

(1970) 01 DEL CK 0011

In the Delhi High Court

Case No : Letter Patent Appeal No. 107D of 1966

Union of India

APPELLANT

Vs

Behari Lal and Co.

RESPONDENT

Date of Decision : 14-01-1970

Acts Referred:

Citation : (1970) 6 DLT 497

Hon'ble Judges : S.I. Rangarajan, J;H.R. Khanna, J

Bench : Division Bench

Advocate : Nanak Chand, Raj Kishan and Vijay Kishan, for the Appellant;

Judgement

Rangarajan, J.

(1) This judgment will dispose of Letters Patent Appeals (Nos.107-D of 1966 to 112-D of 1966). The common question of law which arises for determination in all these six appeals is whether section 74A (as amended by Act 46 of 1949) of the Indian Railways Act applies to a case of short delivery or not. The respondents (plaintiffs) in these appeals filed suits for recovery of damages for short delivery of part of the consignments G. 1. pipes, black pipes, etc. There is no dispute that in all the relevant Forwarding Notes the following endorsement was made by the sender or his agent:-

"THE consignment is in had condition and or defectively packed as follows P. 31 not complied with, sockets not packed separately but loosely fitted with pipes. The consignments are tried with....."

(2) At the destination station some of the pipes, etc. were found missing. Short delivery certificates in respect of what was missing were furnished to the plaintiffs.

(3) The main defense of the Railway Administration was that since the consignment was defectively packed, i. e. not in the manner prescribed for the goods in question, the concerned goods" ere lost as a result of such defective or

improper packing; in the circumstances the Railway Administration was exonerated from liability by reason of section 74 A (as amended by Act 56 of 1949) of the Indian Railways Act.

(4) Section 74 A. (1) When any goods tendered to a railway administration for carriage by railway-

(A) are in a defective condition as a consequence of which they are liable to deterioration, leakage, wastage or damage in transit, or (b) are either defectively packed or packed in a manner not in accordance with the general or special order, if any, issued under sub-section (2) and as a result of such defective or improper packing are liable to leakage wastage or damage in transit, and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, the railway Administration shall not be responsible for any deterioration, leakage, wastage or damage, or for the condition in which such goods are available for delivery at destination, except upon proof of negligence or misconduct on the part of the railway administration or any of its servants. (2) The (Central) Government may, by general or special order prescribe the manner in which goods tendered to a railway administration for carriage by railway shall be packed."

According to section 74 A (1) (b) when goods are defectively packed, i. e. when they are not packed as required by the regulations in force, the Railway Administration will not be liable in respect of "leakage, wastage or damage in transit" as a result of such defective or improper packing except upon proof of negligence or misconduct on the part of the Railway Administration or any of its servants. There is no proof in these cases of any such negligence or misconduct on the part of the Railway Administration or any of its servants.

(5) The learned single Judge, relying upon the decision in *Union of India v. Raunaq Singh* by one of us, held that the case of loss of goods was not covered by section 74 A. In that case the consignment was pipes with sockets, at the time of the delivery there was shortage of sockets. An attempt was made on behalf of the Railway Administration to bring the case of such loss within the expression "damage" used in section 74(1). Repelling this contention it was observed as follows:-

"The word "damage as used in the section denotes partial destruction or partial impairment and implies that the goods still exist although in damaged form and that it does not cover the case of loss of the goods. There are a number of sections both preceding as well as following section 74 A in which the word loss" has been used and if the legislature intended that the protection given by section 74 A of the Act would also cover the case of loss, there was nothing to prevent the legislature from mentioning the word loss" in addition to the words "deterioration, leakage, wastage or damage" in section 74 A of the Act. The fact that the legislature did not use the word loss" in section 74 A of the Act though that word was used in some of the preceding sections as well as following that

section would, in my opinion, go to show that the protection given by section 74 A of the Act was not intended to cover the case of loss. I further find that in sub-section (3) of section 74 C as well as in section 76 of the Act legislature has used both the words "loss" as well as "damage" in addition to "destruction and deterioration. If in fact the word "damage" was used in a comprehensive sense as to include the cases of loss, there was hardly any necessity for using the word "loss" in the above mentioned two sections, because in such an event the use of the word loss* would have been superfluous and otiose. The fact that the legislature also clearly mentioned the word loss" in addition to the word "damage" in section 74 C and 76 clearier goes to show that the word loss" was used as some thing distinct and separate from the word "damage". It also cannot be said that though the word "damage* as used in sections 74C and 76 of the Act is not comprehensive enough to cover the case of loss, it is comprehensive to cover the case of loss so far as section 74 A of the Act is concerned. The courts would ordinarily presume that a word used in different parts of a statute carries the same meaning. It is observed on page 322 of Maxwell on the Interpretation of Statutes. Tenth Edition: It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act." In the circumstances I am of the view that the word "damage" as used in section 74 A of the Act is not comprehensive enough to cover the case of loss of part of the goods consigned. The railway administration consequently cannot escape its liability by relying on the provisions of section 74 A of the Act."

(6) It has also been brought to our notice that a similar view was taken by S. K. Kapur J. in M/s Jain Brothers v. The Union of India* (Original Suit No. 340 of 1966 decided on 2nd December 1968) S. K. Kapur J. was concerned with section 77C as amended by the Act of 1961, corresponding to section 74 A as amended in 1949. The present case, however, falls to be decided u/s 74 A, as amended in 1949. Dealing with a similar contention that the Railway Administration was absolved from liability since the goods were not packed as required by the relevant packing conditions S. K. Kapur J. observed as follows:-

"THE question, Therefore, is whether the goods were not packed in accordance with the packing condition No. P/37 and, if so, to what extent does section 77 C reduce and or affect the liability of the railway administration for non-delivery of a part of the consignment. The persual of section 77G shows that it does not apply to the case of loss of goods and is limited to the cases of damages, deterioration, leakage or wastage. If that be the correct reading of the provision then section 77 C will not, in any manner, reduce the liability of the railway administration in case of loss and or non-delivery of goods as is the case at hand. In other words, in that event, section 77 C will not be of any avail to the railway administration when the goods in defective condition or defectively packed, are lost or short-delivered or not delivered. Several provisions of the same Act refer to loss destruction, damage or deterioration but the words used in section 77 C are "damage, deterioration, leakage or wastage" and the word

"loss" has been omitted. The section, Therefore, obviously deals with cases where the goods are either damaged or wasted or get deteriorated or leak due to defective packing etc. Mr. Chopra, the learned counsel for the defendants, said that the term "leakage" covers the cases of loss of goods like G. 1. pipes which are defectively packed as defective packing may provide an incentive to a thief to steal the goods and that would also be leakage within section 77 C. In some cases the goods may, depending on their nature be lost to the consignee or the consignor due to leakage as a result of defective packing. For instance, wheat or grains, if defectively packed, may leak from the bags resulting the loss. In that sense it would be a loss by leakage and covered by section 77 C. I do not, however, agree with Mr. Chopra that term "leakage" is so wide as to cover even the case of loss or theft of goods defectively packed when loss or theft has no connection with packing. In that sense loss is not covered by the term leakage. Goods like GI pipes cannot be lost by leakage in the sense in which the word has been used in section 77 C. The loss or non-delivery of G. 1. pipes even if defectively packed, will not be protected by section 77 C. In other words, where the loss is, for instance, due to theft or pilferage, the section will be of no avail to the railway administration. In this view I am supported by two decisions of the Punjab High Court. In *Union of India v. Ranuq Singh* while interpreting section 74 A of the Railway Act, which was deleted by the Indian Railways (Amendment) Act 1961 and which corresponded to section 77 C (1), it was held that the protection given by the said section did not cover the case of loss of part of the goods consigned. To the same effect is the decision in *Union of India v. Messers Behari Lal & Co*. To my mind the scheme of section 77 C is clear and the word "leakage" therein means leakage from the container or "packing or, in other words, involuntary escape from the container or packing. In such cases there is a limited protection to the railway administration against liability. In case of G 1. pipes the loss is not attributable to leakage at all and consequently not protected by section 77 C. (7) It may be noticed that S. K. Kapur J. also agreed with the view taken by Narula J. of the Punjab High Court, sitting in the circuit Bench of Delhi (which is the judgment now under appeal and which has been reported in 1966 Delhi Law Times 462). The learned single Judge has, in the judgment under appeal, discussed several decisions of the Patna, Nagpur, Calcutta and Allahabad High Courts, the Judicial Commissioner of Ajmer and the decision of the House of Lords in *Phoenix Insurance Company of Hartford v. De. Monehk*. The House of Lords held that loss of turpentine oil amounted to leakage in transit since leakage since meant involuntary escape. The Judicial Commissioner of Ajmer has answered in *Union of India v. Khyam Chakriwala* with a case of short supply bags of jaggery sent in gunny bags. It was stated that jaggery was "a semiliquid" and was liable to leakage on account of the bag being torn. Besides, the seals and rivets of the wagon in which the said consignment of jaggery was sent were found to be intact and the contents were seen spread on the floor of the wagon when the door of the wagon was opened. In the Patna case (*Bengal and North Western Railway Company v. Tapan Dass*) the question was whether the short supply amounted to "deterioration" which is not one of the expressions used in

section 74A (a) (b) as contra distinguished from section 74A (1) (a) which deals with goods tendered for carriage in a defective condition. The case of *Union of India v. Dhanpal Patni* arose under the old Risk Note which held the field prior to the amendment, in 1949, introducing section 74 A. Even though the other cases *Gangadhar Ram Chandra v. Dominion of India* and *Qadir Salamat Ullah v. Governor-General-in-Council* were also concerned with cases governed by the law prior to the introduction of section 74A in 1949 yet shortage in quantity was held not covered by Risk Note A.

(8) Reliance was placed upon the statement of the objects and Reasons in the Amending Act 56 of 1949 and an effort was made to show that what was stated in the Risk Note A previously was embodied in section 47 A and that even "loss" was covered by section 74 A. We do not consider this approach permissible, because as observed by the Supreme Court in *Commissioner of Income Tax v. Sm. Sodran Devi* it is not legitimate to refer to the statement of Objects and Reasons as an aid to the construction or for ascertaining the meaning of any particular word used in an Act or Statute. All that can be done is to refer to the same for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of evil which besought to remedy. His Lordship S. K. Das J. speaking for the Supreme Court in *The Central Bank of India and others v. Their Workmen, etc.* observed on page 21 as follows:-

"THE Statement of Objects and Reasons is not admissible, however, for construing the section; far less can it control the actual words used."

(9) His Lordship Mr. Justice Subba Rao (as His lordship then was) in *Kavalappara Kottarathil Kochuni & others v. The States of Madras and Kerala* followed *Aswini Kumar Ghose v. Arabinda Bose* and observed at page 1086 as follows:-

".....THE statement of Objects and Reasons is not admissible as an aid to the construction of a statute. But we are referring to it only for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced, and the purpose for which the amendment was made."

As was pointed out in *Union of India v. Raunaq Singh* (extracted above) the legislature had mentioned the word "loss" in addition to the word "damage" in other portions of the Act (vide sections 74C and 76). When an expression is used in a statute it must be construed as having the same meaning when it is used in the same statute in two or more places unless the context requires otherwise. *Raghubans Naran Singh v. The Uttar Pradesh Government*.

(10) We concur with the view of the learned single Judge that the case of loss during transit of the G. 1. pipes in question does not; come within the scope of section 74 A of the Indian Railways Act as; amended in 1949 and that the Railway Administration cannot claim "to be exonerated from the liability to make good the loss to the concerned respondents (plaintiffs) in these appeals. II. The Letters Patent Appeals are, Therefore, dismissed with costs.