

(2012) 02 PAT CK 0039

In the Patna High Court

Case No : Appeal from Original Decree No. 465 of 1984

Union of India

APPELLANT

Vs

Mahindra Sah and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1989 — Section 97

Citation : AIR 2012 Patna 71

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Advocate : Anil Singh, with Dharendra Kumar, for the Appellant; Nandan Pd. Singh, Surendra Pd. Singh and Manish Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Shailesh Kumar Sinha, J.—The above appeal is directed against the judgment and decree dated 21st of March, 1984 in Money Suit No. 8 of 1981 passed by the Subordinate Judge, Vaishali at Hajipur. The suit having been decreed against the appellant-Union of India for a sum of Rs. 14,325/- with proportionate cost, hence the above appeal on behalf of the Union of India (Railway). The short facts for disposal of the appeal are that the plaintiff booked two consignments with total 269 bags of maize at Khanna Railway Station by the defendant-2nd party as per R.R. Nos. 259711 dated 11.1.1979 and 259712 dated 11.1.1979 to be delivered to the plaintiff at Hajipur Railway Station. Both the consignments were loaded in a single Railway wagon and after paying the amount mentioned in the aforesaid railway receipts and on obtaining the Bank endorsement of such payment, the plaintiff went to the Railway Station for receiving the aforesaid 269 bags of maize. The further case of the plaintiff is that at Hajipur Railway Station, the plaintiff could only receive 135 bags of maize on 20th of February, 1979 against the Railway Receipt No. 259712 dated 11.1.1979, however, the remaining 134 bags of maize were not delivered corresponding to Railway Receipt No. 259711. The plaintiff made correspondences with the Railway authorities for delivery of

the remaining bags of the maize, however, on becoming unsuccessful, after serving notice u/s 80 of the Code of Civil Procedure, the above money suit was filed on 20th of August, 1981.

2. The respondent-Union of India appeared and filed written statement denying the claim and asserting that since the goods in question were booked at the owner's risk, the Railway is not liable to make good the alleged loss, however, adduced no evidence, oral or documentary, on its behalf.

3. The trial court on analyzing the oral as also the documentary evidence brought on the record found that 134 bags of maize against the Railway Receipt No. 259711 had been receipted by the Railway at Khanna Railway Station, as would be evident from the forwarding note, vide Ext.B. The other details of the case are not being repeated as the same has been dealt with elaborately by the court below as would be appearing from the judgment and decree under appeal.

4. Mr. Anil Singh, learned counsel appearing on behalf of the appellant submits that since the goods were booked at the owner's risk, the lock of the wagon was found intact at Hajipur Railway Station and as such, the Railway is not liable to make good the loss, if any, in absence of any negligence on its part or on the part of the Railway administration in terms of the provisions of section 97 of the Railways Act, 1989. On perusal of the forwarding note (Ext.B), it would appear that the aforesaid consignment was booked by the consignor (defendant No. 2) in favour of the plaintiff at Khanna Railway, which was received by the Railway authorities and after receiving the aforesaid consignment, the nature of packing and some other details of the consignment were recorded on the said Ext.B, but could not be explained as to how the aforesaid consignments were dealt with thereafter. Notwithstanding the above, learned counsel for the appellant submits that the decretal amount has already been deposited on 13.8.1987 in Execution Case No. 1 of 1985 in the court of the Subordinate Judge, Vaishali at Hajipur.

5. Learned counsel for respondent No. 1 submits that the goods having booked and receipted by the Railway and not delivering the same at Hajipur Railway Station nor even made aware to the plaintiff as to how the booked goods were dealt with after it was received by the Railway as per the forwarding note (Ext.B), on the basis of which the connected Railway Receipt No. 259711 dated 11.1.1979 was issued. The Railway or its servants negligently dealt with the consignment in question. The plaintiff-respondent No. 1 paid the amount mentioned in the said R.R. and after making the payment, received the said R.R. from the Bank after making the payment endorsement, however, 134 bags of booked maize were not delivered to him and as such, the plaintiff has rightly claimed the loss of Rs. 17,000/-, including the cost. The court did not decree the suit in full, however, allowed the decree for Rs. 14,325/- with proportionate cost of the suit with Pleader's fee of Rs. 20/- and as such respondent No. 1 filed the cross-objection.

6. Considering the rival submissions of the parties, the controversy between the

parties has come down to a narrow issue. The contention on behalf of the Railway is that since the goods in question were booked at owner's risk, the Railway is not at all liable to make good the alleged loss; more so when the lock of the Railway wagon reaching at Hajipur Railway Station was found to be intact. The contention of respondent No. 1, on the other hand, is to the effect that the aforesaid consignments admittedly having received by the Railway as per the forwarding notes (Ext.B) on the basis of which the Railway Receipt (Ext.A) was issued and in absence of any material/evidence brought on the record in order to show that how the consignments receipted by the Railway administration at Khanna Railway Station was dealt with, it would be logical to conclude that the concerned Railway servants were totally negligent in dealing with the consignments. There is no pleading in the written statement with respect to the aforesaid consignment as to how the same was dealt with after it was received through the forwarding note taking the endorsement of the Railway authorities with respect to even the condition of the bag and as such, it amply proved of the fact that the aforesaid consignment was received by the Railway. The submission has sufficient substance. However, cross-objection filed on behalf of respondent No. 1 with respect to the claim for higher price for the concerned consignment has no substance for the reason that the court below had allowed the rate as per the evidence adduced by respondent No. 1. Accordingly, the cross-objection has no merit. The same stands rejected. In the result, the judgment and decree is affirmed. In addition to the decree as allowed by the court below, the plaintiff-respondent No. 1 is allowed simple interest at the rate of 6% per annum from the date of filing of the suit till the date of payment of the decretal amount i.e., 13.8.1987. The appeal stands dismissed with the above modification in the judgment and decree with respect to the interest only.