
(1999) 10 DEL CK 0006
In the Delhi High Court
Case No : Regular First Appeal (OS) 40/74

Union of India

APPELLANT

Vs

Babuna Brothers and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Citation : (2000) 1 AD 31 : AIR 2000 Delhi 45 : (1999) 82 DLT 760 : (2000) 52 DRJ 101

Hon'ble Judges : S.N. Variava, C.J;S.K. Mahajan, J

Bench : Division Bench

Advocate : Mr. H.S. Dhir and Ms. Anjana Gossain, for the Appellant; Mr. Atul Kumar, for the Respondent

Judgement

S.K. Mahajan, J.—This Appeal is against the Judgment and Decree dated 21st May, 1974 whereby the suit of the plaintiff was decreed. Aggrieved with the said Judgment this Appeal has been preferred by the Railways.

2. The facts in brief are that two consignments of black dry pepper were booked by Defendant No. 2 with the Railways at Ellattur for delivery at New Delhi. plaintiffs are the endorsed consignees of the Railway Receipts for valuable consideration. The consignment when it reached New Delhi was found to contain pepper refuse and chef intermixed with palm instead of the black dry pepper. Bags at New Delhi Station allegedly did not tally with the weight and description of the bags booked with the Railways and also did not bear any Railway mark thereon. Request for survey of the consignment and open delivery was accordingly made by the plaintiffs which was declined by the Defendant Railways. After service of notice upon the Railways u/s 78-B of the Indian Railways Act, 1890 and Section 80 of the CPC the suit for recovery of Rs. 64,060/- was filed both against the Railways as well as against the consignor.

3. In the written statement the defense taken by the Railways was that the consignment was loaded by the consignor at the forwarding Station; the wagon in which the consignment was loaded was found to have developed hot axle

enroute and was stopped at Bir Railway Station. Wagon was then removed from the train and the contents thereof were stated to have been transshipped into another wagon at Bir Railway Station for sending to the destination station. Transshipment at Bir Station was done by the staff of the Appellant without the knowledge of Respondent No. 1/plaintiff.

4. At the destination station wagon was received with the seals of the Bir Railways Station intact. It is, Therefore, alleged that the Railways were not negligent in the carriage of goods and were not responsible for any loss or damage to the consignment. It was also stated that a fraud was played by the consignor and the plaintiff by booking pepper refuse and chaff in place of black dry pepper. It was also alleged in the written statement that responsibility for loading and unloading was that of the party and the goods were not booked at Railway risk rate. Railways, Therefore, denied its liability to make payment of any amount to the plaintiff.

5. On the pleadings of the parties the learned Single Judge framed the following issues:-

1. Whether the plaintiff is a registered firm under the Indian Partnership Act and Mohan Lal is one of its registered partner? If not, to what effect?

2. Whether the consignments in suit were booked at railway risk and the responsibility of their loading and unloading was that of the railway?

3. What were the goods which were booked by defendant No. 2 and what was the quantity of that? (onus and frame of this issue is objected to)

4. Whether the goods offered to the plaintiff by the railway at New Delhi Station consist of pepper refuse and chaff intermixed with palm seeds and are unmarketable and valueless as alleged in para 3 of the plaint?

5. Whether the goods offered to the plaintiff at New Delhi Station are the same as were received from the consignor and booked by the railway at Elattur and Therefore the defendant No. 1 is not liable for the claim in suit?

6. If issue No. 5 is proved in favor of defendant railway, is not defendant No. 2 liable for the claim made in para No. 18 of the plaint?

7. To what amount of money is the plaintiff entitled to and from whom?

8. Whether the packing conditions were not complied with? If so, to what effect?

9. Relief.

6. After evidence was led by the parties, the learned single Judge passed decree for Rs. 64060/ with costs holding that the Railways have failed to produce any evidence to prove that sufficient care was taken in the carriage of the consignment while the same was in its custody and possession and it was, Therefore, liable to compensate the plaintiffs for the loss suffered by them.

7. Mr. Dhir learned counsel appearing for the Appellant has challenged the findings of the learned single Judge only on issues Nos. 3, 4, 5 and 6. It is the contention of Mr. Dhir that as loading and unloading of the consignment was the responsibility of the consignor, it was the duty of the plaintiff to have examined someone from the forwarding station to prove that the consignments booked with the Railways contained black dry pepper and that having not been done an adverse inference should be drawn against the plaintiff. It is also the contention of Mr. Dhir that as the consignment was booked at owner's risk it was not required of the Railways to prove as to how it was dealt with during the period it was in its custody.

8. We are unable to accept the arguments of learned Counsel for the Appellant. A perusal of the forwarding notes as well as the Railways Receipts clearly show that the bags containing the goods were weighed at the forwarding and the contents thereof were found to be approximately 50 Kg. each and the actual weight of the bags had been mentioned both on the forwarding notes as well as on the Railway receipts. None of the receipts shows that contents and weight of the bags were not checked at the time of booking. Mr. Dhir referred to us Rule 115 of the Goods Tariff to contend that the Railways receipts should not be taken to be an admission of the weight and contents of the bags. Rule 115 reads as under:-

"Rule 115. Right to Correct Charges - The weight, description and classification of goods and quotation of rates as given in the Railway Receipt and Forwarding Notes are merely inserted for the purposes of estimating the Railway charges and the Railway reserves the right of re-measurement, re-weighment, re-classification of goods and re-calculation of rates and other charges and correction of any other errors at the place of destination and of collecting any amount that may have been omitted or undercharged. No admission is conveyed by a Railway Receipt that the weight as shown therein has been received or that the description of goods as furnished by the consignor is correct."

9. In our view the purpose of Rule 115 is only to preserve the right of the Railways to collect at destination the correct freight and other charges payable, notwithstanding anything recorded in the Railway receipt as to the matters mentioned in the first sentence of the rule. The learned Single Judge while interpreting the Rule has held that the second sentence must be read in the same context. Perhaps, read literally, it might be thought to destroy the character of a Railway receipt as an admission even as regards the description of the goods. The words "description" used therein means the description germane for the purposes of determining rates of freight in accordance with Chapter VIII of the Goods Tariff. The object of the Rule is only to receive correct freight and not to absolve the Railways from the obligation of examining consignments accepted for carriage at Railway.

10. The consignments in this case were carried at Railway risk rate. u/s 73 of the Indian Railways Act, 1890 the liability of the Railways while carrying goods is that of a common carrier and it cannot escape its liability unless it comes under any

one of the exceptions mentioned there in. Section 73 reads as under :-

73. General responsibility of a railway administration as a carrier of animals and goods:- Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage, deterioration or non-delivery, in transit, of animals or goods delivered to the administration to be carried by railways, arising from any cause except the following; namely:-

- (a) act of God;
- (b) act of war;
- (c) act of public enemies;
- (d) arrest, restraint or seizure under legal process;
- (e) orders or restrictions imposed by the Central Government or a State Government or by any officer or authority subordinate to the Central Government or a State Government authorised in this behalf;
- (f) act or omission of negligence of the consignor or the consignee or the agent or servant of the consignor or the consignee;
- (g) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;
- (h) latent defects;
- (i) fire, explosion or any unforeseen risk;

provided that even where such loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the administration further proves that it has used reasonable foresight and care in the carriage of the animals or goods."

11. It is thus clear that even when the case falls in any one of the exceptions u/s 73. Railways has still to prove that it had used reasonable care and foresight in the carriage of goods. The Appellant in this case has not produced any witness from the forwarding station to prove that the contents of the bags were not checked or weighed. It is surprising that according to the forwarding note and the Railway receipt when the weight of each bag was 50 kg. the consignments when reached at the destination station were found to contain bags with each bag weighing 37kg. No. Explanation has been given as to how the weight has been reduced. In his statement in court the Station Master Bir Railway Station has admitted that there was no Railways marks on the bags while normally there should have been such marks. He also admits that there was no wagon summary in the wagon and normally there should have been such a summary. The learned single Judge has believed the statement of Station Master, Bir Station when he states that the consignments was transhipped by him from the wagon which

was found to have developed hot axle had the same consignment has reached New Delhi. Replacement of bags has, Therefore, taken place either at Ellatur Railway Station or somewhere between Ellatur and Bir. This was within the special knowledge of the Railways and the Appellant have not discharged that onus placed upon them. It is not a case where the consignments were booked on "said to contain basis" or weight of bags given by the consignor was accepted as in that case the Railway Receipts would bear the remark "SWA" meaning Sender's weight accepted. In the absence of any such remark either on the Railway Receipts or the forwarding notes the only inference that can be drawn is that not only that the contents of the bags were checked by the Railway Staff at the forwarding station but the bags were also actually weighed by them. The Railway administration has, Therefore failed to discharge the onus upon it to prove as to how the consignments were dealt with during the time the same were in their custody and possession. Even the seals removed from the wagon at Bir Railway Station after it had developed hot axle have not been produced to show that the same were not tampered with. Railway Receipt is prima facie evidence of the goods having been taken charge of by the Railway administration and the Railway authorities were expected to verify the particulars given by the consignor before issuing the same. Though it is contended by Mr Dhir that a fraud was played by describing the goods wrongly but no particulars of alleged fraud have been given. In our view, Railways having not produced various registers and records maintained by it which might have thrown some light on the question which this Court has to decide. Necessary adverse inference has to be drawn against it. In the absence of this evidence we are of the view that the Railways have failed to prove that the goods were not those stated in the Railway Receipts. In our view the Appellant cannot, Therefore, escape from its liability to pay for the loss suffered by the plaintiff. In our view the learned Single Judge has rightly held that the goods offered to the plaintiff were not the same as were received by the Railways from the consignor at Ellatur and that the goods having been booked at Railway risk rate, the Railways have failed to prove as to how the consignments were dealt with during the time they were in its custody.

12. We, Therefore, do not see any reason to interfere with the findings of the learned Single Judge. We do not see any merits in this Appeal. The same is accordingly dismissed with costs.

13. We are informed that the Respondent No.1 has received the decretal amount deposited by the Appellant after furnishing bank guarantee. In view of the decree having been upheld, bank guarantee stands discharged and is directed to be returned to the Respondent No.1 through counsel.