

(1956) 07 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Revision No. 26 of 1955

Sattanmal Vishandas

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 13-07-1956

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 74C(1), 74C(3)

Citation : AIR 1960 Raj 121

Hon'ble Judges : K.L. Bapna, J

Bench : Single Bench

Advocate : R.L. Goyal, for the Appellant; H.L. Pareek, for the Respondent

Final Decision : Allowed

Judgement

K.L. Bapna, J.—This is a revision petition by the plaintiff in a suit for recovery of damages for nondelivery of goods by the railway administration against the judgment of the Small Cause Court, Jaipur, dated 11-11-1954.

2. Narayan Das Nebhan Das despatched 101 bags of garlic and 50 bags of onion from Jamnagar to the petitioner on 8-2-1953, under Railway Receipt No. 1310599 invoice No. 32 of the same date. When the consignment arrived at Jaipur, six bags of garlic were found short. The plaintiff claimed Rs. 390/- as the price of the six bags of garlic weighing 6 maunds, and Rs. 17/8/- by way of interest and Rs. 1/8/- on account of postage in all Rs. 409/-. It was alleged that proper notice had been given to the Union of India. The defendants' case was that the consignment had been loaded by the consignor and had not been checked by the defendants' employee at Jamnagar, and it had been mentioned on the Railway Receipt that the goods were at senders' risk, and, therefore, the defendant was not liable.

The trial court found that 101 bags of garlic and 50 bags of onion had, as a matter of fact, been delivered to the Railway Administration at Jamnagar for

carriage to Jaipur, and six bags were received short. It was held that the defendant was liable to pay damages to the plaintiff. The court, however, dismissed the suit as it did not believe the evidence led on behalf of the plaintiff that the rate of garlic at Jaipur when the consignment arrived was Rs. 60/- per maund. The Court was of opinion that there was no reliable evidence as to the rate prevailing at Jaipur. The petitioner has come in revision.

3. Learned counsel for the respondent contended that the finding as to the liability of the Railway Administration for short delivery was not correct. Reliance was placed on Section 74C (1) and (3) of the Indian Railways Act, and it was contended that unless the sender could produce a document in writing to show that the goods were despatched at railway risk rate, the presumption would be that they were at owner's risk rate, and the Railway Administration would only be liable if the loss could be proved to be due to negligence or misconduct on the part of the Railway Administration, or any of its servants. Learned counsel also relied on the endorsement on the Railway Receipt that the goods had been loaded by the consignor himself in an open wagon, and were at senders' risk. The contention raised by learned counsel for the respondent has no force.

4. Sub-section (1) of Section 74-C of the Indian Railways Act provided for a presumption that the goods are at owners' risk rate in the absence of the proof that they were at railway risk rate, in cases where the Railway Administration provides for carriage at two rates, one ordinary tariff rate known as the railway risk rate, and the other a special reduced rate known as the owner's risk rate. No document has been produced to show that in the case of the particular goods now in dispute there were two rates as referred to in Section 74-C (1). The presumption, relied on by learned counsel that the goods were despatched at the owners' risk rate, therefore, does not apply, and the circumstances mentioned in sub-Section (3) were not required to be proved, in the present case.

5. As to the loading of the goods by the sender in an open wagon, no particular protection is afforded to the Railway Administration by the law. The mention that they were at senders' risk in the railway receipt is of no consequence unless such endorsement could be proved to be authorised to be mentioned under the law. The lower court has observed that Jai Kant witness produced on behalf of the Railway Administration had to admit that such endorsements were not supported by any law or rules under the Railways Act.

6. Now as regards the contention of the petitioner. It was urged that the lower court had committed error in not relying on the statement of Narain Das, one of the partners of the plaintiffs firm, that the rate of garlic at the time when the consignment arrived at Jaipur was Rs. 65/- per maund. The lower court did not accept the word of Narain Dass on the observation that more reliable evidence could be produced, firstly by the statements of other shop keepers dealing in garlic, or at any rate by production of the account books of the firm for it was admitted that garlic had been sold by die plaintiff near about the period that the consignment arrived at Jaipur. While there is no doubt that more evidence could

be produced, there was no reason to think that garlic could be had for nothing, and the suit should not have been dismissed. The invoice of the consignor had been produced, which showed despatch of garlic at Rs. 16/- per maund Rs. 32/- per Bengali Maund, and there were other expenses incurred in the despatch, as mentioned in the invoice as also the railway freight paid to the railway Administration. Looking to the entire circumstances of the case it would be reasonable to think that the minimum rate of garlic at Jaipur would be at about 48/- per maund. The plaintiff has claimed interest. This was clearly not admissible, and similarly the burden of postage cannot be placed on the defendant.

7. The revision is, therefore, allowed, the judgment and decree of the lower court dated 11-11-1954, are set aside, and the plaintiff is granted a decree for Rs. 288/- with proportionate costs of the two courts.