
(1958) 09 MAD CK 0010
In the Madras High Court
Case No : App. No. 388 of 1954

M.K. Manickam Chettiar

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 25-09-1958

Acts Referred:

Contract Act, 1872 — Section 151, 152, 161
Railways Act, 1989 — Section 72

Citation : AIR 1960 Mad 149

Hon'ble Judges : P.V. Rajamannar, C.J; Ganapatia Pillai, J

Bench : Division Bench

Judgement

Ganapatia Pillai, J.

(1) 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. 14659-1-6 and interest at 6 per cent per annum on this amount from 23-1-1951

to 3-12-1951. 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 Motilal Madan Mohan of Bidar in the Old Hyderabad State to

purchase for him 300 bags of dhanias and despatch them by rail to Mannargudi. Accordingly, 300 bags were loaded by the broker of Motilal

Madan Mohan, on 25-12-1950 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 guage wagon in which the goods were sent to Mannargudi arrived at that station on 12-1-1951. 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 20-1-1951, 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 the 90 per cent of the value of the

goods. The plaintiff was therefore able to sell only the 75 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. 1500 at the market rate of Rs. 75 per bag. The total damage suffered by the plaintiff amounted to Rs. 15,537-8-0 but the claim for

damages made in the plaint is limited to Rs. 14659-1-6.

(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?

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 railways 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 13-1-1951 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 watertight.

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 meter

gauge wagon in which the goods were carried from Arakonam to Mannargudi was not leaky though not rain proof. 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 wagons was water-tight.

We may straightway 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 guage 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.

(5) Another conclusion of the learned Judges 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 22-12-1950.

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 out if his

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

(6) 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 25-12-1950. This wagon arrived at Arkonam on 4-1-1951 with the forwarding Station Master's seals intact. The consignment

was transhipped at Arkonam junction into the metre gauge wagon BCG 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 Mannargudi 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, as 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.

(7) 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." 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, Ex. 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.

(8) Two things stand out prominently from this evidence. First, if partially dried

corps, 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.

(9) 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 22-12-1950, and was therefore forced to send, in a hurry, goods which were not completely dry. It is true that, on 18-12-1950, 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 22-12-1950, he had a stock of only 84 old bags. In cross-examination, P.W. 4 stated thus: At close of 18-12-1950, 84 bags were on hand.

On 22-12-1950, he had a stock of 467 bags on hand, out of which 306 bags had been despatched on 23-12-1950. On 19-12-1950, 864 bags had been despatched. Thus, after 18-12-1950 till 22-12-1950, nearly 1000 bags had been purchased and despatched. On 23-12-1950, this witness purchased 213 bags. Thus, the old stock available on the 23rd of December before the purchase of 213 bags amounts to at least 196 bags. This and the purchase of 213 bags on 23-12-1950 constituted the source, from which 300 bags were sent to the Bidar railway station on 24-12-1950 for the order of the plaintiff and they were actually loaded into the wagon on 25-12-1950. 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 dryage is one day. He positively denied that the time taken for dryage would be four days. The process of collecting the goods and drying them described by P.W. 4 is this, If dhania

purchased was not dry, it 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 dryage would be sufficient to make the goods completely dry. As against the

evidence of this witness, 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 learned 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.

(10) 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.

(11) 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. Immaturely 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 were 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.

(12) 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 administrations to show that there was no rain all the way from Bidar to Arkonam

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

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 could be a reliable record to prove the assertion that there was

no rainfall in any place on route from Bidar to Arkonam. There is, however, indication in the evidence of D.W. 9, the transhipment clerk at

Arkonam responsible for the transhipment 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 Ex. 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.

(13) 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 S. 151 of the Indian Contract Act, which applies to railway

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

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

consequent damage to the goods is provided for in S. 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

plaintiff, 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 Ex. 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 secondhand; stitching defective; new crop."" 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 an 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 secondhand gunnies being used for bagging the seeds. The only cause for the damage must have been the wetting of the bags by

rain water.

(14) Mr. S. S. Ramachandra Aiyar, the learned counsel for the railway administration, cited the decision in B.N. Ry. Co. Vs. Moolji Sicka and

Co., , 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 situated on the Bengal Nagpur Railway. The goods were loaded at Tumsar road station on 26-6-1925

and the wagon reached Shalimar station on 3rd July following. The goods were delivered on 6th July.

The plaintiff had hired a while wagon for despatching his goods, 60 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 Judges who constituted that Bench held that it included wrongful commission and omission, intentional or unintentional,.....

any act which it wrongfully did not 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 under 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 S. 74A, this onus would be upon the railway except in a case

where the goods are carried at owner's risk. Section 74A 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-s. (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 of 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 S. 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 where 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 B.N. Ry. Co. Vs. Moolji Sicka and Co., , 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 Judges 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 ten days earlier at the time when the goods were loaded

into it should suddenly become leaky ten 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 or 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 rainwater. 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 13-1-1951. That day, he went with six labourers from Tanjore to Mannargudi

and tested the meter gauge wagon in which the suit consignment had 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 R. 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 fool proof test to find out if the wagon was leak-proof. 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 not being waterproof when closed. That P.W. 3

loaded a consignment of paddy into the metre gauge wagon in question on 13-1-1951 itself at Mannargudi would not be decisive on this question.

Our conclusion is that the damage in this case was caused only because rainwater leaked both into the broad gauge wagon in which the goods

arrived from Bidar upto Arkonam and also in the metre gauge wagon from Ankonam to Mannargudi.

(15) 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

up to 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 Aiyangar, learned counsel for the appellant did not address any argument to us on this 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.

(16) 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. 14,432-1-6 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.

(17) Appeal allowed.