
(1974) 01 AHC CK 0018
In the Allahabad High Court
Case No : Second Appeal No. 548 of 1969

Firm Naraindas Pitamchand	Vs	APPELLANT
Firm Shanker Lal Mohandas and Others		RESPONDENT

Date of Decision : 18-01-1974

Acts Referred:

Railways Act, 1890 — Section 77(2)

Citation : AIR 1974 All 255

Hon'ble Judges : A. Banerji, J

Bench : Single Bench

Advocate : Vishnu Kumar Gupta, for the Appellant; Gur Pratap Singh, G.P. Bhargava and A.N. Bhargava, for the Respondent

Final Decision : Allowed

Judgement

A. Banerji, J.—This is plaintiff's appeal in which he has prayed for a decree in the further sum of Rs. 3,301.16 P. against the Union of India respondent No. 5.

2. The plaintiff had filed a suit for the recovery of Rs. 6,920.19 P. against the defendants. Defendants first set were consignors and they are residents of Aligarh, whereas defendant second set was the Union of India which owns the railways. A consignment of maize was despatched from Nizamabad Railway station in Andhra Pradesh on the 19th September, 1964. This consignment reached Aligarh at the destination station on 3rd of October, 1964. The consignee after inspecting the goods was of the opinion that the goods had deteriorated and were damaged and asked for, an open delivery. The railways had asked that before any assessment of damage was done, the consignee better take book delivery and that was done. On the 10th of October, 1964 an officer of the railways expressed his inability to make the assessment as the damages were beyond his power and the assessment could only be made by the Assistant Commercial Superintendent, Allahabad who would be asked to come and do it. Plaintiff thereafter says that nothing was done in the matter and the assessment of the damage was not done. The delivery of the goods was not taken till the

12th of July, 1965, when it was so done under the order of the court, in the meantime, the plaintiff had filed a suit against the two sets of the defendants and had claimed damages.

3. The defence of the defendants first set was that the goods sent by them were of a good quality and not defective or damaged. The Union of India had also denied their liability for any loss, deterioration, damage or destruction. The railways had taken the plea that the claim against them was barred u/s 77(2) of the Railways Act. The trial Court by its judgment decreed the suit of the plaintiff for their recovery of Rs. 3,587.42 P. against the defendants first party with proportionate costs and dismissed the suit against the Union of India, with costs.

4. That against the above decision, two appeals were filed, one by the plaintiff -- Appeal No. 490 of 1966, and the other Appeal No. 464 of 1966 was filed by the defendant first set, the consignor. By its judgment the Lower Appellate Court allowed both the appeals and set aside the decree passed by the trial Court and instead decreed the plaintiff's suit for the recovery of Rs. 3,587.42 P. along with pendente lite and future interest at 6% p. a. with proportionate costs in both the courts, against the Union of India. The suit was dismissed against the defendants first set who were, however, directed to bear their own costs in both the courts.

5. Against the above decision the Union of India has not filed any appeal in this Court. The appeal has been filed by the plaintiff claiming damages for the goods which admittedly were lost. No cross-objection has, however, been filed by the respondent, the Union of India. Learned Counsel for the appellant urged two points. Firstly, the railways were responsible as a bailee for the consignment of goods and a duty was cast on it as to how the goods were dealt with, not only for the period of transit but for a period of 30 days subsequent to the reaching of the consignment at the destination station. Admittedly there is no evidence on the record to show that no loss occurred within the period of 30 days after the consignment had reached the destination station.

6. Learned Counsel for the respondents on the other hand urged that the Railways were protected u/s 77 (2) of the Railways Act and where a consignment is not taken delivery of within 30 days, the Railways are completely absolved from all losses accrued thereon. The short question, therefore, for the consideration of this court is about the ambit of Section 77 of the Railways Act.

7. Section 77 (1) and (2) of the Railways Act reads as follows:--

"Railway Administration shall be responsible as a Bailee under Sections 151 152 and 161 of the Indian Contract Act, 1872 (IX of 1872) for the loss, destruction, damage, deterioration or non-delivery of goods carried by the railways within a period of 30 days after the termination of transit;

Provided where the goods are carried at the owners risk rate, the Railway Administration shall not be responsible for such loss, destruction, damage, deterioration or nondelivery except on proof of negligence or misconduct on the

part of the Railway Administration or on any of its servants.

(2) The Railway Administration shall not be responsible in any case for the loss, destruction, damage, deterioration or nondelivery of goods carried by the railways arising after the expiry of the period of 30 days after the termination of transit."

8. Sub-section (1) of Section 77 of the Railways Act, therefore, makes it incumbent on the Railway Administration to deal with the goods put in its care as a bailee is bound to take. Section 151 of the Contract Act specifies that in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. It would, therefore, be clear that the Railway Administration has to take the same amount of care for the goods as a man of ordinary prudence not only during the period of transit of the goods from the station of origin to the station of destination, but for a period of 30 days after the termination of the transit. The nature of the care that has to be taken during the period of transit has also to be taken during the period of 30 days after the termination of the transit. It, therefore, becomes further clear that the railway administration is wholly responsible for the consignment for the period of 30 days after the goods had reached the destination station as also during the period of transit. In case, there is a loss, destruction, damage or deterioration of goods during this period of 30 days, railway administration is equally liable for the same.

9. Sub-section (2) of Section 77 of the Railways Act specifies that the railway administration shall not be responsible for any such loss, destruction, damage, deterioration or non delivery of the goods after a period of 30 days from the termination of the transit. It is, therefore, apparent that the protection of the railways u/s 77 (2) can only arise in a case where loss occurs after the expiry of the period of 30 days. Therefore, where the goods are lost, or damaged or deteriorate after a period of 30 days from the date of the termination of the transit, the railways can take a plea successfully that they are not liable under the law. But if the loss takes place within the period of 30 days, the provisions of Section 77 (2) of the Act will have no application and the railway administration will be liable for the same.

10. In this case the plaintiff came with the case that the loss, damage, and deterioration etc. had taken place while the goods were with the railways. Once this plea is taken it is for the railways to explain as to how they dealt with the goods in their charge not only during the period of transit, but for the subsequent period of 30 days after the goods have reached the destination station. In this case, there is no evidence to show that the goods remained intact during the full period of 30 days after the goods have reached the destination station. The burden was on the railways to show that no loss, destruction, deterioration etc. had taken place not only during the period of transit but also in the subsequent period of thirty days, after the goods had reached the destination

station. In my opinion, therefore, the railway administration cannot successfully plead in defence the bar of Section 77 (2) of the Railways Act.

11. It has been established that on the 10th October, 1964, the railway had itself agreed for a further inspection of the consignment by a superior officer, as the extent of damages was beyond the power of assessment of the officer concerned. This by itself was an indication of the fact that the goods were damaged or lost in transit and/or within a week of its arrival at Aligarh. It has further come in evidence that the Railways gave notice u/s 56 of the Act for the removal of the goods within 15 days failing which it was to be sold away. This notice is dated the 15th October, 1964, and its period expired on 30th October, 1964. Even then the railways were not absolved of its liability, for the period of 30 days had not expired by then. The period of 30 days expired on the 2nd November, 1964. The Railways had to show that the goods were intact till then. There is evidence on the record to show that the goods were removed by the railways from where it was lying to a wagon and kept there, about 20 to 25 days after its arrival at Aligarh. This evidence shows that the railways had themselves moved the goods within the period of 30 days of the arrival of the goods at the destination station. It was the duty of the Railways to have shown that at that time no part of the goods disappeared or were lost or were damaged.

12. Demurrage is charged by the Railways if the goods are kept with the railways after the expiry of the free time. The charging of demurrage also makes the railways liable to take care of the goods. The only provision which protects the railways from loss is Section 77 (2) of the Act provided the loss takes place after the period of 30 days of the termination of the transit. In this case the railways have failed to show that the loss did not take place within the period of 30 days of the termination of the transit, and also failed to establish that the loss took place after the said period of 30 days. In these circumstances the liability of the railways remained intact and it has to be held that the goods disappeared or were lost during this period of 30 days. The result would be that the railway administration will be liable for the entire loss suffered by the consignee.

13. There is no dispute about the extent of loss that is Rs. 3,301.16 P. In view of what has been stated above, I am of the opinion that the plaintiff was also entitled to this amount of Rs. 3,301.16 P. The Court below ought to have decreed the suit for this amount as well.

14. No other point was urged.

15. In the result, therefore, the appeal succeeds and is allowed. The decree passed by the Court below is modified. Plaintiff's suit will now stand decreed for a sum of Rs. 6,888.58 P. along with pendente lite and future interest @ 6% per annum, with costs in both the courts against the defendants second party. Pendente lite interest shall commence from 20th February, 1965, the date on which the defendants second party shall be deemed to have been impleaded in the suit. The plaintiff appellant will also be entitled to his costs of this appeal.