

(2001) 06 KAR CK 0005

In the Karnataka High Court

Case No : Regular First Appeal No. 573 of 1997

Janatha Tourist Corporation and Another

APPELLANT

Vs

Indo U.S. Wire Casting Ltd. and Another

RESPONDENT

Date of Decision : 27-06-2001

Acts Referred:

Citation : AIR 2002 Kar 65

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Umakantha, for Mohandas N. Hegde, for the Appellant; Devanam V. Satyanarayana, for Respondent 1, for the Respondent

Final Decision : Partly Allowed

Judgement

K. Sreedhar Rao, J.—The appeal filed against the judgment and decree of the 19th Additional City Civil Judge, Bangalore in O.S. No. 1754 of 1992. The appellants are the defendants in the trial Court. The first respondent filed the suit for recovery of money in a sum of Rs. 88,850/- with costs and interest. The first appellant is a common carrier to whom the consignment of pure nickel was entrusted to be transported from Bombay to Bangalore. 5 bags of pure nickel was the consignment, in all weighing about 250 kgs. to be delivered at Bangalore. But only two bags weighing about 97.5 kgs came to be delivered at Bangalore and three bags were missing and in two bags that were delivered, there was shortage of quantity. Respondent 2 is the consignor. First respondent is the consignee. In respect of non delivery and short delivery, statutory notice came to be issued. The value of the goods is shown as Rs. 68,850/-. In addition, towards loss of value of the consignment, damages in a sum of Rs. 20,000/- is claimed contending that the articles consigned are not available in Bangalore market and as a result, the plaintiff was put to lot of inconvenience and loss.

2. In the written statement filed, as can be seen, the value of the consignment, is not disputed. Although in the course of arguments, the Counsel for the appellant contended that the plaintiff has failed to establish the value of the

consignment, on going through the contents of written statement, and the issues framed, I find that the value of the consignment stated by the plaintiff has not been disputed. Therefore, the issues, are framed only in respect of the bar of suit on the principles of *res judicata* and the liability of the defendants 1 and 2 to reimburse the loss and the third issue relates to the jurisdiction of the Court at Bangalore to try the suit. The fact that the appellant is a common carrier is not in dispute. The entrustment of the goods for delivery also not in dispute. The trial Court, on consideration of the evidence placed on record, decreed the suit of the plaintiff directing to pay a sum of Rs. 88,850/- which includes a sum of Rs. 20,000/- claimed towards, damages. Being aggrieved the present appeal is filed.

3. In the appeal it was seriously contended that in the first place, the plaintiff-respondent has not pleaded and placed on record the details and price regarding the loss and damage. The pleadings are vague and no evidence is placed. Besides it is contended that the grant of damages against the common carrier is illegal. The Counsel strenuously contended that under the Carriers Act, the common carrier is only to answer to the extent of value of the loss of goods and not the profits or other damages that may be suffered by the consignee or the consignor. In that view it was argued that the liability of the company, if at all would be to an extent of the value of goods and the claim in respect of damages to be disallowed. To support this proposition the Counsel relied on the Commentaries in McGregor on Damages 13th Edition, p. 833 The relevant commentaries are extracted here under for convenient reference :

(a) Loss through loss of use :

(i) loss of user profits. The leading case concerning the loss of user profits by reason of non-delivery is *British Columbia Saw Mills Co. v. Nettleship* (1868) LR 3 CP 499. The defendant contracted with the plaintiff to carry by sea from England to Canada several cases of machinery, the plaintiff intending the machinery for the erection of a sawmill in Canada. On the arrival of the defendant's ship in Canada one of the cases, which contained parts of the machinery without which the mill could not be erected, was found to be missing, and the plaintiff was obliged to replace the missing parts from England with a consequent year's delay. The plaintiff claimed to recover a year's loss of profit. This claim was disallowed since, although the defendant carrier knew generally that the cases contained machinery, he neither knew that the mill could not be erected at all without the missing parts nor that the missing parts could only be replaced by sending to England. The only damages for loss of user that the Court was prepared to give was the user value of the goods as represented by interest on their value for the time that would take the plaintiff to obtain replacement. *Montevideo Gas Co. v. Clan Line* (1921) 37 TLR 544, 545."

The ruling of the Madras High Court in *Indian Airlines Corporation Vs. Jothaji Maniram*, is relied on. The relevant portion of the ratio regarding the liability on the point is extracted here-under :

"Under general law a common carrier is liable practically as an insurer of the goods. That liability can be regulated by a contract entered into between the parties. It is invariably the practices for common orders to enter into a contract, defining and limiting their liability. That practice is so universal that in the normal course of things one would expect any consignor of goods to look into conditions which are found in consignment notes. To say that in every case the carrier should prove that he drew the attention of the consignor to the clause in the consignment note regarding limitation of its liability is extended the rule beyond its limits."

4. The Counsel for the respondent supported that the grant of damages as fully justified. The articles consigned are not available in Bangalore market as a result, the plaintiff was put to lot of inconvenience and loss and therefore, the measure of damages whatever granted in a sum of Rs. 20,000/- is too meager and would not in full measure answer the loss or inconvenience suffered by the plaintiff. The Counsel for the respondent referred to Ex. P.7 wherein the detail costs of production of 250 kgs. of nickel is shown as Rs. 13,175-40 which includes the profit part of the product. On that basis it was argued that the damages granted is fully Justified.

5. On consideration of the citations and the evidence on record it is not in doubt that the common carrier has a liability to make good the loss to an extent of value of the consignment. The precise question in the case would be whether the common carrier is also liable for the damages caused on account of loss and inconvenience to the consignor and the consignee.

6. The commentaries in the McGregor on Damages the law has been succinctly discussed. The ruling of the Madras High Court also makes it explicit that it is domain of the contracting parties to stipulate and limit the liabilities. The provisions of the Carriers Act u/s 5, except the schedule goods, the parties are at liberty to enter into a special contract to limit the liabilities under the contract. May be that at the discretion of the parties, under the contract a limited liability can be fastened or an unlimited liability can also fastened. In order to fasten liability on the common carrier towards the damages, apart from the value of the goods it is essentially to be shown that at the time of the contract it was brought to the notice of the common carrier about the consequences of the breach which may be suffered by consignor or consignee. If with such knowledge or understanding, contract is entered into the common carrier renders itself liable for the damages resulting as a consequence of breach. In the absence of such notice of the consequences of breach, it would not be proper in law to fix any liability on the common carrier in respect of the special loss or damages incurred by the consignor or the consignee for the breach of the contract by the common carrier.

6A. Obviously, in this case, the plaintiff had not brought to the notice of the common carrier about the special consequences of breach or the damages that the plaintiff is likely to suffer. In the absence of such pleadings and evidence, I

find that the grant of a decree for damages in a sum of Rs. 20,000/- by the trial Court is untenable and liable to be set aside. However, the common carrier is undoubtedly liable to pay to the plaintiff a sum of Rs. 58,000/- being the value of the short delivery of the articles. Although in the plaint, a sum of Rs. 68,000/- and odd is claimed, however, in evidence PW 1 states that the value as on the date of the consignment was Rs. 58,000/- and as on the date of the suit it was valued at Rs. 68,000/-. The value as on the date of consignment should be a determining factor for considering the loss of the value of the goods.

7. Accordingly, the appeal is partly allowed. The judgment and decree of the trial Court is modified. The appellant is directed to pay a sum of Rs. 58,000/- towards the loss of goods with costs and interest at 6 per cent from the date of suit will realisation.