(1998) 03 KL CK 0045

In the High Court Of Kerala

Case No : A.S. No. 225 of 1988

Scindia Steam Navigation Co. Ltd. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 26-03-1998

Acts Referred:

Carriage of Goods by Sea Act, 1925 — Article 3
Contract Act, 1872 — Section 73
Evidence Act, 1872 — Section 115

Citation : AIR 1998 Ker 250 : (1998) 3 ILR (Ker) 474

Hon'ble Judges : N. Dhinakar, J;D. Sreedevi, J

Bench : Division Bench

Advocate : K.P. Vijayan and P.K. Alexander Vaidian, for the Appellant; Sr. Central Govt. Standing Counsel and George C.P. Tharakan, for the Respondent

Final Decision : Allowed

Judgement

Sreedevi, J.—This appeal is directed against the decree and judgment in O.S. No. 55 of 1978 of the Sub-Court, Kochi. The defendant is the appellant.

2. The facts for the purpose of this appeal are these : The first plaintiff shipped on board the vessel S. S. Jaladuta, which belonged to the defendant-appellant, 11830 M.T. of muriate of potash "clean on board" at the Port of Illyichevak for discharge in one Port of India, as per bill of lading, Ext. A1, dated 13-2-1977. The first plaintiff, who is the first respondent herein, wanted 5000 tons of the said goods to be discharged at the Port of Kandla and the remaining goods at the Port of Cochin. The loading was done into the ship''s hatches in bulk by the shipper and the bill of lading states, among other things, that "measurement, weight, quality, brand, condition, quality, contents and value as declared by the shipper, but unknown to the carrier." The unloading of the goods at the ports of discharge was admittedly the shipper''s responsibility. The second plaintiff, who is the second respondent herein, is the first plaintiff''s agent to arrange for unloading of the goods and taking delivery of the same at both the Ports.

3. The vessel carrying the goods arrived at the Port of Kandla on 28-2-1977. Manifest was filed to unload 5000 tons of goods at that port. Accordingly, after making a hatch survey, 5000 M.T. of the goods were discharged from the vessel by the first plaintiff''s agents. The quantity of the goods discharged from the vessel was fixed by draft survey done by the approved surveyor, who is an officer of the Cochin Port and the daily discharge reports of the goods from the hatches prepared by the first plaintiff''s agents, in the course of discharge of the goods from the vessel. After discharging the said quantity of goods at Kandla, the vessel left that port and reached Cochin on 17-3-1977. There also the same process was repeated in the discharge of the goods. Import manifest was filed for the remaining 6830 M.T. of the goods. After the hatch survey and draft survey by the approved surveyor, the goods were discharged from the vessel by the first plaintiff''s agents. After the unloading was done at both the Ports, the goods were filled in bags of 50 kgs. each for supply to different parties. This process was done under the supervision of surveyors appointed by the first plaintiff. This process, which is known as standardisation operation, was done at Kandla during the course of 8 days. After standardisation it is reported that the total weight of the goods filled in the bags was 4910.00 M.T. at Kandla. The standardisation operation at Kochi took 15 days. After standardisation, it is reported that the total quantity was only 6678.9 M.T. which is less than the quantity of goods discharged at the Whraf. Thus, on the basis of the surveys done after the standardisation of bags, of 50 kgs. each there was a total shortage of 241.100 M.T. of goods. The Union of India filed a suit for realisation of the value of the said quantity of goods.

4. The defendant, who is the appellant herein, contested the suit, stating that the goods loaded on board the ship were discharged at the Ports of delivery, in bulk by the plaintiffs. It was expressly stated in the bill of lading that the weight of goods shown was as declared by the shipper and unknown to the carrier, that the hatches were suryed and found intact before discharge of the goods from the vessel at both the ports, that the whole goods as shown in the bill of lading were manifested for import and accordingly imported as would be evident by the draft surveys, daily discharge reports and the port out turn statements, and hence they are not liable to pay the plaint claim.

5. The trial Court, after taking evidence, decreed the suit in favour of the plaintiffs-respondents. Aggrieved by the said decree and judgment, this appeal has been filed by the defendant-Company .

6. Admittedly, the defendants are the owners of Steamer "Jaladuta." They received on-board the steamer a consignment of fertilizer Muriate of Potash in bulk weighing 11830.000 net M.T. in bulk under Ext. Al bill of lading, stating the following ;

"Clean on board Discharging at destination port including works in the ship''s holds to be for Buyer''s account.

Cargo due and other expenses at destination port for Buyer''s account."

Ext. A2 is the invoice. A ''clean'' bill of lading, in English practice, is one which bears no superimposed clause or notation which expressly declares a defective condition of the goods and or the packaging.

7. The goods are to be delivered at Kandla and Cochin. The ship arrived at the Port of Kandla on 28-2-1977 and completed discharge on 10-3-1977. At Kandla, 5000 M.T. were to be delivered and the remaining had to be delivered at Cochin Port. The plaintiffs (respondents) would allege that they have not delivered the entire quantity of consignment as per the contract, as, on weighment by independent surveyors, it would found that there was short delivery and hence the Union of India sued for realisation of 241.100 M.T. of cargo. The defendants would contend that they are not liable for the shortage. According to them, they did not weigh the cargo at the time of boarding and their duty is only to effect delivery of the goods in the same condition in which they were boarded. The relevant provision in Ext. A1, Bill of Lading, is Clause 3(a), which reads as follows :

"Neither the carrier, its agents, servants nor the ship shall be liable for any loss, damage or detention, whatsoever of or to the goods before loading, on or after discharge from the ship named herein or substituted therefrom under the provision hereof even though such loss, damage or detention be caused by the act, neglect or default of the carrier, its agents or servants or other persons for whom the carrier is responsible or by the unseaworthiness or unfitness of any craft, vessel or conveyance at the time the goods are placed therein or at any time thereafter even though the goods are in the custody of the carrier, its agents or servants as warehousemen or otherwise howsoever and the goods prior to loading or subsequent to discharge over the rail of the vessel are at the sole risk of the owner of the goods."

By Ext. B3, survey report, it is certified by the Deputy Conservator and Surveyor that 6820 M.T. of cargo approximately has been discharged at Cochin. Ext. B1, the hatch survey report, reads as follows :

"This is to certify that we, the undersigned did, at the request of Messrs. Scindia Steam Navigation Co. Ltd., Gandhidham, attend on the above vessel for the purpose of survey and examination of the hatches and condition of cargo which consists of 5000 M/tonnes Muriate of Potash in bulk from Ilichevak Via Aden.

After careful examination we report as follows :

The Mac Gregor hatch covers were well secured and upon opening the hatches the cargo was found to be well stowed and trimmed and so far as could be seen there was no damage."

This certificate was issued by G. P. Dave & Sons, who are the agents of the respondent. The appellants have produced Ext. B2 series showing the discharge of manifested quantity of 5000 M.T. on various dates at Kandla. The respondents have no case, that the appellants weighed the cargo at the time of boarding and were convinced of the quantity.

8. The learned counsel for the appellants would argue that they believed the declaration of the respondent regarding the weight of the cargo, and that they have not weighed the .same separately and convinced of its weight. In an identical case, the Madras High Court in Thakur Shipping Co. Ltd., Bombay and Another Vs. Food Corporation of India, held as follows (paras 13 and 33) :

"In law a ship owner, whose ship is chartered, will not stand in the same position as a common carrier to the owner for any loss or damage caused to his goods when they were carried on the vessel. On the other hand, the liability of the owner of the chartered vessel will be only that of a bailee for reward and if he had exercised due care and diligence, he cannot be held liable for any loss or damages sustained by the owner of the goods. The question of treating the owner of a chartered vessel on par with a common carrier will arise only in the absence of a special contract between the parties.

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But in so far is the weight, contents and value are concerned, if there is an endorsement that they are not known or if there is a qualifying remark indicating that the master of the vessel has entered those particulars in the bills of lading in accordance with the figures given to him by the shipper or consignor, then the statements in the bills of lading regarding those particulars would not be binding on the shipowner and it will be for the shipper or consignor to prove that the consignments loaded on board the ship were of the same weight and the contents were of the same nature and the value was of the same figure as those noted in the bills of lading."

Here is a special contract, which reads as follows

"SHIPPED ON BOARD In apparent good order and condition (unless otherwise stated therein) on the ship named above the undernoted PACKAGES MERCHANDISE marked and numbered as per above (measurement, weight, brand, condition, quality, content and value as declared by the shipper but unknown to the carrier) for carriage to the port of discharge named above."

This will clearly go to show that the carrier is not responsible for the shortage, if any, caused. Even the respondent had no case, that there was any damage to the cargo. The cargo was discharged without any damage, that is evident,from Ext. A3 survey report, which reads as follows :

"Prior to commencement of standardisation, the scale balances were checked by us and found them in order."

It is admitted by the respondents, that there will be loss of Muriate of Potash during the time of standardisation into packets of 50 kgs. After taking delivery of the goods, admitting that there was no damage to the consignment, the plaintiffs arc estopped from contending that there is short delivery. There is absolutely nothing on record to show that the carrier admitted the quantity of cargo boarded on the ship. The burden of proof is on the plaintiffs to prove by acceptable and convincing evidence the actual weight of the goods shipped. After discharging the goods shipped, the steamer left. After discharging the cargo, the respondents cannot lay any claim for damages in view of Clause 3(a) of the Bill of Lading. There is also chance of causing loss or damage during standardisation. Since it is admitted that the bulk cargo was received without any damage, the appellants are not entitled to lay any claim for short delivery. The Court below went wrong in appreciating the questions of law on the point and also the evidence, both oral and documentary, adduced by the parties. The decree and judgment are therefore liable to be set aside.

In the result, the appeal is allowed and the decree and judgment of the Court below are set aside and the suit is dismissed. No costs.