(1925) 07 AHC CK 0034

In the Allahabad High Court

Gulab Dei APPELLANT

Vs

G.I.P. Railway RESPONDENT

Date of Decision : 21-07-1925

Acts Referred:

Citation : AIR 1926 All 146 : (1926) ILR (All) 217 : 90 Ind. Cas. 99

Hon'ble Judges : Daniels, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Daniels, J.—The question raised in this revision is as to the correctness of an additional charge of Rs. 170 levied by the Great Indian Peninsula Railway from the applicant Mt. Gulab Dei on account of 315 maunds of waste paper consigned from Bombay to Agra and delivered to her at the latter place. The name of the person despatching the goods was Mangalji Ganesh. The Railway receipt was made out in his own name, hut was subsequently endorsed to the firm of Lachman Das Mul Chand. It was stated in the plaint that the plaintiff, namely, the present applicant, is the proprietor of that firm. The goods were charged at Bombay at the maund rate of 8 annas per maund applicable to waste paper under the "station-to-station rate list" given on p. 111 of the Great Indian Peninsula Railway Goods Tariff Part 1-B. The rate is given under No. 261 and the commodity is described as Paper, waste, O.R. W/300-L. The initials ''O R.'' mean owner''s risk; the words ''W/300 mean, as explained on p. 80 of the Goods Tariff, Part 1-A, that the rate applies to a minimum wagon-load of 300 maunds per 4 wheeled wagon, and a larger minimum, 450 or 600 maunds per 6-wheeled or bogie wagon. If the amount loaded in the wagon is larger than the minimum, freight is to be paid on the actual weight, ''L'' indicates that the loading was to be done by the consignor. The Railway Company put a wagon at the consignor''s disposal for loading the goods, and granted him a rail receipt showing that the waste paper was charged on the full amount of 315 maunds at the maund-rate of 8 annas. Rs. 157 at this rate was paid by the consignor in advance before the receipt was issued. On arrival at Agra the Railway claimed that owing to the goods having been loaded in an 8. wheeled bogie wagon they wore entitled under Rule 52-A to charge, not for 315 maunds actually consigned, but for a consignment of 40 tons or nearly 700 maunds at the same rate. They, therefore, demanded from the recipient the sum of Rs. 170 which is now in dispute and refused to deliver the goods until that sum was paid.

2. I am not prepared to accept the interpretation of this rule which the learned Subordinate Judge has adopted. It is quite true that the Railway Company reserve to themselves aright of re-measurement and re-calculation on the arrival of the goods at their destination, but this does not entitle them, when they have made a contract with the plaintiff to convey his goods at a particular rate on the amount of goods consigned, subsequently and without his knowledge to alter the entire basis of calculation merely because, to suit their own convenience they have used for the conveyance of the goods a much larger wagon than was actually necessary. It is perfectly clear that the consignor would never have agreed to consign the goods in this form if he had been told beforehand that he was going to be charged on considerably more than double the amount of waste paper he wished to despatch. I, therefore, find that the Railway Company were not entitled to make the additional charge which they did make in this case and that the plaintiff''s claim was well founded.

3. An objection has been taken on behalf of the respondents that in their written statement the Railway Company challenged the right of the plaintiff to sue, and that no finding has been arrived at on this point. The plea was certainly taken in the written statement, but when the case came to trial no issue was framed upon it. The sole issue which was framed was whether the plaintiff was entitled to a refund of the overcharge. Under these circumstances it must be taken that the point was not pressed at the trial.

4. For the reasons already given I allow this revision and decree the plaintiff''s suit with costs.