

(1973) 05 DEL CK 0016

In the Delhi High Court

Case No : Civil Revision Appeal No. 50 of 1969

Union of India

APPELLANT

Vs

Singh Fruit Co.

RESPONDENT

Date of Decision : 22-05-1973

Acts Referred:

Citation : (1974) RLR 125

Hon'ble Judges : P.N. Khanna, J

Bench : Single Bench

Advocate : H.S. Dhir and M.L. Bhatia, for the Appellant;

Judgement

P.N. Khanna, J.

(1) This revision has been directed against the judgment dated 19.2.1968 of Judge, Small Cause Court, Delhi, whereby he decreed the respondent's suit for Rs. 641.45, as damages caused to two consignments of raw and fresh mangoes, with proportionate costs against the petitioner.

(2) The goods were booked on 4.6.1964 by respondent from Vijayawada station of the South Central Railway for carriage by rail to New Delhi Railway Station, he himself being the consignee as well. The goods were actually delivered at New Delhi on June 13, 1964 in damaged condition, the damage being assessed at 31%, According to the respondent the damage occurred due to the negligence and misconduct on the part of the petitioner Railway Administration and its servants. The total amount claimed by the respondent was Rs. 982.08. The petitioner controverted the respondent's allegations.

(3) The learned Judge, Small Cause Court held the petitioner liable on the ground that the goods were delivered late by two days and the petitioner had failed to adduce evidence to show as to how the consignment was handled during the transit. As the damage had been assessed to the extent of 31% and the goods had been sold on June 13, 1964 for Rs. 1.428 00, the actual damages were worked out at Rs. 611.45, for which amount the decree with proportionate

costs was passed.

(4) Mr. H S. Dhir, the learned counsel for the petitioner, contended that the consignment had been delivered within ten days, which was not unreasonable, taking into account the normal time taken in transit. He referred to evidence on record to show that on one occasion the goods had been delivered within nine days and on seven occasions within eight days against clear receipts. This, according to him, proved that there was no unreasonable delay. The learned Judge, Small Cause Court, however, found that the late delivery of goods by two days amounted to unreasonable delay, taking the normal time spent in carriage as eight days only. According to Mr. Dhir delay of one or two days would not make any difference and in support of his contention he cited *Rasabati Bewa and Another Vs. Union of India (UOI)* and *Another, , and Tulsidas Vithaldas Vs. The Union of India, .* In both these cases carriage of consignments of potatoes was involved. In the Orissa case the degree of damage done to or deterioration in quality of articles in transit more often than not was considered to depend upon the nature of goods implying that the degree of care required in the case of fast-perishing goods like soft fruits, fish or meat was more than in the case of other perishable goods like potatoes. The details about the handling of the consignment in transit in that case, were available. In the Gujarat case also some details about the transit of goods were on record and it was held that the criterion for time to convey the goods is not "quickest time", but ""reasonable time", which concept admitted of some flexibility.

(5) But, each case has to be decided on its own facts. More care will be needed to handle more perishable articles and flexibility in determining "reasonable time" in their case will be less than it may be in the case of other goods. It has been established in the present case that there was delay of two day in delivering the consignment of mangoes, which is a highly perishable commodity. This was unreasonable delay looking to the facts of the case. Damage to the extent of 31% had occurred. The initial burden of proof was thus duly discharged by the respondent to show that the Railway Administration had been guilty of negligence or misconduct on its, part or on the part of its servants. It was, Therefore, incumbent upon the Railway Administration to place on record complete evidence to show as to how the consignment was handled during its transit. The Railway Administration failed to do so, as a result of which facts, which were within Its special knowledge were not brought on record and a presumption had to be raised u/s 114 of the Evidence Act against the Railway Administration. (See *Union of India Vs. Chandu Mal Sham Dass & Co.* Cr 258 of 1969, D/15-9-1972, and *Mjs Nirmdl Kumar Harish Chander Vs. Union of India*, Cr 555-D of 1962, D/9-10-1969). The Railway Administration having failed to place on record the necessary relevant evidence on the subject, which it alone could produce, the presumption was rightly drawn against it by the learned Judge, Small Cause Court and I do not find any ground to interfere with his decision.

(6) Mr H. S. Dhir contended that the damages could be assessed only on the

difference between the contract price and the market price, which, according to him, has not been proved. The learned Judge, Small Cause Court appears to have adopted the price at which the goods were actually sold by the respondent plus 31% of the total prices as the market price of the goods. The respondent failed to produce any rebuttal. I have not been able to find any error in this. It is a question of assessment of evidence and the court has come to a conclusion on the basis thereof. This court is not sitting in appeal and would not interfere in this finding, more especially as this has not been taken even by the petitioner himself as a ground of revision. Revision Dismissed.