
(1974) 01 MAD CK 0018
In the Madras High Court
Case No : Appeal No. 330 of 1968

Surendra Overseas Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-01-1974

Acts Referred:

Citation : AIR 1974 Mad 297 : (1978) 87 LW 858 : (1974) 87 LW 858

Hon'ble Judges : Ramaprasada Rao, J;Natarajan, J

Bench : Division Bench

Judgement

Ramaprasada Rao, J.—The Chief Controller of Chartering, Government of India chartered the vessel "A. P. Aruna", owned by the

defendants, and entered into a charter party on 16-8-1963 under Ex. B.1. The charter was intended for the carriage of certain consignments of

urea together with a certain quantity of empty gunny bags from Venice-Port Merghera to a port in West coast or East coast in India. The bills of

lading evidencing the loading of the cargo are Exs. A.1 and A.2, which in turn incorporated the material terms contained in the charter party. Exs.

A. 10 and A.11 are the certificates of weight issued at the port of shipment, whilst Exs. A.12 and A.13 are the certificates of origin relating to the

goods. Ex. A.14 is the invoice issued by the seller. The invoice discloses the shipment of two consignments of urea, in all, 1,31,140 bags, for

carriage to Madras and also 1312 empty bags along with it. Ex. A.15 is the certificate of inspection given by the High Commissioner of India at the

port of shipment. The ship arrived at Madras on 10-10-1963 and commenced discharging of the cargo on 11-10-1963 and completed the same

on 14-10-1963. The plaintiff's case is that out of the consignment of urea so

loaded and as evidenced by the invoice as above, there was a short-landing of 370 bags of urea contend. The vessel also discharged 1340 bags of urea slack or torn or cut and 130 bags of ship sweepings. It appears that the ship's manifest under Exs. B2 and B3, also noticed such a situation. At or about the time of discharge, there was what is known as hatch survey, but without notice to the plaintiff. This is seen from Ex. B.5. This hatch survey was under taken by the vessel on its own responsibility when it was lying in No. 2 West Quay, Madras Harbour. It is common ground that this survey was not undertaken in the presence of the plaintiff or any one on their behalf. On the basis of the said hatch survey, the Master of the ship issued what is known as the Master's certificate of discharge of the cargo under Ex. B.11. As per the custom availing at the Port of madras, the cargo which was so discharged and hatch surveyed, was handed over to the Port Trust Authorities, who took delivery of the same from the Quay, apparently as the agents of the ship. Till this stage, it is common ground that there was no physical delivery of the cargo to the plaintiff as the consignee. After the Port Trust so took delivery of the cargo, as is usual, the plaintiff under Ex. B.4 requested their clearing agents, the South India Corporation (Agencies) Pvt. Ltd. to effect clearance after getting the usual certificate from the Port Trust Authorities. The Port Trust under Ex. A.3 gave what is popularly known as the B certificate, which is a short landing certificate, after making due enquiries as regards the quantum of the discharged cargo. Under Ex. A.3, the short landing of 370 bags as claimed by the plaintiff and also 1340 urea slack or torn or cut bags and 130 bags of ship sweepings were noticed. At this stage, it is proper to note that the short landing as disclosed in the B certificate was corroborated by the ship's out-turn statement Ex. A.32. That also discloses the short landing of the abovesaid 370 bags of urea etc. Even the tally sheets Ex. A. 44 of the Port Trust Authorities, who effected the discharge, would also confirm such shortage. As a matter of fact, a survey at the instance of the plaintiff consequent upon the issue of the short landing certificate under Ex. A.3 was held on 17th and 18th of October 1963 and from Ex. A-4 which is the certificate which followed such survey it is seen that 1340 bags of urea were slack and torn and there weight was lesser than in invoice weight and that there were ship

sweepings of 130 bags which were also naturally lesser in weight than the avowed quantity as per the invoice. This is besides the shortage of 370 bags of urea as already noted.

2. It was in these circumstances that the plaintiff came to court seeking for the value of the goods so short landed as also for the value of the goods

damaged. The defendants in their written statement relied upon the charter party and in particular clause 4 therein, and pleaded that the cargo was

duly delivered to the consignee as soon as it was discharged at the West Quay, that delivery of the goods to the Port Trust would imply delivery to

the consignee and that, in view of the hatch survey held in the presence of the Master as evidenced by Exs. B-1 and B-11, they were not in any

way responsible either for the shortage or the damage to the cargo. One other contention was raised by the defendants. They would attribute the

damage to the cargo to the faulty and negligent stevedoring by the persons engaged by the plaintiff in the course of the discharge of the cargo from

the vessel. Lastly they would state that they had performed their part of the contract of affreightment and they were therefore absolved from

liability.

3. The learned City Civil Judge framed the following issues for trial:

1. Whether the alleged short delivery of 370 bags of urea is true?

2. Whether the alleged shortage of 7088 metric tons of urea is true?

3. Whether the entire cargo was landed as contended by the defendants?

4. Whether the defendants are liable to compensate for the shortage under the contract of carriage?

5. Whether the defendants or the agents were negligent in taking care of the cargo as alleged?

6. Whether the suit is bad for want of notice from the plaintiff within three days from the date of removal of the goods?

7. To what damages if any is the plaintiff entitled?

8. To what relief if any is the plaintiff entitled?

On issues 1 to 8, after considering the documentary evidence, he came to the conclusion that Ex. A.8, the short landing certificate issued by the

Port Trust, which was corroborated duly by its own out-turn statement as also the tally sheets under Exs. A. 32, 42, 43 and 44, were proof

enough to accept the plaintiff's claim as to short-landing and damages. He also negated the defendants' plea that there was negligence on the part of the plaintiff or their representatives, when the cargo was discharged from the hatches, as according to him, the labour engaged at or about the time when the cargo was discharged at the West Quay was labour provided by the Madras Dock Labour Board and the plaintiff was not in any way responsible for any alleged mishandling of the cargo by the labour force so provided and the plaintiff had no control over such labour force so provided and the plaintiff had no control over such labour when the discharge was made of the cargo from the hatches. In the result, he decreed to suit: the defendants have come up in appeal.

4. The main contention of Mr. Duleep Singh, the learned counsel for the appellants is that Exs. B-1, B-5 & B-11 are primary documents, which disclose a normal discharge of the cargo, and that in any event, under Ex. B.1, it should be deemed that the delivery of the cargo was to the consignee when it was discharged at the West Quay, though physically it was handed over to the Port Trust Authorities. In the main, his contention is that the delivery of the cargo to the Port Trust should be deemed and accepted to be delivery to the consignee, and, if so accepted, Ex. B-1 and in particular clause 4 therein, exonerates the defendants from all supervening liability either in the matter of the shortage of the goods, or in respect of the damage to them in the course of the implementation or working out of the contract of affreightment.

5. We may at once refer to clause 4 of the charter party Ex. B1, which runs as follows-

A declaration by the Master or Chief Officer that all cargo shipped has been delivered to the receivers shall be, and shall be accepted as, conclusive evidence of that fact, unless the receivers shall before the commencement of the discharge give to the Master notice in writing of their intention to tally the cargo, and unless such tally is in fact taken at the vessel's hatchways.....

Strong reliance is placed upon the text of this clause by the learned counsel for the appellants. He also relies upon the hatch survey held at the instance of the Master of the vessel, who ultimately gave Ex. B-11, his certificate of discharge. But it ought not to be forgotten that the said hatch

survey was held by the vessel or its agents or officers without notice to the plaintiff. This is a self-serving activity the result of which cannot prejudice the party who has neither been called to be present at the time of such survey nor has any information been given to such a person who is likely to be affected thereby. It is not the case of the appellants that any such attempt was made to invite the attention of the plaintiff to be present at the time of such survey. We are, therefore, of the view that Ex. B.5, which is the report on such a hatch survey, is a self-serving document, which cannot be projected by the appellants to serve their own case. Regarding the certificate issued by the Master, it is neither corroborated by the ship's manifest or the tally sheets. As a matter of fact, the manifest as well as the tally sheets do support the short landing certificate issued by the Port Trust after due survey in the presence of the vessel's representatives. Ex. A.4 is the survey report and Ex. A.3 is the short landing certificate issued by the Port trust authorities. This is a certificate issued by a public body which obviously takes care of the cargo discharged from various ships coming from international borders. Nothing has been said as against Ex. A.3, nor any averment made either in the trial Court or before us against the method adopted by the surveyors when they effected the survey. Reading the documents Exs. A.2 and B.3 which are the ship's manifest and comparing the same with Ex. A.3 which is the short-landing certificate, the position is clear that the entire cargo has not been landed. That there has been short-landing cannot be disputed as it was physically established at the time of the survey under Ex. A.4. The only document put as against Ex. A.3 is Ex. B.5, read with Ex. B.11, the certificate of the Master. We have already characterised Exs. B.5 and B.11 as self-serving documents. Exs. A.3, B.2 & B.3 stand alone by themselves as documents on which reliance could be placed by a Court of law to accept that there was a short landing of cargo and that the cargo was also equally damaged as indicated in Ex. A.4. In fact, Mr. Duleep Singh did not seriously contend that there was no such short landing or damage to the cargo, in view of the abundance of documentary evidence with which he was confronted. He would however hesitantly contend that as the discharge was by labour force which negligently handled the cargo when it was lifted from the hatches at West Quay, the ship was not responsible for the same. There is a fallacy in this argument. The Master is responsible

vicariously for the acts of his servants provided there is an admitted relationship of Master and servant as between them, or by necessary implication such a jural relationship is inferable from the circumstances of the case. In the instant case, there is evidence to show that the labour force deployed for the discharge of the cargo from the ship was a force over which the plaintiff had no control. As a matter of fact, it was supplied by an independent quasi statutory body, namely, the Madras Dock Labour Board. It may be that the labour so supplied by the Dock Labour Board used hooks while discharging the cargo from the vessel and consequently there was damage to it. the vessel ought to have taken the necessary precautions to prevent such handling at the time when such an attempt was made by the labour force engaged to discharge the cargo in an alleged negligent way. There is no evidence to support the contention that the labour force did act negligently and even if they did there was an initial objection by the vessel or its officers at the time of discharge that such a method of discharge ought not to be adopted by the labour force engaged and that they should be more careful in the matter of the removal of the cargo from the hatches. In the absence of any such evidence, we are inclined to accept the finding of the Court below that the use of the hooks by the labour engaged by the Madras Dock Labour Board in discharging the cargo from the vessel cannot be said to be act done by the persons engaged by the plaintiff. Unless there is a connection between the labour force engaged for the purpose of discharging the cargo and the plaintiff, it is unreasonable to hold that the plaintiff should be in any manner made responsible for the alleged negligence of such labour force.

6. The last contention of the learned counsel for the appellants, however, turns on the interpretation of clause 4 of Ex. B.1. We have already excerpted this clause. The contention of the learned counsel for the appellants is that in the circumstances the discharge of the cargo at the West Quay on the date when it was cleared from the vessel from its hatches and delivered to the Port trust authorities, should be deemed for all purposes to be delivery to the receiver, or the consignee, who is the Regional Director (Food) Southern Region, Madras. That factually there was no such delivery to the representative of the plaintiff at Madras cannot be disputed. The argument proceeds that once it is not in dispute that the

cargo has been discharged at Madras and the Port Trust authorities took delivery of the said cargo in full or in part, or in a damaged condition, from the vessel, then eo instanti clause 4 of Ex. B.1 would come into operation and would prevent any lis on the part of the receivers to further a claim for short-landing damage etc. No doubt, under clause 4, a declaration by the Master or the Chief Officer of the vessel that all cargo shipped has been delivered to the receivers shall be and shall be accepted as conclusive evidence of that fact. In the instant case, Ex. B.11 is one such certificate issued by the Master of the vessel that the cargo shipped has been allegedly delivered to the Madras Port trust. On the basis of this, the interdict contained in clause 4, which would bar an action by the receivers, is invoked. As we said, the argument is fallacious because the assumption that the cargo has been delivered to the receivers is by itself not well-founded. Admittedly the cargo was delivered to the Madras Port trust. This is the practice in the Port at Madras.

7. Whether delivery to the Port Trust authorities would constitute delivery to the consignee, has come up in several cases of this Court and the courts have taken consistently the view that such delivery to the Port Trust is not delivery to the consignee and that the Port Trust takes such delivery on behalf of the vessel and not on behalf of the consignee. Instead of referring to the various decisions, it is sufficient to refer to the decision of the Supreme Court in the *Trustee of Port of Madras by its Chairman v. Md. Rowther and Co.*, (1963) 2 SCR 915. Raghubar Dayal, J., speaking for the Bench has categorically made the position clear and the opinion of the Bench is better quoted in their own words:

There is no doubt that the shipowner is the bailee of the shipper, the consignor, and that he is responsible for the delivery of the goods to the consignee or a transferee according to the terms of the bill of lading. This duty the ship-owner discharges only when he has delivered the goods to the consignee or such person who is entitled to take delivery in accordance with the endorsement on the bill of lading. Delivery to the Board is not delivery to the consignee or such person, both because the delivery is to be on the presentation of the bill of lading and because the Act (the Madras Port Trust Act) contains no provision which would constitute the Board an agent of the consignee for the purpose of taking delivery of the

goods.... It is clear therefore that when the Board takes charge of the goods from the ship owner, the ship owner is the bailor and the Board is the

bailee, and the Board's responsibility for the goods thereafter is that of the bailee. The Board does not get the goods from the consignee. It cannot

be the bailee of consignee. It can be the agent of the consignee only if so appointed.

This is not alleged in this case either. The Supreme Court concluded by saying-

.....the landing of the goods by the ship owner on the quay and placing them in charge of the Board does not amount to delivering them to the

consignee, even though it absolves the Master of the ship from further responsibility for the loss or damage to the goods.

These above statements are clinching and a complete answer to the contention of Mr. Duleep Singh, which is based on clause 4 of Ex. B.1.

Admittedly, there is no physical delivery of the cargo to the consignee though it was discharged at the quay. It was only the Port trust which took

delivery of the same. It was in custody of it. A survey was effected thereafter. The short landing and the damage was discovered as a result

thereof. It was at that stage that the receiver or the consignee came into the picture and took delivery of the cargo as offered by the Port Trust in

their godowns. Therefore, it is clear that it is only then that the consignee obtained physical custody or possession of the cargo discharged by the

vessel at the Quay, though it was handed over as per the practice to the Port Trust authorities. It is for consideration whether at that point of time

when the receivers took delivery of the goods from the Port Trust, there has been a complete delivery or a partial delivery, or delivery of goods

which are partly damaged and partly in accordance with the invoice. It is this delivery which comes into the computation for the purpose of

assessment of the reciprocal obligations and rights of either party under the charter party. Clause 4 of Ex. B.1 cannot therefore help the appellants.

When the plaintiff received the cargo after the survey under Ex. A.1 it was discovered that there was a short landing and damage to the goods.

This is supported by Ex. A.3, the short landing certificate issued by the Port trust authorities and corroborated as well by the ship manifest and tally

sheets already referred to. We have, therefore, no hesitation in accepting the case of the plaintiff that there was a short landing and damage to the

cargo as complained. Such short landing and damage have been proved by acceptable evidence. The Court below was right in awarding damages

being the money equivalent to such short landed cargo and damaged cargo. In so far as the quantum of the damages awarded by the Court below

is concerned, there is no dispute.

8. The appeal therefore fails and it is dismissed with costs.

9. Appeal dismissed.