
(1960) 04 PAT CK 0009

In the Patna High Court

Case No : Appeal from Original Decree A.F.O.D. No. 236 of 1957

Sarjug Prasad Ishwar Purbey

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-04-1960

Acts Referred:

Railways Act, 1890 — Section 72, 74A, 74C

Citation : AIR 1960 Patna 571

Hon'ble Judges : K. Dayal, J

Bench : Single Bench

Advocate : A.C. Roy, for the Appellant; P.K. Bose and Mahabir Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

K. Dayal, J.—This appeal is by the plaintiff-firm. It arises out of a suit for recovery of damages against Union of India representing the North-eastern Railway and the Eastern Railway.

2. The case of the plaintiff-firm, shortly stated, is that on the 6th November 1954, they had booked 178 bags of resultant atta from Darbhanga Railway Station for Howrah. The consignment reached. Howrah on the 14th November 1954, when the plaintiff-firm presented the railway receipt before the Goods Accountant at. Howrah and demanded the delivery of the consignment. They were, however, told to get the railway receipt countersigned by the Director of Procurement and Supply, Government of West Bengal, Calcutta, otherwise the delivery could not be given. Then it is alleged, they approached the Director of Procurement and Supply in the matter, but their attempts failed. On the 2nd April 1955, however, the said Director informed them by wire that the ban on the movement of wheat products had been lifted. They did not take delivery as the goods had become unfit for human consumption, and, after serving usual notices on the Railway Administrations, they instituted the present suit on the 22nd September 1955, alleging that the commodity in question had deteriorated due

to the negligence of the Railway Administration causing loss to them.

3. The defence, amongst other, was that the atta in question was inherently bad and that the same had lost its quality due to the plaintiff-firm not taking delivery at the proper time, and that there was no negligence on the part of the Railway Administrations.

4. The Court below, on a full and fair consideration of the evidence, has held that there was no negligence on the part of the Railway Administrations in taking proper care of the atta in question. It has, further, held :

"The plaintiff should have taken the delivery as required under the rules of the Railways, and then, if he was entitled to claim compensation under the law he could have done so. But in the circumstances of the case the plaintiff cannot claim any compensation from the Railways. I, therefore, find that the Railways, namely the defendant, are not liable for compensation in this case. The suit of the plaintiff, therefore, for such compensation is misconceived. The plaintiff is not entitled to any relief."

The plaintiff-firm, being thus aggrieved, have preferred this appeal.

5. Learned Counsel, in support of this appeal, has urged that u/s 72 of the Railways Act, the responsibility of the Railway Administrations was that of a bailee under Sections 151 and 152 of the Contract Act. In this view, he has submitted that the Railway Administrations were liable for the loss due to the deterioration of the goods in question. In support of his contention, he has relied on Union of India (UOI) Vs. Serajuddin and Another, . This case is clearly distinguishable.

There, the Railway Administration had kept the goods (cases of cigarettes) absolutely to the winds in the months of the monsoon. That is not the position in the instant case. In this case, the goods were consigned much after the monsoon, namely, in the month of November, and the same reached the destination in a very reasonable time in November and it was kept on the platform at Howrah Junction under the tin roof.

6. Besides, the Railway Administrations in the present case could not be held liable as a bailee. In Lalji Raja and Sons Firm Vs. The Governor General of India in Council, , their Lordships of the Calcutta High Court have held :

The liability of the Railway Company as bailee is limited to the period of transit or carriage of the goods with the addition of a reasonable period of time for loading the goods and a reasonable period of time (namely, twenty-four hours) which is to be given to the consignee to take delivery, and does not extend to any period beyond this time."

Hence it has to be held that the liability of the Railway Administrations as a bailee ceased by the 16th November 1954, and there is no evidence to show that the consignment in question deteriorated during the relevant period, that is,

between the 6th November and the 16th November 1954.

7. The allegation of the plaintiff-firm was that this atta was purchased at Jadavpur on the 16th August 1954 and was brought from there to Dar-bhanga. Later on, when the said atta could not find suitable market at Darbhanga, it was sent back from Darbhanga to Howrah. The bijak for the purchase of the atta is Exhibit 4. It shows that it was purchased on the 16th August 1954. Now, there is no evidence as to when this atta was prepared. Further, from the evidence, it is clear that the plaintiff-firm had not opened the consignment in question at any time after its arrival and, therefore, they could not be competent enough to submit that this atta in question was of good quality even on the date when, it had arrived at the railway station at Howrah.

It is manifest that the atta during the rainy season, that is, from August to the 5th of November 1954, was in possession of the plaintiff-firm packed in gunny bags and it was consigned back to Bengal, as there was no suitable market at Darbhanga for the same. This may have been due to the deteriorating condition of the atta as well. At any rate, it is common knowledge that atta packed in gunny bags in the rainy season does deteriorate within a month or two, in this view, it is difficult to hold that the deterioration was caused during the period of bailment. At least, there is no such allegation.

8. Then, there is no effort made before going to take delivery to have the railway receipt countersigned by the relevant authority.

In this respect, local rate advice No. 1 of 1952, issued by the Railway Authority to the offices of the Railway namely, exhibit B, may be referred to. It contains a quotation from the Gazette notification of the Government of West Bengal dated the 13th August 1948. This notification enjoins upon the Railway Authorities not to deliver wheat products to anybody, unless such delivery is authorised by an endorsement in writing to this effect made by the Director of Procurement and Supply, Department of Civil Supplies, West Bengal, or an officer empowered by him in this behalf. This rule of the West Bengal Government was in force at the Howrah Railway Station, and it appears from the telegram (Ext. 8) that this ban was withdrawn with effect from the 18th March 1955.

Thus, it is manifest that no step was taken by the plaintiff to comply with the law in time. In this view, it has to be held that "the plaintiff-firm were negligent and this negligence on their part may have caused the deterioration of the goods later. It cannot, in the circumstances, be held that they did all that was necessary for taking delivery in time. Therefore, it could not be said that the loss was caused due to any negligence on the part of the Railway Administration.

9. Learned counsel for the appellant has endeavoured to distinguish Lalji Raja and Sons Firm Vs. The Governor General of India in Council, . He has contended that this case was considered later by the Calcutta High Court in Chhatumull Chowthmull Vs. Union of India (UOI), , and their Lordships of the Calcutta High Court did not follow this decision. There is no merit in this contention. Lalji Raja

and Sons Firm Vs. The Governor General of India in Council, was distinguished merely on the ground that, in that case, no wharfage had been paid, as is the position in the instant case. Their Lordships of the Calcutta High Court, in the case of Chhatumull Chowthmull Vs. Union of India (UOI), have not dissented from" the view expressed in Lalji Raja and Sons Firm Vs. The Governor General of India in Council, .

10. Learned counsel for the appellant has also relied on Secy. of State Vs. Ramdhan Das Dwarka Das Firm, . That case again is not helpful to the appellant. In that case the consignment was booked on the 16th March 1927 and attempts for taking delivery were made on the 20th/21st March 1927 and, near about 2 P. M. on the 21st March, the godown caught fire and the goods were burnt and! the Railway Administration was held liable as a bailee. This case, in no way, militates with the principles of law laid down in Lalji Raja and Sons Firm Vs. The Governor General of India in Council, .

11. There is yet another reason for holding that the Railway Administrations in this case are not liable. This case is governed by Section 74C of the Railways Act, and the few in this regard is thus, laid down :

"It is erroneous to hold that the loss or damage of goods is prima facie proof of negligence in a case which is governed by Sections 74A and 74C of the Railways Act. When the statute requires proof of negligence, misconduct, etc., for the liability for the loss, destruction, deterioration, leakage, etc. to hold that the loss or damage is prima facie proof of negligence is to make the entire effect of Sections 74A and 74C nugatory. Here lies the importance of the qualifying words, "subject to the other provisions of this Act, occurring in Section 72 of the Railways Act." (See Union of India (UOI) Vs. Bishwanath Agarwalla,).

In the present case, no evidence has been adduced by the plaintiff-firm to show that the deterioration of the goods was due to any negligence on the part of the Railway Administrations. Nor is there any proof that the consignment was booked at railway risk. Thus, the liability of the Railway Administrations as carrier ended.

12. Learned counsel for the appellant, relying upon Chhatumull Chowthmull Vs. Union of India (UOI), , has further argued that, in this case, there was a fresh bailment because wharfage was sought to be charged. This contention has to be repelled. As a matter of fact, in the instant case, no wharfage was paid and, therefore, there could be no fresh bailment and hence Chhatumull Chowthmull Vs. Union of India (UOI), is not helpful to the appellant.

13. In view of the facts and circumstances of the case discussed above and in view of Rule 31(2) framed u/s 47(a)(f) of the Railways Act, it has to be held that the Railway Administrations in this case were not liable. This rule runs as Follows :

"The railway administrations hereby give public notice, that in respect of goods not removed from railway premises at station of destination within a reasonable

time, the railway is not liable in any respect for any loss, destruction, deterioration of or damage to such goods, arising from whatever cause notwithstanding that the railway may have warehoused or otherwise kept the goods and notwithstanding that the railway shall be entitled to be paid the authorised charges for goods so left on their premises. Normally, the free time allowed for demurrage and wharfage on railways should be considered as reasonable time for this purpose,"

14. Regarding wharfage, the position is, thus, stated in Rule 1 :

"Wharfage will be charged at rates not exceeding those given in the following table and will be calculated:

1. When freight is levied on maund or ton basis upon the actual weight of the consignment, and if the actual weight is not known upon the chargeable weight.
2. When freight is levied on the vehicle in which the goods are carried upon the carrying" capacity of such vehicle except when the actual weight is shown in the invoice in which case the wharfage will be calculated upon such weight.

Circumstances Time allowed free Commodities Rate per maund or part of a mound per day or part of a day in excess of the free time. Remarks

1 2 3 4 5

(i)

On goods for des patch waiting to be consigned i.e, con. signment brought to station but consign, ment notes not re ceived.

Closing time of the day on which goods are brought to station.

For goods of every description. 1 anna.

Goods will in all cases be at owner"s risk until a receipt In the prescribed form has been granted duly signed by an authorised railway servant.

(ii) On goods available for delivery.

From time of arrival till closing time of the day following that on which con signments are made available for delivery.

Do. Do.

Goods will be warehoused either under cover or in the open as space may be available."

(iii) On goods not removed after delivery.

Thus, it is manifest that the defendant in this case could not be liable after the period of transit was over even if the goods lay at the railway premises, because these were kept as ordained by Rule 1. Besides no wharfage had been paid.

15. For the reasons stated above, it has to be held that there is no merit in the contentions raised. In the result, the appeal fails and is dismissed with costs.