
(1966) 04 MP CK 0008
In the Madhya Pradesh High Court
Case No : C. R. No. 862 of 1965

Firm Mannoolal Nanhulal

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 20-04-1966

Acts Referred:

Madhya Pradesh Civil Courts Act, 1958 — Section 9
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1969) ILR (MP) 329 : (1969) JLJ 576 : (1969) MPLJ 402

Hon'ble Judges : K.L. Pandey, J

Bench : Single Bench

Advocate : V. S. Dabir, for the Appellant; B. C. Verma, for the Respondent

Final Decision : Dismissed

Judgement

K. L. Pandey, J.

This revision u/s 25 of the Provincial Small Cause Courts Act is directed against a decree of the First Additional District Judge, Sagar, empowered u/s 9 of the Madhya Pradesh Civil Courts Act 1958, whereby the applicant's claim for Rs. 748.62 as damages for short delivery of oil consigned for transport by rail was dismissed.

The plaintiff is a registered firm and carries on business at Sagar. Messrs Khanna and Hariraj booked for transport by rail at railway risk a consignment of 385 tins of oil consisting of 335 tins of vegetable oil and 50 tins of refined groundnut oil from Wadi Bandar to Sagar vide Railway Receipt No. 517703 dated the 11 December 1963 and Invoice No. D/379. The Railway Receipt was endorsed in favour of the plaintiff-firm which took open delivery of the goods on 30 December 1963. It was then found that, while the vegetable oil tins retained all the oil contained in them, 14 of the tins containing groundnut oil were empty and, in the other 36 tins, there was a shortage of 84.8 kilograms of groundnut oil.

The plaintiff averred that the tins containing the groundnut oil were new ones

and that the leakage and shortage in the groundnut oil was attributable to the gross negligence of the defendant in not properly protecting the consignment till it reached Sagar. On the basis of these averments, the plaintiff claimed Re. 748.62 as damages including Rs. 655.50 as price of the oil which was thus lost.

The Railway Administration resisted the claim inter alia on the ground that the senders themselves had stated in the forwarding note that the tins were not packed in cases. The Small Cause Court accepted this defence and dismissed the suit on the basis of the provisions contained in section 77C (1) of the Railways Act.

section 77C (1) of the Railways Act reads as follows:-

(1) When any goods tendered to a railway administration to be carried by railway,-

(a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage; or

(b) are either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under sub-section (4), and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage,

and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination, except upon proof of negligence or misconduct on the part of the railway administration or any of its servants.

It is also dear from the forwarding note Ex. D-2 dated 10 December 1963 that the senders recorded the fact that the tins were not packed in wooden cases as required by Goods Tariff Rules. That being so and the plaintiff having failed to prove any negligence or misconduct on the part of the railway administration or its servants, section 77C (1) is a complete answer to the claim.

In B. S. Gupta v. Union of India Civil Revision No. 161 of 1963 decided on the 20th December 1963. there was no record about the defective packing in the forwarding note. That appears to have been the position in Union of India v. Firm Gannamal Bhagwandas Civil Revision No. 602 of 1963 decided on the 28th August 1984. and in Jhaverchand Thakerse v. Union of India Civil Revision No. 350 of 1964 decided on the 19th February 1965, also. These cases are, therefore, of no assistance to the applicant.

The revision fails and is dismissed. The applicant shall bear its own costs and pay those of the non-applicant throughout. Hearing fee in this Court Rs. 60.