
(1934) 08 AHC CK 0018
In the Allahabad High Court

Secretary of State

APPELLANT

Vs

Firm Janki Das Govind Ram

RESPONDENT

Date of Decision : 13-08-1934

Acts Referred:

Citation : AIR 1934 All 952

Hon'ble Judges : Kendall, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kendall, J.—These two applications for revision arise from two suits which were filed in the Court of the Judge of the Small Cause Court of Agra, relating to similar transactions, and they have been dealt with in detail in one judgment. The facts are as follows: The plaintiff-opposite-party had purchased some old sleepers from the applicant Railway Company for the purpose of firewood, and had them despatched from the stations of Bara and Agra. Nine wagon loads were sent from Bara and seven from Salpura and the wagons were loaded at those places on the responsibility of the plaintiff. There were no arrangements for weighing the wagons at the stations of despatch and they were actually weighed at Bina where according to the applicant and the finding of the trial Court, it was found that the wagons were overloaded. By overloading was meant not that the wagons were loaded beyond their carrying capacity, but there is a special rule relating to traffic that has to pass over the Chambal bridge. The sleepers were loaded in 8 wheeled carriage, and for traffic that has to pass over the Chatnbal bridge the weight to be loaded in such wagons is restricted to 56 tons. According to the case for the applicant therefore and the finding of the Court the wagons were found at Bina to weigh over 56 tons. Some of the sleepers were therefore unloaded by the railway authorities at Bina until the wagons were brought down to the weight allowed by the rule. The present suits are concerned with the sleepers that had been unloaded.

2. It appears that they were kept at Bina for some time, and that the plaintiff

wrote to the railway authorities, objecting that they had been illegally unloaded, and asking the railway to despatch them to Agra at the schedule rates. The agreement between the parties as to rates had originally been that the sleepers were to be despatched at " Q " rate which is described as the lower rate. The railway authorities at Bina loaded these extra sleepers and sent them at owner's risk to Agra where however they refused to deliver them to the plaintiff unless and until he paid at the higher rate, i.e., the first class rate. This the plaintiff refused to do. The sleepers were therefore kept at Agra, and according to the plaintiff deteriorated, and the plaintiff brought the present suit for delivery of the sleepers or in the alternative for the price of the sleepers plus any shortage that might have come due on account of the depreciation in their value since the goods were ordered. The trial Court has given the plaintiff a decree for the amount of the value of the sleepers.

3. It has been argued in support of the applications by the learned Government Advocate that the consignor, i.e., the plaintiff, was responsible for the loading of the wagons, that under the rules the wagons had to be unloaded at Bina, and that also under the rules in such a contingency the Railway have to charge the rate applicable to "small lots" and not the reduced rates. It has also been argued that even on the findings of fact arrived at by the trial Court the form of the decree is wrong as the plaintiff sued in the first place for delivery of the sleepers, and it is argued that there was no justification for compelling the Railway to keep the sleepers and to pay for them." The rules relied on by the applicant are Rules 52 and 52-AA in Chap. 1 of the General Rules relating to Goods Tariff under the G.I.P. Railway published in 1931.

Rule 52(b) is to the following effect:

When owing to loading restrictions on certain sections of railway a wagon for a particular journey cannot be loaded to its full marked carrying capacity, the carrying capacity under this rule for purposes of such journey will be maximum weight up to which loading is permitted and not the marked carrying capacity. A note of the reduced carrying capacity must be entered on the invoice.

Clause (c) of the same rule is:

Consignors in loading are required not to exceed the marked carrying capacity of the wagon used or any reduced carrying capacity that may be required in the circumstances referred to in Rule 52 (b). Should overweight be discovered en route and the excess weight be removed, charge will be made for the overweight as for smalls. If the overweight is discovered at destination, or being discovered en route is not removed, charge will be made for the overweight at the same rate proportionately as for the rest of the consignment.

4. It was the plaintiff's case that there had been no overweight and that the method used for weighing the wagons at Bina was inaccurate. The trial Court has found however that there was an overweight. It was argued by Mr. Seth that there was no weigh bridge at Bina for weighing 8 wheeled wagons, and that the

method used Was to put on half of the wagon on the bridge and weigh that, and then turn it round and put the other half on the bridge, the half that was not being weighed remaining on the ground. There was evidence before the Court to prove that this method gives sufficiently accurate results, and indeed it appears to have been the only method available and I must therefore hold myself bound by the finding of the Court that overweight has been proved. The wagons therefore were not permitted under the rules to carry up to their marked carrying capacity, but only up to their reduced carrying capacity, and it followed that charge had to be made "for the overweight as for smalls." Similarly under Rule 52-AA:

All goods loaded in excess of the reduced carrying capacity of the wagon used due to axle load restrictions had to be removed" and became subject to a charge at the classified rate applicable to small lots and not at the reduced rates, whether special schedule or class rates that may have been quoted for wagon load consignments.

5. It may therefore be argued plausibly that the railway authorities were justified in charging not the reduced rate which had been agreed upon between the parties under their contract but the higher rate which beoame applicable under the rule. There are however certain circumstances in the case which make it exceedingly doubtful whether the Railway were justified in demanding the higher rate. In the first place, there had been a contract between the parties that the lower rate should be charged for this consignment. No doubt an exceptional element has come in, that is to say, the goods had been wrongly loaded on the responsibility of the consignor. Moreover, no notice had been sent to the consignor of the reduced carrying capacity of the wagons, and he on finding that some of the sleepers had been retained at Bina requested the Railway to forward them at the schedule rates (i.e., the lower rates) and what the railway authorities did was to forward the sleepers at owner's risk and not at Railway risk, and on the arrival of the consignment to demand payment at the higher rates.(I think it is clear that the railway authorities here put themselves in the wrong.

6. They might have refused to forward the Weepers from Bina to Agra on the request in the plaintiff, and as they did forward them from there at owner's risk it appears that at that stage they themselves were intending to charge the lower rates had been agreed in the contract, and That they were not acting in accordance which the strict provisions of the rules which I have quoted. That appears to have been the view taken by the trial Court, though it has not gone into the matter in any detail, and I am not prepared to hold that in finding that the lower rate ought to be applied in the circumstances of this case there has been by miscarriage of justice. In the case of Firm Ramnath Ladhu Ram v. North Western Railway 1926 Lah 631 a Bench of the Lahore iligh Court held that the railway authorise could not charge the difference between class 1 rate and schedule rate on he ground that the goods had been looked at owner's risk instead of railway is through a mistake of the booking dark, and that they should

have been booked at the railway risk. In the case of Secy. Of State v. Murli Dhar Verma 1927 Oudh 145 it was held by a bench of the Chief Court that it cannot be permitted to the railway administration to override the terms of contract under which the goods were accepted by it to be carried to the place of destination and in the case of Dalip Singh Kundan Lal v. Secy. Of State 1934 All 19 a Bench of this Court held that where according to the railway receipt the goods described (accepted as firewood) were charged at maund rates, the railway was not entitled to charge subsequently at a higher rate, even though larger wagons may have been used, for the purpose. Not one of these cases is exactly analogous to the present one, and it has been argued that Rules 52 and 52-AA clearly entitled the applicant to charge the higher rate and that ignorance of rule is not proper defence. I think that this argument would have been of no force if the goods had not been sent from Bina to Agra but in the circumstances that I have described above I am not prepared to differ from the trial Court.

7. As regards the second part of the argument it appears to me that as the suit was one for delivery of the sleepers the Court was not justified in compelling the railway to keep the sleepers and to pay the price to the plaintiff merely on the ground that they had refused to deliver them unless the freight were paid at the higher rate. It is said that an opportunity was given to the applicant to deliver the goods on payment of the lower rate, which payment was actually made by the plaintiff and the amount deposited in Court, and that the applicant refused, but this only means that the applicant was insisting on a judicial decision on the point. In my opinion the proper decree would be one for the delivery of the sleepers to the plaintiff on payment of the lower rate. The plaintiff did however make other claims relating to damages owing to depreciation, etc., on which the Court has given no finding. I therefore refer the following issue to the trial Court:

Is the plaintiff entitled to any damages on account of depreciation or any other cause by reason of the railway having refused to deliver the goods on payment of the lower rates? If so, how much?

8. The finding on this issue should be returned within two months. No fresh evidence should be admitted. Costs of this proceeding will abide the result. The plaintiff in the meanwhile may be allowed to take delivery of the goods as the amount due for freights has been deposited in the trial Court. (On receipt of the finding, the Court passed order.)