
(1939) 03 AHC CK 0014
In the Allahabad High Court

Firm Moti Lal Raghubar Dayal	Vs	APPELLANT
Bombay Port Trust Railway and Another		RESPONDENT

Date of Decision : 28-03-1939

Acts Referred:

Citation : AIR 1939 All 649 : (1939) 9 AWR 595

Hon'ble Judges : Mulla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mulla, J.—This is a plaintiff's application, in revision u/s 25, Small Cause Court Act. It; arises out of a suit brought by the plaintiff against two Railway Companies having their headquarters at Bombay ? the Bombay Port Trust Railway and the Great Indian Peninsular Railway - to recover a sum of Rs. 260 which is made up of the following items : (1) A sum of Rs. 186-5-0 realized from the plaintiff in respect of three consignments on the ground the booking clerk at the station of despatch had made an undercharge. (2) A sum of Rs. 24 for reweighing the three consignments at the station of destination at the rate of Rs. 8 per consignment. (3) A sum of Rs. 5 realized, from the plaintiff for demurrage in respect of one consignment. (4) A sum of Rs. 4 spent by the plaintiff in giving notice to the defendants. (5) A sum of Rs. 40-11-0 for interest by way of damages. The facts of the case may briefly be stated as follows:

Three consignments of iron rails were despatched by an agent of the plaintiff on three different dates from Panton Bunder on the B.P.T. Railway to Bellanganj, Agra, on the G.I.P. Railway. The first one was despatched on 27th March 1934 under R./R. No. 7520/76 (invoice No. 5), the second on 9th April 1934 under R./R. No. 7521/89 (invoice No. 1), and the third on 12th April 1934 under R./R. No. 7520/16 (invoice No. 2). It is to be noted that in two of these receipts the goods were described as old iron rails condemned, while in the third they were described only as old iron rails. It appears further from the receipt relating to the third consignment that it contained a small lot of old iron scrap. In each case the

rate charged by the Railway Company was Rs. 0-9-4 per maund. In the receipt relating to the second consignment the rate was described as C/O rate. In the receipt relating to the third consignment it was described as a special rate. In the third receipt relating to the first consignment it was described as a special C/O rate. One of these receipts relating to the third consignment bears an endorsement to the effect that the special rate was being charged in accordance with the Chief Traffic Manager's letter No. R.C.T./1007, dated 7th March 1934. The receipt relating to the first consignment also bears an endorsement to the effect that the rate mentioned therein was being charged under instructions from higher authorities. The third receipt relating to the first consignment also bears an endorsement which is however unintelligible. There are also two forwarding notes on the record relating to the second and the third consignments and from these notes also it appears that the goods were described as loose old iron rails condemned and were charged at a special C/O rate. When these consignments reached their destination the Railway Authorities of that place charged a rate of Rs. 0-10-4 per maund on each consignment and eventually compelled the plaintiff to pay Rupees 64-7-0 in respect of the first consignment, Rs. 62.2-0 in respect of the second consignment and Rs. 59.12.0 in respect of the third consignment over and above the amount which he had to pay in accordance with the rate mentioned in the R/Rs. It appears that each consignment was also re-weighed, presumably for the purpose of determining the exact amount of undercharge to be realized from the plaintiff and the Railway Company charged Rs. 8 per consignment on that account. They further charged a sum of Rs. 5 as demurrage in respect of the third consignment. The plaintiff paid these amounts under protest, and after giving a notice to both the defendant companies instituted the suit out of which the present application arises.

2. With reference to one of the pleas taken by the defendants it is important to note that the notice given by the plaintiff is dated 4th October 1934. The case put for-ward by the plaintiff in his plaint is that the defendant companies were not entitled to alter the basis of the contract between the parties by charging a higher rate than that mentioned in the R/Rs. He has further laid considerable stress on the fact that he had made definite enquiries from the defendants as to the rate applicable to old iron rails condemned and upon being given a definite assurance by them that it was Rs. 0-9-4 per maund he had acted upon that assurance and had consequently despatched the three consignments upon that basis. He has specifically alleged in his plaint that if the higher rate of Rs. 0-10-4 had been quoted by the defendants he would never have despatched the goods at all and would either have sent them at Bombay or would have despatched them at a cheaper rate from another station on the B.B. & C.I. Railway. He therefore contends that the defendants offered him a special rate and as he accepted that offer and consigned his goods on that basis they were not entitled to alter that rate into a higher one at the station of destination. The substance of the defence taken by the defendant companies is that the goods were wrongly treated at the station of despatch as iron scrap and consequently the station to

station rate of Rs. 0-9-4 was wrongly charged thereon and under the rules mentioned in the Railway Tariff and under condition 6, printed on the back of the R/Rs, the defendant companies were entitled to re-classify the goods at the station of destination and to charge the C/O schedule rate of Rs. 0-10-4 per maund which was correctly applicable to them. They further plead that the plaintiff's claim is barred by limitation in so far as it relates to the first consignment because the notice given by the plaintiff in respect of that consignment as required by Section 77, Railways Act, was beyond the period of six months fixed therein. As regards the re-weighment charges made by them the defendants concede that they were entitled only to Rs. 4 per consignment and have offered to refund a sum of Rs. 8 in respect of the two consignments regarding which the plaintiff's claim is within limitation. They have further offered to refund the sum of Rs. 5 which they charged for demurrage in respect of the third consignment.

3. The learned Small Cause Court Judge has accepted the defendants' plea of limitation in respect of the first consignment and has also held that the correct rate chargeable on the goods in question was the C/O schedule rate of Rs. 0-10-4 per maund and having regard to condition No. 6 on the back of the R/Rs which incorporates a term of agreement between the parties the defendants were entitled to re-calculate the rate and to charge the correct rate. On the question of limitation he has relied upon two decisions of this Court, one is the case in *Dr. Moti Lal Vs. Agent, O.R. Railway and Others*, and the other in *Badri Prasad v. G.I.P. Ry.* AIR (1925) All. 617. On the other question of the defendants' right to re-classify the rate mentioned in the R/Rs and to charge a higher rate he has relied on the case in *Secy. Of State v. Makundi Lal* (1926) 24 A.L.J. 393. Upon these findings he has dismissed the plaintiff's suit except in respect of a sum of Rs. 13 which is made up of Rs. 8 on account of re-weighment charges in respect of two consignments and Rs. 5 on account of demurrage in respect of the third consignment which the defendants offered to refund. He has however failed to apply his mind at all to the principal question raised by the plaintiff in his plaint that the rate mentioned in the R/Rs was quoted by the defendants upon his inquiry and as he had acted upon that assurance and had consigned the goods on that basis the defendants were not entitled to alter that rate to his disadvantage. Hence the present application in revision.

4. The first point urged on behalf of the applicant is that the goods in question fell within the definition of "iron or steel scrap S/21" and consequently the correct rate chargeable thereon was the station to station rate of Rs. 0-9-4 as laid down on p. 24 of the Goods Tariff, Part I-B, at item No. 143. It is urged that under Rule 63-AA (iii) it is incumbent on the Railway Company to charge a station to station rate in the first instance if such a rate is prescribed for a particular class of goods and as a station to station rate has been prescribed for "iron or steel scrap S/21"; as mentioned above the defendants in this case were not entitled to charge any other rate. This argument is however unsound because the first premise on which it is based has not been established. The goods in question were, as stated above, described in the R/Rs and the

forwarding notes as old iron rails condemned and not as iron or steel scrap. It is further to be noted that goods falling within the definition "iron or steel scrap" to be chargeable at the station to station rate must; also fulfil another condition which is indicated by "S/21" which is explained in Ch. 8 of the Goods Tariff, Part I-A, as follows : "The term "scrap" applies to scraps or pieces of metal having value for remelting purposes only."

5. There is nothing to show that the goods despatched by the plaintiff fulfilled this condition so as to be chargeable at the station to station rate of Rs. 0-9-4 per maund mentioned at item No. 143 on p. 24 of the Goods Tariff, Part I-B. The learned Counsel for the plaintiff laid some stress in this connexion on an entry to be found on p. 284 of the Goods Tariff, Part I-A No. 10 against "rails" comprised within "iron or steel, Division B." It appears that a class rate indicated by the figure 2 is laid down in this entry as the rate applicable to rails with a note which runs as follows:

This rate applies to steel rails sold by G.I.P. Railway as condemned material in local booking except when they are in lengths of not more than six feet; in which case rates as for iron or steel scrap will apply.

6. It was urged that the goods in question consisted of iron rails in lengths of not more than six feet and hence it was contended that the rate prescribed for iron or steel scrap was applicable to them. This argument has to be rejected for several reasons. In the first place there is nothing to show that the goods in question consisted of steel rails sold by G.I.P. Railway as condemned material. There is no allegation to that effect in the plaint, nor is there anything in the plaintiff's own deposition to show that the goods in question were steel rails sold by G.I.P. Railway as condemned material. Again there is no adequate foundation for the allegation that the goods in question consisted of rails not more than six feet in length. There is no such allegation either in the plaint or in the plaintiff's examination-in-chief. The learned Counsel relied only upon a statement made by the plaintiff in his cross-examination. That is however a very inadequate basis for holding that the goods in question consisted, of rails not more than six feet in length. Lastly the note upon which the learned Counsel for the applicant relies comes into operation only when class rate 2 is to be applied to iron rails. The plain meaning of the note is that class rate 2 shall be applied to iron rails only if they happen to be steel rails sold by G.I.P. Railway as condemned material in local booking. The general rule as to the rate applicable to iron rails is to be found in Ch. 6 of the Goods Tariff, Part I-A, No. 10 on p. 106. From the relevant entry on that page it would appear that the C/O schedule rate is applicable to all goods falling within "iron and steel Division B" including rails. On a reference being made to p. 284 of the same Tariff it would appear that rails are included within "iron or steel Division B." It is also important to note here that according to the entry on p. 106 the C/O schedule rate is also applicable to "iron or steel scrap S/21." The same rate is shown against iron or steel scrap S/21 on p. 285 of the same Tariff. If the plaintiff had succeeded in proving that the goods in

question fell within the definition of iron or steel scrap it would perhaps have been open to him to argue that in spite of the fact that the schedule rate C/O is mentioned as the rate applicable to iron or steel scrap on pages 106 and 285 of the Goods Tariff, Part I-A No. 10, still the Company was bound under Rule 63 AA (iii) to charge the station to station rate because such a rate was provided for by Goods Tariff, Part I-B, page 24, item 143. We find however that there is nothing to show that the goods in question were anything but old iron rails condemned which cannot be presumed to be identical with iron or steel scrap. There is consequently no real foundation for the argument advanced on behalf of the applicant and it must be held that the correct rate applicable to the goods in question was the C/O schedule rate of Rs. 0-10-4 per maund which was actually charged by the defendants at the station of destination. The plaintiff cannot therefore succeed upon the ground that in making the excess charge from him the defendants had applied a wrong rate.

7. It is contended however that in the present case the defendants made a definite offer of a particular rate to the plaintiff who accepted the same and despatched the goods in question upon that basis so that the defendants are not entitled to alter that rate to his disadvantage. On behalf of the defendant it is argued that in accordance with condition No. 6 printed on the back of the R/Rs they were entitled to re-classify the goods and to re-calculate the rates and to recover the undercharge from the plaintiff. The condition in the R/Rs upon which the defendants rely runs as follows:

That the railway have the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminals and other charges at the place of destination and of collecting before goods are delivered any amount that may have been omitted or undercharged.

8. It has been held in several cases decided by this Court; that this condition authorizes the Railway Company to re-classify any goods which have been wrongly classified at the station of despatch and to re-calculate the rate applicable to the goods on re-classification and to recover the under-charge, if any, from the consignor. It is unnecessary to refer to those cases because there is no contest upon that point in the present case. The question however remains whether the charge made by the defendants in the present case was the result of a re-classification of goods and a re-calculation of the rate applicable upon such re-classification. In view of the facts stated above, the answer must be in the negative. It is evident from the R/Rs and the forwarding notes that the goods in question were correctly described as old iron rails condemned. There was consequently no mistake in the classification of the goods. Again, it is clear from the R/Rs that the booking clerk who accepted the goods for despatch was under no delusion that the rate applicable to them was the station to station rate applicable to iron or steel scrap. It is clearly mentioned in the receipts that the rate applicable was the C/O schedule rate, but the figure of Rs. 0-9-4 was put down as a special rate in accordance with the instructions given by the Chief

Traffic Manager in some letter sent by him to the Railway Authorities. It cannot therefore be said that a wrong rate was applied to the goods in question at the station of despatch so as to entitle the defendants at the station of destination to re-classify the rate. The fixing of the rate in the R/Rs at Rs. 0-9-4 per maund was not the result either of a wrong classification of goods or of any mistake on the part of the booking clerk. It was only due to a compliance on his part with certain instructions issued by the Chief Traffic Manager. Condition No. 6 printed on the back of R/Rs upon which the defendants rely has therefore no application to the circumstances of the present case. The real question is whether the defendants were entitled to alter the rate mentioned in the R/Rs even though it was not the result of any wrong classification of goods or of any mistake on the part of the booking clerk but had been fixed in accordance with certain instructions issued by the Chief Traffic Manager.

9. It may be mentioned here that the plaintiff made several applications in the Court below asking the defendants to produce the Traffic Manager's letter No. R.C. T/1007 dated 7th March 1934 which had been specifically referred to in an endorsement on the back of one of the R/Rs and which furnished the authority for the fixing of the rate at Rs. 0-9-4 per maund but the defendants failed to produce it and evasively alleged that it was not traceable. The plaintiff has stated on oath that he made enquiries from the defendants as well as the B.B. & C.I. Railway Company with the result that the defendants quoted the rate mentioned in the R/Rs which was slightly lower than that quoted by the B.B. & C.I. Railway and it was in consequence of this low offer being made to him that he despatched the goods in question. There seems to be no reason to disbelieve him on this point and the fact that he made enquiries from the defendants is further established by the circumstance that the Chief Traffic Manager addressed a letter No. R.C. T/1007 to the authorities at the despatching station directing them to charge the rate of Rs. 0-9-4 per maund. It cannot be denied that the Chief Traffic Manager was authorized to offer a special rate within the limits prescribed by the rules framed by the Railway Board to any consumer, and the obvious inference is that he did so in the present case. The Traffic Manager, acting within the scope of his authority, made a special offer and the plaintiff accepting that offer proceeded upon that basis to despatch the goods in question. The question for consideration therefore is whether in these circumstances it was open to the defendants to alter the special rate offered by the Traffic Manager and accepted by the plaintiff who was led to alter his position in consequence of that offer. I have no hesitation in holding that the answer must be in the negative. In Civil Revn. No. 298 of 1938 I held that under condition No. 6 printed on the back of the R/Rs the Railway Company was authorized to charge a higher rate than that mentioned in the receipt where the latter rate was the result of a bona fide mistake on the part of the booking clerk and there was nothing in the case to suggest that the consignor had made any enquiries and had received any assurance which had led him to alter his position to his disadvantage. I expressed my view in the following terms:

Ordinarily the basis of a contract between the consignor and the Railway Company is the fact that there is a fixed tariff and the consignor is not liable to pay anything more than the rate prescribed in the tariff. It is true that it cannot be presumed that the consignor has knowledge of the rates mentioned in the tariff, but I think it must be presumed that every consignor knows that there is a tariff and that he would be charged at the proper rate mentioned therein. In some cases the consignor might prove that he made definite inquiries from the company and upon being given a definite rate by the company consigned his goods upon that assurance and thus altered his position to his disadvantage. In such cases there is an element of estoppel and the company might well be refused the right to charge a higher rate upon re-calculation on the ground that its agent made a certain representation within the scope of his authority and that representation had the effect of causing an alteration in the consignor's position to his disadvantage. It may be possible for the consignor in such cases to prove that he would not have consigned the goods at all if a higher rate had been quoted.

10. I adhere to that view and I think the present case provides a clear instance of the class of cases which I had then in mind. In the present case I may add that the offer of a special rate by the Traffic Manager and its acceptance by the plaintiff constituted a special contract which abrogated the general condition No. 6 printed on the back of the R/Rs and the defendants had no authority to go behind that special contract. I therefore hold that the plaintiff's claim must succeed unless any portion of it is barred by limitation as pleaded by the defendants. The plea of limitation raised by the defendants is limited to the amount which the plaintiff seeks to recover in respect of the first consignment; which was despatched on 27th March 1934. The contention is that the notice u/s 77, Railways Act, relating to the overcharge in respect of that consignment must have been given by the plaintiff within six months of 27th March 1934, that is, the date on which the consignment was delivered to the railway for being carried to its destination. Section 77, Railways Act, runs as follows:

A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

11. The language of the Section is perfectly plain and clearly supports the defendants' contention which must consequently prevail. The argument on behalf of the applicant is that no cause of action arose to the applicant until the excess charge was recovered from him and it is further contended that the "overcharge" referred to in the Section must be taken to mean overcharge at the despatching station so that the applicant's claim which relates to an overcharge at the station of destination cannot be governed by the Section. The language of

the Section taken in its plain meaning clearly repels the applicant's contention. The Section is not concerned with the accrual of the cause of action to the claimant and there can be no justification for introducing into the Section certain words after "overcharge" so as to limit it to an over, charge made at the despatching station. The same conclusion was arrived at in the two cases of this Court referred to above which have been relied upon by the learned Small Cause Court Judge. I therefore reject the applicant's contention and hold that his claim is barred by time so far as it relates to the first consignment. The plaintiff is, however, entitled to recover the two amounts which were realized from him in respect of the other two consignments and also the re-weighment charges made in respect of those consignments. It was alleged on behalf of the defendants that the re-weighment of the consignments was made at the plaintiff's own request, but there is no evidence to support that allegation and it is evident that the question of re-weighment arose only in consequence of the illegal claim made by the defendants. One more point was raised on behalf of the defendants in the course of the argument and that is that no decree can be passed against the G. I. P. Railway because there was no contract between that railway and the plaintiff. In support of this contention reliance was placed on a Full Bench decision of this Court in *Chunni Lal v. The Nizam's Guaranteed State Ry.* (1907) 29 All. 228 in which it was held:

When a railway company receives and undertakes to carry goods from a station on its railway to a place on another distinct railway with which it communicates this is evidence of contract with the receiving company for the whole distance and the other railway company will be regarded as its agent and not as contracting with the bailor.

12. The contention is obviously well founded and the learned Counsel for the plaintiff-applicant conceded that it must prevail. The result therefore is that I allow this application and setting aside the decree passed by the learned Small Cause Court Judge decree the plaintiff's suit for (1) Rs. 62.2-0 in respect of the second consign. merit, plus Rs. 8 for re-weighment charges in respect: of the same consignment; (2) Rs. 59.12.0 in respect of the third consignment, plus Rs. 8 for re-weighment charges and Rs. 5 for demurrage in respect of the same consignment; (3) Rs. 4 for the costs of the notices given by the plaintiff and (4) interest on the whole of the amount mentioned above at the rate of 6 per cent, per annum from the date of the institution of the suit up till the date of realization. The plaintiff shall also get the proportionate costs of both the Courts. The decree is passed only against defendant 1, the B.P.T. Railway.