
(1933) 03 AHC CK 0021
In the Allahabad High Court

Secy. of State

APPELLANT

Vs

Ghanshyam Das Baij Nath

RESPONDENT

Date of Decision : 31-03-1933

Acts Referred:

Citation : AIR 1934 All 393

Hon'ble Judges : Iqbal Ahamd, J

Bench : Division Bench

Judgement

Iqbal Ahamd, J.—This is a defendant's appeal and arises out of a suit for recovery of a sum of Rs. 1,309-6-0 on account of the shortage in weight of mustard oil despatched by the plaintiff from the Agra City station and for the recovery of a further sum of Rs. 85-13-0 that the plaintiff had to pay on account of freight under circumstances to be presently stated. The trial Court decreed the claim for rupees 1,089-6-0 on account of the shortage and for a sum of Rs. 85-13-0 on account of the freight. The decree of the trial Court was, on appeal by the defendant, affirmed by the lower appellate Court.

2. On the 20th April 1929, the plaintiff despatched mustard oil in a tank to Nimtullah station on the F.B. Railway. The carrying capacity of the waggon was 16 tons or 435 maunds and 20 seers. The waggon was despatched from the Agra city station soon after the 20th April 1929, and it is common ground that it reached a station named Chitpur on the 26th April 1929 at 3-20 P.M. Till then there was no leakage of the oil. But while the waggon was at Chitpur, there was leakage or pilferage. The leakage was discovered at 9-30 p. m. on the 26th April 1929. The run between Chitpur and Nimtullah is of about one hour and the waggon was, soon after the discovery of the leakage, sent from Chitpur to Nimtullah. The plaintiff's servants were offered delivery of the oil, but they, having noticed the leakage, refused to take delivery till the oil was re weighed. There being no arrangement for re-weighment at Nimtullah Station, the consignment had to be taken back to Chitpur for re-weighment. The Railway Company charged a sum of Rs. 85-13-0 from the plaintiff for carrying the

consignment buck from Nimtullah to Chitpur. On re-weighment the oil was found short by 59, maunds and 15 seers. The consignment, was despatched under Risk Note form B. It provides that the consignor in consideration of the Railway Company charging the freight at a specially reduced rate, instead of the ordinary tariff rate, agrees to hold the railway administration harmless and free from all responsibility for any loss, destruction...to the said consignment from any cause whatever except upon proof that such loss...arose from the misconduct of the railway administration servants. Then follow certain provisos that are not material for the purposes of the decision of this appeal. The plaintiff's case was that the shortage in the consignment was directly attributable to the misconduct of the railway servants at Chitpur railway station and accordingly Risk Note form B could be of no avail to the defendant. Both the Courts below accepted this contention of the plaintiff. The lower appellate Court has found that after the arrival of the oil tank at Chitpur, the tank was not placed under Watch and Ward and it was not guarded by the railway servants and

some one managed to open the pipe line and extracted the oil from it and then placed the into to prevent the oil coming out freely. The Bail way Company did not properly protect the oil waggon. They were negligent and the loss of oil was due to their misconduct, for the Railway Company's servants did not protect the oil tank and did not guard it.

3. In view of this finding, the lower appellate Court was perfectly justified in holding that the negligence and misconduct on the part of the railway administration was proved. It must therefore be held that the shortage in the goods was due to the negligence and misconduct on the part of the railway servants. The defendant was therefore liable to answer the plaintiff's claim. It is, however, argued on behalf of the defendant-appellant that the railway company could not be made liable for the shortage that may; have occurred between Nimtullah and Chitpur railway stations when the consignment was on its return journey to Chitpur. It is said that the plaintiff was not justified in not taking the delivery at Nimtullah station when the goods arrived there and delivery was offered to him. It is therefore contended that the plaintiff must himself bear the loss that arose after the goods were sent from Nimtullah to Chitpur railway station. In our judgment there is no force in these contentions. In view of the finding of the lower appellate Court it must be taken for granted that loss to the consignment had occurred because of the negligence and misconduct of the railway servants. The plaintiff's servants were therefore justified in insisting that before the goods are delivered to them, the amount of the, loss to the consignment should be ascertained. The loss could only be ascertained by reweighing the goods. It was no fault of the plaintiff if there was no arrangement for the re-weighment at, Nimtullah station. The plaintiff's insistence for re-weighment of the goods was perfectly justified and therefore the plaintiff cannot be saddled with the responsibility for the additional loss to the consignment that accrued between Nimtullah and Chitpur stations when the consignment was sent back to Chitpur for re-weighment.

4. It is further argued that in no case should the plaintiff have been granted a decree for the sum of Rs. 85 13-0 that they had to pay on account of freight from Nimtullah to Chitpur. There is no substance in the contention. The goods were sent to Chitpur for re-weighment the goods had to be re-weighed not because of any fault of the plaintiff but because of the fault on the part of the defendant's servants. If the plaintiff had a right to call upon the defendant to reweigh the goods before delivery, they undoubtedly had the right to ask the defendant to take the goods at their own expense to the place where they could reweigh the same. There was no justification, therefore for charging the freight from the plaintiff from Nimtullah to Chitpur. For the reasons given above we affirm the decrees of the courts below and dismiss this appeal with costs.