 mentioned in para No. 9 of the plaint i.e. Rs. 1,000/- and for rest, of the amount, plaintiff is entitled.

20. Learned counsel for the respondent referred to R. 141 of the General Rules, but in this rule also, Cooler and refrigerator are not included, therefore, as held above, plaintiff is entitled for entire amount of Rs. 9,500/-; though he lost Rs. 10,500/- value of goods, but entitled for Rs. 9,500/- only on above account in view of the fact that plaintiff is not entitled for value of goods mentioned at item No. 3 of para No. 9 of the plaint amounting to Rs. 1,000/-, therefore, finding recorded by the trial court on issue No. 5 is set aside as held above.

21. The learned trial court refused the interest to the plaintiff on the ground that plaintiff failed in proving basis for award of interest. This reasoning given by the trial court cannot be allowed to stand. The plaintiff was deprived of the above amount and, therefore, he was deprived of his enjoying of that property and its value, therefore, plaintiff is also entitled for interest @ 6% per annum from 2.3.74 when the goods were found missing.

22. No other point is pressed. The appeal of the appellant is allowed. The suit of the plaintiff is decreed for Rs. 9,500/-, principal amount alongwith interest from 2.3.74 @ 6% per annum. Plaintiff is also entitled for cost of the suit and appeal as well.