(1957) 02 MAD CK 0017

In the Madras High Court

The Great Eastern Shipping Co., Ltd. APPELLANT

Vs

E. Govindaswamy Chetty and Another RESPONDENT

Date of Decision : 15-02-1957

Acts Referred:
Contract Act, 1872 — Section 151, 152, 161

Citation : (1957) ILR (Mad) 840 : (1957) 70 LW 511 : (1957) 2 MLJ 98

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Single Bench

Judgement

P.V. Rajamannar, C.J.—These two Civil Revision Petitions arise out of a suit (S.C.S. No. 8816 of 1952) filed in the Court of Small Causes

at Madras by one E. Govindaswami Chetti, for the recovery of a sum of Rs. 668-9-6 from the defendant, viz., the Great Eastern Shipping Co.,

Limited, and the Madras Port Trust, defendants 1 and 2 respectively, in the following circumstances:

The plaintiff was a consignee of 219 bundles of wet salted cow-hides despatched from Calcutta to Madras per S.S. ""Avanee"" belonging to the first

defendant shipping company. These bundles bore the mark of the plaintiff ""'EGC"". The ship arrived at the Madras harbour on 30th January, 1952

and the cargo intended for delivery at Madras was unloaded and the goods were delivered over by the Master of the ship to the Madras Port

Trust authorities, who passed receipts, sometimes described as tally sheets, as prescribed by Section 39(3) of the Madras Port Trust Act. As the

goods were unloaded in the course of 3 or 4 days, they were covered by more than one tally sheet. The total shown in these tally sheets as having

been taken charge of by the Port Trust was 276 bundles with the mark EGC, evidently a mistake, as the plaintiff was a consignee only of 219 bundles. When the consignee applied for delivery, the Port Trust supplied him only 215 bundles. The delivery was completed by 7th February,

1952. When the plaintiff demanded the balance of 4 bundles, the Port Trust replied that though 219 bundles were manifested under the plaintiff''s

mark, only 215 bundles bearing that mark were found and the remaining four bundles were short-landed. Long after the landing and the delivery to

the plaintiff, the Port Trust issued what is described as an adjustment sheet for the consignment of bundles of skin landed S.S. ""Avanee"" (Exhibit

D-4) in which they made the correction and showed that there was a deficiency of four bundles out of the manifest number of 219 bundles. The

consignee thereupon filed the suit for the recovery of the value of the four bundles, viz., Rs. 607-13-6 together with the sum of Rs. 60-12-0

representing the profit which he would have got by selling the hides. The learned Chief Judge of the Court of Small Causes who tried the suit

passed a decree against the Madras Port Trust for Rs. 607-13-6 and proportionate costs. He dismissed the suit against the shipping company. He

held that though ordinarily it is the shipping company who would be responsible under the Bill of Lading for any shortage, as the Port Trust, a

statutory body, had taken charge of the consignment after unloading, they were responsible for all the goods shown in the Bill of Lading and the

manifest which were entrusted to them by the shipper and for which they passed a receipt u/s 39(3) of the Madras Port Trust Act. The learned

Judge was not prepared to accept the plea of the Port Trust that the tally sheets were subsequently corrected by the adjustment sheet, because

these corrections were made three or four months after the landing. He held that the first defendant was discharged from liability because of the

receipt granted by the Madras Port Trust.

2. Against this judgment and decree of the learned Chief Judge, New Trial Applications were filed both by the Madras Port Trust and by the

plaintiff Govindaswami Chetti. The learned Judges of the New Trial Bench heard and disposed of these two applications together. They set aside

the judgment and decree of the learned trial Judge and decreed the suit against the first defendant, the shipping company for the sum of Rs. 607-

13-6 and dismissed the suit as against the Madras Port Trust. The shipping Company is the petitioner before me and they seek to get rid of the decree passed against them.

3. The ground on which the Judges in the New Trial Bench dismissed the suit against the Port Trust was that Section 39(3) of the Madras Port

Trust Act applies only to a case where the owner of the goods authorises the Port Trust to take charge of the goods but that the plaintiff never

required the Port Trust to take charge of the goods and that the Port Trust must be deemed to be the agents only of the shipping company. They

observed that it may be that the shipping company may have a claim against the Port Trust which can be the subject-matter for adjudication in a

separate suit; but so far as the present suit was concerned, the plaintiff, the consignee, had no right as against the Port Trust.

4. Section 39 of the Madras Port Trust Act, in so far as it is material for this case, runs as follows:

39- (1) The Board shall, according to its powers, provide all reasonable facilities for and shall have power to undertake the following services:

(a) landing, shipping or transhipping passengers and goods between vessels in the Port and the wharves, piers, quays or docks in possession of the

Board;

(b) receiving, removing, shifting, transporting, storing or delivering goods brought within the Board''s premises.

(2) The Board shall, if so required by any owner, perform in respect of goods all or any of the services mentioned in Clauses (a), (b) and (d) of

Sub-section (1), provided that the Board shall not be bound to perform any service which it has relinquished under the provisions of Clause (a) of

Sub-section (1) of Section 41-A.

(3) The Board shall, if required, take charge of the goods for the purpose of performing the service and shall give a receipt in the form and to the

effect prescribed from time to time by the Central Government.

After any goods have been taken charge of and a receipt given for them under this section no liability for any loss or damages which may occur to

them shall attach to any person to whom a receipt shall have been given or to the master or the owner of the vessel from which the goods have

been landed or transhipped.

5. In my opinion, the learned Judges constituting the New Trial Bench were wrong in their construction of Section 39. It was not disputed before

me that the cargo from any ship which arrived at the port is first entrusted to the Madras Port Trust and it is only subsequently that the Port Trust

Officers deliver the goods to the respective consignees. When the Master of the ship lands the goods and leaves them in charge of the Port Trust,

the legal effect is as if the Master, representing the shipping company, had delivered the goods to the consignee, for whom the Port Trust must be

deemed to be the agents. This, I think, follows from the second paragraph of Section 39(3) of the Act which says that after the goods have been

taken charge of by the Port Trust and a receipt given for them, no liability for any loss or damage which may occur to the goods shall attach to the

Master or the owner of the ship. Having regard to the practice obtaining at the Madras Port, it is not necessary that there should be a formal

requisition by the consignee to the Port Trust to take charge of the goods. This position was not seriously disputed by Mr. V. V. Raghavan who

appeared for the Madras Port Trust. No reliance can be placed on the adjustment sheet issued by the Port Trust according to which the number of

bundles bearing the plaintiff''s mark which were landed was only 215. Admittedly the corrections were not made immediately after the landing and

before delivery to the consignee. They were made nearly two months after the delivery of the bundles to the consignee. In a similar case (C. S. No.

186 of 1951) Ramaswami Gounder, J., made the Port Trust liable for short delivery of goods as per the receipt passed by them u/s 39(3) of the

Act.

6. Mr. V. V. Raghavan relied on Section 40 of the Act in support of another contention of his, that the Port Trust was not liable for the loss of the

four bundles even on the assumption that they must have received all the 219 bundles belonging to the consignee. Section 40(1) defines the

responsibility of the Port Trust for the loss"", destruction, or deterioration of goods taken charge by them as that of a bailee under Sections 151,

152 and 161 of the Indian Contract Act, 1872. There is no material on record to sustain the plea of the Port Trust. There is no proof that the Port

Trust took as much care of the goods taken charge of by them as a man of ordinary prudence would, in similar circumstances, take of his own

goods. It is only on such proof that u/s 152 of the Indian Contract Act, the bailee would be relieved from the responsibility for loss destruction, or deterioration of the thing bailed.

7. It follows that it is the Port Trust which is liable for the value of the four bundles short delivered. The receipts granted by the Port Trust u/s 39(3)

relieves the shipping company from liability for loss or damage to the goods after they had been taken charge of by the Port Trust. I therefore set

aside the judgment and decree of the learned Judges in the New Trial Applications and restore the decree granted by the learned Chief Judge of

the Court of Small Causes. The plaintiff would be entitled to proportionate costs throughout. The petitioner would be entitled to his costs in this

Court in Civil Revision Petition Nos. 274 and 275 of 1955.