

(1967) 02 DEL CK 0011

In the Delhi High Court

Case No : First Appeal No. 31-D of 1957, from order of Sub. J., 1st Class, Delhi
D/- 17-1-1957

Union of India

APPELLANT

Vs

Bhagat Ram Parma Nand and Another

RESPONDENT

Date of Decision : 03-02-1967

Acts Referred:

Citation : AIR 1967 Delhi 153

Hon'ble Judges : S.K. Kapur, J; Narain Andley, J

Bench : Division Bench

Advocate : R.L. Aggarwal and S.N. Kumar, for the Appellant; Iqbal Krishan, for the Respondent

Judgement

(1) Bhagat Ram plaintiff-respondent booked 205 bags of onions on 2nd October, 1951, from New Delhi to Calcutta under Railway Receipt No. 025841, Invoice No. 871. These goods were loaded in wagon No. 3746/22, G.I.P. Railway. The goods reached Calcutta on 14th October, 1951, and at destination it was found that 69 bags had deteriorated to the extent of 55 per cent while 100 bags to the extent of 45 per cent. plaintiff Bhagat Ram claimed that in due course of transit the consignment booked on 2nd October, 1951, should have reached Calcutta and delivered to the consignee on 8th October, 1951 but due to carelessness negligence and misconduct on the part of the railway and its employees, the same reached late and was consequently delivered to him in a damaged and deteriorated condition. To prove the period required for journey of goods from New Delhi to Calcutta by a goods train the plaintiff in his plaint and evidence cited an example of another consignment of onions booked on 3rd October 1951 under Railway Receipt No. 374795 which was delivered to the consignee on 9th October, 1951 at Calcutta.. The case of the plaintiff was that the onions booked by both the above mentioned wagons were purchased from the same amount and were of the same quality. According to the plaintiff the goods booked on 3rd October , 1951, did not get deteriorated because they reached the destination in time while so far as the goods in question are concerned, they got deteriorated

because of the delay as mentioned above. The onions booked on 3rd October, 1951, fetched plaintiff Rs. 9144/12/6, while the goods in question were sold for Rs.3248/1/- and the plaintiff claimed Rs. 5896/11/6 as damages on account of deterioration on the ground that if the goods had not deteriorated they would have fetched the same amount as the other consignment.

(2) The goods were admittedly booked on owner's risk and were of a perishable nature. The defendants inter alia alleged that the time taken in transit was a normal one and neither the railway administration or its employees were guilty of any carelessness, negligence or misconduct. The trial Court inter alia decided that it was the duty of the railway administration to show as to how the goods were dealt with in the journey and having failed to do so they were liable for damages. The trial Court granted the plaintiff a decree for Rs.4800/- and arrived at the amount on a finding that the goods in question could have been sold for Rs.8048/2//-. The learned counsel for the appellants has pressed only two points before us - (1) that there was no negligence or misconduct on the part of the railway administration, the burden to prove which was on the plaintiff; and (ii) that the plaintiff had failed to prove that the goods did not deteriorate because of some inherent defect in the quality or because of the presence of moisture therein at the time of booking.

(3) Before 1949 the Indian Railways Act had provided for various risk notes under which the goods could be booked but by Act 56 of 1949 sections 74C, 74D and some other sections were introduced which were again deleted in 1961. It is the common case of the parties that having regard to the date of booking this case has to be decided in the light of the provisions contained in the Act, after its amendment by Act 56 of 1949 and before Section 74C etc., were deleted. S 74C(3) provides that when the

"goods are carried or are deemed to be carried at owner's risk rate, a railway administration shall not be responsible for any loss, destruction or deterioration of or damages to such goods from any cause whatsoever except upon proof that such loss, destruction, deterioration or damages was due to negligence or misconduct on the part of the railway administration or of any of its servants". The onus is, Therefore, clearly placed on the consignor to prove negligence or misconduct before he may be held entitled to damages on account of deterioration. Section 74D expressly casts an obligation on the railway administration in giving cases to disclose to the consignor how the consignment or package was dealt with throughout the time it was in its possession or control and further provides that if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor. The duty to disclose the handling of the consignment is cast on the administration only in two cases (a) where the whole of a consignment of goods or the whole of any package forming part of a consignment carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by

the railway administration to have been due to any accident, to the train or to fire, or (b) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit.

(4) Before I discuss the evidence as to negligence it is pertinent to point out the position in law as obtains in the light of the statutory provisions. Mr. Radhey Lal Aggarwal, the learned counsel for the appellants, says two things - (1) section 74D not being applicable it is entirely for the plaintiff to prove negligence and/or misconduct on the part of the railway administration, and (2) no such negligence or misconduct can be inferred merely from the fact that the consignment booked on 2nd October, 1951, reached Calcutta on 14th October, 1951, that is, within a period of about 13 days. The learned counsel further says that the railway administration is entitled to adopt the position of saying:

"Whatever my position may be I decline to render you the least assistance and I am not going to let you know any more than I am bound to under the express provisions of the statute." In short, Mr. Radhey Lal's argument is that there is no obligation on the railway to disclose to the plaintiff as to how the goods were dealt with in the course of transit, or for the matter of that, render any assistance to enable the plaintiff to prove his case, and that the plaintiff has failed to prove that there was any delay in transit due to negligence or misconduct of the railway administration. The learned counsel further says that even if there be any duty to disclose cast on the railway administration, no inference could be drawn against them unless the plaintiff had in the event of his dissatisfaction with any disclosure that may have been made by the defendants" asked the Court to require the railway to make further disclosure. According to the appellants' learned counsel the plaintiff not having demanded any disclosure the occasion for any adverse inference against the defendants never arose. In support of this proposition he has relied on a decision of their Lordships of the Supreme Court, in Union of India (UOI) Vs. Mahadeolal Prabhudayal, . Since the obligation to disclose is limited to cases mentioned in section 74D, it is not necessary to deal with this aspect of the controversy. Even if there be no such obligation under the Railways Act to make a disclosure, the railway administration is not completely absolved from proving facts especially within its knowledge. This duty is cast u/s 106 of the Evidence Act,. It is no doubt true that in cases to which section 74C of the Railways Act applies the burden of proving misconduct or negligence is on the plaintiff , but it is equally true that with respect to the facts within its special knowledge the railway administration should call all the material witnesses to prove such facts. In this view, I am supported to Ramkrina Ramnath Shop Vs. Union of India and Others, ; Union of India v. Shri Ram Richpal Air 1955 All 246; and Union of India v. Delhi Cloth and General Mills Co. Ltd. Air 1964 P&h 147. When examined in the light of the statutory provisions, namely section 74C of the Indian Railways Act and of the

various decisions mentioned above, the position that first emerges is this. In cases covered by section 74D a duty is cast on the railway administration to at once disclose as to how the consignment was dealt with throughout the time, it was in its possession or control, and if necessary, to give evidence thereof, before the consignor is called upon to prove misconduct. This duty, as I have said above, arises at once is not confined to the stage of litigation. If the railway administration fails to fulfill that obligation the consignor can take the assistance of the Court in obtaining a direction to make the necessary disclosure. On the other hand in cases not covered by Section 74D the obligation arises at the litigious stage and the railway administration must u/s 106 of the Indian Evidence Act prove the facts within its special knowledge.

(5) Having thus stated the legal position I now proceed to consider the evidence on the record. Radha Krishan, Goods Clerk, New Delhi Godown, appeared as D.W. 1 and stated that the train in which the goods in question were loaded left New Delhi on 2nd October, 1951. According to Kishan Chand (D.W. 2), who is Train Clerk, Ghaziabad, the train reached Ghaziabad, on 5th October, 1951. Kishan Chand further disclosed that the distance between New Delhi and Ghaziabad is only 12 or 12-1/2 miles and normally a train takes three or four hours to reach Ghaziabad. He further stated that onions are perishable goods and such goods are given preference. According to this witness the train left Ghaziabad on 6th October, 1951 at 22-45 hours. It appears from the above evidence that the train was held up somewhere between Delhi and Ghaziabad from 2nd October to 5th October, 1951. The plaintiff served certain interrogatories on the defendants which are not available on record. The answers to the interrogatories are, however, available. The Claims Inspector Karam Chand filed an affidavit dated 12th January, 1955, in which he stated that he was deputed to inquire if the wagon in question was detained at Yamuna Bridge and for how long. He made the requisite inquiry and according to the said affidavit "the above wagon did not pass Yamuna Railway Station but it passed Tundla by through Train 212 Dn on 7th October, 1951". There is again an affidavit by Inder Sain, Assistant Commercial Officer, Northern Railway, Delhi, D/- 12th March, 1956, which also appears to be in answer to the interrogatories, wherein it is stated that the relevant records having been destroyed no information was available. It is, Therefore, obvious that the railway administration completely failed to prove the facts especially within its knowledge and consequently an inference can legitimately be drawn against the defendants. Again, it is the plaintiff's evidence that the goods in question and onions dispatched on 3rd October, 1951, were of the same quality and were purchased from the same amount. The goods booked on 3rd October, 1951, reached destination in perfect condition on 9th October, 1951. This evidence is not only unrebutted but the plaintiff was also not cross examined on this matter. It is possible that the train remains stationary at some place between Delhi and Ghaziabad between the 2nd and 5th October, 1951. That must have resulted in damages to the goods. Possibly there is better circulation of air in moving train and if it was stationary

the goods must have been deprived of that air circulation resulting in deterioration. I have no hesitation in accepting the evidence led by the plaintiff that these goods were of the same quality as the goods dispatched by the other train on 3rd October, 1951. That leads me to believe that if the train had not been delayed between Delhi and Ghaziabad and had not been stationary, these goods would also have reached destination safely. The defendants having failed to lead any evidence or offer any Explanation for inordinate delay in the journey between Delhi and Ghaziabad an inference of negligence arises against them.

(6) In the result, negligence on the part of the railway administration stands fairly proved and I would, in the circumstances, uphold the decision of the trial Court. The appeal is Therefore, dismissed with costs.

(7) Appeal dismissed.