

(1917) 05 CAL CK 0027
In the Calcutta High Court

Ramjash Agarwala

APPELLANT

Vs

Indian General Navigation And Railway Company, Limited

RESPONDENT

Date of Decision : 11-05-1917

Acts Referred:

Citation : 41 Ind. Cas. 387

Hon'ble Judges : Newbould, J; N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for the recovery of Rs. 1,591-15-10, being the price of goods delivered by the plaintiff for carriage to the defendant, the India General Navigation and Railway Company, Limited. The plaintiff's agent delivered at the defendant Company's Booking Office at Mokamah 150 bags of chillies weighing 130 maunds 8 seers for being conveyed to Goalundo. On arrival of the goods at the place of destination, the plaintiff's servant paid the freight, signed the bill of lading and gave a clear receipt in the delivery register of the defendant Company. He thereupon obtained the delivery order; but did not take actual delivery as he found some of the bags damaged. He asked the booking clerk to re-weigh the goods and then deliver the same. This was refused and, in consequence, the plaintiff's servant refused to remove the goods. Hence this suit for recovery of the price of the goods.

2. The liability of the defendant Company, a Steamer Company in respect of goods is that of an insurer. If, therefore, there was shortage in weight, the defendant would be liable. As already stated, however, the plaintiff did not weigh the goods and the suit is not for the price of goods which might have been found short in weight. The question for decision in the case is whether the plaintiff could compel the defendant Company to re-weigh the goods before taking delivery and, on the latter's refusal to re-weigh, whether the plaintiff was entitled to treat such refusal as a refusal to deliver goods and claim the price thereof.

3. It was contended before us that the consignee is entitled as of right to have

the goods re-weighed before taking delivery, but no authority has been shown in support of this broad proposition. We were referred to the case of *Wills v. Great Western Railway Company* (1915) 1 K. B. 199 : 84 L.J.K.B. 449. In that case the question was whether non-delivery of a part of a consignment was "non-delivery" of the consignment within the meaning of the contract between the parties. It was a case of short delivery and no question arose as to the consignee's right to have the goods re-weighed by the Company.

4. The question was raised in the case of *Janki Das v. Bengal Nappur Railway Company* 13 Ind. Cas. 509 : 15 C. L. J. 211 : 16 C. W. N. 356. In that case 290 bags of rice were consigned, two of which were lost and the remaining bags arrived at the destination in a damaged condition. The consignee demanded a re-weighment and a certificate of shortage and that not being complied with by the Company he refused to take delivery. The Court below held that "the Railway Company is not required by law either to re-weigh or to certify shortage," and this Court observed, "The result then is that of the 290 bags two were not delivered because that were lost, and non-delivery of the rest was due to the fact that the plaintiffs would only take delivery on a condition that they were not entitled to impose." There is no doubt that the matters are made easy for the consignee in a suit, if re-weighment is made by the Company before removal of the goods by the consignee, but it is a matter of evidence only. The refusal of the Company to re-weigh does not in any way affect the right of the consignee. He may weigh the goods himself, and claim the price of the shortage in weight. The mere fact that he has accepted delivery and granted a clear receipt does not extinguish his right to compensation if he proves that a portion of the goods were lost in transit or in the custody of the Company see *East Indian Railway Company v. Sispal Lal* 12 Ind. Cas. 596 : 14 C. L. J. 472 : 16 C. W. N. 329 : 39 C. 311.

5. The question whether the consignee is entitled to refuse to take delivery in case of short delivery, or the broad proposition that the consignee is not entitled in any case or under any circumstances to have goods, entrusted to a common carrier, re-weighed need not be considered in the present case. In the present case it cannot be said that there was short delivery because the goods were never weighed by the plaintiff, and he is not in a position to say whether there was any shortage.

6. It appears that it was the practice of the defendant Company to allow consignees to inspect their goods before granting receipt in the delivery book and have their goods re-weighed (if so demanded) in case of suspicion of short weight and enter the short weight in the delivery book. In fact the plaintiff's agent, who went to take delivery of the goods in question, appears to have on two other occasions granted qualified receipts for goods with a remark of short weight. He might have adopted the same course in the present case, and if that course was not open to him because he had given a clear receipt, he might have had the goods weighed himself and claimed the price for the shortage. But he did

not avail himself of the opportunity of inspecting the goods before granting receipt, and having granted a clear receipt insisted upon re-weighment and upon the defendant's refusing to re-weigh, he refused to take delivery. We do not think that under the circumstances he was justified in refusing to take delivery of the goods on the ground that they had not been re-weighed by the Company, and to claim the price thereof. The appeal must, therefore, be dismissed.

7. Appeal from Appellate Decree No. 400 of 1914 arises out of a cross-suit brought by the Company to recover Rs. 519-13-9 on account of godown charges for the period during which the chillies were in the custody of the defendant. If, as we have said, the plaintiff was not justified in refusing to take delivery of the goods, he would be liable for demurrage charges for the period during which the goods were in the possession of the Company. It appears, however, that on the 5th January 1911, the Company wrote to the plaintiff that the chillies would be sold away at auction if the consignee failed to remove them. The Court of first instance held that the Company were not entitled to any demurrage after that date, and, accordingly, allowed only Rs. 153-6-6 as demurrage for the period up to that date and the decree was affirmed on appeal. We think that that decree is correct and this appeal also must be dismissed. We make no order as to costs in either case.

8. The result, no doubt, is to be regretted. But the plaintiff appears to have refused to take delivery of the goods on the mistaken notion that he could insist upon the defendants' re-weighing the goods before taking delivery, the defendant Company also insisting upon their strict rights to refuse re-weighment.