
(1963) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : C. Revision No. 151 of 1953

Gupta, B.S.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-12-1963

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161

Citation : (1966) JLJ 298

Hon'ble Judges : Shivdayal, J

Bench : Single Bench

Advocate : V.S. Dabir, for the Appellant; P.R. Padhye, for the Respondent

Final Decision : Dismissed

Judgement

Shivdayal, J.—The Petitioner's suit against the railway for recovery of damages has been dismissed. He has now preferred this revision.

2. Admittedly the Plaintiff's goods were consigned as a wagon load at railway risk rates. The Plaintiff's contention that since the goods were booked at the railway risk rates, the railway was bound to pay the damages because the pipes were found broken when delivery was given at the destination must be accepted.

3. Shri Padhye relies on Goods Tariff, Chapter I, Rule 31 (3); Chapter VIII, Rule 119 (6) (XVIII); Chapter VIII Classification; and Chapter IX, Section 1, item P/20. Rule 31 (3) of Chapter I lays down that the railway administration is not liable for loss of, or damage done to, any packages or their contents which may be insufficiently, improperly or incorrectly packed it is now to be seen what kind of packing is prescribed. In Rule 119 (6) (XVIII) of Chapter VIII, is explained the meaning of the abbreviation of the letter's) as indicative that the packing condition for carriage laid down in Section 1 of Chapter IX applies. Before turning to Section 1 of Chapter IX, one has to look to Chapter VIII Classification. Pipes, earthenware and stoneware are articles of classification "P/20". The packing conditions of such articles are specified in Section 1 of Chapter IX as follows:

P/20. Must be securely packed in straw or other suitable packing material in cases, casks or creates.

The trial Judge dismissed the suit on the ground that the goods were not proved to have been packed in that manner.

4. The liability of the railway administration u/s 72 of the Railway Act is that of a bailee. It is quite clear from Section 74-C that there is a distinction between the owner's risk and the railway risk, when the railway administration accepts a consignment at the railway risk rates, the liability for damage, destruction or loss is that of the railway administration without the Plaintiff being required to prove negligence or misconduct on the part of the railway. Not is it open to the railway administration to plead in defence that the picking did not conform to the rules prescribed for packing of the particular goods, or the goods were not otherwise properly packed. Before it accepts a consignment at the railway risk rates, it is its duty to satisfy itself that the packing is in order and according to the Rules. It is open to it to refuse the booking of the goods at railway risk rates if it finds that they are not packed as required by the rules. But having accepted the consignment at the railway risk rates, the railway administration cannot turn round and repudiate its liability on the ground of any defect in packing. Otherwise, there would be no meaning in making a distinction between railway risk/rates and owner's risk rates. Shri Padhye relies on Union of India (UOI) Vs. Bishwanath Agarwalla, and Sheikh Makbul Vs. Union of India (UOI) and Another, , both these cases are inapplicable here because there the goods were consigned at the owner's risk.

5. A consignment tendered for despatch is carefully examined by the railway administration and the actual commodity ought to be compared with the description entered into the consignment note. In case of defective packing, the consignor should be asked to repack them or undertake to (sic) the railway from loss due to defective packing by a declaration on the forwarding note.

6. In Ramkrishna Ramnath vs. Union of India AIR 1959 Pat 473., a Division Bench of the Bombay High Court had to consider a case of "Jarda" or country made tobacco. Two rates are provided under the railway rules, namely, under the general classification P/10 in Chapter IX of Goods Tariff at railway risk and under the general classification P/9 at the reduced rate, that is, at the owner's risk. In that case it was held that where the owner did not pay the special rate at railway risk, but elected to send the goods at his own risk, Section 74-C applied and unless the Plaintiff proved their misconduct or negligence on the part of the railway administration or of any of its servants, he was not entitled to recover any damages.

7. Sections 151, 152 and 161 of the Contract Act provide that a 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 of the goods bailed, and that in the absence of any special

contract, the bailee is not responsible for loss; destruction, or deterioration of the thing bailed, if he has taken care of it as prescribed in Section 151. Ordinarily, therefore, when Section 72 of the Railways Act applies, the responsibility of the Railway, as that of a bailee, is to show that it has taken as much care of the goods as a man of ordinary prudence would, in similar circumstances, take of his own goods of the same bulk, quality and value of the goods bailed. This general responsibility of the Railway is altered where the provisions of Sections 74-A or 74-C of the Railways act apply. Section 74-C applies when the railway provides two alternative rates for the carriage of goods and when the sender does not pay railway risk rate. In such a case, the railway administration is not responsible for any loss, destruction or deterioration of, or damage to such goods from any cause whatsoever except upon proof of negligence or misconduct on the part of the railway administration or its servants. Section 74-A absolves the railway administration from liability in case the goods tendered are in defective condition or are defectively packed or packed in a manner not in accordance with the general or special order. But there is a further condition in Section 74-A that the fact of such condition or improper packing has to be recorded by the sender or his agent in the forwarding note. If these conditions are satisfied then the railway administration is not responsible for any deterioration, leakage, wastage or damage except upon proof of negligence or misconduct on the part of the railway administration or of any of its servants. It is clear from this section that if defective condition or improper packing is not recorded in the forwarding note, the railway administration, is not exonerated of its liability and proof of negligence or misconduct is not required.

8. In *M/s Sattanmal Vishandas Vs, Union of India* AIR 1960 Rag. 121, it is held that the presumption under Sub-section (1) of Section 74-C that the goods are at owner's risk rate arises in cases only where the railway administration provides for carriage at two rates, one ordinary tariff rate, known as the railway risk rate, and the other, a special reduced rate, known as the owner's risk rate.

9. In *Bhupendra Kumar Vs. Indian Union and Others*, , it is pointed out that by executing Risk Note A it is recognised that the package is defective. It thus takes the case outside the exception in proviso (a) of Risk Note B which only operates provided the consignment is packed in accordance with the instructions laid down in the Tariff. As the proviso in Risk Note B does not operate, the railway administration is not bound to make any disclosure to the consignor as to how the consignment was dealt with throughout the time it was in its possession. In *Sheikh Mohammad v. Governor-General in Council* ILR 1953 Nag. 45, it is held that Risk Note B contemplates non-delivery due to loss of consignment by accident or fire. The initial burden to prove misconduct is on the Plaintiff, but in cases falling under the first or second proviso to Risk Note B, the railway administration is bound to disclose to the Plaintiff how the consignment was dealt with through out the time it was in its possession or control, and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct. These cases are not in point here.

10. The result of this discussion is that, in the present case, the consignment was at the railway risk. There was no forwarding note as to any defect in the packing.

11. The quantum of Damages claimed by the Plaintiff is not disputed by Shri Padhye.

12 The revision is allowed. The judgment and decree of the Small Cause Court are set aside. A decree shall be passed in favour of the Plaintiff for Rs. 162.40 nP. with costs throughout. Counsel's fee in this Court Rs. 25/-.