

(1961) 09 MP CK 0030
In the Madhya Pradesh High Court
Case No : C. Rev. No. 178 of 1961

Haji Jiwan Khan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Madhya Pradesh Civil Courts Act, 1958 — Section 9
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1963) J LJ 603

Hon'ble Judges : P.K. Tare, J

Bench : Single Bench

Advocate : J.V. Jakatder and J.M. Sood, for the Appellant; P.R. Padhey, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tare, J.—This revision u/s 25 of the Provincial Small Cause Courts Act is by the Plaintiff against the decree, dated, 10-1-1961, passed by Shri P. B. Thakre, Additional District Judge, Khandwa, empowered u/s 9 of the M. P. Civil Courts Act. 1958, in Small Cause Suit No. 333 of 1960, dismissing the Plaintiff's claim for damages on account of the injury to the goods while in transit.

2. The undisputed facts in the present case are that the Plaintiff-Petitioner was a consignee in respect of a consignment consisting of 154 bundles of S. W. Pipes booked from Jabalpur to Khandwa under Railway receipt No 156 dated 25-8-1959. Even according to the Plaintiff, the bundles consisting of cement pipes were packed in grass without any crates or covers in order to protect the brittle goods. The consignment was booked on the Railway risk.

3. On 2-9-1959, when the consignment was delivered to the Petitioner at Khandwa, it was discovered that 56 bundles were in a broken condition. Accordingly, a certificate of damages and shortages, dated, 8-10-1959 (Ex. P. 1) valuing the loss at Rs. 63.85 nP was issued in favour of the Petitioner. The

Petitioner also served a notice, dated, 7-12-1959 u/s 77 of the Railways Act and Section 80 of the CPC Code.

4. At this stage, it is pertinent to note that the Railway receipt, dated, 25-8-1954 (Ex. P-4) contained an endorsement to the effect that packing conditions were not complied. It is not known whether the Railway administration took any writing from the Petitioner in the forwarding note about the defective packing as required by Section 74-A of the Railways Act. However, this fact was admitted by the Petitioner himself in the plaint that the packing had been done in grass that no crates had been used as required by packing condition No. 20 contained in the Goods Tariff Part I pertaining to general rules for acceptance, carriage and delivery of goods.

5. In view of the fact that no forwarding note recording the defective packing signed by the consignor was produced in the present case and what was on record was merely an endorsement made on the Railway receipt, I had referred this case to a larger Bench by order, dated, 4-8-1961 to consider the question whether in the absence of a forwarding note duly signed by the consignor acknowledging the defective packing, the Railway administration could invoke Section 74-A of the Railways Act. The learned Judges constituting the Division Bench, by order, dated 30-8-1961, answered the reference as follows. The following question was formulated for consideration:

Whether the Railway Administration is entitled to the protection from liability granted to it u/s 74-A of the Indian Railways Act in a case the damages to the goods tendered for carriage to it arises as a result of a defective packing, even if the fact of such defective packing has not been recorded in the forwarding note ?

The Division Bench answered the question in the negative by holding that the Railway administration would not be entitled to the protection, unless both the conditions mentioned in Section 74-A of the Act were complied with. Therefore, as per the decision of the Division Bench, it is clear that the Railway administration cannot invoke the protection of Section 74-A of the Railways Act. The matter will, therefore, be governed by the other provisions of the Act.

6. In the present case the goods were not booked at the owner's risk; but they were booked at the Railway risk. Therefore, it was not necessary for the Plaintiff-Petitioner to establish any negligence or misconduct on the part Of the Railway administration. The goods having been booked at the Railway risk, the burden will lie on the Railway administration to establish that it discharged its responsibility as a bailee properly as required by Section 72 of the Railways Act; and if the Railway administration fails to establish that fact, it will clearly be liable for the damage to the goods.

7. Therefore, we have to examine the non-applicant's evidence to ascertain if the burden that lay on the Railway administration was duly discharged. As regards the loss, there can be no doubt that loss was caused, although the extent of it may have to be ascertained, if the Railway administration is found

liable for damages.

8. On behalf of the non-applicant, one Sunderlal (D. W 1) a Railway employee at Itarsi was examined to show the condition of the consignment at that place. He stated that he checked the consignment as a tally-clerk at Itarsi. The consignment was loaded in Wagon No. ER- 11216. The articles were received from Jabalpur. They were loaded in another wagon and sent to Khandwa. The seals of the wagon were in order at Itarsi. He also stated that the goods were in order at Itarsi. From the testimony of the said witness, it appears that the goods reached Itarsi intact without any damage or breakage- It is, therefore, clear that the breakage must have occurred some where between Itarsi and Khandwa.

9. The second witness for the non-applicant Narsinghdas (D. W.2), a Railway employee at Itarsi, was examined to prove the defective packing. This witness was the unloading supervisor at Khandwa. He got the consignment unloaded on 1-9-1959. He stated that the seals of the wagon were intact. The packing was kept in grass. There were no crates to protect the goods. He also stated that the goods were delivered on 2-9-1959. According to this witness pipes were required to be packed in crates under the rules.

10. So far as the fact relating to defective packing is concerned, it is not in dispute that the consignment was not packed as required by packing condition No. 20. Therefore, it is necessary to ascertain the exact cause of the damage to the goods. So far as the evidence led by the non-applicant is concerned, it does indicate that the Railway administration discharged its responsibility as a bailee properly. Can it be said that the damage to the goods was on account of any carelessness on the part of the Railway servants in transit or was it due to the defective packing of the consignment.

11. The learned Judge of the trial Court dismissed the Plaintiff's suit mainly on the ground that the Plaintiff had failed to establish any negligence or misconduct on the part of the Railway administration. That would have been the real position, if Section 74-A of the Railways Act had been applicable to the present case. But, as the said section is wholly inapplicable, it is for the Railway administration to establish that it took proper care of the goods as a bailee. However, from the evidence on record it is amply established that the the Railway administration took proper care of the goods as a bailee. However, it is not known whether the consignor had apprised the Railway authorities of the fact that the goods were brittle and that special care had to be taken during transit. Therefore, the burden will again shift on the Plaintiff to establish that although he apprised the Railway administration of the fact that special care was to be taken of the brittle goods, the servants of Railway administration did not take proper care. In this connection, it is to be noted that the Railway receipt (Ex. P-4) does disclose that 154(sic) bundles of S.W. pipes were being sent. The consignor must have known that the defective packing might result in damage to the goods, in as much as he had not used crates to protect the pipes from being broken or damaged on account of the movements of the train. Therefore, it is possible that

the goods might have been damaged on account of the defective packing, while in transit from Jabalpur to Khandwa. As such, the damage cannot be attributed to any action of the non-applicant or its employees. In view of the evidence on record, the only reason attributable for the damage is the defective packing. Therefore, as the burden shifted on the Plaintiff to establish that proper care was not taken by the employees of the Railway administration in spite of appraisal of the fact of the goods being brittle, the Plaintiff failed to get that material on record. Therefore, the only conclusion that can be drawn under the circumstances is that the defective packing was responsible for the damage caused to the consignment.

12. Therefore, as a result of the discussion aforesaid, I agree with the conclusion of the learned Small Cause Judge, although for different reasons. Therefore, this revision fails and is dismissed with costs. Counsel's fee Rs. 25, if certified.