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(1958) 08 OHC CK 0013

In the Orissa High Court

Case No : Second Appeal No. 163 of 1956

Nanda Kishore Chiranjilal and Another — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 25-08-1958

Acts Referred:
Railways Act, 1890 — Section 72A, 74C, 74D

Citation : AIR 1960 Ori 141 : (1959) 25 CLT 260

Hon'ble Judges : S.P. Mohapatra, J

Bench : Single Bench

Advocate : H. Sen, for the Appellant; B.K. Pal, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mohapatra, J.—The plaintiffs, who were unsuccessful in both the courts below, have come with this second appeal against the confirming judgment of the lower appellate Court arising out of a suit for recovery of damages on account of the plaintiffs'' having suffered damages of their articles consigned from Faruqabad to Bhadrak. The plaintiffs" version is that a consignment of 273 baskets of potatoes weighing nearly 307 maunds was despatched on 27-5-52 from Faruquabad situate in East Indian Railway at the time when the consignment was made, and the consignment reached Bhadrak the place of destination on 8-6-52 and the plaintiffs when taking delivery of the goods on 9-6-52 found that 100 baskets had suffered damages to the extent of 80 per cent, another 100 baskets to the extent of 40 per cent and the rest 73 baskets to the extent of 35 per cent.

The plaintiffs therefore levied the claim at Rs. 2445/-. The plaintiffs aver that the damages were on account of the delay and negligence on the part of the railway employees. The defence was that there was no negligence or delay in the transit of the goods; on the contrary the plaintiffs paid a lower rate and acknowledged that the transit was to be at the owner''s risk; the damages were suffered in due course of transit even though there was no negligence on the part of the railway

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authorities and therefore the railway is not liable.

2. It is to be noted at the outset that Section 74 of the Indian Railways Act has undergone changes by introducing several sections with the set purpose or settling various conflicts of decisions which were existing prior to the introduction of legislation by the Central Legislature which took place in 1950. The relevant provision is 74-C which runs as follows:

"Liability of a Railway Administration for animals or goods carried at owner''s risk:

(1) When any animals or goods are tendered to a railway administration for carriage by railway and the railway administration provides for the carriage of such animals or goods either at the ordinary tariff rate (in this Act referred to as the railway risk rate) or in the alternative at a special reduced rate (in this Act referred to as the owner''s risk rate), the animals or goods shall be deemed to have been tendered to be carried at owner''s risk rate, unless the sender or his agent elects in writing to pay the railway risk rate.

(2) Where the sender or his agent elects in writing to pay the railway risk rate under Sub-section (1), the railway administration shall issue a certificate to the consignor to that effect.

(3) When any animals or goods are carried or are deemed to be carried at owner''s risk rate, a railway administration shall not be responsible for any loss, destruction or deterioration of or damage to such goods from any cause whatsoever except upon proof that such loss, destruction, deterioration or damage was due to negligence or misconduct on the part of the railway administration or of any of its servants."

It is clear, on a plain reading of the section itself, that if it is established that the consignment was carried at owner''s risk rate, the railway will not be liable for damages for any loss, destruction or deterioration except upon proof that such loss, destruction or deterioration or damage was due to negligence or misconduct on the part of the railway administration or of any of its servants.

3. The main thing to be seen in this case is whether it has been proved as a matter of fact that the consignment was carried at railway risk rate or at owner''s risk rate. The defendant relies upon Ex. A, Railway receipt which was, it is to be noted, exhibited on admission. It runs as follows:

"Forwarding note No. 63 -- Risk note Form O. R. R. The baskets insecurely packed; contents perishable. Liable to damage and rotten in transit. Wagon (c) selected by the sender. Loading and unloading at owner''s risk. Rate owner''s risk."

The courts below have accepted form Ex. A, which was exhibited on admission, that the consignment was carried at owner''s risk and the contents of Ex. A are correct. They appear to be correct in view of the statement made by P. W. 1, plaintiff himself, in his deposition. He admits that he was not present when the

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potatoes were packed and booked; but his commission agent sent him the consignment. This commission agent was not examined. The plaintiff makes a statement in his cross-examination that he cannot say if the articles were sent at owner''s risk or railway risk.

It is impossible for a Court of Justice to accept the plaintiff''s statement as correct, the plaintiff being the consignee and he was to pay the railway freight also. Further it appears that his commission agent was present when the consignment was sent. The court below therefore were absolutely correct and justified in coining to the conclusion, that the contents of Ex. A are correct,

If once it is found that the contents of Ex. A are the true picture of the position, the case is very well covered by the provisions of Section 74-C of the Act and that the plaintiff can succeed only if he is able to prove the negligence on the part of the railway administration or of any of its servants. The consignment way made by the owner paying a considerable less rate. He chose his own wagon and it must be said the consignment was sent when the owner and the consignee took the risk of any damage during transit, particularly when the consignment was made in the hottest part of the year, that is, in the month of May.

4. Mr. Sen, appearing on behalf of the appellants however relies upon the finding of the lower appellate court that the Forwarding Note u/s 72-A has not been proved by the railway administration. His contention is that the railway administration is bound to produce the Forwarding Note and then only the contract could be established and the railway administration might be absolved of the responsibility after it is so noted in contract itself. As I have already discussed, from the evidence on record, which has been found by the courts below, the conditions to bring the ease under the provisions of Section 74-C have been well established.

It is now immaterial whether the Forwarding Note u/s 72-A is forthcoming or not, Mr. Sen, however, contends that it is always incumbent upon the railway administration to put forth all the materials in its possession to show how the consignment was carried during the transit. Position of this nature has been very well provided for by the Legislature in the new Amendment as contained in Section 74-D. It is applicable to cases of non-delivery. If it is a case of non-delivery, the railway administration is bound to disclose to the consignor how the consignment or package was dealt with throughout the time it was in the possession of the railway authorities. But the present case not being a case of nondelivery but being a case of damage during transit, as is manifest from the pleadings and evidence adduced, in my opinion, the case is not covered by Section 74-D but by Section 74-C and the courts below were justified in coming to the conclusion that the plaintiffs have not been able to make out a case to get any relief in the present suit.

5. A further point was taken that there was considerable delay during the transit which caused damage to the consignment and therefore the railway

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administration is responsible. As I have mentioned above, the consignment was sent on 27-5-52 and reached Bhadrak on 8-6-52. I get it from the judgment of the lower appellate court that there were no materials on record to show that the railway administration had guaranteed the period of transit. It is usually the case with the railway administration that it never takes the responsibility of giving any guarantee about the, time to be taken during transit. The courts below have further found that the consignment reached the destination within a reasonable time. The point therefore has no substance. Mr. Sen very much relies upon a Single Judge decision of Hyderabad in support of his contention that the Forwarding Note u/s 72-A should have been produced by the Railway authorities and further they ought to have produced the risk note, if any.

This is a case where the consignment was made prior to the introduction of the new Amendment of the year 1950 and further the distinguishing feature is that as there was no evidence, the learned Judge found it difficult to accept that the consignment was sent at owner''s risk rate. But as I have already mentioned, the evidence in the present case before us is so convincing that the courts below did come to the concurrent finding that the transit was at owner''s risk rate and therefore the plaintiffs were bound to prove negligence on the part of the railway administration.

6. Under the above circumstances, therefore, I confirm the judgments and decrees passed by the courts below and dismiss the appeal with costs.

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