
(2001) 03 MP CK 0062
In the Madhya Pradesh High Court
Case No : Second Appeal No. 84/83

Sujanmal	Vs	APPELLANT
Union of India		RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Railways Act, 1890 — Section 74, 74(3), 76

Citation : (2001) 2 ACC 382 : (2003) ACJ 440 : AIR 2001 MP 247 : (2001) 4 MPHT 47 : (2001) 2 MPLJ 324

Hon'ble Judges : Mr. S.P. Khare, J

Bench : Single Bench

Advocate : Ms Sadhna Pathak, for the Appellant; Shri Y.I. Mehta, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a second appeal u/s 100, CPC. The following substantial questions of law were formulated by order dated 16-4-1983 at the time of admission of this appeal.

- (i) Whether the respondent is not liable in law for the delay caused in transit of the consignment.
- (ii) Whether the Lower Appellate Court committed an error of law in disallowing appellate's claim of damages of Rs. 973/- for the damage caused to the consignment in transit ?
- (iii) Whether the Lower Appellate Court committed an error of law in disallowing appellant's claim of damage Rs. 1466.89 being the amount of interest charged by the Bank ?

The facts relevant for decision of the questions referred to above are that the

plaintiff was the consignee of wheat as per Railway Receipt No. 364256 dated 19-6-1978. 275 bags of wheat were despatched from Gwalior to Bamania under this railway receipt. The bags reached the destination on 24-9-1978. Thus there was delay of about 95 days. At the destination the damage caused to the wheat was assessed on 13-10-1978 and the damage certificate issued by the Railway Authorities is Ex. P-3. According to this certificate, damage was assessed at Rs. 973/-. This certificate further shows that there was germination in the bags and there were insects also.

The plaintiff claimed the amount of Rs. 973/- as damages caused to the wheat due to delay in carriage. He also claimed the amount of Rs. 1,466.89 Ps. as interest charged by the Bank for the delay in retiring the railway receipt from the Bank. According to the plaintiff he did not take the railway receipt from the bank as the goods had not arrived at the destination. The defendants denied the liability under both the heads mentioned above. The Trial Court decreed the suit of the plaintiff on both counts with interest at the rate of 12% per annum from the date of the suit till realisation. The First Appellate Court reversed the decree and dismissed the suit of the plaintiff on the ground that the plaintiff did not lead any evidence on the point that the wheat was not infected when it was loaded in the wagon by the consignor. The burden of proof was placed on the plaintiff to show that good quality of wheat was despatched. Claim for interest charged by the Bank was disallowed on the ground that the plaintiff did not take railway receipt from the Bank for taking delivery of the goods from the railways during the period when the goods should have ordinarily reached destination.

In this appeal the questions stated at the out set have been formulated. The arguments of the learned counsel for both the sides were heard on these questions.

Question Nos. 1 and 2 : As stated above there is no dispute that there was delay of 95 days in transit. It is also admitted that in the normal course the goods should have reached the destination in 20 days. The damage certificate Ex. P-3 issued by the officers of the railway department shows that there was deterioration in the quality of wheat. There was physical deterioration. It must have been because of the unusual delay in the transit. Therefore, Section 76 of the Railways Act, 1890 is attracted. It has been held by the Supreme Court in Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona, , that the responsibility of the railway has changed "from bailee to the common carrier". This is as a result of the amendments made in 1961.

The import of Section 76 of the Railways Act, 1890 is that the railway is bound to deliver the goods at the destination within reasonable period necessary for their transportation. Any delay in such delivery will render the railway administration liable in damages to the owner thereof. The burden is on the railway to show that the delay was caused without negligence or misconduct on its part.

In Union of India (UOI) Vs. Shankerlal, , it has been held that "Section 76 of the

Railways Act is a Proviso to Section 74 (3), which is general provision absolving the railway administration of responsibility for loss, destruction, damage, deterioration for non delivery of goods or animals sent at owners risk. There is nothing in Section 74 (3) or Section 76 to show that the latter is in anyway controlled by the former section. Section 74, therefore, does not exclude the operation of Section 76 in cases where the goods or animals are booked at owners risk. Delay or detention in transit is per se indicative of misconduct or negligence but it is not conclusive proof of negligence or misconduct. Section 76 therefore, makes an initial presumption of misconduct or negligence of the railway authorities in case of delay or detention and places the burden to prove that delay or detention occurred without there being any misconduct or negligence on the part of the railway administration. Where the administration leads no evidence to prove that the loss, destruction, etc. was not due to their misconduct or negligence, Section 76 relieves the plaintiff of his burden u/s 74 (3). If the consignor proves that the destruction, damage or deterioration was caused by delay or detention in transit then the burden shifts on the railway authorities to prove that the delay or detention arose without negligence or misconduct on the part of the administration or of any of its servants. Where the owner does not prove delay or detention, he has to prove the misconduct or negligence of the railway as required by Section 74 (3)."

In *Gaj Raj Vs. Estate Officer (Divisional Superintendent), Western Railways, Ajmer and Others*, , also it has been ruled that "Section 76 is not controlled by Section 74 (3), therefore, in cases of delay, the burden to prove that deterioration was not caused due to misconduct or negligence of its servants, is on the railway administration and failure to prove the same relieves the consignee burden u/s 74 (3). However, it is for the consignee to prove that damage or deterioration in the condition of goods was caused due to delay during carriage of goods".

As demonstrated earlier, the damage certificate Ex. P-3 unmistakably shows that there was deterioration in the quality of wheat because of the delay of 95 days in the carriage. The Railway Officers themselves have assessed damage at Rs. 973A and that has been claimed by the plaintiff. Therefore, this claim cannot be said to be either unjust or unreasonable.

As a result of the aforesaid discussion the answer to question No. 1 is that the respondent is liable in law for the delay caused in the carriage of goods.

It is not in dispute that the plaintiff was required to pay the amount of Rs. 1466.89 Ps. as interest to the Bank. The First Appellate Court has disallowed the claim for interest on the ground that the plaintiff did not take the delivery of Railway receipt from the Bank. The cause assigned by the plaintiff is that the goods had not arrived at the destination and, therefore, it was of no use to take the delivery of railway receipt from the Bank. That would not alter the quantum of damages. If the plaintiff had taken the delivery of railway receipt then his own money would have been "locked up". The railway receipt is sent by the consignor

to the consignee on the premise that it would be retired from the Bank on payment of price of goods. The Bank provided finance during the period the delivery of goods was not made to the consignee and, therefore the Bank has charged interest and that has been paid by the plaintiff. The plaintiff is undoubtedly entitled to be compensated on this count. This claim is dehors Section 76 of the Railways Act and is based on the principles laid down by the Supreme Court in Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona, , referred to above. In that case the damages for delay in the carriage of goods were assessed on the basis of the loss of interest. Similarly in Union of India Vs. Visveswaraya AIR 1987 Kar 161, it has been held that if the capital of the owner of the goods is "locked up" he is entitled to reasonable rate of interest on that capital by way of damages.

In the present case, the First Appellate Court has committed an error of law in disallowing the appellant's claim of Rs. 1466.89 Ps. as damages by way of interest paid to the Bank. This loss to the plaintiff arose as natural and probable consequence of the delay in the carriage of the goods. Instead, of the plaintiff's own money being "locked up" for a period of 95 days, the Bank financed the plaintiff for that period and charged interest from him. The plaintiff has paid the interest to the Bank and he is entitled to recover the same as damages from the respondent.

In the result this appeal is allowed and it is directed that the respondent will pay the amount of Rs. 973/- to the appellant for physical damage to the wheat. The defendant will further pay the amount of Rs. 1466.89 Ps. to the plaintiff as damages for the delay in the carriage of the goods. The respondents will further pay interest at the rate of 9% per annum on these two sums from the date of the suit till their realisation. The respondents shall pay cost of the appellant incurred in this appeal and also proportionate costs incurred in the two Courts below.

Second Appeal allowed.