

(1967) 07 PAT CK 0017
In the Patna High Court
Case No : Civil Revision No. 921 of 1966

Firm, Mahadeolal Bhagirathmal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-07-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Railways Act, 1890 — Section 74, 76F

Citation : AIR 1968 Patna 440

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : B.P. Rajgarhia, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—A consignment of 660 tins of mustard oil was booked from Rohtak railway station, on the lines of the Northern Railway, to Tatanagar, a station under the South Eastern Railway Administration. At the time of delivery of the consignment to the plaintiff, according to its case, 15 tins were found damaged and contents removed. A short delivery certificate was granted by the goods supervisor and 231 kilograms of mustard oil found short. The plaintiff firm instituted the suit for recovery of Rs. 977.75 Paise as compensation for the loss of the mustard oil weighing 231 kilograms. According to its case, the loss was caused due to the negligence or misconduct on the part of the Railway Administration or its servants. This charge was refuted in the written statement and it was further pleaded that the goods were defectively packed and, therefore, the Railway Administration was not liable for the loss of a part of the goods.

2. The trial court found that the tins were cut and the contents had been pilfered in transit. Since the Railway had failed to disclose as to how the consignment was dealt with throughout the time it was in its possession or control, negligence or misconduct on the part of the Railway Administration or of any of its servants

could fairly be inferred for the said failure on the part of the Railway Administration. It further held that the case is not covered by Section 77C of the Indian Railways Act 1890 (hereinafter called the Act).

3. On appeal by the Union of India, at owner of the Railway Administrations; the lower appellate court has taken a different view. It has held that a part of the contents of 15 tins was lost due to leakage in the tins and leakage was caused due to bad soldering at their bottom. It has further held that the case was covered by Section 77C of the Act. In that view of the matter, the decree passed by the trial court in favour of the plaintiff has been set aside by the lower appellate court. The plaintiff firm has filed this application in revision u/s 115 of the CPC in view of the provision of law contained in Section 102 of the Code.

4. In my opinion, it is not necessary in this revision to examine as to whether the case is covered by Section 77C of the Act, which relates to the question of the oil having been defectively packed or packed in defective tins. On the findings recorded by the court of appeal below, the case is not covered by Section 76F of the Act and there was no obligation on the Railway Administration to disclose as to how the consignment was dealt with throughout the time it was in its possession or control. The obligation to disclose is there only when the case is covered either by Clause (a) or Clause (b) of Section 76F of the Act. Obviously and undisputably the case is not covered by Clause (a). Clause (b) runs thus:

"where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit."

According to the finding of the court of appeal below, oil leaked out of the 15 tins and the quantity of short delivery to the plaintiff firm was not the result of any pilferage as no cutting in the tins, according to the finding, was found at the time of the delivery of the consignment to the plaintiff. The finding is based upon Exhibit 1 and the evidence of D. W. 2. The finding could not be attacked in this civil revision by advancing an argument on the question of fact and on that finding, it follows that it was not a case of pilferage and so there was no obligation on the Railway Administration to make any disclosure as had been asked for by the plaintiff in its notice u/s 78-B (old Section 77) of the Act and Section 80 of the Code of Civil Procedure, as also as asked for in the plaint. That being so, on the materials placed before the courts, the plaintiff was not able to discharge the onus of proving negligence or misconduct on the part of the Railway Administration or any of its servants,

5. It was argued on behalf of the petitioner that the consignment was booked at railway risk rate as the railway receipt (Ext. A) indicated that the consignment had been booked at "R/R rate" indicating thereby that it was booked at Railway Risk Rate. The argument as put forward is attractive and would tempt one to

accept it, but the difficulty is that the plaintiff did not plead in its plaint that the consignment was booked at railway risk rate. In absence of such a pleading, u/s 74 of the Act, it will be deemed to have been booked at owner's risk rate, and this is so apart from the fact that in a case of railway risk a certificate must have been granted to the consignor under Clause (2) of Section 74 of the Act, and, perhaps, it was necessary for the plaintiff to produce and prove that certificate. I am, therefore unable to decide this case on the footing that it was a case relating to a consignment booked at railway risk rate.

6. In the view I have taken on the question as to whether the plaintiff has succeeded in proving negligence or misconduct on the part of the Railway Administration because of its failure to make disclosure, It is not necessary, as I have stated above, to examine as to whether the case is covered by Section 77C of the Act.

7. In the result, the decision of the lower appellate court has got to be upheld on the only ground decided by me. The application in revision fails and is dismissed, but I shall make no order as to costs.