

(1964) 11 PAT CK 0017

In the Patna High Court

Case No : Letters Patent Appeal No. 119 of 1959

Sagarmal Choudhury

APPELLANT

Vs

Union of India(UOI)

RESPONDENT

Date of Decision : 04-11-1964

Acts Referred:

Railways Act, 1890 — Section 75

Citation : AIR 1965 Patna 316

Hon'ble Judges : S.C. Misra, J;G.N. Prasad, J

Bench : Division Bench

Advocate : Harilal Agarwalla, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal against the judgment of Raj Kisore Prasad, J. in First Appeal No. 480 of 1956. The plaintiff brought a suit for damages against the Union of India for deterioration of the consignment of the plaintiff despatched from Harinagar Sugar Mills to Tatanagar. It is said that when the consignment was received at Tatanagar, it was found damaged, 75 bags by rain water in the first wagon and 8 bags by difference in weights in the second wagon. It is not necessary to refer in detail to these matters, as the present appeal is confined to a narrow question which is to the effect as to whether the amount of damages allowed to the plaintiff by the Court on the basis of the prevailing rate of prices for the consignment concerned at the place of destination should include the railway freight or not. The learned Single Judge has excluded the railway freight from the prevailing market rate. The market rate has been accepted as being Rs. 29-12-10. It has been calculated that Rs. 28-3-4 per maund would be the net market rate and Rs. 1-9-6 would comprise the railway freight etc.

The learned Single Judge has allowed damages at the rate of Rs. 28-3-4 in respect of the quantity of sugar found to have been damaged in transit while the consignment was in the custody of the railway administration, inasmuch as, Rs. 1-9-6 was deducted out of the amount claimed, being Rs. 29-12-10, as freight

per maund as I have mentioned above.

2. Mr. Harilal Agarwalla, appearing for the appellant, has urged that the learned Single Judge was in error in reducing the claim of the plaintiff v. with regard to the "prevailing market rate per maund by the sum of Rs. 1-9-6, because Rs. 29-12-10, the prevailing market rate, would always include the freight paid by the consignor when the market rate to be taken into account is the rate prevailing at the place of destination. The principle, no doubt, is well established with reference to several authorities to which reference is not necessary, that where damages are calculated on the basis of the market rate prevailing at the place of destination, that should include the railway freight as well, because such rate is determined as a rule by three factors, namely, the cost price of the commodity, the cost of transportation as also the margin of profit of the supplier (the last factor not being relevant in assessing damages). The sum of Rs. 29-12-10, In that view, the price which the commodity would have fetched at Jamshedpur, must be allowed because the plaintiff already paid the railway freight.

It is also settled law that if it be a case of complete loss of the consignment in which even the railway freight is generally not paid because no delivery of the goods can be made, damages are allowed on the basis of the prevailing market rate of the commodity at the place of destination, but the railway freight has to be excluded because it is taken for granted that It has not been paid. When the market rate at the place of destination is not available, or no evidence has been adduced on that, then the cost price together with thee railway freight must be taken into account for determining the amount of damages where it is in evidence that the railway freight, in fact, was paid. Where, however, there is no evidence to that effect either resulting from the circumstances or direct evidence on the point, then the railway freight cannot be taken into account for assessing the amount of damages awardable to the plaintiff.

Mr. Bose, appearing for the respondent, the Union of India, has urged that if the present case is placed in the first category, the railway freight would be included, no doubt, provided, however, that there would be evidence on record to support the plaintiff's claim, that the railway freight was, in fact, paid. A perusal of the plaint shows that there is no recital therein in paragraph 11, which is relevant, that the railway freight was paid, and a certain amount was demanded on that ground. The plaintiff (P. W. 3) has stated in his examination In chief that Rs. 29/- per maund was the cost price inclusive of the railway freight etc. But he did not say that the railway freight was paid. Mr. Bose has urged further that although normally when the railway receipt is presented for taking delivery of the goods consigned through railway, freight would be realised by the railway authorities before the delivery could be made; but in the case of merchants who have regular transactions of transport of goods, delivery may be made even without realising the freight which may be debited to the account of the consignee.

In the circumstances, It Is incumbent upon the plaintiff to say in clear terms that

the railway freight was paid. We consider it unnecessary to scrutinise the substance of Mr. Bose's contention because Ext. A, the railway receipt, does not show that the railway freight was paid, and neither in the plaint nor in the evidence of the plaintiff (P. W. 3) anything has been mentioned on this matter. In the circumstances, it cannot be taken that the payment of the freight by the plaintiff has been established in a reasonable manner. We would accordingly accede to the contention of Mr. Bose that the plaintiff cannot claim inclusion of the sum by way of railway freight as if he had already paid it to the railway administration. Mr. Agarwala has contended that the learned Single Judge does not indicate that he was very clear in his mind on this point, that is to say, that the freight could not be allowed because there was no evidence that the freight had been paid. Somehow or other he was of the opinion that the railway freight, as a matter of rule, could not be included in damages to be awarded on the basis of calculation of the prevailing market rate at the place of destination. That may be so. We would accordingly make the position clear that where the railway freight has been established to have been already paid by the consignor to the railway administration, this amount could not be excluded from the prevailing market rate at the place of destination. In the present case, however, there is no evidence to that effect on the record, and the appeal must be dismissed. In the circumstances, the parties will bear their own costs.