

(1975) 01 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 179 of 1967

Union of India

APPELLANT

Vs

Matilal Agarwalla

RESPONDENT

Date of Decision : 09-01-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Contract Act, 1872 — Section 161, 46, 73

Evidence Act, 1872 — Section 114(g), 72

Citation : 79 CWN 419

Hon'ble Judges : Sharma, J;K.J. Sen Gupta, J

Bench : Division Bench

Advocate : Ajay Kumar Basu, for the Appellant;J.C. Guha and Janwarilal Pugalia, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Sen Gupta, J.—This appeal by the Union of India representing the Railway Administration relates to the claim of the plaintiff-respondent for damages on account of delay in delivery of 250 bags of rape seeds under the following circumstances. A consignment of 250 bags of rape seeds (mustard) was booked by M/s. Jahar Mall Asoke Kumar from Khorī under invoice No. 1 R/r No. B/59/57045 dated 25.5.58 for carriage by Railway to be delivered to the plaintiff as the endorsee thereof at Siliguri. The plaintiff is the purchaser of the goods for valuable consideration. According to the plaintiff the ordinary and usual time of transit from Khorī to Siliguri of such goods is about three weeks from the date of booking. The plaintiff asserted that owing to the negligence and misconduct of the servants of the Railway Administration one part of the consignment that is 100 bags weighing 270 mds. 20 sRs. were delivered on 9th December, 1958 and the remaining part of 150 bags weighing 341 mds. 10 sRs. were delivered on 27th December, 1958. The market price was Rs. 35/- per maund in the middle of November, 1958 when the consignment ought to have been delivered. The price however came down to Rs. 23/- per maund on or about 8th December, 1958 and

it further went down to Rs. 20/5/- on about 27th December, 1958. On the said allegations the plaintiff claims to have suffered a loss of Rs. 121/- per maund for 100 bags and at the rate of Rs. 14/ 11/- per maund for 150 bags. On account of the less at the rate of Rs. 12/- the plaintiff claimed a sum of Rs. 2, 730/- and on account of the loss at the rate of Rs. 14/11/- the plaintiff claimed Rs. 5, 012/1/9 and according to the plaintiff the said loss was caused due to the delay in delivery. The plaintiff also claimed some damages due to shortage of 12 mds. 13 sRs. which was detected at the time of delivery. The appellant, however, has not challenged the said finding of the learned courts below that there was actually shortage of goods at the time when the same was delivered. The value of the shortage as was granted by both the courts below was Rs. 446/4/-. The said sum has not been challenged here. After service of notice u/s 77 of the Indian Railways Act and u/s 80 of the Code of Civil Procedure, the plaintiff filed a Money Suit being Money Suit No. 113 of 1959 in the court of the Subordinate Judge at Darjeeling. The learned Subordinate Judge decreed the suit for the sum of Rs. 8, 005.84. Against the said judgment and decree the Railway Administration preferred an appeal being Money Appeal No. 3 of 1961 in the court of the District Judge at Darjeeling. The learned District Judge affirmed the judgment and decree passed by the learned Subordinate Judge.

2. Being aggrieved by the said judgment and decree, this second appeal has been preferred by the Union of India representing the Railway Administration.

3. Mr. Basu, learned Advocate for the Railway Administration, the appellant, has urged the following points to challenge the finding of the courts below. The points raised by Mr. Basu will be considered in this judgment one after another.

4. Firstly it has been submitted that as the goods were in fact delivered even if out of proper time, the plaintiff is not entitled to get any damage on that score. Section 72 of the Indian Railways Act (hereinafter referred to as the Act) speaks of liability for loss, destruction or deterioration. As the goods were delivered, the case does not come within the purview of section 72 of the Act. In order to bring a case u/s 72 of the Act, either of the three conditions must be fulfilled, that is, it must be shown that there has been a loss or destruction or deterioration to the goods consigned. Mr. Basu has contended that in each of such cases there must be actual physical loss, destruction or deterioration to the goods in question. In support of the said proposition Mr. Basu has cited the decision in the case of Governor General in Council Vs. Musaddi Lal, . The principle inundated therein does not touch the point at issue. The question whether fall in price of goods due to delayed delivery of goods causing deterioration has not been considered in that case. In this case when the question of deterioration of goods is involved, the plain meaning of the word "deterioration" may at first be considered. The ordinary dictionary meaning of the word "deterioration" is "to lower in quality or value", "to impair quality or value"". That is how the said word has been explained in the Oxford Dictionary. In case, the intrinsic value of any goods is impaired or lowered, it is said that the said goods has been deteriorated. Hence

depreciation in value of the goods on account of fall in the price of the goods in question is deterioration. Mr. Guho, learned counsel for the respondent has contended that deterioration is nothing but depreciation of value of any goods. In case of bailee he is responsible for any loss sustained by the assignee due to default on the part of the bailee to deliver the same at the proper time. This question was raised in different courts from time to time. The word "deterioration" as mentioned in section 72 of the Act and section 161 of the Indian Contract Act; came for consideration in different cases. Considering the meaning of the word "deterioration" we are of the views that it includes even a case of depreciation in value of the goods due to fall of its price. Section 73 of the Indian Contract Act deals with all cases of claim for compensation upon a breach of contract. Bailment is one kind of contract dealt with in the Contract Act. The bailment to a carrier is bailment to delivery of goods for the purpose of carriage. Such a case has been contemplated in section 161 of the Contract Act which may be quoted here. Section 161:

If, by the default of the bailee the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

As per term of that section, the bailee is required to deliver goods at the proper time. In case the delivery be not made in proper time and the goods in question came in the fallen market and due to that the value of the goods is depreciated, it is clearly a case of deterioration of goods. The said view of ours gets support from the decision of the case of Firm Kishanlal Shrilal Patwa Vs. Union of India (UOI) and Another, wherein his lordship held : "In spite of some early difference of opinion it has been generally accepted to include the depreciation by fall in the market" price". In this connection we may refer to another decision in the case of Union of India (UOI) and Others Vs. Sheobux Satyanarayan, . Though it is a decision of the single Bench, we respectfully agree with the view expressed by G. K. Misra, J. wherein his Lordship observed :

The word "deterioration" used in section 72 of the Railways Act and in section 161 of the Contract Act is wide enough to include depreciation in value on account of a fall in the price of the goods.

5. For the reasons stated, the first point of Mr. Basu fails and we hold that the plaintiff can get the damages, if of course the other conditions are fulfilled.

6. This leads us to the consideration whether the plaintiff can get damages due to delayed delivery of the goods if he proves that due to such delay in delivery the loss occurred. Such a case was considered in the case of B.N.W. Railway Vs. Firm Munna Lal Bishambhar Nath and B.B.C.I. Railway . Similar is the view expressed in the case of Firm Arjundas-Hariram Agarwalla v. The Secretary of State for India in Council reported in 85 Indian Cases 786 (Cal) wherein Suhrawardy and Duval, JJ. passed a decree for damages for the delayed delivery.

7. It has been urged next by Mr. Basu, that in the absence of any specific date

mentioned in the R.R. or in the absence of any contract to that effect, the plaintiff cannot make" any grievance of the same. We have already held that as section 161 of the Contract Act is attracted in the fact of these case, other relevant provisions of the Contract Act also apply. Mr Guho on the other hand has submitted that to meet such a case the provisions of section 46 of the Indian Contract Act has been made. The said section is as follows :

Section 46 :Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation: The question "what is a reasonable time" is, in each particular case, a question of fact.

The explanation in that section clearly lays down that what is reasonable time is a question of fact and it depends on the facts of each particular case. Section 161 of the Contract Act also refers to "proper time in the matter of return, delivery or tender of the goods booked. In any view of the matter, the plaintiff has to show that the delay was unreasonable and at least the goods were not delivered in the proper time. Both the courts found on evidence that the goods ought to have been delivered by the middle of November, 1958. But instead of delivering the goods at the relevant time, 100 bags out of the consignment was delivered on 9.12.58 and the balance of 150 bags were delivered on 27.12.58. This delay in the absence of any evidence on the side of the Railway Administration to explain the same, speaks of negligence and misconduct on their part. The plaintiff by his evidence has amply proved that middle of November, 1958 was the proper time for delivery of such goods. But the defendant Railway Administration did not make any disclosure whatsoever to show how the goods were dealt with in transit. The bailee's failure to disclose facts as may rebut the claimant's evidence of damage and Railway's negligence, the provisions u/s 114(g) of the Evidence Act is attracted. As they failed to do the same, an adverse-inference may be drawn against them u/s 114(g) of the Evidence Act. One may safely presume under the facts of the case that had they produced the relevant documents, that would have clearly established that due to the negligence and misconduct of the Railway employees that delay was caused. Hence we agree with the findings of the courts below that there was unreasonable delay and that due to the same the goods were not delivered at the proper time. That by itself is not sufficient to saddle the defendant with liability for damages. But the evidence on record is one sided to show that the price of the rape seeds at the destination station was Rs. 351- per maund in the middle of November, 1958 which has been found to be the proper time. From the evidence it has also been established that the price of rape seeds on 8.12.58 and 27.12.58 was Rs. 23/7/3 and Rs. 2015- per maunds respectively. That shows that the rape seeds fell In the fallen market and there was gradual fall in the price of the same.

8. On behalf of the appellant it was next contended that there was no proper

evidence to show fall in prices between November 1958 and the two dates of December 1958 when the goods were delivered. The said contention of Mr. Basu fails, as on the evidence it has been established that there was fall in prices of rape seeds during that period. It was further contended that the loss suffered by the consignee of goods due to fall in prices at the destination station cannot be treated as a deterioration or loss within the meaning of section 72 -of the Act and would in any case be too remote. This question we have already considered and held that the fall in price of the goods due to delayed delivery comes under section 72 of the Act and the claim for damages on this score is maintainable and that the Railway cannot get protection under the provision of the said section 72. We are also of the view that the damage on that score cannot be said to be too remote, as the damage is the direct result of the delayed delivery of the goods. The said view of ours gets support from the decision in the case of *Union of India v. Panipat Woollen and General Mills Co. Ltd.* reported in AIR 1967 Pun 497.

9. We have now to consider the quantum of damages suffered by the plaintiff. Mr. Basu has submitted that the damage awarded by both the courts below is excessive and not in accordance with law. According to him, the evidence of the plaintiff showed that he purchased the seeds at the rate of Rs. 30.25 per maund. As such loss, if any, should be assessed at the difference of price paid and the price pre-velant in the middle of November 1953, the proper time for the delivery of the goods. In that case it comes to Rs. 4.75 per maund of rape seed. Mr Guho on the other hand has contended that it is the general intention of law that in giving damages for breach of contract the plaintiff should be placed in the same position as he would have been if the contract had been performed and that the proper damage is the difference of the value of the goods prevelant at the time which may be said to be due date for delivery and the date when actually it was delivered. In this connection certain passages of Addison's Law of Contracts eleventh edition, at p. 1072 may be quoted :

Generally speaking, when a carrier fails to deliver articles of merchandise in the ordinary course, and the goods come to a fallen market, the difference between the marketable value of the goods at the time they would have been sold if they had been carried according to contract, and their marketable value at the earliest period at which they could have been brought to market after their delivery to the consignee, will be the measure of damages recoverable.

The said observation was quoted with approval by Suhrawardy and Duval, JJ. in their judgment reported in 85 Indian Cases 786 (supra). Mr. Guho in support of the said contention has further drawn our attention to Halsbury's Laws of England, fourth edition Article 460 at p. 237. We may quote the said Article which will speak for itself:

An ordinary consequence of delay is a diminution in value, and therefore the difference between the value of the goods when they ought to have been delivered and their value at the actual time of delivery may as a rule be recovered. Accordingly, when there is a regular market for the goods, and the

price falls in this interval of time, the difference between the market price at the time of actual delivery and the market price at the time when the goods ought to have been delivered is recoverable as damages". The said principle has also been accepted and noted with approval in Anson's Law of Contract, 23rd edition at p. 511. It may be quoted here:

If he delays in delivering the goods, it is the difference between the market value of the goods on the day on which they ought to have arrived and their market value on the day on which they did arrive.

10. Considering the above decisions and the principle as enunciated from time to time, we are of the views that we need not deviate from that well-established principle. We are, therefore, of the views that while awarding damages for breach of contract a plaintiff must be placed in the same position as he would have been if the contract had been performed in proper times. In the case of delayed delivery of goods sent by Railway, the measure of such damages, in order to indemnify the consignee, should be the difference between the market price at the respective dates of due and actual delivery of the goods sent.

11. For the reasons stated, all the contentions of Mr. Basu fail. In consequence, we agree with the decision arrived at by the courts below.

12. In the result, the appeal fails and it is dismissed with costs, hearing fee being assessed at five gold mohurs. It is submitted by Mr. Guha, learned Advocate for the respondent that the plaintiff-respondent has already withdrawn the money deposited by the Railway Administration in the lower court by his furnishing security. In view of our judgment which we have delivered now, the said security bond, if furnished, will stand discharged.

Sharma, J.

I agree.