

(1980) 12 RAJ CK 0008
In the Rajasthan High Court
Case No : Second Appeal No. 129 of 1968

Smt. Pani Bai and Others

APPELLANT

Vs

Smt. Sire Kanwar and Others

RESPONDENT

Date of Decision : 12-12-1980

Acts Referred:

Contract Act, 1872 — Section 211, 73

Citation : AIR 1981 Raj 184

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : Amar Chand Bhandari, for the Appellant; H.N. Parekh, for the Respondent

Final Decision : Partly Allowed

Judgement

Dwarka Prasad, J.—In this appeal a short but interesting question of law arises as to what should be the measure of damages when an agent sells goods of the principal below the limit placed upon such goods by the principal and without being able to justify the sale in terms of the contract or otherwise?

2. The circumstances in which the aforesaid question arises may be briefly narrated:

Hastimal, the original plaintiff, was doing his business as commission agent in the name of M/s. Fatehchand Moolchand. Kesarimal, whose legal representatives are the defendants, was dealing in wool and did his business in the agency of the plaintiff. 11 bales of wool belonging to Kesarimal were sent in the agency of Hastimal to Liverpool in England for sale. According to the plaintiff, the bales of wool were sold at the rate of 52 1/2 pence per pound and that the sale proceeds were duly accounted for in the mutual open and current account between the parties. On taking an account, a sum of Rs. 1325/4/- was found outstanding against Kesarimal and as the same was not paid, Hastimal filed a suit for the recovery of the aforesaid amount along with interest, in all 5 sum of Rs. 1869/-

against the legal representatives of Kesarimal. The defendants contested the suit and took the plea that Kesarimal, who was the owner of 11 bales of wool had instructed the agent Hastimal to sell the said bales at a price not below 62 pence per pound and that the plaintiff should account for the loss of 9 1/2 pence per pound, in respect of 11 bales of wool said to have been sold at the rate of 52 1/2 pence per pound at Liverpool. According to the defendants, if the price of 11 bales of wool, sold at Liverpool, was calculated at the rate of 62 pence per pound, then the amount payable to the defendants by the plaintiff would far exceed the claim of the plaintiff, and on this ground the suit of the plaintiff was liable to be dismissed.

3. The trial Court held that Kesarimal had placed a limit of 60 pence per pound for the sale of 11 bales of wool sent to Liverpool for sale. But relying upon the statement of Jhumurlal (P. W. 4) the trial Court came to the conclusion that the consent of Sire Kanwar, widow of Kesarimal was obtained for the sale of goods in question at a lesser price, as after the death of Kesarimal his widow had instructed the agent that the goods in question were not desired to be retained any longer and should be disposed of at the best available price. Having come to this conclusion, the trial Court decreed the plaintiff's suit. However, the learned District Judge, Pali, allowed the defendants' first appeal and dismissed the plaintiff's suit, holding that the consent of Sire Kanwar for sale of the bales of wool at a lesser price was not proved to have been given.

4. In this second appeal it was not disputed that the limit placed by Kesarimal in respect of sale of 11 bales of wool sent to Liverpool was 60 pence per pound and not 62 pence per pound, as alleged by the defendants. The documents Ex. 80 to Ex. 87 on record go to show that a limit of 60 pence per pound was placed by Kesarimal for the sale of the goods in question. Ex. 84 is the letter of M/s. H. W. Hammand and Co. of Liverpool, in which they clearly admitted that they had taken notice of the limit of 60 pence per pound imposed on the consignment of 11 bales of wool, and they hoped that "we may get somewhere near it for cabling to you in case your reserve is not reached". The case of the plaintiff that after the death of Kesarimal his widow Shrimati Sire Kanwar had agreed to sell the goods for a lesser price, is based on the solitary statement of P. W. 4 Jhumar Lal, who was the Munim of the plaintiff's firm M/s. Fatehchand Moolchand. The evidence of this witness has not been relied upon by the first appellate Court and the learned District Judge has held that it was highly improbable that the consent of Smt. Sire Kanwar was obtained in the manner alleged by Jhumar Lal. It is not in dispute that Kesarimal died before March 7, 1958, and it has not been alleged that his consent was obtained. Smt. Sire Kanwar, who has appeared as D. W. 1, has categorically denied the story of alleged consent and has stated that her consent was never obtained. Thus there is oath against oath on this question and as the learned District Judge has placed reliance upon the statement of defendant Smt. Sire Kanwar in preference to the statement of P, W. 4 Jhumar Lal, Munim of the plaintiff, the question is purely one of appreciation of evidence. The finding of fact recorded by the first appellate Court, after an appreciation of

the evidence on record, is that the consent of Smt. Sire Kanwar, widow of Kesarimal. or any other legal representative of Kesarimal was not obtained for selling the goods in question below the reserve price of 60 pence per pound, which was admittedly placed by Kesarimal during his lifetime on the sale of the consignment in question. Thus the conclusion that 11 bales of wool were sold at a price below the limit placed by Kesarimal, without the consent of the defendants, appears to be well founded and does not call for any interference. One more fact which appears to be significant in this respect is that in the letter Ex. 82 sent by the Bombay firm M/s. Moolchand Hastimal to M/s. H. W. Hammand and Co. Liverpool, in reply to their cable regarding the bid of 52 1/2 pence per pound, it was stated that the price was low, yet they authorised the Liverpool Company to sell the lot according to their best discretion and in case they did not get a better price, they were authorised to sell the goods at the rate of 52 1/2 d. per pound. The letter Ex. 82 contains a definite authorisation on behalf of the plaintiff to the Liverpool Company, but it makes no mention at all as to whether the consent of the principal had been obtained for the sale of the goods at the rate of 52 1/2 d. per pound.

5. Thus the only question which is now required to be considered relates to the quantum of damages which the defendants are entitled to obtain on account of the sale of goods in question below the limit placed by Kesarimal. The argument of Mr. Hastimal, learned counsel for the defendants, is that the defendants are entitled to the difference between the price at which the goods were sold and the limit price. According to the learned counsel Kesarimal had put his own valuation upon the goods, as he was entitled to do and if the plaintiff was unable to sell the goods up to the limit price then he should have returned the same to the defendants or should have sought fresh instructions from them. On the other hand, Mr. Sumerchand Bhandari, learned counsel for the plaintiff, submits that the measure of damages can only be the difference between the price at which the goods were actually sold and the market price at the relevant date and as there was no evidence on the record about the market price of the goods within a reasonable time, the price fetched by the goods should be considered to be the proper price for such goods and the defendants were not entitled to any further amount by way of damages.

6. In *Manchubhai Navalchand v. John H. Tod* ILR (1896) Bom 633 a similar question arose before their Lordships of the Bombay High Court, where the principal had placed a specified limit in respect of the price of a parcel of pearls sent for sale to London, but the same was sold by the London firm at much lesser price. The limit which was placed by the principal on the parcel of pearls was ? 550/-, while the same was sold by the agents, the London firm, for ? 270. It was held by the Bombay High Court in the aforesaid case that the measure of damages in a case where an agent had, in breach of his duty, sold the goods of his principal below the limit placed upon them by the principal, is the loss which the principal had sustained and if he had sustained no loss then the principal could ask only for nominal damages.

7. In *Chelapathi v. Surayya* (1902) 12 Mad LJR 375 it was held that the sale made by an agent in contravention of the principal's direction is wrongful and the principal will be entitled to recover substantial damages if he succeeds in proving such damages and the measure of damages would be the amount as would place the principal in the position in which he would have been if the agent had not wrongfully sold the goods. Sir Charles Arnold White, delivering the judgment of the Madras High Court in the aforesaid case, observed that the measure of damages in such a case would be the difference between the price the goods fetched at the sale made by the agent and that which the goods would have fetched at the time when the principal might reasonably would have been willing to sell the same. In that case, the decision of the Bombay High Court in *Manchubhai Navalchand's case* ILR 1896 Bom 633) was relied upon.

8. In *Bowstead on Agency* it has been observed that the measure of damages in an action by a principal against his agent for negligence or breach of duty by the agent in the course of an agency is the loss actually sustained by the principal.

9. In *Gambhirmull Mahabirprasad Vs. The Indian Bank Ltd. and Another*, *Mitra J.*, held that the minimum amount which the principal is entitled to recover from the agent in such cases is the amount of loss sustained by the principal.

10. Thus, it is well settled that in a case where an agent sells the goods belonging to the principal, below the limit placed by the principal for the sale of such goods, the principal is entitled to recover from the agent, by way of damages, the difference between the price at which the agent had sold the goods and the price which the goods would have fetched when the principal would have been willing to sell his goods. Applying the aforesaid principle to the fact of the present case, the defendants were entitled to obtain by way of damages the difference between the price for which the goods were actually sold by the plaintiff's Liverpool agent and the price which the said goods would have fetched when the defendants would have been willing to sell the same. However, the difficulty which arises in this case is that there is no evidence on the record as to the price the goods in question would have fetched in the Liverpool market subsequent to March 7, 1958, and as such the amount of damages cannot be accurately determined.

11. In *A.V. Joseph v. R. Shew Bux* AIR 1918 PC 149 it was held that where in a suit for damages the Court found in favour of the plaintiff that there was a breach then simply because the plaintiff has not given sufficient evidence to show certain details of damages, it would not be proper to grant him merely nominal damages. Their Lordships of the Privy Council held that although there was an element of uncertainty in such cases, yet it would be desirable to award reasonable damages.

12. *Cheshire and Fifoot's Law of Contract* (ninth edition) contains the following statement of law in this respect:--

"We have seen that in cases of frequent occurrence, such as a contract for the

sale of goods, certain rules relating to the measure or assessment of damages have gradually been evolved, as for instance the rule that a defaulting seller must pay to the buyer the difference between the market and the contract price of the goods. But in general there is no specific rule upon the matter, and it is left to the good sense of the Court to assess as best it can what it considers to be an adequate recompense for the loss suffered by the plaintiff. The assessment may well be a matter of great difficulty, indeed in some cases one of guess work; but the fact that it cannot be made with mathematical accuracy is no reason for depriving the plaintiff of compensation."

13. The fact that damages are difficult to estimate or could not be assessed with certainty or precision cannot relieve the wrong doer of the necessity of paying the damages for the breach of his duty to abide the instructions of the principal and the lack of evidence in such matters would not be sufficient ground for awarding only nominal damages. Where it is established that damages have been incurred for which one party should be held liable, the other party should be accorded the benefit of every reasonable presumption for the loss suffered. Thus, when faced with such a situation that a precise quantum of damages could not be calculated because of insufficiency of material placed on the record, the Court may form its own conclusions on matters in respect of which there is no evidence, on a reasonable basis and the defendants must be paid reasonable compensation for the loss suffered by them. The Court, in such a situation, should try to place the principal in such a position in which he would have been placed if the agent would not have committed breach of the instructions of his principal.

14. In the present case, I find that the valuation report, which was received from Liverpool showed that the price of wool was 56 d. per pound in February 1958. It was after the receipt of this valuation report, that Kesarimal insisted that his goods, consisting of 11 bales of wool should not be sold at a price below 60 d. per pound. It may be that the price fixed by Kesarimal may be fanciful or may be excessive, yet from the documents on record it is apparent that the price of wool in the month of February 1958 was 56 d. per pound. Even assuming that the price had gone down in the first week of March and there is no evidence to show as to what was the price of wool of the specified quality at Liverpool during the latter period, yet it would not be unreasonable to hold that the goods in question could have easily fetched the earlier price of 56 d. per pound, if the same would not have been sold at 52 1/2 d. per pound, on the basis of the instructions contained in the cable sent on March 7, 1958 by the plaintiff to the Liverpool Company. The market might have slowly recovered after some time and if the goods would not have been sold at 52 1/2 d. per pound, then they would have been available for sale at a higher price subsequently. Thus it would be reasonable, in the circumstances of this case, to consider 56 d. per pound as the reasonable sale price of the goods, although Kesarimal was not willing to sell the goods at the aforesaid price. But the same might represent the best possible price which the bales of wool would have fetched in the Liverpool market. The

first appellate Court has held that the defendants were entitled to difference of 7 1/2 d. per pound, on the basis that the goods should have been sold at the rate of 60 d. per pound, which was the limit fixed by Kesarimal. But as I have held above, the measure of damages cannot be the difference between the price actually obtained at the agent's sale and the limit of price fixed by the principal, but the measure should be the difference between the price at which the goods were sold by the agent and the price which the same would have fetched at the time when the principal would have desired to sell them. Thus taking 56 d. per pound as the reasonable price of the goods in question, the defendants were only entitled to a difference of 3 1/s d. per pound, over and above the price of 52 1/2 d. per pound, for which the goods were actually sold by the plaintiff. Calculating on this basis, learned counsel for the parties are agreed that the difference in the price works out to Rs. 666/- after converting the difference into Indian currency. It is also settled law that when an agent has sold the goods of the principal against his instructions, then the agent is not entitled to the commission to which he would have been otherwise entitled, if the goods would have been sold by him according to the instructions of his principal, and also to the expenses incurred in such a wrongful sale. The schedule produced along with the plaint giving the details of the account between the parties shows that a sum of Rs. 305-51 was deducted by the plaintiff from the sale proceeds of 11 bales of wool in respect of his commission and expenses. In my view, the plaintiff is not entitled to the adjustment of the aforesaid sum of Rs. 305.51 on account of his agency commission and the expenses incurred by him. Thus a sum of Rs. 971.51 is liable to be lawfully deducted from the amount claimed by the plaintiff from the defendants. Hence the principal amount which the plaintiff is entitled to obtain from the defendants comes to Rs. 353.74. Of course, the defendants are also entitled to deduction of interest on the aforesaid amount of Rupees 971.51, which has been found payable by the plaintiff to the defendants, out of the interest amount claimed by the plaintiff in the suit.

15. In the result, the appeal is allowed in part, the decree passed by the learned District Judge, Pali, dated November. 2, 1967 is modified and the plaintiff's suit is decreed for a sum of Rs. 353.74 and interest thereon subject to the condition that the defendants are entitled to deduction of interest on the sum of Rupees Rs. 971.51 from March 1958 up to the date of institution of the suit. The plaintiff shall be entitled to pendente lite and future interest on the principal amount of Rs. 353.74 at the rate of 6% per annum. In the circumstances of the case, the parties are left to bear their own costs throughout.