

(1916) 04 AHC CK 0011
In the Allahabad High Court

Sheikh Alla-Ud-Din Hadi

APPELLANT

Vs

The G.I.P. Railway Company

RESPONDENT

Date of Decision : 07-04-1916

Acts Referred:

Citation : 34 Ind. Cas. 104

Hon'ble Judges : P.C. Banerji, J

Bench : Single Bench

Judgement

P.C. Banerji, J.—This is an application for revision of a decree passed by the Judge of the Small Cause Court at Cawnpore, dismissing the claim of the plaintiff for damages brought under the following circumstances:

The plaintiff consigned 67 bundles of dry hides at the Attarra railway station to be delivered to him at the Cawnpore General-ganj railway station, both these stations being on the same Railway, namely, the Great India Peninsula Railway. The bundles weighed 120 maunds and 29 seers and were charged for at maund rates, the amount charged being Rs. 73-12-0. The goods appear to have been despatched in four waggons. When these arrived at Cawnpore the defendant Company charged an additional sum of Rs. 124-8-0 at waggon rates. The plaintiff paid this amount under protest and brought the present suit for recovery of the said amount by way of damages, on the ground that the excess charge was illegally made. The defendant Company contended that under the terms of the consignment note they were entitled to make the additional charge realized from the plaintiff. On the back of the consignment note there are certain conditions which are headed "Notice to Consignors." One of these conditions, namely, No. 6, is as follows: The Railway have the right of remeasurement, reweighment, reclassification and recalculation of rates, terminal and other charges at the place of destination, and of collecting, before the goods are delivered, any amount that may have been omitted or undercharged.

2. It is urged on behalf of the Railway that this condition authorized them to make the excess charge levied from the plaintiff. It is clear that this was not a

case of remeasurement, reweighment or reclassification. There was no mistake in classification and admittedly there was no mistake in measurement and weighment. The question is whether this comes under the head of recalculation. The learned Vakil for the Railway Company relies on Rule 57 of the General Rules of the Railway, which provides for the case of bulky articles fully occupying a waggon. I am of opinion that this is not a case of recalculation. The calculation according to the maund rates was correct. The contract with the plaintiff was a contract to carry the goods at maund rates, which were lower, in this particular instance, than waggon rates. Such a contract having been made cannot be altered. The case is fully covered by the ruling of the Full Bench in *Chunni Lal v. Nizam's Guaranteed State Railway Company, Limited* 29 A. 228 : 2 M.L.T. 42 : A.W.N. (1907) 21 : 4 A.L.J. 80 .

3. In that case as in this, the Railway Company relied on paragraph No. 51 of the Peninsula Railway goods tariffs, which were exactly in the same terms as Clause 6 of the consignment to which I have already referred. It was held that the terms of this rule did not entitle the Railway Company to alter the contract and charge at destination different rates from the contract rate. In that case the contract made at the receiving station was at waggon rates and the claim made at the station of destination was at maund rates. It was held that the acting of the Great India Peninsula Railway Company in exacting maund rates instead of waggon rates was not covered by the words remeasurement, reweighment, recalculation.

4. In view of this ruling the excess charge made by the defendant Company was not recoverable and the plaintiff was entitled to refund from the Railway Company of the excess charge made. I allow the application, set aside the decree of the Court below and decree the plaintiff's claim with costs in both Courts.