
(2001) 08 SC CK 0113

In the Supreme Court Of India

Case No : Civil Appeal 4569 of 1995 and Special Leave Petition(C) 13631, 13632 and 3974 of 1995 and 1996

Saddler Shoes Pvt. Ltd. etc.

APPELLANT

Vs

Air India and Others

RESPONDENT

Date of Decision : 28-08-2001

Acts Referred:

Carriage by Air Act, 1972 — Section 12

Citation : (2001) 6 AD 28 : (2001) AIRSCW 4551 : (2001) 49 BLJR 2092 : (2001) 3 CPJ 1 : (2001) 7 JT 122 : (2002) 1 PLJR 191 : (2001) 5 SCALE 550 : (2001) 8 SCC 390 : (2001) 6 Supreme 528 : (2001) 2 UC 437 : (2001) 2 UJ 1562

Hon'ble Judges : S. Rajendra Babu, J;D. P. Mohapatra, J

Bench : Division Bench

Advocate : K.N. Rawal, Additional Solicitor General, Joseph Vellapally, Ranjit Kumar, A.K. Ganguli, Dayan Krishnan, Nikhil Nayyar, S. Muralidhar, K.V. Viswanathan, K.V. Venkataraman, R.B. Hathikhanawala, Ms. Nina Gupta, Uday Gupta, Ms. Saya Shrivastava, Omika Dubey, Vineet Kumar, Mr. Narain, Sandeep Narain, Ms. Anjali, A.K. Mittal, Mrs. Meera Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Rajendra Babu, J.—This appeal arises out of an order made by the National Consumer Disputes Redressal Commission (for short 'the National Commission') in the original petition before it.

2. The facts leading to this appeal are as follows:

In the original petition before the National Commission, the appellant, M/s Saddler Shoes Pvt. Ltd., acting through their agent M/s Sheriff Travel and Cargo Service Pvt. Ltd. booked two consignments of leather garments for transportation from Madras to Gdansk in Poland as per the two airway bills dated May 11, 1991. According to appellant, the goods reached the destination at Poland but the respondents did not inform the consignees about their arrival and did not deliver the goods to the said consignees; that some time in July 1991,

the appellant came to know that the consignees were not interested in taking the delivery of the goods consigned and thereafter they located another purchaser in Gothenburg, Sweden who was willing to purchase the said goods; that, therefore, the appellant requested the respondents to redirect the two consignments to Gothenburg, Sweden; that in spite of repeated requests the respondents failed to carry out the appellant's instructions for rerouting the goods to Gothenburg, Sweden as a result of which the new intended purchaser cancelled the order resulting in financial loss and other damages arising as a result of inconvenience, mental anxiety and worry. On the question of payment of demurrage charges as claimed by the respondents it was stated that such liability would not have arisen had the respondents discharged their duty properly. The appellant contended that under Paragraph 2.7.1. of Air Cargo Tariff Rules, published by the International Air Transport Association, it is the duty of the carrier to promptly inform the appellant about the failure of the consignee to take delivery of the goods and in not carrying out the said duty the respondents had been guilty of negligence which constitutes 'deficiency' in service. On three grounds it is urged that: (i) Air India had not informed the consignees at Poland of the arrival of the goods and deliver the goods to the consignees in Gdansk; (ii) they had not acted on the instructions of the appellant to reship the goods and deliver the same to the consignee in Sweden, and (iii) Air India had not promptly informed the appellant about its difficulty in carrying out the appellant's instructions to reship the goods to Sweden, the respondents had been wilfully negligent and guilty of deficiency in service and the appellant sought for compensation of Rs. 31.52 lakhs as representing the loss and damage caused to him under various heads set out in the complaint.

3. Air India contended that their obligation was to carry the consignment booked by the appellant to a destination specified by them, namely, Gdansk in Poland and this obligation had been duly carried out by them inasmuch as the consignments involved had safely reached the Airport, Gdansk in Poland on May 26, 1991. Inasmuch as Air India did not operate any service to Gdansk in Poland, it had arranged with LOT Polish Airlines for the transportation of the consignments in question from Frankfurt to Gdansk and through them the consignments were safely carried to the destination. After the arrival of the consignments in the said port of destination the Polish Airlines gave a notice of the arrival of the consignments to the consignees concerned and even though reminders were also sent to the consignees there was no response from them. The consignments, therefore, remained undelivered at the Gdansk Airport. Much later the appellant conveyed a request that the consignments should be re-routed to Sweden and Air India contacted the LOT Polish Airlines to ascertain the demurrage and customs charges that had to be paid to the Polish authorities at Gdansk Airport since the goods had remained undelivered in the Airport for a long time. The appellant was also informed that the should make a deposit of a substantial amount in U.S. Dollars with Air India to enable it to arrange for transportation of the goods from Gdansk to Gothenburg. The appellant thereupon

offered to make some payment only in Rupee currency but they were advised to obtain Reserve Bank of India approval for accepting the payment in Indian currency. The re-transportation from Gdansk to Gothenburg could not be arranged by Air India because of the failure on the part of the appellant to obtain the Reserve Bank of India approval and deposit the required amount in Rupee currency. In those circumstances, it is contended that there is no deficiency on their part.

4. The National Commission after inquiry dismissed the complaint. On identical facts, two appeals that had been preferred by Air India against the orders of the State Commission stood allowed while the appeals preferred by complainants before the State Commission stood dismissed.

5. Before us the contention put forward is that the carrier has a liability to take instructions from the consignor in the event of the buyer declines the goods and that when the buyer had not refused to take goods, the maximum that could be stated is that there was no delivery; that even assuming that there was no refusal in writing but in view of the long lapse of time the carrier ought to have intimated the shipper on the expiry of reasonable time. The appellant, on the basis of interpretation of Section 12 of the Carriage by Air Act, 1972, contended that the consignor has the control over the disposal of the consignment and this right ceases only when that of the consignee begins and that, therefore, when the consignee claimed no interest in the consignment, the carrier is duty bound to carry out consignor's instructions to divert the consignment to new consignee.

6. The National Commission, held that the fact that the consignees had not been informed about the arrival of the consignments at Gdansk in Poland is not correct and there was ample evidence put forward by Air India and as enumerated in the statement filed by LOT Polish Airlines, third respondent before it; that the Polish Airlines had advised the consignee about the arrival of the goods on May 29, 1991 and had followed it up with reminders sent on June, 11, 1991 and July 19, 1991 and thus there was no failure on the part of either Air India or on its agent LOT Polish Airlines to carry out their obligation to give the intimation to the consignee about the arrival of their goods at the port of destination. The consignee, however, failed to take delivery of the goods. Thus the first contention put forward before the National Commission that Air India was guilty of deficiency in service on the ground of failure on their part to give intimation to the consignee about the arrival of the goods has no merit.

7. The National Commission also noticed as follows:-

"The transaction of the sale of the goods to the consignee in Gdansk had been effected by the Complainant by the process of negotiating the documents of title to the goods through its Bank in Madras which in its turn had sent the documents to its counter part in Gdansk with instructions to deliver them to the consignee only on the payment of the full amounts payable to the consignor as noted in the documents. The consignor as a prudent businessman to whom substantial

amounts were due in respect of the goods dispatched to Poland, would ordinarily have been in regular touch with his banker for ascertaining whether the bills had been honoured and the amount due thereon had been credited to his account. We are unable to believe and accept as true the case put forward by the complainant that they made no inquiries of the said nature and were content to sit back and wait until some day in July, 1991 when they casually came to know from a part in Sweden that the consignees were not interest in taking delivery of the goods. The probability is that, soon after the consignments reached Gdansk in Poland and the consignee failed to take delivery thereof, the complainants would have come to know from their banker in Madras that the bills had not been honoured and hence they would have contacted the part in Sweden in their efforts to find an alternative buyer. We hold that no loss of any kind had occurred to the complainant by reason of the alleged deficiency in service on the part of Air India to inform the complainant about the failure of the consignee in Poland to take delivery of the two consignments."

8. Apart from stating the law on the matter, it was noticed by the National Commission that the complainants merely instructed Air India to re-ship the goods, but they had not taken any steps to deposit the charges for re-transportation which had to be paid either in foreign currency or in Rupee currency with the express approval and permission obtained from the Reserve Bank of India. On the basis of these facts, the National Commission held that there was no deficiency of service by the respondents. Similarly, on the same basis, the National Commission reversed the findings recorded by the State Commission.

9. In our view, it is unnecessary in these cases to adjudicate upon the fine points of law raised in these appeals, such as the consignor's rights and carriers' liability. Even proceeding on the basis of the contention raised before us, when the National Commission, as a matter of fact, has recorded the findings as to the discharge of the liability by the respondents, we hardly find any merit in this appeal and, therefore, we decline to interfere with the same.

10. The appeal, therefore, stands dismissed. The facts and questions of law arising in the special leave petitions are identical to those considered in C.A.No.4569/95. Hence SLPs also stand dismissed. Leave to appeal refused. But in the circumstances of the case, there shall be no order as to costs.