

(1929) 10 AHC CK 0016
In the Allahabad High Court

G.I.P. Ry. Co. and Others

APPELLANT

Vs

Jugul kishore-Mukat Lal

RESPONDENT

Date of Decision : 24-10-1929

Acts Referred:

Citation : (1929) 10 AHC CK 0016

Final Decision : Partly Allowed

Judgement

1. This is an appeal by the railway companies from a decree in a suit brought to recover damages on account of the fall in the price of the goods as a result of an unreasonable delay in delivery. Bales of cotton under two separate consignments were despatched by the plaintiff from Khurja City for Cotton Depot at Bombay on 1st December 1923. One consignment reached Bombay in time and there is no complaint about it. The second consignment was to be sent to Bombay via Jumna Bridge (Agra). The consignment passed Jumna Bridge and reached Jhansi on 7th December 1923 but at that station owing to a mistake by one of the servants of the G.I.P. Ry. instead of being forwarded to Bombay it was sent to Collectorganj, Cawnpore. It remained there for a long time till the mistake was discovered and was ultimately sent to Bombay where it arrived in two lots, the bulk arriving in Bombay on 25th February 1924 and four bales arriving on 24th March 1924. The delivery was taken by the plaintiff of these bales within two or three days of their arrivals. The plaintiff claimed that there was a fall in the price of cotton which resulted in a loss to him and he claimed damages as well as interest on account of such loss alleging that the loss was due to the wilful neglect and negligence of the company's servants.

2. The defendant companies pleaded that there was no wilful negligence on their part and also urged that they were protected under the special contract entered into between the parties in the form of risk-note B. It was further asserted that the whole transaction had resulted in a net profit to the plaintiff and he was not entitled to get any damages. The claim for interest was also contested.

3. The learned Subordinate Judge has decreed the claim for damages holding

that the consignment in the ordinary course should have arrived at Bombay on 20th December 1923 and that there was an unreasonable delay on account of the negligence of the G.I.P. Ry. Company's servants. He has further held that the prevailing market rate about the time when the goods arrived at Bombay was Rs. 480 per candy, i.e., two bales. He has therefore given the plaintiff a decree for the difference in the value of the goods calculated at the rate prevailing on the date when the goods ought to have been delivered and the rate that prevailed when the goods actually arrived at Bombay. In addition to the amount he has given to the plaintiff interest in the amount of damages from 20th December 1923 till the 24th November 1924, the date of the institution of the suit.

4. Several points have been urged in appeal before us. The first question is whether the railway company was protected under the special contract as contained in risk-note form B. The plaintiff despatched the consignment at a special reduced rate and agreed in writing that the said goods may be carried in transit, from Khurja City via Jumna Bridge to Cotton Depot, harmless and free from all responsibility for any loss, destruction or deterioration of or damage to the said consignment from any cause whatever except for the loss of a complete consignment or of one or more packages forming part of a consignment due to wilful neglect of or theft by the servants of the companies. In this case the loss caused to the plaintiff is on account of the difference in the prevailing market prices between the date when the consignment should have arrived and the date when it actually arrived. It is not suggested that there was any inherent deterioration in the quality of cotton but on the findings of the Court below it cannot be disputed that there was a depreciation in the value of the goods on account of the fall in the price.

5. The first question for consideration before us is whether the word "deterioration" in the risk-note is wide enough to cover depreciation in value on account of the fall in the market price. On this point the authorities are to some extent conflicting. It has been definitely laid down by the Lahore High Court in the case of *E.I. Ry. Co. Ltd. v. Diana Mal Gulab Singh* AIR 1925 Lah. 255 that a fall in the market value is not contemplated by the use of the word "deterioration" in such note. On the other hand the case of *Madras Railway Co. v. Govinda Rau* [1898] 21 Mad. 172 is some authority for the view that the scope of the word "deterioration" is wide enough to include such a case. Recently there has been a pronouncement by Mukherji, J., in *Chandrika Rai Vs. Srikant Rai*, that the word "deterioration" does include a loss in the value of the goods consigned owing to a delay in delivery. It has been supposed by the Judicial Commissioners' Court at Nagpur in several cases *B.N. Ry. Co. v. Dillu* AIR 1925 Nag. 350 that the authority for holding that the word "deterioration" does not imply a depreciation in value is to be found in the case of *E I. Ry. Co. v. Gopi Krishna Kashi Prasad* AIR 1124 All. 8. In that case, however, the decision was not that the plaintiff should get a decree for the fall in the price of the article but it was held that the delay in delivery was so long that the article had become unserviceable and the plaintiff should be given a decree for its total value with

interest, and the goods should remain with the defendant company to be disposed of by them. That case is therefore not a direct authority on this point.

6. That the word "deterioration" can connote the idea of a depreciation in value is borne out by the use of that expression in the judgments delivered in *Wilson v. Lancs, and Yorks. Ry. Co.* [1861] 30 L.J.C.P. 2 which have been referred to by the learned Judges in the Madras case quoted above. In Murray's dictionary as well as in Webster's dictionary the word "deterioration" is taken to be wide enough to mean "become lower or impaired in quality or value."

7. An additional reason for holding that the word "deterioration" covers the idea of depreciation in value will appear from the following circumstances: Section 72, Railways Act, Sub-clause 3, lays down that nothing in the common law in England or in the Carriers Act regarding the responsibility of common carriers shall affect the responsibility of a railway administration and Sub-clause 1 provides that the responsibility for the loss, destruction or deterioration of animals or goods delivered to the railway administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under Sections 151, 152 and 161, Contract Act, 1872 and Sub-clause 2 provides that an agreement purporting to limit that responsibility shall be in writing and on an approved form. Now Section 161, Contract Act, lays down that if by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. It is clear to us that the meaning of the word "deterioration" in Section 161 which imposes the liability on the railway company must be the same as in risk-note form B which lays down the special conditions under which the railway company is protected. In both these, "deterioration" resulting from a delay in tendering the goods is contemplated. Our attention has not been drawn to any case of this Court which has directly laid down a contrary opinion. We therefore accept the view expressed by Mukerji, J., in the unreported case and hold that the word "deterioration" is wide enough to include depreciation in "value on account of a fall in the price of the goods."

8. It follows therefore that if the railway companies have carried out their contract they would be protected from all liability because of the special contract entered into between the parties.

9. But the next point urged on behalf of the plaintiff is that the contract between the parties contemplated that the goods should be transmitted across the ordinary route within a reasonable time and that when the railway company's servants owing to a mistake or negligence diverted the goods from Jhansi to Cawnpore the route was changed and the contract was not carried out. It is quite clear that the entire delay occurred because the goods were wrongly sent from Jhansi to Cawnpore and the plaintiff would not have suffered any loss but for this diversion of the route. The question which we have to consider is whether this circumstance deprived the railway company of the protection to which they were entitled under the risk-note form B. On this question of law the preponderance of

authority is undoubtedly in favour of the plaintiff. The Court of appeal in the case of Neilson v. London and North Western Railway Co. [1922] 1 K.B.D. 192 laid down that if the goods were taken across a different route and loss was incurred by the consignor, the carrier was responsible. That principle was applied by the Bombay High Court in the case of Vali Mahomed Hamad v. Agent, G.I.P. Ry. Co. AIR 1922 Bom. 74 to the case of the diversion of route by a railway company. After this case the House of Lords affirmed the opinion of the Court of appeal L.R. (1922) 2 A.C. 263 in the case mentioned above and their Lordships unanimously accepted the view that:

where the contract is to relieve the company from all liability for loss, damage, misconveyance, misdelivery, delay or detention of or to such goods (during any portion of transit or whilst left in the company's possession to be stored whether the subject of a charge or otherwise) the exemption is only from liability during the transit and when once the goods are diverted from that route the protection ends.

10. It was also remarked by their Lordships that:

where a carrier seeks to protect himself from liability for the negligence of his servants by exemptions of this far reaching character he must do so in clear and unambiguous language, language which will convey to persons of ordinary understanding that he is reserving to himself a freedom from liability, save in the particular cases indicated, for anything that may happen to the goods entrusted to him to be carried to any named destination whether the route be or be not indicated.

11. This case has been discussed at considerable length in a well considered judgment by Boys, J., in the case of Janki Das Gobind Ram Vs. Secretary of State and Another in which passages from the various judgments have been quoted in extenso. It is therefore not necessary for us to repeat what has already been quoted and reported. Since then the Bombay High Court in the case of Laxminarayan Bijeram Vs. G.I.P. Railway Co., and the Lahore High Court in the case of Secy. of State v. Dyal Mal Gujar Mal AIR 1928 Lah. 899 have followed the same rule and held that the change from the ordinary route puts an end to the protection given by the risk note.

12. The language employed in the risk note form B is certainly not so clear as to inform the consignor that any loss incurred by him on account of delay that may be caused by sending the goods along a wrong route would not make the company at all liable. If the idea was to exempt the company from responsibility even in such a case it should have been expressed in clear and unambiguous language. The party which claims exemption from statutory liability on the basis of a special contract must satisfy the Court that the language on which the claim is based is free from all ambiguity and clearly gives the protection.

13. In view of the preponderance of authority in favour of the plaintiff we must hold that protection ceased to be operative as soon as the goods were taken out

of their ordinary route.

14. The next point urged on behalf of the railway companies was that there was no clear finding and at any rate there was no satisfactory evidence to show the actual market rate after the 27th December 1923. The evidence on this point was all one-sided. Jamna Das Ram Das, a witness, proved that on 19th February 1924 the rate was Rs. 480, per candy and he was able to show an entry in his sauda book for that date. He also stated that he himself sold Dhuri cotton which is similar to Khurja cotton at Rs. 480 per candy on 4th March 1924. Although the witness Kishan Lal was not able to show any entries in his account books after the 27th December 1923 showing the rate at which goods were sold or purchased by him he did state that the rate between the 19th February 1924 and 24th February 1924 was between Rs. 475 and 480 per candy. He further stated that there was no variation in the market rate of Khurja cotton between the 18th March and 31st March 1924 and that the market was steady at Rs. 470 per candy. Another witness Dayaji also said that on 10th March 1924 the rate of Khurja cotton was Rs. 465 per candy. The evidence was all one-sided and the railway company did not attempt to produce any evidence to the contrary. The learned Subordinate Judge on a consideration of the evidence came to the conclusion that Rs. 480 should be accepted as the prevailing market rate between February and March 1924. We see no reason to interfere with that finding.

15. The other findings that in the ordinary course the maximum period during which the goods ought to have been delivered was 20 days and that on 20th December 1923 the market rate was Rs. 588 per candy have not been challenged before us. The amount of damage accepted by the Court below representing the difference between the market value on the date when the goods ought to have been delivered and the dates when they arrived at Bombay is therefore correct. We agree with the Court below that the plaintiff cannot be called upon to give credit for any profit that he might have made subsequent to the taking of the delivery of the goods, by postponing their sale and speculating on the market. Had he suffered any further loss he could not have made the company liable for it. *Jamal v. Moolla Dawood Sans and Co.* AIR 1915 P.C. 48.

16. The next point on behalf of the company is that the learned Subordinate Judge has wrongly allowed interest on the amount of ascertained damages. It seems to us that this contention is partly correct. When the learned Judge gave the plaintiff a decree for the difference between the market price on 20th December 1923 and the price in February 1924 he should not have given a decree for interest on this amount. The difference in the prices represents the full amount of compensation to which the plaintiff is entitled u/s 73, Contract Act. But the interest on the amount so assessed from 24th March 1924 till the date of the institution of the suit represents the further loss suffered by the plaintiff on account of the delay in the payment of the amount due to him and it could certainly have been awarded to him as compensation calculated on the basis of

interest.

17. The last point urged on behalf of the company is that u/s 80, Railways Act the plaintiff had the option of suing either the E.I. Railway to which the goods were delivered or the G.I.P. Railway on whose railway the deterioration occurred. It seems to us that although Section 80 gives the plaintiff that option it by no means prohibits him from impleading both the companies in a suit. Indeed in many cases it may be difficult for the plaintiff to know before the institution of the suit on which line the loss actually occurred. There is therefore no good reason for holding that the plaintiff could sue only one of the two companies and not both.

18. We accordingly allow this appeal in part, modify the decree of the Court below to this extent that we disallow the amount of interest given to the plaintiff from 20th December 1923 till the 25th February 1924 and uphold the rest of the decree. The railway companies will bear their own costs and pay those of the plaintiff.