

(1962) 10 MP CK 0006

In the Madhya Pradesh High Court

Case No : F.A. No. 76 of 1960 and C. S. No. 30B of 1957

Seth Laxmichand

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 25-10-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 77

Citation : (1966) JLJ 861

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : B.C. Verma Junior, for the Appellant; J.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Pandey, J.—This is a plaintiff's appeal against the lower Court's decree by which his claim for damages for deterioration and short delivery of the goods consigned for transport by rail was dismissed.

2. The facts of the case no longer disputed may be briefly stated. On 6 June 1957, one Nanailal Brindaban of Bhopal booked under railway receipt No. G2047/29, invoice No. 1, a consignment of 220 bags of wheat at Bairagarh to be delivered to himself after being transported by rail to Mandla Fort via Jabalpur. The bags were new and the consignment, which at the request of the consignor was loaded in an open wagon, was covered by a tarpaulin fastened to the wagon by means of ropes. The consignment was carried to the destination via Nagpur, Gondia and Nainpur and was delivered to the plaintiff, who produced the railway receipt, on 10 July 1957. At the time of delivery, the consignment was damaged by rain. One bag of wheat, tarpaulin and ropes were also missing. On 16 July 1957, the plaintiff sent to each of the two railway administrations concerned a combined notice u/s 77 of the Railways Act and section 80 of the Civil Procedure Code. These notices were duly received on 19 July 1957 and 22 July 1957.

3. The plaintiff claimed that he was the karta of a joint Hindu family which owned the shop Lakshmidhara Anantkumar, that he had placed order for the goods and that, having paid for the goods, he was authorised by the bank, which remitted the price to the consignor, to take delivery of the goods. Since the goods were carried via Nagpur, Gondia and Nainpur, the goods reached the destination in one month and four days instead of the ordinary time of fifteen days required for transport via Jabalpur. The consignment was damaged by rain because the tarpaulin, which covered it, was lost in transit. The consequence was that six bags of wheat became wholly unfit for consumption and had to be thrown away. Another 44 bags of wheat deteriorated and could be sold for nearly half the market price. Further, in consequence of the delay in delivery owing to deviation, the plaintiff had to suffer loss owing to fall in the market rate. The plaintiff, therefore, claimed damages amounting to Rs. 2, 179-12-0 as detailed in paragraph 3 of the plaint, which he attributed to the negligence and misconduct of the railway administration and their servants.

4. The claim was resisted inter alia on the following grounds. The plaintiff was neither the consignor nor the consignee nor the endorsee of the railway receipt. He had also not paid for the goods and was disentitled to claim damages. It was denied that the ordinary time required for transport via Jabalpur was fifteen days or that there was any delay in delivery despite deviation. Apart from the consideration that the railway administration had not undertaken to deliver the goods within a definite time, the goods in this case were delivered within a reasonable time. Finally, since the goods were loaded in an open wagon at the request of the consignor himself, the railway administrations were not responsible for damage, if any, due to rain or other natural conditions of the atmosphere.

5. The lower Court held that, although the plaintiff had paid for the goods, he was disentitled to sue because he failed to prove that the railway receipt was endorsed in his favour. It was further held that, since the goods were loaded in an open wagon at the request of the consignor, the railway administrations were not responsible for any damage caused to the consignment by rain. In regard to the delay, the lower Court took the view that Rule 8 of the Tariff Rules protected the railway administrations, which did not guarantee the despatch of goods by any particular train or the arrival of the goods at the destination within any definite time.

6. The first question for consideration is whether the plaintiff is entitled to sue notwithstanding the fact that he has not led any evidence to prove that the Punjab National Bank, in whose favour the consignor had endorsed the railway receipt, re-endorsed it in favour of the plaintiff. Agreeing with the lower Court, we accept the evidence of Bhaiyalal P. W. 2 and Ganesh Prasad (P. W. 1 on commission) to the effect that the plaintiff paid for the goods and the consignor received the price thereof. In view of the evidence, it must be held that the plaintiff is the owner of the goods. In our opinion, as owner of the goods, the

plaintiff is entitled to maintain the suit. In *Chhangamal Harpaldas and Another Vs. Dominion of India and Another*, , Shah J, (as he then was) stated:

"An owner of goods covered by a railway receipt may sue for compensation relying upon his title, and the loss of goods by misconduct of the railway administration."

[Page 653]

In *Governor-General in Council Vs. Joynarain Ritolia*, , it was held that, when the railway receipt was handed over on payment of the price of the goods, there was an absolute transfer both of the goods and of the right to take delivery under the contract of carriage. In *The Commissioner of income tax, Madhya Pradesh and The Commissioner of Income Tax, Madhya Pradesh and Bhopal, Nagpur Vs. Bhopal Textiles Ltd., Bhopal*, , their Lordships stated:

"A railway receipt is a document of title to goods, and, for all purposes, represents the goods. When the railway receipt is handed over to the consignee on payment, the property in the goods is transferred. In this case, it is a matter of considerable doubt whether the property in the goods can be said to have passed to the buyers by the mere fact of the railway receipts being in the name of the consignees, as has been held by the High Court."

[Page 12]

7. The next question is whether the plaintiff can claim compensation for damage to the goods caused by rain and other atmospheric conditions. It is not disputed, and is otherwise obvious, that wheat bags are carried in covered wagons and that, in this case, the wheat bags were, at the request of the consignor, carried in an open wagon. This case is, therefore, governed by section 74 B of the Railways Act which reads:

"When any goods which, under ordinary circumstances, would be carried in covered vehicles or vessels and would be liable to damage if carried otherwise, are, at the request of the sender or his agent recorded in the forwarding note, tendered for carriage by railway in open vehicles or vessels, the railway administration shall not be responsible for any destruction, deterioration or damage which may arise only by reason of the goods being so earned."

When, at or about the time of commencement of the "rainy season, the consignor requested the railway administration to carry the wheat bags in an open wagon, section 74-B absolves the railway administration of all responsibility for any destruction, deterioration or damage caused by rain by reason of the fact that the consignment was carried in an open wagon.

8. Admittedly, there was in this case a deviation from the route along which, by the terms of the contract of carriage, the goods had to be carried. That being so, subject to section 74-B, the railway administrations would be responsible for loss or damage flowing from such deviation, which was not imperative within the

meaning of the proviso to section 74-B of the Railways Act. In this connexion, it is urged that, owing to the deviation, there was undue delay in carrying the goods to the destination. In the instant case, the contract of carriage did not fix, either expressly or by implication, any time for carrying the goods to the destination. That being so, it should be presumed that the goods were to be carried within a reasonable time, having regard to all the circumstances of the case. There is, in this case, no evidence to show that the time actually required was unreasonable or that a consignment from Bairagarh ordinarily reaches Mandla Fort in a shorter time. Bhaiyalal P. W. 2 and Ganesh Prasad (P. W. 1 on commission) did say that the usual time for carrying a consignment from Bairagarh to Mandla Fort was fifteen days, but their statements are devoid of any value because, admittedly, they did not, at any other time, book any other consignment for transport by rail from the one station to the other, it must, therefore, be held that the plaintiff has failed to prove that there was unreasonable or any delay in carrying the goods to the destination. It follows that the plaintiff is disentitled to claim any damage caused by loss on account of the fall in the market rate.

9. We find that, in this case, the railway administrations did not deliver to the plaintiff one bag of wheat, a tarpaulin and the ropes. The lower Court found upon evidence the value of these articles to be Rs. 50, Rs. 110 and 1/15 respectively. Since the railway administrations unaccountably failed to deliver these articles to the plaintiff, they are, to that extent, prima facie guilty of negligence or misconduct. They must, therefore, compensate him for the loss thereby sustained. This amount comes to Rs. 161-15-0.

10. The result is that the appeal succeeds only to a small extent. The decree of the lower Court is set aside. Instead, there will be a decree in favour of the plaintiff for Rs. 161-15-0 and costs according to success in this Court and in the Court below. The plaintiff shall pay to the defendant the costs of both the Courts to the extent to which the claim has failed. Hearing fee according to schedule.