
(1984) 01 AHC CK 0017
In the Allahabad High Court

Shanti Devi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-01-1984

Acts Referred:

Railways Act, 1890 — Section 78B
Railways Act, 1890 — Section 78B
Railways Act, 1890 — Section 78B

Citation : (1985) 1 ACC 385

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Judgement

N.N. Sharma, J.—This is a plaintiff's appeal directed against the judgment and decree dated 31-7-1974 of Sri R.C. Chaturvedi, learned Judge Small Causes Court (Addl. Civil Judge), Aligarh who allowed Civil appeal No. 490 of 1974 and reversed the judgment and decree recorded by Sri V.K. Aggarwal, Munsif, Koil, Aligarh dated 24-11-1973 in Original suit No. 417 of 1970 by which plaintiff's claim was decreed for Rs. 3,088/- with pendente lite and future interest at Rs. 5/- per cent per annum.

2. Plaintiff is sole proprietor of Firm Roop Ram Moti Lal, South Tiara Colliery Ltd. Aligarh. He got heard coke booked from Pathardihi station for delivery at Aligarh. He was consignee and obtained R/R No. 571840 dated 29-6-1968 weighing 24.3 tonnes invoice No. 28. The wagon was well covered and riveted and sealed. When it reached the destination station original seals and rivets were missing.

3. Plaintiff was not informed about the arrival of wagon by the Railway -officials but he found subsequently that the wagon was virtually empty. He therefore, insisted on open delivery after weighment at his own costs, but the railway employees were adamant and refused to accept to his request.

4. He served notices u/s 78-B of Railways Act and Section 80 C.P.C. on defendant in vain. On account of this loss sustained by him due to negligence and misconduct of Railway employees damages to the aforesaid extent were claimed and

awarded as given above but the judgment of trial court was reversed in appeal. Learned trial court recorded the findings in favour of plaintiff on all the issues drawn by him. Learned appellate Court simply reversed the judgment on the plaint that plaintiff was unjust in his stand to have goods reweighed before delivery and thus the suit was dismissed but parties were ordered to bear their own costs.

5. The short question which was canvassed before me on behalf of appellant by his learned Advocate was that the view of learned appellate court on this point was wrong. Rule 118 of Goods Tariff relied upon by learned Judge was unreasonable and ultra vires. That Rule was not properly appreciated by learned trial Judge; that rule was beyond the competence of Central Government under the power conferred by Section 47 of Indian Railways Act (Act No. 4 of 1890). Section 77 of the aforesaid Act shows the extent of liability of the Railways Administration whose position is that of a bailee as contemplated under Sections 151, 152 and 161 of Indian Contract Act, 1872. It was not open to the Central Government to cut down that responsibility of railway administration by aforesaid rule. In the instant case pilferage was established and even though the goods were carried at owner's risk rate yet Railway administration was liable on account of proof of negligence or mis-conduct on the part of railway administration.

6. There is statement of plaintiff Moti Lal, P.W. 1, who testified that he was not informed about the arrival of the consignment at destination station and when he went to the station, he found that the goods were hardly two or three maunds in weight and goods Supervisor refused to reweigh the goods and so he was well within his rights to have declined the offer made by Railway Administration.

7. Before appreciating these contentions I may slightly refer to the defence put forward on behalf of Railway Administration. According to the defence plaintiff wrongly and illegally refused to take delivery which was not open to him; he was duty bound to take delivery of the goods. To substantiate their defence three witnesses were examined by railway Administration. Govind Singh, DW 2, Goods-clerk and Sri R.L. Srivastava, Asstt. Goods Clerk posted at Aligarh who dealt with this wagon testified that the name of consignee could not be learnt by them despite the contact with Ram Singh agent of Moti Lal. When plaintiff refused to take delivery when offered to him the goods had to be auctioned for Rs. 2,300/- and an entry was made to that effect in wagon Transfer register produced by the witness in court. On this evidence both the court below had taken divergent views.

8. Before appreciating the rival contentions I may set out Rule 118 of the Goods Tariff which is worded as below:

Re-weighment of consignment at destination:

Railways do not undertake to weight consignment at destination stations as a matter of courts. Such weighment at destination stations can only be considered

in exceptional cases when the condition of the consignment or package warrants this.

9. Learned advocate for appellant alleged that this Rule was unreasonable and learned Civil Judge did not apply his mind to the fact that it was an exceptional case where railway administration should have been obliged to re-weigh the goods.

10. In this connection reliance was placed upon *Bhullan Mal Asa Ram Vs. Secy. of State and Another*, . In that case the consignment was booked without any risk note. It did not strike down Rule 118 of aforesaid. It simply dealt with the liability of Railway Administration which was that of bailee. This ruling was distinguished by a Division Bench of this Court in *Gopi Nath and Sons Vs. The Union of India (UOI) and Others*, which is directly in point.

11. The next authority relied upon by learned Counsel for the appellant has been reported in *Secy. of State Vs. Madhuri Das-Narain Das*, . It was about a consignment under risk note 8 and not at owner's risk. In that case open inspection of goods was allowed as claimed by consignee. Plaintiff claimed damage as prices of goods went down. It was held that plaintiff was not entitled to damages.

12. The next authority relied upon by learned Advocate for the appellant has been reported in *Rohilkhand and Kumaon Railway Co. v. Ismail Khan* AIR 1915 All 155(2). It appears at that time tariff Rules in force were different than the present Rules and the risk note was not in these terms as to be identical with the risk note at owner's risk. So this case was also distinguished in *Gopinath and Sons v. The Union of India and Ors.* AIR 1978 All 81 (supra).

13. The next authority relied upon in the *The General Manager, G.I.P. Railway, Bombay Vs. Mst. Kiran Devi and Another*, dealt with warehousing liability of Railway Administration. In that case Railway demanded ware-house charges from the opposite parties which were paid under protest. A suit was filed to recover Rs. 120/-on account of illegal ware house charge. So this ruling has little relevance the point involved in this appeal.

14. The next authority relied upon by learned Advocate for the appellant has been reported in *Badri Das Gauri Dutt Vs. Union of India (UOI)*, which posited:

A clause in railway receipt that the claimant in case of loss or damage to goods should at the earliest give a written statement showing the nature of the articles missing or the nature of the damage sustained by the consigned goods does not entitle the claimant to claim open delivery. Nor is the railway bound to open the consignment and examine it before delivery and it is not wrongful on its part to refuse to give open delivery. Where the railway administration had gratuitously agreed to give open delivery on certain conditions which involved delay, the railway administration cannot be held responsible for damages on the mere ground that there was delay in making this gratuitous open delivery. When it not

the plaintiff's case that the goods had suffered any physical damages during the time when they were in the hands of the railway administration between the period of their arrival at destination that the time when actually open delivery was taken, the plaintiff could not even claim damages on the ground that even though the railway administration acted as a volunteer they were under the law bound to act like a reasonable person and take reasonable care of the goods which were in their possession 21 Ind. Cas. 448 (All), Rel. on Secy. of State Vs. Madhuri Das-Narain Das,

In this case AIR 1933 Allahabad, page 447 Secretary of State v. Madhuri Das Narain Das (supra) relied upon by learned Counsel for the appellant was distinguished. Thus this case also does not help the appellant.

15. The next authority relied upon by learned Advocate for the appellant has been reported in Hardayal Ram Dass Ray Vs. B. and N. W. Ry. Co., . It struck down Rule 27(a), B. and N.W. Railway by which Railway administration avoided its liability for the loss of goods. It was observed:

A railway company cannot avoid or unduly restrict its liability under the Railways Act framing its own rules for the purpose and if any such rules are found to be unreasonable and inconsistent with the Act, such rules will be declared to be ultra vires and not binding upon those who have to dealt with the railway company. Thus Rule 27(a) B. and N.W. Railway framed u/s 54, Railways Act, is it ultra vires.

So this authority did not deal with Rule 118 aforesaid.

16. The next authority relied upon by learned Counsel for the appellant has been reported in Union of India (UOI) Vs. Shantilal Nanchand Jain, . In that case a parcel of Sarees was left near the Verandah of the railway station without entrustment to any person. The amount of care enjoined on the Railway Administration u/s 72 of the Indian Railways Act, 1890 was defined in that case. So this authority also does not relate to Rule 118 aforesaid.

17. In Niranjan Lal Vs. Union of India (UOI), it was observed:

Brief Note: (A) Neither Goods Tariff No. 31, nor the Act contains provision for consignee to ask for damage assessment before taking delivery. He must take delivery within reasonable time (in the condition in which they are found) after giving notice to the authorities showing damages to or shortage of the goods. Alleged tort is no excuse to postpone delivery taking.

18. Thus the ruling lays down that the consignee was bound to take delivery within reasonable time after giving notice to the authorities. Even if any tort is alleged by him is no excuse to postpone delivery taking.

19. Learned Counsel for the appellant tried to distinguish Gopi Nath and Sons Vs. The Union of India (UOI) and Others, Division Bench case (supra) on the ground that did not consider the vires of Rule 118 aforesaid although it applied the said

Rule in case where the goods was booked at owner's risk and part of consignment was lost in transit, it was held that consignee was not justified in insisting on delivery after re-weighment.

20. On a careful perusal of the aforesaid authorities I find absolutely no reason to distinguish the aforesaid authority which well covers this case and is directly in point. In his 4th Edition of India Railways Act by Sri P. Hari Rao observed at page 267:

A contrary view, however, has been held in some other cases to the effect that the Railway Company is not under a liability to re-weigh the goods or to give a certificate of shortage. It is settled that a railway company is not bound by law either to re-weigh goods or certify shortage at the time of delivery. Hence a consignee will not be justified in refusing to take delivery of goods on the ground that the railway company did not grant re-weighment before delivery. If the consignee be dissatisfied either with the amount of freight charged or the condition of the goods, when they arrived, he should take delivery and pay the charges demanded, and then take steps to obtain any refund which he might prove to be due to him. A consignee has not right to insist that railway officer giving delivery should weigh the goods consigned and make an endorsement as regards the shortage and to refuse to take delivery if the railway officer refuses so to do. The consignee should take delivery of the consignment in the condition in which it is found after giving notice to the delivering officer as to its condition and then sue the railway administration for damages. A consignee of goods delivered to a steamship company for carriage cannot compel the company to re-weigh the goods before taking delivery. But the refusal of the company to reweigh does not in any way affect the right of the consignee, who may weigh the goods himself and claim the price of the shortage in weigh. The mere fact that he has accepted delivery and granted a clear receipt will not extinguish his right to compensation, if he proves that a portion of the goods was lost in transit or while in the custody of the company.

21. The observations of a Division Bench of Lahore High Court in B.N.W. Railway Co. v. Film Dasundhi Mal, reported in 1928 Lahore page 166 were quoted with approval. It was laid:

The last point for decision is whether plaintiff was justified in refusing to take delivery, merely because the railway officials refused to make a note in their registers about the quality and quantity of the goods and what are the consequences of the refusal. It is conceded on behalf of the plaintiff that there is no provision in the Indian Railways Act, or the rules framed under that Act, requiring railway officials to make a note as regards the condition or weight or goods at the time of delivery. The weight authority is in favour of the appellant's contention that the refusal of the railway authorities to re-weigh goods or note the condition or weight in the registers at the time of delivery gives no cause of action to a consignee. This was taken as "settled law" in Suraj Mal v. B.N.R. Railway which follows a number of previous authorities and the same view was

taken in Secretary of State v. Sham Lal Deoki Nandan. It seems unfortunate that the plaintiff refused to take delivery under a mistaken notion to rights.

22. I respectfully agree with the aforesaid observations.

23. It was open to the plaintiff to contract out of the aforesaid Rules, That has not been done and the consignment was simply a contract at owner's risk. The facts laid above disclose that the exercise of discretion by railway administration, in the aforesaid circumstances, was not purely arbitrary.

24. So for the aforesaid reasons I find that it is not a fit case to strike down Rule 118 of Goods Tariff Rules. Plaintiff's evidence that the consignment offered to him for delivery weighed only two or three maunds when he inspected the same is also unreliable having regard to the statement of Sri R.L. Srivastava which was supported with the entry in the relevant register. Had the goods been 1, 2 and 3 maunds in weight only is testified by plaintiff these could not have fetched an auction prices of Rs. 2,300/-. It was not an exceptional case as contemplated by Rule 118 aforesaid.

25. In the result appeal is dismissed. However, under the circumstances of the case parties shall bear their own costs.