
(1972) 08 DEL CK 0006

In the Delhi High Court

Case No : Second Appeal No. 68-D of 1966, from judgment and decree of M.L. Jain, Addl. Dist, J., D/-10.12.1965

Hulas Rai Jhamman Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-08-1972

Acts Referred:

Citation : AIR 1973 Delhi 73

Hon'ble Judges : P.N. Khanna, J

Bench : Single Bench

Advocate : A.L. Saigal, for the Appellant; R.L. Aggarwa and Udai Bhan, for the Respondent

Judgement

1. The appellant firms suit for recovery of Rs.4,275.76, as damages for non delivery of parcel containing hand loom woollen shawls booked by it as Chandni Chock Delhi Booking Agency of the Northern Railway on November 14, 1961 for transport to an delivery at Silao, was dismissed by the learned sub-Judge I Class Delhi on the ground that the goods in question were excepted articles within the meaning of section 75 of the India Railways Act and as such the Railways were not liable for their non delivery as the value thereof had not been a declared by the appellant consignor at the time of booking. In appeal the learned Additional District Judge Delhi confirmed this finding but held that it had been proved that the goods in dispute booked by the appellant were of the value of Rs. 4,275,76 the amount claimed in the suit. The appeal was dismissed with costs.

2. The main question that has arisen for consideration in this second appeal Therefore is about the scope and true construction of section 75 of the India Railway Act (IX of 1890) before it was amended by Section 13 of Act 39 of 1961, which came into force with effect from January 1, 1962 Section 75 before it amendment read as follows:--

"Further provision with respect to liability of railway administration as a carrier of articles of special value. -- (1) when any articles mentioned in the Second

Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway and the value of such article in the parcel or package exceed there hundred rupees the railway administration shall not be responsible for the loss destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package o the administration caused it value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or package for carriage by railway and if so required by the administration paid or engaged on pay in writing a percentage on the value so declared by way of compensation for increased risk.

(2)

(3)"

In the second Schedule referred to in the aforesaid section 75 article mentioned against item (m) is "shawls". It has been found by the lower Appellate Court that a there appellant did not make the required declaration about the value of the content of the parcel at the time of its delivery for carriage by the railway nor paid or engaged to pay a percentage on the value by way of compensation for increased risk. The goods admittedly were booked at railway risk of the article in the parcel exceed Rs.300/- Under the circumstance the Railway Administration will not be responsible u/s 75 if the Articles contained in the parcel were of the a description mentioned in the Second Schedule (in this case `shawls"); and there has been loss of the parcel. Destruction or deterioration of the parcel is out question as that it nobody's case.

3. Mr. A. L. Sehgal, the learned counsel for the appellant content that the court below have erred in law in affording protection to the Railway although there was no loss of the parcel. The railways could not shake of their liability for the non delivery of the goods. His second contention was that the good booked by the appellant were admittedly handloom woolen shawl's and no "shawls". According to him shawls mentioned against item(m) in the Second Schedule are expensive shawls like the Kashmiri shawls. Handloom Woolen shawls, according to the learned counsel are common articles and not covered by the said description.

4. Examining the first contention of the counsel as to whether the respondent railway can deny their responsibility in the absence of their alleging or proving loss it is noticed that in paragraph 5 of the plaint, the appellant firm stated that on its surrendering the parcel way bill it was offered a parcel of a suspicious nature, held by four iron straps instead of eight which had originally been fixed around it. The original Delhi Rail way Booking officer make on the parcel was missing. In the paragraph 6, it was stated that there was no question of the appellant taking delivery of goods which did not belong to it and that the parcel offered was different form the one which had been delivered for booking to the railway. Both these paragraphs Nos. 5 and 6 the plaint were admitted by the respondent to be correct. In paragraph 11 of the plaint, it was stated that "the

non delivery of the plaintiff goods was owing to the negligence/misconduct of the railway administration concerned and/or their servant of which they were bound to compensate the plaintiff which they failed to do"

In reply it was stated in the written statement by the respondent: "that non delivery is not due to negligence or misconduct of the railway but is rather due to criminal interference with the goods at Silao railway station Therefore the railway is not responsible." Non delivery was not disputed the same was said to be due to "criminal interference with the goods" What this so called criminal interference was not explained. This was a vague plea and the time of the framing of issues the learned sub-Judge held it to be so. In his order, he observed: such a plea cannot be taken notice of in the absence of material facts given rise to this plea. So this plea will be deemed as struck off unless the defendant chooses to amend the written statement within 7 days. This order was perfectly; justified. No attempt was made to amend the written statement or to given better particulars. In the absence of such a plea no evidence could be led to proves loss and in any case non a was attempted. There was thus neither any allegation nor proof of the alleged loss.

5. Mr. R. L. Aggarwal the learned counsel for the respondent submitted that non delivery itself could result only for loss of good to the railways. Non delivery according to him amounted to loss referred to in section 75. This contention of the learning counsel cannot be accepted more especially as the respondent as already noticed failed to comply with the orders of the court and never and the written statement nor furnished better particulars. Non delivery was admitted. Loss was not pleaded. Proof was not attempted. Ground was not laid even for an inference of loss. Under the circumstance the first appellate court was wrong in holding the non delivery to the appellant amounted to loss of good so as to attract the provision of Section 75 of the Railway Act. Mr. Aggarwal relied on Romesh Chander v. Governor-General in Council (1949) 51 Pun Lr 52 : AIR 1949 Ep 285. In this case the goods were proved to have been delivered to a wrong person. The of course was a loss to the lost by mis-delivery; and Therefore, the price could not be recovered by virtue of Section 75 This is not the case here; as nothing has been bought on record to show as to what happened to the consignment which was not delivered. There is no question of loss I the present case as mere non-delivery cannot be equated with loss.

On the other hand Mr. Sehgal placed reliance on Governor General in Governor-General in Council Vs. Lala Debi Sahai, Union of India v. M. Hanuman Dass, Air 1954 May 180 and The Union of India (UOI) Vs. Paul Scientific and Chemical Corporation, Manufacturers and Importers, for the proposition that non delivery of the goods did not amount to loss of good as envisaged in Section 75 of the Railway Act. In an a unreported judgment of a Division Bench of the Circuit Bench of the Punjab High court at Delhi in Ram Sarup Shyam Sunder v. Union of India Rfa 47-D of 1954 decide on 7-8-1959 (Punj) Mr. Justice A. N. Grover, (as he then was) speaking for the Bench observed then the Railway failed to

establish that the goods had been lost and if that be so then protection cannot be claimed u/s 75 of the India Railways Act. As no loss has been alleged or proved in the present case, the Railway cannot escape their liability as a bailee and cannot resist the appellant's claim. In view of this, it is not necessary to examine the second contention of Mr. Sehgal.

6. The judgments and decrees of the courts below cannot, under the circumstances, be sustained. It has been found by the value of the Additional District Judge that the value of the articles, which were not delivery to the appellant was Rs.4275.76 The appellant, Therefore, is entitled to recovered this amount from the respondent.

7. The appeal accordingly is allowed and the decrees of the court below are set aside and the appellant's suit is decreed for Rs.4,275.76 with costs. Counsel fee Rupees 150/-.

8. Appeal allowed.