

(1951) 06 CAL CK 0024
In the Calcutta High Court
Case No : Appellate Decree No. 1249 of 1948

Dominion of India

APPELLANT

Vs

Virjee Doya and Co.

RESPONDENT

Date of Decision : 29-06-1951

Acts Referred:

Goods Tariff of the Great Indian Peninsular Railway Rules — Rule 31

Citation : AIR 1952 Cal 70 : 55 CWN 758 : (1953) 1 ILR (Cal) 45

Hon'ble Judges : Harries, C.J.; Das, J

Bench : Division Bench

Advocate : Nani Coomar Chakravarti, for the Appellant; Bhabesh Narayan Bose, for the Respondent

Final Decision : Allowed

Judgement

Das, J.—This is an appeal by the Defendants in a suit for recovery of certain sums of money which the Plaintiffs allege to have paid to the Defendants under protest.

2. The Plaintiffs' case is that they consigned certain goods from Karachi Bundar, a station on the North-Western Railway to Howrah, a station on the East Indian Railway. At the place of destination the railway company overcharged the Plaintiffs with certain freights which are not legally payable. The Plaintiffs accordingly claim the sum so overpaid with interest at 12 per cent. per annum. The claim was laid at Rs. 4,253-6, viz., Rs. 3,535-14 as the excess freight realised and Rs. 420 as interest at 12 per cent. per annum, and Rs. 307-10 on account of certain other items.

3. The defence of the railway administration is that there was no excess payment and that due to a mistake on the part of the booking clerk at Karachi Bundar the freight was calculated wrongly over a portion of the journey from Karachi Bundar to Gaziabad.

4. Both the courts below have decreed the Plaintiffs' suit in part. The Defendants

have preferred this appeal.

5. The findings of the courts below are that the railway administration charged for the goods at a lower rate over that portion of the journey from Karachi Bundar to Gaziabad that this was due to a mistake on the part of the booking clerk, and that the rate charged was that leviable for goods which were carried at the railway risk.

6. Mr. Bose appearing for the Defendants has contended that the railway administration was entitled to the excess rate by virtue of condition 6, which appears on the back of the forwarding note. Clause 6 of the forwarding note is in these terms:

That the railway administration has the right of remeasurement, reweighment, reclassification and recalculation of rates, terminals and other charges, at the place of destination and collecting before delivery of goods any amount that may have been remitted or under-charged.

7. The question is whether the excess freight which was levied at destination comes within this condition. The words "reclassification and recalculation of rates" are obviously intended to cover cases where the railway administration had charged a lower rate than what was payable in respect to the carriage of the goods. It was suggested that this refers only to cases where the goods carried by the railway administration were wrongly classified. This, in my opinion, cannot be accepted because the words are "reclassification and recalculation of rates" and not of good. It obviously covers a case where a certain rate was payable for the goods carried, but the rate charged was different from that which was properly payable according to the rules.

8. It also appears to me that the present case would also come within that part of the condition which relates to the realization of other charges.

9. It was contended that the Plaintiffs, being assignees of the consignee, are not bound by these conditions. In my opinion, the Plaintiffs can have no higher rights than the consignor or the consignee had under the terms of the forwarding note. It is undisputed that these terms bind the consignor.

10. It was also contended that condition 6 appearing on the back of the forwarding note is not a part of the contract. It appears that on the face of the forwarding note it is stated that the goods are carried subject to the conditions on the back of the forwarding note. The contract between the railway administration and the consignor must be considered with reference to the terms contained in the forwarding note. It cannot be suggested that the freight, which is mentioned in the forwarding note and thereto, which has been charged therein form the sole term of the contract. We must regard all the terms contained in the forwarding note as forming the basis of the contract, and one of the terms is that contained in condition 6. The whole question is as to the interpretation of condition 6 appearing in the forwarding note. I have already stated my view of

the effect of the forwarding note.

11. Reference has been made to a number of cases in this Court. These cases do not speak with one voice. I shall now refer to the cases cited at the Bar.

12. On behalf of the Plaintiffs Respondents reliance was placed on the decision in the case of *Chunnilal v. The Nizam's Guaranteed State Railway Co., Ltd.* ILR (1906) All. 228. In that case, certain goods were consigned from a station on the Nizam's State Railway to a station on the G.I.P. Railway. The goods were charged at the wagon rate. At the station of destination the railway administration found that the goods had been wrongly charged at that rate and the railway administration recovered the proper charges, namely, charges at the maund rate. The question was whether the railway administration was justified in levying freight on the goods consigned, at the maund rate. The Full Bench was of opinion that the railway company were not entitled to recover the excess rate and that Rule 31 of the Goods Tariff of the Great Indian Peninsular Railway, which is similar to condition 6 appearing in the present forwarding note, did not empower the railway company to charge the excess. The Full Bench merely stated that this would have the effect of altering the contract between the parties. No reasons are given in the judgment of the Full Bench as to how the contract between the parties would be altered. This decision was distinguished in a later Bench decision of the same Court. *Secretary of State for India in Council v. Harbans Prasad* ILR (1929) All. 81. In that case certain goods had been consigned from a station on the O and R section of the East Indian Railway to a station on the Great Indian Peninsular Railway. The goods had to pass in course of their journey through different railways. It appears that a lower freight was charged on O and R portion of the journey through mistake. The railway administration instead of charging "first class rate" which was leviable charged a concession rate (known as Carew's rate) on that portion of the journey. The mistake was discovered at destination and the railway administration recovered the correct freight. The Bench dismissed the Plaintiff's suit on the ground that the railway administration was entitled to levy the correct rate in view of condition 6 which was similar to the condition which now appears on the back of the forwarding note as condition 6, and that the case was really one of wrong classification of the rate. The view taken by this Bench decision of the Allahabad High Court has been taken in a later Bench decision of the Madras High Court in the case of *M. Sheik Dawood Rowther v. South Indian Railway Company, Limited* ILR (1945) Mad. 174. Reliance was placed on behalf of the Plaintiffs Respondents on a Bench decision of the Lahore High Court in the case of *Ramnath Ladhu Ram v. North Western Railway* ILR (1926) Lah. 412. In that case it was suggested that if the railway administration is allowed to realise the excess rate that would have the effect of altering the basic terms of the contract. In my opinion, the Bench overlooked the fact that the contract between the parties related not merely to the rate actually charged which appeared on the face of the note, but also to the conditions subject to which the goods were carried.

13. Our attention was not drawn to any decision of this Court.

14. As I have said already, the decisions of the different High Courts are somewhat divergent. In my opinion, the real point is-what is meant by the expression "reclassification and "recalculation of the rate"? I have already said that this expression covers cases where a wrong rate was charged through mistake and it was later discovered that the rates actually charged for the goods carried were lower than those which were properly chargeable for those goods. In other words, if certain goods are to be charged at a rate which was payable for class I goods and the rate levied at the place of acceptance of the goods is lower than that, the railway administration can very well claim to charge at the station of destination at the higher and correct rate under this clause. In any event, I am of the opinion that the last part of the condition "other charges" are sufficiently wide to cover a case like this. For these reasons, I am of the opinion that the courts below are in error in holding that the administration was not entitled to recover the excess rate at destination.

15. It has been pointed out to us that, in the course of the trial the railway administration admitted that the rate actually charged at destination was in excess of what would have been legally payable by the consignor for a portion of the journey. This is a matter which has not been properly decided by the courts below and this matter should be enquired into by the trial court.

16. In the result this appeal must be allowed. The judgments and decrees of the courts below are set aside. The Plaintiffs' claim in so far as it relates to the excess rate, which was properly charged by the railway administration, should be dismissed and an enquiry will be made in regard to the amount which was realised by the railway administration on a miscalculation of the rate properly payable. This matter will, therefore, be remitted to the trial court for ascertainment of the excess amount which was realised by the railway administration on a wrong calculation of the rate actually and properly payable by the Plaintiff in regard to the consignment and for giving the Plaintiff relief, if any, only to that extent.

17. As the appeal mainly succeeds, the Appellants are entitled to the costs of this appeal. As regards the costs of the courts below there will be a decree in favour of the Defendants for proportionate costs in accordance with the decision of the trial court as regards the amount to which the Plaintiff may be ultimately entitled on calculation after remand.

Harries, C.J.

18. I agree.