

(1970) 03 DEL CK 0022
In the Delhi High Court
Case No : Civil Revn. No. 19 of 1968

Shiv Saran Dass

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-03-1970

Acts Referred:

Citation : AIR 1970 Delhi 261

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Chhabil Dass, for the Appellant; R.S. Phul, for the Respondent

Judgement

1. This revision petition is directed against an order of the learned Judge, Small Cause Court, Simla whereby he dismissed a suit of the petitioner for recovery of Rs. 347-56 paise. The allegations of the petitioner, in the plaint, were as under:-

2. The petitioner is the sole proprietor of the firm known as Messrs. Dewan Chand Atma Ram, 57, the Mall, Simla. The firm is dealing in wool and other goods. A consignment, containing one case of wool was sent to the petitioner by Bengal National Textile Mills Limited, Calcutta from howrah, vide R.R. No.052528 dated 2-11-1964. Due to the misconduct and negligence of the Railway Administration, the above consignment reached Simla in a damaged condition. The petitioner had taken open delivery of the goods and it was found that 29 packets of Raj Hans knitting wool were short. The shortage certificate was obtained from the Chief Goods Clerk on 15-12-1964. The certificate was sent to the Chief Commercial Superintendent (claims Branch), Kashmere Gate, Delhi along with the letter of the petitioner dated 22-12-1964 in which claim for shortage was made against the Railway Administration. On account of the misconduct and negligence of the Railway Administration, the petitioner suffered loss amounting to Rs. 347-56 paise. The petitioner prayed that a decree for the recovery of Rs. 347-56 paise be passed against the respondent Union of India.

3. The suit was contested on behalf of the respondent. The respondent did not

admit tht the petitioner was the sole proprietor of the firm known as Messrs. Dewan chand Atma Ram. The respondent did not deny that the consignment was booked at howrah on the basis of R.R. No. 052528 dated 2-11-1964. The respondent did not specifically deny the shortage in the consignment. If any, was not due to any negligence or misconduct on the part of the Railway Administration or its employees. The plea of the respondent was that the shortage, if any, was due to defective packing of the consignment at the time of booking. The respondent did not admit that the value of the goods, delivered short, was Rs. 347-56 paise. The respondent also challenged the validity of the notice u/s 78-B Indian Railways Act. The respondent pleaded that no notice u/s 80, Civil P.C., appeared to have been served.

4. On the pleadings of the parties, the learned Judge, Small Cause Court formulated the following points for determination:-

1. Whether the plaintiff is the sole proprietor of the concern known as Messrs. Dewan Chand Atma Ram?
2. Whether there was a short delivery of 29 packets of wool to the plaintiffs?
3. What was the value of the goods delivered short?
4. Whether short delivery was the result of misconduct or negligence on the part of the Railway Administration?
5. Whether such short delivery was on account of defective packing of the consignment at the time of booking?
6. Whether the plaintiff served the requisite notices under S. 78-B of the Indian Railways Act and S. 80, Civil P.C. before filing the suit?
7. To what relied, if any, the plaintiff is entitled?

5. The learned Judge, Small Cause Court found points 1, 2, 3, 5 and 6 in favor of the petitioner, points Nos. 4 and 7 were decided against the petitioner and his suit was dismissed.

6. Aggrieved by the dismissal of his suit, the petitioner has come up in revision

7. The learned counsel for the petitioner contended that the finding of the trial court on point No. 4 was erroneous. The learned counsel argued that the trial Court had wrongly held that it was for the petitioner to prove negligence or misconduct of the Railway Administration. According to the learned counsel, the burden lay on the Railway Administration to furnish an Explanation about short delivery.

8. The learned counsel for the respondent controverted the contentions of the learned counsel for the petitioner. He also supported the order of the trial Court on the grounds decided against the respondent.

9. There is un rebutted statement, made on oath, of the petitioner that he was

the sole proprietor of the concern. Messrs. Dewan Chand Atma Ram and that the value of the goods short delivered, including sales tax, was Rs. 347-56 paise. The trial Court had accepted the statement. There is absolutely no valid reason to take a different view. The findings of the trial Court on points Nos. 1 and 3 are upheld.

10. Regarding short delivery, besides the statement of the petitioner, that 29 packets were delivered short, there are letters Ex. P.1, Ex. P.5 and Ex. P-7, showing that there was short delivery, Letters, Ex. P1 was addressed to the Chief Commercial Superintendent, Claims Branch, requesting for the payment of Rs. 347-56 paise for short delivery of 29 packets. It was stated in the letter that open delivery of the consignment was taken and that shortage certificate was obtained from the Chief Goods Clerk, Simla. That certificate was enclosed with the letter. No reply was received with the letter. The petitioner then sent the letter Ex. P. 5 as a reminder. Ex. P7 is the letter received by the petitioner from office of the Chief Commercial Superintendent Claims Branch. The letter asked the petitioner to submit the original Trade Invoice. This letter did not question that there was short delivery of 29 packets. The respondent did not produce any rebuttal evidence. As already stated, short delivery was not specifically denied by the respondent in the written statement. It stood established that there was short delivery of 29 packets of wool.

11. So far as point No. 4 is concerned, the trial Court appears to have misunderstood the legal position. The consignment had been booked and there was short delivery in November-December 1964. The Indian Railways (Amendment) Act, 1961 had effected far-reaching changes in the Indian Railways Act, as it stood before. Prior to the Amendment Act the responsibility of the Railway Administration, with respect to loss, non-delivery etc. Of the goods entrusted for carriage by railways, was that of a bailee only. The amendments introduced by the Amendment Act, made the liability of the Railway Administration as of a common carrier. The new Section 73 of the Indian Railways Act provides-

"Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage deterioration or non-delivery, in transit of animals or goods delivered to the administration to be carried by railway, arising from any cause except the following namely:-

- (a) act of God,
- (b) act of war,
- (c) act of public enemies,
- (d) arrest, restraint or seizure under legal process
- (e) orders or restrictions imposed by the Central Government or a State Government or by any officer or authority subordinate to the Central Government or a State Government authorised in this behalf,

- (f) act or omission or negligence of the consignor or the consignee or the agent or servant of the consignor or the consignee,
- (g) natural deterioration on or wastage in bulk or weight due to inherent defect, quality or vice of the goods,
- (h) latent defects,
- (i) fire, explosion of any unforeseen risk;

Provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the administration further proves that it has used reasonable foresight and care in the carriage of the animals or goods."

12. It is clear, from a perusal of the above provisions, that the Railway Administration is responsible for loss, destruction, damage, non-delivery etc of goods while in transit except in the cases where the cause of damage etc., is act of God, act of war etc. Even when the Railway Administration can claim exemption from liability in any of the aforesaid causes, the burden is cast upon the Railway Administration to prove further that it had exercised reasonable foresight and care in the carriage of goods. It follows that once loss, damages, non-delivery etc., is proved, the burden shifts on to the Railway Administration to prove that it is not liable. It is not for the claimant to establish negligence or misconduct.

13. In the present case, short delivery of 29 packets was proved. It was for the Railway Administration to prove that it was not responsible for short delivery. The plea of the respondent was that short delivery was due to defective packing and the Railway Administration was not responsible for short delivery u/s 77-C of the Indian Railways Act. That section reads:-

"(1) When any goods tendered to a railway administration to be carried by railway -

(a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wastage, or

(b) are either effectively packed or packed in a manner not in accordance with the general or special order, if any, issued under sub-section (4), and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, then notwithstanding anything contained in the foregoing provisions of this Chapter, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination, except upon proof of negligence or

misconduct on the part of the railway administration or any of its servants.

(2) When any goods delivered to a railway administration to be carried by railway are found on arrival at destination to have been damaged or to have suffered deterioration, leakage, or wastage, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the railway administration shall not be responsible for the damage, deterioration, leakage or wastage of the goods on proof by the railway administration,-

(a) that the goods were, at the time of delivery to the railway administration, in a defective condition or were at that time either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under sub-section (4) and as a consequence of such defective condition or defective or improper packing were liable to damage, deterioration, leakage or wastage, and

(b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or of any of its servants at the time of delivery of the goods to the railway administration for carriage by railway;

Provided that the railway administration shall be responsible for any such damage, deterioration, leakage or wastage if negligence or misconduct on the part of the railway administration or any of its servants is proved.

(3) A railway administration shall not be responsible under sub-section (1) or sub-section (2) for any damage, deterioration, leakage or wastage occurring after the expiry of the period of thirty days after the termination of transit as defined in sub-section (5) of S. 77.

(4) The Central Government may, by general or special order, prescribe the manner in which goods delivered to a railway administration to be carried by railway shall be packed."

14. It is to be noted that the aforesaid section does not refer to loss or non-delivery of goods. It refers only to damage, deterioration, leakage or wastage. The present case is a case of short delivery. It is, further, to be noted that the section lays down certain circumstances, to be proved by the Railway Administration, before it can be absolved from its responsibility. The first circumstance to be proved is that the goods were defectively packed. The second circumstance to be proved is that the fact of defective packing was recorded by the sender or his agent in forwarding note. Under sub-section (2), it is to be proved that defective packing was not brought to the notice of the Railway Administration at the time of delivery of goods for carriage. Reliance was placed, on behalf of the respondent on the note made on R. R. No. 052528 dated 2-11-1964. The R.R. is marked as Ex. P.W. 1/1. The note referred to is not decipherable on the R.r. the note was quoted in the written statement and was also put to the petitioner when he had appeared as his own witness. The note shows that the packing was defective. But there is no evidence that the fact of defective packing was recorded by the sender in the forwarding note. The note

made on Ex. P.W. 1/1 is a clear proof of the fact that defective packing was within the knowledge of the servants of the Railway Administration. In the circumstances of the case the respondent was not absolved from responsibility for short delivery u/s 77-C of the Indian Railways Act.

15. The Trial Court had placed reliance on Sarjug Prasad Ishwar Purbey Vs. Union of India (UOI), . That case is distinguishable from the present case. That case was decided under the Indian Railways Act as it stood before its amendment by the Railways (amendment) Act 1961. Further, that was a case where the goods had been booked on owner's risk rate. In the present case, the goods had been booked on railway risk rate.

16. For the reasons stated above, I am of the opinion that the learned Judge, Small Cause Court was in error in holding that the petitioner had failed to prove that short delivery was the result of misconduct or negligence on the part of the Railway Administration. As the petitioner had established short delivery of goods, the burden shifted on to the Railway Administration to prove that it was not responsible for short delivery. The respondent has failed to discharge that burden. It was, Therefore, liable to pay Rs. 347-56 paise to the petitioner for short delivery of goods.

17. Point No. 6, formulated by the trial Court, remains to be dealt with. The copy of the claim submitted to the Railway Administration, is Ex. P-1. The copy of the notice u/s 80, Code of Civil Procedure, is Ex P-3. The learned counsel for the respondent failed to point out any defect in the claim or in the notice. The finding of the trial Court on point NO. 6 is upheld.

18. The result is that the decision of the learned Judge, Small Cause Court dismissing the suit of the petitioner is not in accordance with law and is erroneous. It is set aside. The revision petition is allowed and the suit of the petitioner for the recovery of Rs. 347.56 paise with costs of both the Courts is decreed against the respondent.

19. Petition allowed.