
(1986) 04 MAD CK 0019
In the Madras High Court
Case No : S.A. 909 of 1980

Nippon Yeesen Kaisha Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-04-1986

Acts Referred:

Bills of Lading Act, 1856 — Section 3
Evidence Act, 1872 — Section 101, 104

Citation : AIR 1987 Mad 12 : (1986) 99 LW 366

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : S. Krishna Srinivasan, for King and Partridge, for the Appellant; P. Narasimhan, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

1. The appellant in this second appeal has to succeed on a very subtle and convincing point pressed forth by Mr. S. Krishna srivasan appearing for

M/s King and partridge, learned counsel for the appellant. The first defendant in the suit is the appellant. The respondents are the plaintiffs. The first

defendant is a carrier in respect of a particular quantity of urea shipped from Tokyo to Nagapattinam. The plaintiffs are the consignees. The

shippers of consignors were Mitsubishi Corporation, Tokyo. The plaintiffs sued the first defendant and its agent the second defendant for damages

to the tune of Rs. 3,045-20 for short delivery to the extent of 1.100 metric tons of urea. Both the courts below have countenanced the case of the

plaintiffs. As such the first defendant is mulcted with the decree as asked for.

2. In this second appeal directed against the judgment and decree of the lower appellate Court this court, at the " time of its admission, formulated

the following substantial questions of law -

Whether the trial court and the first appellate Court were right in decreeing the suit against the carrier in view of the qualified bill of lading and the

provisions " of S. 3 of the Bills of Lading Act? and when does the cause, of action start accruing for the purpose of Art. 111, rule 6, of the Carriage

of Goods by Sea Act, if the discharge of the cargo is spread over twenty days?

3. Mr. Krishna Srinivasan, learned counsel for the appellant-first defendant, was more on the first substantial question of law. The endorsement or

the bill of lading marked in this case as Ex. A1 reads as follows -

Net weight 7,200,000kgs

Gross weight 7,253,280kgs

Said to weigh".

4. Learned counsel for the first defendant appellant herein would submit that the endorsement extracted above did not give any assurance that the

weight had been checked and found to be correct and in such a contingency it is for the plaintiffs to prove the actual quantity shipped at the other

end and such a proof is glaringly lacking in the present case. He cites a number of pronouncements in support of this submission Before coming to

the pronouncements, I find factually what the counsel submits is correct. Only two witnesses were examined as P.Ws. I and 2, on behalf of the

plaintiffs and they could not competently say anything about the actual weight of the urea shipped at Tokyo. None on behalf of the consignees was

examined to prove the actual weight of urea shipped. Hence, we have to take it that in the present case there is dearth of evidence with regard to

the actual weight of the urea shipped at Tokyo.

5. In *New Chinese Antimony Co. Ltd. v. Ocean Steamship Co. Ltd.*, (1917) 2 KB 664, a bill of lading for antimony oxide ore stated that 937

tons had been shipped on board; in the margin was a typewritten clause "'A quantity said to be 937 tons'" and in the body of the bill of lading was

printed in ordinary type the clause "weight, measurement, contents and value (except for the purpose of estimating freight unknown). Under those

circumstances, it was held that the bill of lading was not even prima facie evidence of the quantity of ore shipped, and that in an action against the

ship owners for short delivery the onus was upon the plaintiffs of proving that 937 tons had in fact been shipped.

6. In *Hajee K. Assainar Vs. The Malabar Steamship Company Ltd.*, , Bhaskaran, J. as he then was dealt with a case, where the bill of lading was

subject to "the notation "weight declared by the shipper but not checked", and the learned Judge held that it was indicative of disclaimer of

responsibility and liability". After discussing the case" law, the learned Judge further held as follows -

The intention of the contracting parties in the present case can be gathered by construing reasonably the implications of the notation "weight

declared by the shippers, but not checked It is very clear that the shipping company did not want to acknowledge the correctness of the weight

shown in the bill of lading, or risk any liability arising out of the weight noted in the bill of lading

in the light of the decision which holds" that it is open to the carrier to contract out of his liability I am of the view that the first appellate court was

correct in holding that the plaintiff did not succeed in establishing that the weight of the goods shipped was actually as noted in the relevant bill of

lading. No presumption as was thought .to be raised by the learned counsel for the appellant arises merely on the ground that certain quantity has

been mentioned in the bill of lading, when. what has been noted is qualified by the further statement that the "weight was declared by the shipper,

but not checked by the carrier. In other words, it indicates that though the shipper declared the weight of the sugar that was shipped, the shipper

did not take the trouble of satisfying the carrier that the weight mentioned in the bill of lading was correct. It is, therefore, clear that the carrier could

not have been held responsible for the shortage when there is no acceptable proof that the actual weight of the 40 bags concerned was as noted in

the bill of lading at the time of the shipment.

7. In *Shipping Corporation of India v. Union of India*, AIR 1976 Goa 49, it was held that ""the clause in a bill of lading that the ,measurement,

weight and quantity, not known" meant that the particulars contained in the document were those furnished by the shipper and that the carrier did

not accept the particulars as correct and the burden of proving such particulars was on the shipper and by independent evidence dehors the

particulars appearing on the document."" While holding so, the two pronouncements i referred to above were followed..

8. So far as this court is concerned, a Bench consisting of S. Natarajan, J. (as he then was) and Sethuraman, J. in *Thakur Shipping Co. Ltd.*,

Bombay and Another Vs. Food Corporation of India, dealing with the endorsement. as "said to weigh" in a bill of lading, observed as follows -

.....In other words, it would mean that the particulars of weight entered in the bills of lading were in accordance with the figures given by the

shipper, but so far as the matter is concerned, he did not give any assurance that those particulars had been checked and found to be correct.

Once such a conclusion is reached, then it follows that it is for the respondent to prove that the rice bags that were loaded at Bangkok were of the

same weight as had been entered in the bills of lading. Only after such proof is adduced, the owner of the vessel can be called upon to account for

the shortage. Since such proof has not been adduced by the respondent in this case, we have to hold that the appellants cannot be called upon to

account for the shortage in the weight contents of the bags.

I have already found that. with regard to the actual weight of the urea shipped at Tokyo, there is dearth of evidence on the side of the plaintiffs. If

that is so, it is not possible to pin down the liability on the carriers in view of the endorsement found in the bill of lading. The endorsement said to

weigh found in the bill of lading Ex. A. I could only mean that there was no admission or acceptance of the weight, by the carriers, as declared by

the shippers or consignors. Such an endorsement could not be taken note of as conclusive proof of weight of the goods shipped. If there is a

complaint of short delivery, weight-wise, the burden rests squarely on the plaintiff to place acceptable and convincing evidence of the actual weight

of the goods shipped. The plaintiffs have not discharged their burden of proof. The lower appellate Court has chosen to mulct the liability on the

first defendant on the simple ground that the bags were found torn and in slack condition. This is only an inferential line of thinking and that can not

hold good in view of the pronouncements referred to above and the well settled principle. The fact that the bags were found torn and in slack

condition at the place of destination and delivery will not lead to any inference of proof that a particular weight of goods was supplied at Tokyo.

These features oblige me to interfere in second appeal and accordingly the second appeal is allowed. The judgment and decree of the two courts

below are set aside and the suit is dismissed. In the peculiar circumstances of the case, I do not think that there should be an order of costs at any stage of the lis. Accordingly, the plaintiffs are absolved of the liability of paying the costs throughout.

9. Appeal allowed.