

(1957) 02 PAT CK 0014
In the Patna High Court
Case No : A.F.O.D. No. 148 of 1948

Dominion of India

APPELLANT

Vs

B.L. Butt

RESPONDENT

Date of Decision : 01-02-1957

Acts Referred:

Carriers Act, 1865 — Section 9
Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 73
Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 75

Citation : AIR 1957 Patna 328 : (1957) 5 BLJR 227

Hon'ble Judges : Kanhaiya Singh, J;Ahmad, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; S.N. Bhattacharya and K.D. De, for the Respondent

Final Decision : Dismissed

Judgement

Ahmad, J.—The appeal is by the Railway, defendant, through the Dominion of India. The suit was for the recovery of Rs. 6.389-11-0 as damages on account of the loss caused during transit by Railway of two bales out of a consignment of ten bales of woollen goods booked from Amritsar to Dhanbad. Out of the consignment only eight bales were delivered to the plaintiff and it is not denied that the other two were not delivered in spite of the demands made. According to the plaintiff, the short delivery was due to the negligence of the Railway administration,

The plaintiff, therefore, after serving the necessary notice u/s 80 of the Code of Civil Procedure, instituted the suit giving rise to this appeal. The claim was challenged on a number of grounds in the trial Court. The trial Court on hearing the parties rejected all the pleas set up in defence and decreed the suit in full.

2. In this Court on appeal only three points have been advanced. They are -- (1)

that Section 75 of the Railways Act is a bar to the present action; (2) that in any case the defendant is not liable to pay (a) loss of profit calculated at 20 per cent., (b) carting charge, and (c) freight paid for the two bundles; and (3) that the loss was due to the running train theft.

3. The case of the Railway is that the articles covered by the two bales not delivered to the plaintiff contained shawls as contemplated by Clause (m) of the Second Schedule to the Indian Railways Act, 1890. That being so, the Railway is not responsible for the loss of those bales as the consignor did not declare their contents as laid down in Section 75 of the Railways Act. Section 75 reads:

"(1) When any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a. Railway administration for carriage by railway, and the value of such articles in the parcel and package exceeds three hundred rupees, the Railway administration shall not be responsible for the loss, destruction 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 or declared them at the time of delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk."

Other clauses of this section need not be referred to here because they are not relevant. Further, it may be mentioned that the amount of Rs. 300 referred to in this section has recently been amended. Originally it was only Rs. 100 and on the facts of this case it is the original value that has to be considered. Mr. Bose appearing for the appellant has conceded that nowhere on any paper connected with the transit of the two hales the word "shawl" has been mentioned by the consignor or by the consignee.

His contention, however, is that the consignor did it purposely in order to avoid payment of additional freight for it. His further contention is that though the shawls had not been mentioned by the consignor but from some of the circumstances apparent on the record it can be inferred that what were carried under the two bales were in fact shawls. To support this contention reliance has been placed on some of the passages given in the notice u/s 80 of the Code of Civil Procedure, the plaint, the schedule of the plaint and the invoice, which is Ex. 1 on the record.

In the notice u/s 80 of the CPC the plaintiff has described himself by occupation as shawl merchant, Similarly in the plaint it is said that the plaintiff is by occupation a shawl merchant. So far as the schedule of the plaint is concerned, that does not anywhere use the word "shawl". The descriptions of the different articles given therein are "Kashmeery chadar", "Tushi chadar" and somewhere ""Alwan". In the invoice also similarly the description was "Tushi, Alwan and chadars". In my opinion, the mere description of the plaintiff that he is by profession a shawl merchant cannot possibly decide the point as to what were

the articles sent under the two bales alleged to have been not delivered by the Railway. He may be dealing with shawls also along with many other articles, and, therefore, simply because he describes himself as a shawl merchant cannot lead to the conclusion that in this particular instance what were sent to him were shawls.

This is apparent from the description of the different articles sent under the two bales; for example, one of the Items mentioned in Schedule A at p. 3 of the paper book is "Fifty two and three-fourth yards veyella desi". This definitely cannot be said to be shawl and, therefore, it is clear that though the plaintiff may be dealing with shawl but at the same time he is dealing with other articles also like "veyella desi". Coming now to the question as to whether the descriptions "Kashmeery chadar" or "Tushi chadar" are such as to be attracted by the word "shawl", two arguments have been advanced: firstly that, as a matter of fact, they are the different varieties of shawls and as such they are covered and included by the word "shawl" and secondly even if they are not included in the word "shawl", Clause (m) of the Second Schedule of the Railway Act is wide enough to cover the same.

The first part of the argument raises the question as to what is the exact meaning and implication of the word "shawl" as used in Clause (m) of the Second Schedule, of the Railways Act. I think that this aspect of the case has been fully discussed and dealt with in the decision of *Sarat Chandra Bose v. Secretary of State* ILR 39 Cal 1029 (A). Therein, their Lordships have observed:

"The learned Subordinate Judge, in dealing with the question as to what is the meaning of shawl, as used in the Schedule, has referred to the definition of the word "shawl" as given in Webster's Dictionary. He considers that, as the term "shawl" is used in a law enacted in the English language, it must be understood in the English sense, irrespective of its meaning in India. He, therefore, arrives at the conclusion that the word "shawls" as used in the Second Schedule of the Railways Act must be taken to be "a cloth of wool, cotton, silk or hair used specially by women as a loose covering for the neck and shoulders," and he thinks that garments such as *Alwans* which are manufactured with cotton or wool must come under this definition. On the other side, it is contended that the word "shawl", as used in the Act, valuable articles such as are produced by the looms of Kashmere and Amritsar, and it is argued that the goods contained in the parcel certainly must fall within that description, if the plea of the defendant is to succeed. We have given the question our best consideration, and we are of opinion that the views which the learned Subordinate Judge has taken as to the meaning of the word "shawl" cannot be accepted.

It is clear from the other items included in the Second Schedule of the Railways Act, that the Schedule was intended to cover articles of special value. The Act which was passed in 1890 took the place of other Railways Acts which were then repealed and were passed in 1879, 1883 and 1886. Schedule II appears in the previous Acts and also in the Acts previous to them which they repealed and we

think that in determining the meaning of the word "shawl" we have, first, to consider what was the probable meaning which the Legislature intended to apply to such a term at the time when the Schedule was first drawn up, and, secondly to consider, how far its meaning can be determined by reference to other items in the Schedule.

Applying those rules we are of opinion that there can be little doubt that at the time when the Schedule was first drawn up, it was intended to cover Indian shawls of valuable materials. The term "shawl" is originally a Persian term, and was applied to valuable and special "articles and certainly had no possible application to the articles to which the learned Judge of the lower appellate Court has thought the word "shawl" as used at present in the English language now applies.

The term "shawl" as used at the time when the Schedule was drawn up obviously referred to valuable "Indian shawls as then understood in India, and could not be taken to apply to articles of inferior value such as the articles contained in the parcel, the subject of the present suit. Of the items of articles contained in the parcel only one is of any special value, that is the first item, the two pairs of Alwans at Rs. 22-4-0 per pair.

In our opinion, judging both from the meaning of the word "shawl" as accepted in India at the time when the Act was passed and also from the fact that all the other items contained in the Schedule are articles of special value and also from the fact that Article (s) in the Schedule provides for the addition by the Governor-General in Council of other articles of special value to the Schedule, the articles for the loss of which damages are claimed in the present suit cannot be regarded as falling within the description of "shawls" as contained in Schedule II of the Railways Act. We are of opinion, therefore, that the Judgment and decree of the lower appellate Court must be set aside."

4. It is thus clear that looking at from all points of view, their Lordships of the Calcutta High Court clearly think that the word "shawl" as used in Clause (m) of the Second Schedule of the Railways Act made the Kashmeery shawl of special value. In my opinion, there is no reason to suppose that this Clause (m) was ever meant to include in it things of inferior quality as that of Alwan, Tushi or ordinary chadar, I respectfully agree with what has been stated above by their Lordships of the Calcutta High Court. "This case was subsequently followed by the Bombay High Court in the case of E. I. Rly. Co. v. Dayabhai AIR 1922 Bom 416 (B). Mr. Bose appearing for the appellant, however, has if this connection, drawn our attention to decisions in The Great Indian Peninsula Railway Company Ltd. Vs. Chella Ram Gianchand, and Shudarshan Maharaj Nand Ram through Nand Ram Vs. The East Indian Railway Company, . So far as the latter decision is concerned that has been discussed and dissented to by the Bombay High Court in the case of AIR 1922 Bom 416 (B), and I think the reason given therein is the full answer to that decision.

Similarly the decision reported in (The Great Indian Peninsula Railway Company Ltd. Vs. Chella Ram Gianchand, , in my opinion, does not meet all arguments which have been elaborately advanced in the decision of ILR 39 Cal 1029 (A), nor it deals with the general principle underlying the Second Schedule of the Railways Act. I, therefore, think that the principle laid down in the decisions relied upon by Mr. Bose cannot be accepted as correct.

5. The other point raised by Mr. Bose is that Clause (m) of the Second Schedule of the Railways Act should be interpreted to mean all woollen cloths similar to or like shawls. This also I think cannot be accepted. Looking at the different items given in the Schedule it is clear to me that wherever the Legislature intends, to use a description in its larger contexts it always uses some expression suggesting that interpretation, for example in Clause (e) the articles described are "watches, clocks & timepieces" of any descriptions". Similarly in Clause (j) the description given is "paintings, engravings, lithographs, photographs, carvings, sculpture, and other works of arts". As against these descriptions, what is stated in Clause (m) is only "shawls". Therefore, it is apparent that what is covered by the word "shawls" in Clause (m) is only "shawls" and not any other thing same or similar to shawls. If that is so then the second contention raised is also equally untenable. That being so, I think the first contention advanced by Mr. Bose has to be held as one without substance.

6. The second point raised relates to damages claimed by the plaintiff. In that connection three of the items given in the Schedule have been objected to. They are (1) loss of profit calculated at 20%, (2) carting charge, and (3) freight paid by the two bundles. Mr. S.N. Bhattacharyya appearing for respondents does not contest much the claim advanced in this connection by the appellant regarding the last two items and I think rightly. Therefore to that extent the contention of Mr. Bose is accepted. So far as the first objection relating to loss of profit calculated at 20 per cent, is concerned that I think has no substance.

His argument is based on the footing that what is claimed under that item is profit and as profit is only a remote damage therefore that should not have been allowed. On principle there is no difficulty in accepting that what is remote damage should not be allowed. But the question which substantially arises for consideration in this case is as to what has been claimed by the plaintiff under the items "loss of profit calculated at 20 per cent.", is in fact the future profit which the plaintiff might have earned or is only the difference between the price of the articles which he paid at Amritsar and the price which was then prevalent at Dhanbad.

Reading the pleadings and evidence on the record I think that what the plaintiff means to say under that item is the difference of the price which he paid at Amritsar and the price which was then prevalent at Dhanbad. If that is so then that cannot be taken as something like remote damage. This is clear from the principle laid down in the decisions in India General Navigation and Railway Co. Ltd. Vs. The Eastern Assam Company Ltd., , O'Hanlan v. G. W. Rly. Co. (1865)

122 ER 1274 (F) and Cooverjee Bhoja v. Rajendra Nath ILR 36 Cal 617 (G). In the case reported in (India General Navigation and Railway Co. Ltd. Vs. The Eastern Assam Company Ltd.,) (E), their Lordships observed:

".....the measure of damages is the value of the goods at the place of destination, in the condition in which the carrier undertook to deliver them, at the time when they should have been delivered, less the proper charges of transportation and delivery, if these have not been paid by the consignor."

In the case reported in (1865) 122 ER 1274 (F), Shee, J., dealing with the similar question observed:

"If there is a regular market for such goods at that place, it is clear that he has sustained no damage beyond the amount of what would have been the cost to him of his goods and of the difference between that cost and the market price where they ought to have been delivered to him of other goods of the same kind. If at that place there are no such commodities, except charged with a profit beyond their original price and the cost of their carriage, then that profit is an element of their market price and of the amount of his damage.

But if there is no market and there are no persons from whom such goods can be bought at the place except at an excessive price, a reasonable construction of the rule laid down in *Hadley v. Baxendale* (1854) 9 Ex. 341 (H) would entitle the plaintiff to the reasonable price of the goods at that place, and that would be ascertained by calculating the probable profits which dealers who might sell goods of that kind there would make on the prime cost of the goods at the place of manufacture, and the cost of their carriage. Therefore the direction to the jury was right....."

Similarly in ILR 38 Cal 617 (G), it has been observed:

"Now, it is admitted that there is a free market for manganese ore in England and that the plaintiffs intended to ship the ore to England. In assessing the damages, therefore, in this contract for such of the breaches at the date of which there was no market rate in Calcutta, we think that the principle adopted in the case of *Borries v. Hutchinson* (1865) 18 CBNS 445 (I), is the one that ought to be proceeded upon, namely, that the damages for those breaches is the value to the plaintiffs of the portions that ought to have been delivered on those dates at the prices he would have got for them in England less the cost of getting them there."

Therefore, in view of these authorities it is difficult to hold that if what has been claimed by the plaintiff is difference between the price that he paid at Amritsar and the price that was then prevalent at Dhanbad, then that is in any sense of the word a remote damage or a damage to which he cannot be in law said to be entitled to. Further it is clear from the pleadings that it has nowhere been challenged, either in the written statement or in the evidence, that the difference of price which in the Schedule he has described as profit was not the real

difference of the two prices at that time. I, therefore, think that there is no substance so far as this contention is concerned.

Mr. Bose in this connection has drawn our attention to the decisions in (1854) 156 ER 145 (H), *Wilson v. Lancashire and Yorkshire Rly. Co.* (1861) 142 ER 248(1) and *Sanders v. Stuart* (1876) 1 CPD 326 (K). They all deal with the question of remote damages. In those cases what was claimed was not exactly the direct damage caused to the claimant but the remote damage. In that view of the matter, their Lordships in those cases relying on the principle laid down in (1854) 156 ER 145 (H), decided that the claimant was not entitled to any damage. That being so, those cases are not at all relevant for deciding the point at issue here.

7. The last point relates to the running train theft. This aspect of the case has been elaborately dealt with by the trial Court and in my opinion it has rightly come to the conclusion that the defendant has failed to prove its case on that point. Firstly it has been conceded that the goods had been consigned under Railway risk. Therefore, the onus is entirely on the Railway to establish that the loss was not due to any negligence on its part. This, in my opinion, it has failed to establish.

Secondly the evidence that has been given regarding theft relates to the consignment which bears No. 11504 while the consignment said to have been lost in this case bears No. 19504. That also, I think, is sufficient to throw out the defence taken by the Railway that there was in fact any case of theft, I, therefore, find no justification to differ with the finding given by the trial Court on that point.

8. In the result, therefore, I think the appeal has to be dismissed with costs subject to the modifications that the claim of the plaintiff regarding carting charge to the extent of Rs. 2 and freight paid for the two bundles in the tune of Rs. 17-15-0 is rejected.

Kanhaiya Singh, J.

9. I agree.