

(1955) 02 MAD CK 0022

In the Madras High Court

Case No : Civil Revision Petition No. 2502 of 1952

Union of India and another

APPELLANT

Vs

S.P.L. Lekhu Reddiar and another

RESPONDENT

Date of Decision : 25-02-1955

Acts Referred:

Citation : (1955) 02 MAD CK 0022

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Advocate : S.S. Ram Chandra Aiyar, for the Appellant; C. Vasudevan, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—The plaintiff first respondent, a trader at Tuticorin, gave an order to the first defendant, a trader at Amaravati, for the supply of 200 bags of white toor. The consignment was booked at Amraoti by the G. I. P. Railway, delivery to be made at Tuticorin by the Southern railway. The plaintiff's case was that 200 bags of white toor were actually sent by the first defendant through the G. I. P. railway and the Southern railway. Only 189 bags of white toor were delivered at Tuticorin and there was a shortage of 11 bags. He, therefore, sued to recover the value of the 11 bags, with interest. The two railways denied liability.

The learned Judge found that there was a short delivery of 11 bags, out of which the G. I. P. railway must be made liable for ten bags and the Southern railway for one bag. The allotment of liability was on the ground that one bag was lost when the goods were in transit between Arkonam and Tuticorin, while the other ten bags must be deemed to have been lost between Amraoti and Arkonam. Both the G. I. P. and the Southern railways preferred this petition against the decree of the learned Subordinate Judge.

2. The petition was pressed only on behalf of the G. I. P. railway. The contention

on behalf of the G. I. P. railway, in short, was that this was a case of direct loading by the party and all that the railway authorities do was to seal the wagon, after the loading has been made directly by the consignor & a receipt was made out in accordance with the representation by the party as to the contents. For the purpose of ascertaining the weight a certain percentage of the goods is weighed and the freight is calculated accordingly. In the present case, the receipt was in the following terms:

wagon said to contain 200 bags white toor.

3. So long as the seals were intact, the railway was not in any way responsible for any shortage. The learned Judge evidently missed the significance of these facts and held that as the freight had been charged for the entire 200 bags, the railway authorities must be responsible for all the 200 bags. That would be so, if the railway staff had loaded the goods after verifying them. In the circumstances that have emerged in this case, the railway cannot be held responsible for any shortage, so long as there is no proof of tampering with the seals.

In - "Dominion of India v. Museram Kushun-prasad", AIR 1950 Nag 85 (A), it was held by a Division Bench that where goods were loaded in the, wagons by the sender and not by the railway servants, and the information given by the sender was accepted as correct for the purposes of charging freight and a receipt was made out in the same way as in this case, viz. "said to contain 255 bags" there was no admission on the part of the railway authorities that the wagons did contain 255 bags, and if at the destination the wagon was found to contain less number of bags, the railway administration was not liable. With respect I entirely agree with this decision, which clearly applies to the facts of the present case.

4. The civil revision petition is therefore allowed, and the decree as against the third defendant is dismissed with costs throughout.