

(1958) 09 MAD CK 0020
In the Madras High Court

M.K. Manickam Chettiar

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 25-09-1958

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161

Citation : (1959) 72 LW 464 : (1959) 2 MLJ 365

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Judgement

Ganapatia Pillai, J.—This appeal is preferred by the plaintiff in O.S. No. 56 of 1953 on the file of the Subordinate Judge, Kumbakonam,

against the decree dismissing that suit. The respondents are the Union of India, represented by the General Manager, Southern Railway, and the

General Manager, Central Railway.

2. The appellant who is a trader in coriander seeds claimed Rs. 14,659-1-6 and interest at 6 per cent, per annum on this amount from 23rd

January, 1951 to 3rd December, 1951. The plaint was originally presented to the Court of the Subordinate Judge, Tanjore, under the following

circumstances. In December, 1950, the plaintiff instructed one Motilal Madan Mohan of Bidar in the old Hyderabad State to purchase for him 300

bags of dhanian and despatch them by rail to Mannargudi. Accordingly, 300 bags were loaded by the broker Motilal Madan Mohan, on 25th

December, 1950, at Bidar station in the broad gauge wagon No. G.I.P. 22315. The railway receipt No. 13205 obtained for the goods was

endorsed over to the plaintiff for taking delivery of the goods at Mannargudi. The metre-gauge wagon in which the goods were sent to Mannargudi

arrived at that station on 12th January, 1951. On opening the wagon, the clerk of the plaintiff found that almost all the bags had been damaged by rain water. He therefore refused to take delivery, and, on instructions from him, the plaintiff wired the General Traffic Manager, Southern Railway, asking for open delivery. Open delivery was given on 20th January, 1951, when it was found that only 75 bags out of the consignment of 300 were in a sound condition and the remaining 225 bags were found damaged, mildewed, caked and darkened in colour. The officer of the railway who gave open delivery certified that these 225 bags were damaged to the extent of 90 per cent of the value of the goods. The plaintiff was therefore able to sell only the seventy-five sound bags at the current market rate ; and out of the remaining damaged bags, he was not able to sell 20 bags and the remaining bags were sold for less than 10 per cent of the ruling market price. The cost of the consignment to the plaintiff amounted to Rs. 22,102-12-6, which works out at the rate of Rs. 73-10-10 per bag. By sale of the damaged, 225 bags, the plaintiff suffered loss of Rs. 13,837-8-0. To this, the plaintiff added the cost of 200 gunny bags at Rs. 200. The total loss of 20 bags is assessed by the plaintiff at Rs. 1,500 at the market rate at Rs. 75 per bag. The total damages suffered by the plaintiff amounted to Rs. 15,537-8-0 but the claim for damages made in the plaint is limited to Rs. 14,659-1-6.

3. The railway administration denied liability for the damage, though the extent of the damage was not disputed by them. They disputed the amount claimed for damages and also the interest claimed on this amount. They denied that there was any negligence on the part of the railway staff in dealing with this consignment. They affirmed that the consignment was carried with all care and caution required under law.

4. The following issues were framed by the learned Subordinate Judge:

- (1) Whether defendant-company took all possible care for the transport of the goods in question and whether they are not liable for any damages ?
- (2) Whether the damages caused to the coriander bags arose in transit on account of the carelessness or negligence on the part of the defendant-company ?
- (3) Whether there was any delay in the despatch of the goods as alleged by the plaintiff ?

(4) To what damages, if any, is the plaintiff entitled ?

5. Under Issues 1 and 2, the learned Subordinate Judge came to the conclusion that the defendant-railway was not liable, though he expressed this

conclusion in a halting manner. This will be seen from the following observations of the learned Subordinate Judge:

In this case, even though I find it difficult to agree wholly with the defendant-railway when the defendant railway says that the wet condition of

prematurely cut coriander crops, because there was a heavy demand for coriander in 1950 December, in the market, was wholly responsible as

the coriander had caked and sprouted, and such a serious condition might not be wholly due to the inherent defect of wet and prematurely cut

crops as stated by P.W. 5, yet, as the wagon appears to have been water-tight, so that P.W. 3, a witness for the plaintiff himself, was prepared to

immediately (on 13th January, 1951 itself) load a consignment of paddy into it in view of the certificate of D.W. 14, I think the defendant-railway

cannot be mulcted by way of damages on account of any negligence, if, due to very heavy rains of exceptional virulence, any water found its way

into the wagon, notwithstanding the wagon being water-tight.

From this involved sentence, we are able to gather that the learned Judge did not believe the allegation of the defendant-railway that the damage

was caused by the wet condition of the goods even at the time when they were loaded into the railway wagon at Bidar. The learned Subordinate

Judge was also satisfied that the cause of the damage was rainwater getting into the railway wagon. At any rate, we take it he means that the

metre-gauge wagon in which the goods were carried from Arkonam to Mannargudi was not leaky though not rainproof. Yet, the learned Judge

found that the railway could not be mulcted with damages, because negligence had not been proved, though the learned Judge was satisfied that

the goods were damaged by very heavy rains of exceptional virulence even though the wagon was water-tight. We may straightaway say that there

was evidence in the case only to show that the metre-gauge wagon which carried the goods to Mannargudi was alone tested and was found by a

railway official to be water-tight. The learned Judge had obviously overlooked the fact that even when the goods were transhipped at Arkonam

from the broad gauge wagon to the metre gauge wagon, damage to about 223

bags was noticed. There was no evidence in the case to show that any exceptional rains of a virulent type had occurred along the route from Bidar to Arkonam, and the evidence only showed that such rains occurred at Tiruvarur and Mayavaram during the journey from Arkonam to Mannargudi.

6. Another conclusion of the learned Judge on this part of the case is thus expressed:

In this view, it is unnecessary to consider whether the plaintiff was guilty of any "contributory negligence" as the consignor (P.W. 4) does not seem

to have sent the goods in a very dried condition, but seems to have sent somewhat wet goods purchased in a hurry to make up the deficiency

between 300 bags required repeatedly by the plaintiff, and only 84 old bags that were available with P.W. 4 by 22nd December, 1950.

This finding is in direct contradiction to the first finding mentioned above, in which the learned Judge had expressed his opinion that he was not

prepared to agree with the contention of the railway that 300 bags were loaded in a wet condition or they consisted of prematurely cut coriander

crops. This confusion in the mind of the learned Subordinate Judge makes it incumbent upon us to examine the evidence in detail to find if his

ultimate conclusion that the defendant-railway was not liable for the damage could be accepted.

7. Many of the facts are not in dispute. The consignment was loaded by the Bidar merchant in G.I.P. wagon No. 22315 at Bidar station on the

Central Railway on 25th December, 1950. This wagon arrived at Arkonam on 4th January, 1951 with the forwarding Station Master's seals

intact. The consignment was transhipped at Arkonam junction into the metre-gauge wagon BCC 338. At that time, it was noticed that about 233

bags were wet and dry (we are borrowing the language of the clerk who was in charge of the transhipment at Arkonam in thus describing the

condition of the bags. This cryptic description is elaborated in the evidence of D. W. 9 the transhipment clerk at Arkonam, in the following manner:

233 bags were wet. Bags were glued to one another as it were. That is what I meant by caked" I have no reason to know if rain water would have

caused the damage to the goods. Except 213 bags, the rest were sound and quite all right.

Neither this clerk nor the goods clerk at Mannarguddi noted the position of the undamaged bags in relation to the damaged bags as they were

bound to note under the rules. But there is the evidence of P.W. 2, the clerk of the plaintiff, who was present at Mannargudi at the time when the

goods were unloaded, and also of P.W. 3 a railway broker, to show both the condition of the damaged bags and the position which they occupied

in the wagon. According to them, 75 bags lying in between the bags at the top and those at the bottom were in sound condition. D.W. 12, the

Goods Clerk at Mannargudi railway station, has admitted that the bags were wet, and that, on touching them, one's hands became wet with water.

This was the Goods Clerk who unloaded the wagon, in which the suit consignment was received at Mannargudi station. P.W. 6 was the Chief

Goods Clerk of that station at that time. But as some allegations have been made against him on the score that he was facing a charge of

corruption, we do not place any reliance on his evidence, which is wholly in favour of the plaintiff's contention.

8. The Station Master of Mannargudi, D. W. 13, was present at the platform when the goods were unloaded. He describes the condition of the

wagon and bags thus:

When I saw, no water came out of the wagon ; nor did any water ooze out of damaged goods. The flooring of the wagon and the damaged bags

were damp.

9. To a specific question whether the damaged goods looked like soaked in water, this witness answered thus:

The bags were wet, not drenched by water or soaked in water. All the damaged bags were wet.

Yet, according to this witness, he sent a message to be on the safe side, though it was obligatory on his part to send messages only in case there

was leakage in the roof or sides of the wagon. The report (Exhibit A-9) of the responsible officer of the railway who was present to give open

delivery shows that almost all bags were wet by water and stained. He assessed 75 bags as sound, and the rest of the consignment, according to

him, was found to be damaged, mildewed and caked darkened in colour. He assessed the damage at 90 per cent.

10. Two things stand out prominently from this evidence. First, if partially dried

crops, or, in other words, crops which were not fully dried, had been sent from Bidar, one would expect the condition of all the bags to be the same ; that is to say, if the seeds had sprouted or caked, all the bags should have suffered this damage. Secondly, the fact that 75 bags were in a sound condition unaffected by water leads to the inference that the damage was caused by water arising from an extraneous source and not present in the seeds themselves when loaded.

11. We now go to the question whether partially dried crops were sent by the Bidar merchant. This finding of the learned Subordinate Judge is

based upon the sole circumstance that, because of heavy demand for coriander in December, 1950. P.W. 4 the Bidar merchant, had not sufficient

stock by 22nd December, 1950, and was therefore forced to send, in a hurry, goods which were not completely dry. It is true that, on 18th

December, 1950, P.W. 4 had only a stock of 84 bags on hand, which represented the residue of goods already purchased. But the learned

Subordinate Judge is wrong in observing that P.W. 4 admitted that, on 22nd December, 1950, he had a stock of only 84 old bags. In cross-

examination, P.W. 4 stated thus : At close of 18th December, 1950, 84 bags were on hand. On 22nd December, 1950, he had a stock of 467

bags on hand, out of which 306 bags had been despatched on 23rd December, 1950. On 19th December, 1950, 664 bags had been despatched.

Thus, after 18th December, 1950, nearly 1000 bags had been purchased and despatched. On 23rd December, 1950, this witness purchased 213

bags. Thus, the old stock available on the 23rd of December before the purchase of 213 bags amounted to at least 195 bags. This and the

purchase of 213 bags on 23rd December, 1950, constituted the source, from which 300 bags were sent to the Bidar railway station on 24th

December, 1950, for the order of the plaintiff and they were actually loaded into the wagon on 25th December, 1950. We are therefore satisfied

that the learned Subordinate Judge was wrong in holding that, out of the 300 bags sent to the plaintiff, all was new stock except 84 old bags.

According to the evidence of P.W. 4, whom we have no reason to disbelieve at least 195 out of the 300 represented old stock. P.W. 4 further

states that the maximum time necessary for dry-age is one day. He positively denied that the time taken for drayage would be four days. The

process of collecting the goods and drying them described by P.W. 4 is this. If dhanias purchased were not dry, they will be spread out on the cement

platform of this witness for drying. Even before spreading out for drying, the goods would be cleaned by winnowing and mud removed. Even if the

sun was not hot and scorching, four or five hours of drayage would be sufficient to make the goods completely dry. As against the evidence of

these witnesses, which is corroborated by P.W. 5, there is only the evidence of the Claims Inspector (D.W. 15) on behalf of the Railway. He has

said in his report that, though there was no rain in Bidar and neighbouring places, premature crops were sent by P.W. 4 to Mannargudi. The

source of his information on this point was the enquiry he made from merchants. In cross-examination, he admitted that this information was not

obtained by him from Bidar merchants, but that he obtained it from merchants in Hyderabad market. We may quote his words to show how

unreliable this source of information was:

I learnt sometimes prematurely cut crops, not properly dried, were booked. No dealer in Bidar told me. But, I learnt in Hyderabad market that

sometimes coriander is prematurely plucked and gathered and sent to market. Nobody told me wet crops were sent. As there was no rain in the

prior month, there were no wet crops sent to market. But I was told that crops without proper drying were sent. Undried crops were not sent ;

but, semi-dried crops were sent. So I was told in Hyderabad, the headquarters of merchants who do business in Bidar and other places also.

This witness was not deputed to enquire into any other case of coriander seeds despatched from Bidar during December, 1950, getting wet and

damaged before reaching destination. In fact, he has said in his report that if similar consignments were found wet at other destinations, it cannot

help the railway to repudiate the claim. Of course no such instance was proved. Even otherwise, it is very clear to us that the enquiries made by

this witness did not furnish any ground for coming to the conclusion that P.W. 4 sent either wet crops or semi-dried crops. The assertion of this

witness to the contrary is purely based upon reports which he heard from Hyderabad merchants and not from merchants in Bidar.

12. P.W. 5 was examined as an expert witness on the side of the plaintiff. He was Agricultural Demonstrator at Kumbakonam at the time when he

was examined in November, 1953. He had served in Bellary in 1939-40 and he claimed knowledge of the dhania crop. He says:

Usually, it is not possible to harvest and cut coriander or dhania crops prematurely as coriander will not separate from plant. Even for mature crops, it requires drying up before separation. Im-maturely cut crops, however, would not germinate or sprout. Without rain, mere immature coriander crops would not stain or discolour the gunny bags. If coriander crops are not wet, but dried, they would not cake or sprout again without admixture of water.

His qualification was B. Sc. in Agriculture. According to him, though mould is a disease, it would not set in after the crop is cut and harvested. But

he admitted that, if there was moisture in the seeds and they were bagged in old gunnies, mould might occur. According to him, there will be

sweating if moist coriander seeds were put in gunny bags. The bags would get damp if there was sweating ; and if the railway wagon was air-tight,

there would not be any extra moisture at all. He further added that premature harvest of coriander could be done only with difficulty and

expenditure and that two or three days" drying would be required for plucking coriander seeds from the plant. Above all, he stated that one day"s

drying would do after winnowing. He is positive as to the cause of the staining of the gunny bags. According to him, there would not be

discolouring of gunny bags, merely because the seeds were moist. He goes further and says that even if unripe coriander is harvested and bagged

in gunnies, there would not be outward discolouring or staining of the gunny bags. There might be only slight stains on the inside of the gunny bags.

He had worked as an Agricultural Demonstrator for about 15 years at the time when he gave evidence. His knowledge about the coriander crop is

not mere book knowledge, as will be seen from the fact that he was working in Bellary during 1939-40, where coriander is grown. The effect of

his evidence is that though mould might occur if there was moisture in the seeds which were bagged in old gunnies, this condition could equally

appear as a result of rain-water falling on the gunny bags. In fact, he is positive that the staining of the bags on the outside could not be caused by

any moisture present in the seeds themselves, and this could only be caused by water coming into contact with the bags on the outside. Having

regard to his evidence and the other facts proved in the case, namely, that water was oozing out of the bags and that the floor of the metre-gauge

wagon itself was wet, there can be no doubt in this case that 225 bags became damaged only on account of rain-water and not on account of any

moisture present in the seeds.

13. The next question for our consideration is whether this was caused by any negligence on the part of the railway administration. A number of

witnesses were examined on behalf of the respondent-railway administration to show that there was no rain all the way from Bidar to Arkonam

during the relevant period. D.W. 10, who was a clerk employed in the Control Office in Royapuram station during the relevant period, produced

Exhibit B-27, the yard report book maintained by him, in which reports of rainfall occurring between stations, Madras to Raichur and Madras to

Bangalore, are noted. Occurrence of heavy rainfall is indicated by the letters " H.R. " and slight rainfall by the letters " S.R. " Much reliance cannot,

however, be placed upon this register for the reason that reports of rainfall are not called for from stations and this register seems to be compiled

only from reports voluntarily sent by the Station Masters. D.W. 10 is unable to say if any record is kept at every station of rainfall. That alone

would be a reliable record to prove the assertion that there was no rainfall in any place en route from Bidar to Arkonam. There is, however,

indication in the evidence of D.W. 9, the transshipment clerk at Arkonam responsible for the transshipment of the consignment now in dispute, that,

on the same date on which the suit consignment was handled at Arkonam, another consignment of goods received from Zaheerabad was damaged

by water. In that consignment, 201 bags were wet. The telegram which this clerk sent in respect of this consignment is Exhibit B-26 (a). There is

no evidence to show what happened to this damaged consignment from Zaheerabad. But this circumstance positively proves that more than one

consignment which arrived at Arkonam on the date in question in different wagons were damaged by water. The possibility, therefore, of rain

having fallen at some place between Bidar and Arkonam cannot be ruled out. That there was heavy rain at Mayavaram and Tiruvalur on the days

on which the metre-gauge wagon, in which the suit consignment was loaded, remained in the yard of those stations, is admitted by the witnesses for

the railway. Thus, the possibility of rain water entering into both the broad-gauge wagon and the metre-gauge wagon is clearly established by the evidence in the case.

14. Thus the question for our consideration is whether the evidence let in by the railway administration discharges the burden which lies upon them

as bailees to show that they had taken as much care of the goods bailed as a man of ordinary prudence would take under similar circumstances of

his own goods. This is the measure of the responsibility of a bailee laid down in Section 151 of the Indian Contract Act, which applies to railway

administration in this country by virtue of Section 72 of the Indian Railways Act. The responsibility of a bailee laid down in Section 151 of the

Contract Act can be delimited by a special contract. This is provided for in Section 152 of the Indian Contract Act. Delay in delivery and the

responsibility for the consequent damage to the goods is provided for in Section 161 of the Indian Contract Act. But, that question does not arise

in this case, since the delay complained of by the plaintiff was only four or five days" delay. According to the plaintiffs, the journey from Arkonam

to Mannargudi usually takes four or five days, though in the present case it had taken eight days. In the forwarding note, Exhibit B-1, signed by the

broker of the consignor when the goods were delivered at the Bidar station, the following remarks as to the condition of the goods appear.

Bagging second hand ; stitching defective ; new crop"".

15. The goods were consigned at the owner's risk, and therefore, if the railway is able to establish that the deterioration of the goods was caused

by the condition of the consignment as noted in the forwarding note, certainly, the railway would not be liable for the resulting damage. The damage

in this case cannot arise either on account of stitching being defective or on account of the crop being new. We have already discussed the question

whether the seeds were wet at the time when they were despatched at Bidar. There is no ground to hold that the coriander seeds bagged in gunny

bags at Bidar were not of the marketable dry quality. We have also indicated our opinion that the damage could not have been caused by second-

hand gunnies being used for bagging the seeds. The only cause for the damage must have been the wetting of the bags by rain water.

16. Mr. S.S. Ramachandra Ayyar, the learned Counsel for the railway

administration, cited the decision in *Bengal Nagpur Railway Company v.*

Moolji Sikka & Company I.L.R.(1930) Cal. 585 for the contention that, even though the goods were damaged by rain water in the course of the

journey, the railway company would not be liable for the damage unless the consignor who claims damages is able to prove that the wagon in

which the goods were loaded was leaky even at the station where the journey started. The facts of that case were as follows. The plaintiffs

despatched 348 bags of country biris from Tumsar Road railway station to Shalimar station, both situate on the Bengal Nagpur Railway. The

goods were loaded at Tumsar Road station on 26th June, 1925 and the wagon reached Shalimar station on the 3rd July following. The goods

were delivered on 6th July. The plaintiff had hired a whole wagon for despatching his goods. Sixty bags out of the 348 bags were found to have

been damaged by rain. It was established in that case that this damage occurred during the transit from Tumsar Road station to Shalimar station. At

the time of taking delivery at Shalimar station, the plaintiff's man found that there were holes in the roof of the wagon, through which water leaked

into it and damaged 60 packages. The goods were covered by Risk Notes A and B executed by an agent of the consignor. In construing the word

"misconduct" used in the Risk Note B, the learned Judge who constituted that Bench held that it included wrongful commission and omission,

intentional or unintentional...any act which it wrongfully did and which it wrongfully neglected to do. In effect, they laid down that the word

"misconduct" which they had to construe denoted any unbusiness like conduct and included negligence or want of proper care which a bailee was

bound to take u/s 151 of the Indian Contract Act. The change in the law introduced by the amendment of the Railways Act in 1949 does not touch

the point relevant for the purpose of the decision of this appeal except that, under the old Risk Note B, the onus was always upon the owner to

prove that the injury to the goods was caused by the misconduct of the servants of the railway company, whereas, by the elimination of the risk

notes and by reason of the new Section 74-A, this onus would be upon the railway except in a case where the goods are carried at owner's risk.

Section 74-A enacts thus:

(1) When any goods tendered to a railway administration for carriage by railway-

(a) are in a defective condition, as a consequence of which they are liable to deterioration, leakage, wastage or damage in transit, or

(b) are either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under Sub-section (2)

and as a result of such defective or improper packing are liable to leakage, wastage or damage in transit, and the fact of such condition or defective

or improper packing has been recorded by the sender or his agent in the forwarding note, the railway administration shall not be responsible for

any deterioration, leakage, wastage or damage or for the condition in which such goods are available for delivery at destination, except upon proof

of negligence or misconduct on the part of the railway administration or of any of its servants.

Clause (2) of Section 74-A is not relevant for our present purpose. Thus, it will be seen that, only under two contingencies, the onus is cast upon

the plaintiff to prove negligence or misconduct on the part of the railway administration or any of its servants before damages could be claimed

when goods are sent at owner's risk. The first relates to the defective condition of the goods, as a consequence of which they are liable to

deterioration. The second condition relates to defective packing of the goods which leads to the damage in question. We have already indicated

that the damage in this case could not be attributed either to defective condition of the goods or the defective packing of the goods in secondhand

gunnies. It follows that in this case the primary onus of a bailee to show that he had taken such care of the goods as a man of ordinary prudence

would take in the case of his own goods must be discharged for denying relief to the plaintiff. In our opinion, the decision in *Bengal Nagpur*

Railway Company v. Moolji Sikka & Company I.L.R.(1930) Cal. 585 does not touch the question which we have to decide, as it arose under the

old B Form Risk Note by which the onus always lay upon the plaintiff to prove misconduct. In this view, it is not necessary for us to say with all

respect that the decision in that case went too far when it laid down that, once the wagon was found to be in a good condition at the loading

station, the fact that it was found to be in a leaky condition at the destination station could not be attributed to the negligence or misconduct of the

railway. The reasoning of the learned Judge was that en route the wagon might have developed leaks, for which the railway would not be

responsible. It seems somewhat strange that a wagon which was in a leak-proof condition 10 days earlier at the time when the goods were loaded into it should suddenly become leaky 10 days thereafter. However, this decision need not detain us any further, since we hold that, in this case, the onus is primarily upon the railway as a bailee to show that they have taken such care of the goods as a person of ordinary prudence would in the case of his own goods. Of course, there is no evidence to show that the two wagons in question were overdue for repairs or overhaul, because the railway has not produced any registers to show when these wagons were due for overhaul. This is a matter upon which the plaintiff could have taken steps to send for the relevant registers ; but his failure to do so could not alter the facts which have been proved in the case. Neither the metre-gauge wagon nor the broad-gauge wagon used in this case could have been leak-proof, as otherwise we are unable to find how the consignment could have been damaged by rain-water. On this point, we must refer to the evidence of D.W. 14, the Train Examiner at Tanjore who is said to have tested the metre-gauge wagon at Mannargudi on 13th January, 1951. That day, he went with six labourers from Tanjore to Mannargudi and tested the metre-gauge wagon in which the suit consignment has been received, by pouring 60 buckets of water over the roof of the wagon. The prescribed procedure for testing a wagon for leaks as laid down in Rule 261 of the Standing Orders of the South Indian Railway is that if there is no Train Examiner at the station where the damaged goods were unloaded, the wagon must be consigned to the nearest station with a Loco Department, where the Loco Foreman should be requested to examine it. Of course, the wagon concerned in this case was not sent to Tanjore, but this is not a very material factor. The test carried out by D.W. 14 may not be perfunctory ; but it cannot be relied on as a foolproof test to find out if the wagon was leakproof. Thus, though it is not obligatory for a wagon to be tested only at stations with water column, the test adopted by D.W. 14 cannot be accepted by us as an efficient test. For this conclusion, we also rely upon the condition of the wagon, namely, the floor of the wagon being wet at the time when it was opened at Mannargudi station. Leaks may develop in a wagon not only through holes in the roof, but also through the doors nor being waterproof when closed. That P.W. 3 loaded a consignment of paddy into the metre-gauge wagon in

question on 13th January, 1951, itself at Mannargudi would not be decisive on this question. Our conclusion is that the damage in this case was

caused only because rain-water leaked both into the broad-gauge wagon in which the goods arrived from Bidar upto Arkonam and also in the metre-gauge wagon from Arkonam to Mannargudi.

17. The next question, is, what will be the amount of damages to which the plaintiff will be entitled? The interest claimed from the date of delivery

upto the date of the plaint was given up by endorsement on the plaint. The learned Subordinate Judge indicated in paragraph 14 of his judgment in

recording his finding under Issue 4 that, if the plaintiff were entitled to damages, he would award cost-price at Rs. 68 per bag for 125 bags, and at

Rs. 77 per bag for 100 bags. He did not accept the plaintiff's contention that damages should be assessed at the market price ruling on the date of

delivery. Mr. R. Gopalaswami Ayyangar, learned Counsel for the appellant, did not address any argument to us on the point The rate claimed in

the plaint for the damaged bags included the cost of the gunnies, which appears to be prima facie untenable, because the price charged by the

sender at Bidar included the cost of the gunnies also. The market price ruling between 10th and 20th January, 1951, for the goods at Mannargudi

is alleged in the plaint to have been Rs. 75 per bag. The basis of damages claimed is thus set forth in the plaint : the plaintiff is entitled to recover by

way of damages the difference between the market value and the money that could be realised by him by sale of the damaged portion of the

consignment. Even though the market value of the goods was said to be Rs. 75, the learned Subordinate Judge has found that he would be

prepared to award damages for 100 bags at Rs. 77 per bag. We are unable to follow the reasoning by which he arrived at that conclusion. In

regard to the remaining 125 bags the learned Subordinate Judge was prepared to allow damages at Rs. 68 per bag. The figure worked out

according to the learned Subordinate Judge's rates comes to Rs. 16,200 while, surprisingly, the amount assessed in the plaint as damages is only

Rs. 15,537-8-0. Obviously the Subordinate Judge was under a misapprehension as to the amount claimed in the plaint for damages, and his finding

as to what the damages would be cannot therefore be accepted by us. The basis adopted in the plaint is the value of the goods at the market rate

of Rs. 75 per bag minus the actual amount realised by sale of the damaged bags. To this was added the cost of the gunny bags. Since we have

found that the plaintiff could not claim the cost of the gunny bags, the damages to which the plaintiff will be entitled should be calculated on the

basis of the claim made in the plaint, which comes to a lesser figure than the figure which the Subordinate Judge was prepared to award.

18. In the result, the appeal is allowed. The decree of the learned Subordinate Judge is set aside, and the appellant-plaintiff is given a decree for

Rs. 14,459-1-6 with interest on this amount at 6 per cent per annum from the date of the decree of the Subordinate Judge till the date of payment

with proportionate costs in both the Courts.