

(2000) 03 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 920/94

Hasmukh Rupani

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Contract Act, 1872 — Section 151

Railways Act, 1890 — Section 72, 73, 74, 74(3), 76

Citation : (2001) 5 MPHT 308 : (2001) 1 MPJR 158 : (2001) 1 MPLJ 233

Hon'ble Judges : Vijay Kumar Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Agrawal, J.

This appeal is directed against the order dt. 7-4-1994 in Case No. T.A.-1605/90 by the Railway Claims Tribunal, Bench Bhopal.

It is now not in dispute that the appellant/plaintiff carries on his business of Coal and Coke, near New Sabji Mandi, Hamidia Road, Bhopal, in the name and style of "Hasmukh Coal Depot" as its sole proprietor. A consignment of steam coal was loaded by the defendant/respondent from its Chandameta Colliery on 24-1-1986. The aforesaid consignment was booked with the respondent/Central Railway from Parasias on 28-1-86 for delivery to the plaintiff at Nishatpura, Bhopal, vide Railway Receipt No. 974516 dt. 28-1-86, particulars of which were : box No. S.E. 96949-steam coal with payload weight 54.6 mtr. tonnes charged weight 56.6 mtr. tonnes, freight Rs. 4,681/-. The said consignment admittedly reached destination, i.e. Nishatpura, Bhopal on 29-1-1986.

The plaintiff/appellant filed a suit for recovery of damages. It was averred that the said wagon arrived at the destination in a disturbed condition and the consignment of coal, was short. On the request of appellant/plaintiff weight of coal delivered to him was taken and shortage certificate No. CGC/NSZ/R-86-45

dt. 15-2-86 for 7.5 metric tonnes of coal was issued. The price of short delivered coal was Rs. 5,400/-. He was also required to pay Rs. 158/- as demurrage charges, Rs. 400/- as weightment charges, Rs. 9/- as excess freight charges and Rs. 100/- as fee for notice-totalling Rs. 6,067/-. The plaintiff/appellant filed a suit for recovery of aforementioned amount of Rs. 6,067/-, after serving statutory notice to the defendant.

The claim as above of appellant/plaintiff was resisted by defendant/respondent. It was averred that the said consignment was accepted for booking under "L" condition in loose state. The plaintiff/appellant paid freight at "Owner's Risk Rate". It was averred that the consignment of Coal booked in favour of the plaintiff was not actually weighed at the time of booking. It was further averred in the above context that as per Rule 115 of Goods Tariff No. 37 Part-I (Volume-I) the weight, description and classification of goods and quotation of rates as given in the Railway Receipt and Forwarding Note are merely inserted for the purposes of estimating the Railway Charges and the Railway reserves the right of re-measurement, re-weightment, re-classification of goods and re-calculation of rates and other charges and correction of any other errors at the place of destination.

It was also averred that since the consignment was booked at "Owner's Risk Rate" the respondent/Railway was not responsible for any loss, destruction, damage, deterioration or non-delivery of goods, in view of Section 74 of the Indian Railways Act, 1890 (hereinafter called as "Old Act" for short), except upon the proof that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on the part of the railway administration or of any of its servants. Since, the goods were delivered without delay and since there was no evidence that there was any negligence or misconduct on the part of respondent/Railways, hence the plaintiff was not entitled to any relief.

The learned Tribunal in the impugned order held that the suit consignment was booked on 27-28th January, 1986 and had arrived at the destination on 29-1-1986 and thus there was no abnormal delay in transit. It was also held that the plaintiff's wagon was not in a disturbed condition. The consignment was booked on condition "L" implying that loading and un-loading is to be done by the owner and the goods were carried at the "Owner's Risk". It was also held that there was no proof of negligence or mis-conduct on the part of respondent's employee. Hence, the respondent was held not liable for payment of damages. However, an amount of Rs. 9/- towards weightment charges and amount of Rs. 25/- towards notice charges totalling Rs. 34/- claimed by the plaintiff was decreed by the Tribunal.

Learned counsel for plaintiff/appellant has submitted that the respondent/Railway has not taken due care of goods. It was therefore liable u/s 151 of the Contract Act, which requires that 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. He has further submitted that there was abnormal delay

in the delivery of consignment, inasmuch as, it was loaded on 24-1-1986 and arrived at Nishatpura, Bhopal on 29-1-1986. Therefore, the respondent/Railway was liable u/s 76 of the "Old Act."

As against this, the learned counsel for respondent/Railway has submitted that the goods were admittedly booked on 28-1-1986 as has been pleaded by the plaintiff/appellant himself and the goods having reached the destination at Nishatpura, Bhopal on 29-1-1986, there was no delay in transit. It was therefore submitted that as the goods reached the destination within reasonable time and as the consignment was booked on "Owner's Risk Rate", it was for the appellant to prove negligence or misconduct on the part of Railway administration or any of its servants, in view of Section 74 (3) of the "Old Act". It has also been submitted that actual weighment of the goods was not done at the time of its booking and the Railway receipt only indicated the approximate weight as stated by the appellant for the purposes of charging of freight as is provided under Rule 115 of the Goods Tariff No. 37 Part-I (Volume-I). Therefore, the weighment of Coal at the time of delivery at Nishatpura, Bhopal would not evidence any short delivery of Coal. Consequently, the plaintiff/appellant was not entitled to claim price of coal on the alleged ground of short delivery.

As noticed earlier, it is admitted position of the case that the goods were booked under the "Owner's Risk Rate". It also appears that the consignment was not weighed at the time of loading and was booked under condition "L". In view of Rule 115 of the Goods Tariff No. 37 Part-I (Volume-I) it is clear that the weight description and classification of goods and quotation of rates as given in the Railway Receipt and Forwarding Note are merely inserted for the purposes of estimating the Railway charges and the Railway reserves the right of re-measurement, re-weighment, re-classification of goods and re-calculation of rates and other charges and correction of any other errors at the place of destination and of collecting any amount that may have been omitted or undercharged. No admission is conveyed by Railway Receipt that the weight as shown therein has been received or that the description of goods as furnished by the consignor is correct.

Learned counsel for appellant has submitted that there was inordinate delay in the delivery of goods, inasmuch as, the same was booked on 24-1-1986 and was delivered on 29-1-1986 and that the Railway administration was therefore liable to make good the loss and pay the price of the goods short delivered. It has also been submitted that since the goods were booked by the appellant with the Railway administration, the latter was liable for taking as much care of the goods, as a man of ordinary prudence in similar circumstances would have taken. He has in this connection relied upon Sections 72 and 73 of the "Old Act" and provision of Section 151 of the Contract Act. In this context reliance has been placed on Union of India v. Mahalaxmi Oil and Dal Mill [1991(1) M.P.W.N.164].

It may be noted in the above context that even according to the allegations in the plaint and also notice (Ex. P-8) served by the plaintiff to the respondent, the

booking of coal with Railway administration took place on 28-1-1986 and the coal booked by the plaintiff/appellant reached the destination at Nishatpura, Bhopal on 29-1-1986. Thus, there was no unreasonable delay. In view of above, the contention of learned counsel for plaintiff/appellant that the coal was booked on 24-1-1986 and has reached to its destination on 29-1-1986, and thus the same was unreasonably delayed or detained and therefore inference would be raised that the loss occurred on account of negligence or misconduct on the part of Railway administration or its servants, cannot be accepted. Further, the coal was booked at the "Owner's Risk Rate", therefore, in view of Section 74 of the "Old Act"; as there was no delay in transit of the suit consignment, the burden of proof or negligence or misconduct on the part of Railway administration, was on the plaintiff/ appellant. The plaintiff/appellant has, however failed to adduce any evidence to show negligence or misconduct on the part of defendant/respondent. Thus, the plaintiff has failed to discharge his burden on the above regard.

Explaining the scope of Section 74 (3) and, 76 of the "Old Act" it has been observed in *Union of India, New Delhi v. Shankerlal* (1972 M.P.L.J. 843) that Section 76 of the Railways Act is a proviso or exception to Section 74 (3) which is a general provision. Section 74 (3) governs all cases of loss, destruction or deterioration whatever the cause, while Section 76 is a special provision which applies only to cases of delay or detention. The general provision must therefore yield to the special one. Thus, the effect of reading both sections together is that where goods are booked at "Owner's Risk Rate" and there is loss, destruction or deterioration; the owner in order to succeed, must prove, unless it is admitted, that there was delay or detention which caused loss, destruction or deterioration or damage. However, if the delay or detention is either admitted or proved, then the Railway is obliged to plead and prove that the delay or detention arose without negligence or misconduct on its part or that of its servants; otherwise it would be liable for making good the loss or damage caused to the goods in case of such delay or detention.

In the instant case, as noted earlier there was no delay or detention, as the consignment of coal reached its destination within a reasonable time of a day. Therefore, since the goods were booked at the "Owner's Risk Rate" it was for the plaintiff/appellant to prove that there was misconduct or negligence. See *Union of India v. Chhedilal* (1972 M.P.L.J. 928). Since the plaintiff/ appellant as noticed earlier, has not proved that there was any negligence or misconduct on the part of Railway administration or its servants and since the goods were admittedly booked at "Owner's Risk Rate" and reached the destination in time, the plaintiff/appellant cannot succeed in its claim.

It may further be noticed that the defendant has pleaded that the goods were not actually weighed at the time of loading and the weight mentioned in the Railway receipt is as stated by the consignor and that it was not the actual weight. This is as per Rule 115 of Goods Tariff No. 37 Part-I (Volume-I). That being so, the weighment at destination and the alleged shortage of 7.5 tonnes

calculated on the basis of weight mentioned in the Railway receipt cannot be accepted. Therefore, it is also not proved that there was any short delivery of consignment to the plaintiff/appellant, as has been alleged by him.

Accordingly, the plaintiff/appellant could not succeed in his claim for the alleged short delivery of goods. His claim was rightly dismissed by the learned Tribunal. This appeal has no merit and is accordingly dismissed.