

(1974) 04 MAD CK 0016
In the Madras High Court

Union of India (UOI) and Another

APPELLANT

Vs

A. Venkataiah.

RESPONDENT

Date of Decision : 18-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 33, 34, 80
Railways Act, 1989 — Section 78B

Citation : (1975) ILR (Mad) 278 : (1975) 88 LW 83 : (1974) 2 MLJ 371

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—The Union of India, owning the Northern Railway and the Southern Railway, respectively represented by their

General Managers, are the appellants. The plaintiff is a merchant carrying on business in betel leaves, and his course of dealings extends to trading

in North India as well. It is usual for the plaintiff to consign such betel leaves in specially prepared baskets, each basket containing about 3,000

leaves, and consign them through the Grand Trunk Express and the Janata Express belonging to the appellants to the various stations in North

India. In the course of the dealings between 25th March, 1962 and 24th June, 1962, the respondent-plaintiff consigned from Madras such betel

leaves packed in specially prepared baskets for being carried to Lucknow and Kanpur within the jurisdiction of the first appellant. As the goods

were perishable, special precautions were taken by the respondent and the respondent expected that the carriers would take the goods as fast as

they could and deliver the same at the respective places of destination. The plaintiff naturally expected equally that the carriers would take all

reasonable precaution to carry such perishable goods after taking all reasonable

caution regarding their preservation in the course of the carriage. It appears that during such period, 450 baskets of betels were not delivered at the respective places of destination and 169 baskets thereof were a total damage to the respondent. Consequent upon such injury caused to him, the plaintiff came to Court after issuing the due notices under the provisions of the Railways Act and the Civil Procedure Code, for damages at the rate of Rs. 16 per basket even though, according to the plaintiff, he was entitled to Rs. 20 per basket. In fact, his claim towards such damages was partially met, and in the plaint, the plaintiff has given credit to such of those amounts paid by the appellants in partial admission of the damage caused to plaintiff's goods in the course of transit. The plaintiff, prior to the action, called upon the defendants to pay damages as claimed by him earlier in the notices, and as he could not get satisfaction of his claims as made by him, he has come to Court seeking a sum of Rs. 9,090 which, according to him, represented the value of the damaged goods, and prayed for, a decree in that sum.

2. The second defendant in the action (the second appellant) in its written-statement took up various stands, such as that the respondent had no right to sue; that there was no negligence on the part of the Railway Administration as carriers when they carried the goods of the respondent to the respective places of destination; that the goods became damaged on account of their inherent perishable nature; and that the goods were defectively packed; and on such pleas, it denied the claim in toto, stating that the short delivery as well as the total loss as claimed by the plaintiff was not due to any overt act on the part of the Railways as carriers. In any event, the second defendant stated that the consignments were booked at the owner's risk and that the Railways were absolved from liability. On the merits, the second defendant pleaded that the plaintiff did not properly give credit to the amounts received by him from the Railway Administration in regard to certain consignments towards which damage was more or less admitted. In the ultimate analysis, in the written statement of the second defendant, which was adopted by the first defendant, the defendants pleaded that they were not liable for the suit claim.

The trial Court framed the following-issues:

(1) Have the defendants made payments as alleged in paragraph 7 of the written

statement of the first defendant towards the plaint claim and are they entitled to credit therefore as claimed therein ?

(2) Has the plaintiff right and title to sue ?

(3) Is the alleged damage and shortage due to the negligence or misconduct on the part of the defendants ?

(4) What was the packing condition of the goods at the time of booking ?

(5) Is not the damage due to the inherent perishable nature of the consignment ?

(6) What is the extent and value of the goods alleged to have been short delivered and damaged ?

(7) Have valid and proper notices both u/s 78-B of the Railways Act and Section 80 of the Civil Procedure Code, been given ?

(8) To what relief is the plaintiff entitled ?

3. On issue No. 2, the learned Judge held that the respondent had the right and title to sue as consignor and as the consignee was not a person

different from the consignor, the respondent had the right to institute the action. On issues 3 to 5, which pinpointed on the damage and shortage of

the goods, and whether such damage was the result of the negligence and misconduct on the part of the Railway Administration, the trial Judge

found that the alleged damage and shortage were due to the negligence and misconduct on the part of the appellants and not due to the inherent

perishable nature of the goods, as contended by the defendants. On issues 1 and 6, with which practically we are concerned in this appeal, the

learned Judge, after considering the evidence before him, and after hearing the parties, decreed the suit in a sum of Rs. 7,728-40 holding that the

plaintiff is entitled to damages at the rate of Rs. 15 per basket. As a matter of fact, the calculation made by the learned Judge even in the judgment

appears to be not quite correct, as the damages will work out to something more than that awarded by him, if the damages were to be reckoned at

the rate of Rs. 15 per basket. As a matter of fact, it would come to Rs. 9,285 and after deducting the sum of Rs. 812 received by the plaintiff, it

would amount certainly to something more than the computed amount of Rs. 7,728-40. However, that need not detain us.

4. The point to be noticed at this stage is that the learned Judge did not provide for interest on the computed amount of damages, but in the decree

that ensued provided for it in the following terms:

That the defendants do pay plaintiff Rs. 7,728-40 (Rupees seven thousand seven hundred and twenty-eight and paise forty only) with interest

thereon at 6 per cent. per annum from the date of the plaint, viz., 6th April, 1963 till date of realisation.

5. As against this judgment and decree of the Court below, the appellants have presented this appeal. But it is singular to note that in the

memorandum of valuation the appellants have stated thus:

The appellants are claiming relief in the appeal only to the extent of Rs. 3,000 inclusive of interest at 6 per cent. per annum from the date of plaint

(6th April, 1963) to date of filing the appeal.

6. On a calculation of the interest portion of the subject-matter of the appeal, we find that it works out to Rs. 2,125.20 and the balance of Rs.

874.70 obviously refers to the portion of the damages awarded by the trial Court when it decided issues 1 and 6 in the suit.

7. Having this background, the learned Counsel for the appellants contends firstly that inasmuch as the judgment is silent about any provision for

interest either pendente lite or after the decree has been passed, there is prima facie a variation between the judgment and the decree and to that

extent the provision in the decree for payment of interest ought to be set aside. The second contention of Mr. Srisailam, the learned Counsel for the

appellants, is that there is no positive proof of the market-value of the goods at the places of destination and the materials placed by the respondent

during the trial are not sufficient for the Court to conclude with any reasonable precision that any particular sum would represent the market value

of the goods at the places of destination. On the other hand, Mr. Srinivasa Rao, the learned Counsel for the respondent, would state that there is

no variation between the judgment and the decree, and having regard to the fact that the suit itself is one for damages, the provision for interest on

such reckoned damages, after trial, either for the period during the pendency of the suit or for a period posterior thereto is a normal feature in such

cases, and it does not in any way militate against the provisions of the Civil Procedure Code, or the well understood precedents in relation thereto.

Regarding the market-value of the goods at the places of destination, it is said that enough data was provided before the trial Court for it to

ascertain the quantum of the damages suffered by the plaintiff by utilising the appellants as carriers of their betel leaves, which were admittedly

carried from one station within the jurisdiction of the second appellant to the other stations of destination within the jurisdiction of the first appellant.

8. Regarding the first contention of the learned Counsel for the appellants, that there is a variance between the judgment and the decree in the

matter of provision for interest and that therefore the appellants are entitled to seek relief at the appellate stage for the exclusion of such payment of

interest awarded by the Court below, we are of opinion that that contention is without substance. Section 34 of the Code of Civil Procedure, is a

special provision, providing for interest in the case of a decree for payment of money. It runs as follows:

34 (1). Where and in so far as a decree is for payment of money, the Court may, in the decree, order interest at such rate as the Court deems

reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on

such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the

Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of

payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit shall not lie.

Sub-section (1) of Section 34 is relevant for the issue and it is capable of being considered in three broad divisions. In the decree in a suit for the

payment of money, the Court can at its discretion, provide for the payment of reasonable interest on the principal adjudged (a) from the date of suit

to the date of decree; (b) in addition direct the payment of any interest adjudged on such principal sum for any period prior to the institution of the

suit; and (c) may also direct the payment of further interest at such rate not exceeding 6 per cent. as the Court deems reasonable on such principal

sum from the date of the decree to the date of payment or such earlier date as the Court thinks fit. The expression "decree for payment of money

is not to be understood as a technical expression or an expression with some reservation. A suit instituted by a litigant claiming damages either in

tort or on breach of contract or for payment of damages by a carrier for non-performance of a statutory and other obligations as bailee, resulting in

a decree for damages, which damages are obviously and necessarily computed in terms of money, can also be characterised as a decree for

payment of money. Therefore, a decree for damages computed by the trial Court after hearing parties, which sum is reckoned by it on the

evidence noticed by it, is to be treated and considered as a decree for payment of money. Thus understood, the second heading under which

additional interest could be granted u/s 34 in cases of a. decree for payment of money would not generally be invocable in cases where the suit is

purely for damages. The second head relates to payment of additional interest on the principal sum adjudged for any period prior to the institution

of the suit. In a case for damages, it would be speculative to award such interest for a period prior to the institution of suit, because a person

claiming such damage cannot be said to have been injured unless and until he quantifies the same in his own way and seeks for relief in a manner

known to law. Such awarding of damages for a period prior to the institution of the suit would militate against the well accepted principle of

damnum sine injuria, without injury there cannot be a damage. In the case of damages, the party must suffer an injury and then ask for it. In a case

similar to the one under consideration, if such interest is awarded prior to suit it would be damages over damages, which is not postulated in law.

Therefore, in cases like the one before us, any interest as additional interest for a period prior to the institution of the suit ought to be automatically

excluded. The next question is whether the Court can award interest from the date of the suit to the date of the decree and thereafter. These two

reliefs could be granted by the Court in its discretion under the first and the third heads into which we have brought the prescriptions in Section 34.

That such interest could be granted by Court is well recognised and cannot be disputed at all. (See AIR 1938 67 (Privy Council) and Union of

India (UOI) Vs. Panipat Woollen and General Mills Co., Ltd., If, therefore, we come to the conclusion that the Court has the discretion to award

interest from the date of the suit to the date of the decree as also further interest at such rate not exceeding 6 per cent. per annum as the Court

deems reasonable on the adjudged sum from the date of the decree to the date of payment, and if such provision has been made only in the

decree, and if the judgment is silent about it, can it be said that there is a variation between the judgment and the decree, as contended, disentitling

the respondent from the relief granted by the Court below?

9. The CPC makes a distinction between a judgment and a decree. This is obvious from the language in Sections 33 and 34. Section 33 is a

general provision enabling the Court to pronounce judgment after the case has been heard and on such judgment, a decree shall follow. Section 34

however is a special provision relating to the decree for payment of money. We have already expressed the view that a decree for payment of

damages which is computed in terms of money is to be understood as a decree for payment of money. In such cases, there is intrinsically a

possibility envisaged in the CPC itself, which enables the Court, which has to adjudicate upon suits for damages resulting in decrees for money,

either to provide for interest, if they think fit, in the judgment, or independently provide for it, as expressly authorised u/s 34 of the Civil Procedure

Code. Section 34 acts on its own and does not need a lever for it to function. It does not depend upon a provision in the judgment to be made by

the trial Court, which would be the sine qua non for the provision for interest in the decree. The jurisdiction to provide interest in the decree

notwithstanding the fact that there is no reference to it in the judgment, is one which is peculiar to money decree s, and the Courts are vested with

such jurisdiction. As early as in *Kolai Ram v. Pali Ram* ILR (1885) All. 755 a Division Bench of the Allahabad High Court in a similar situation,

considering the meaning of Section 206 of the Civil Procedure Code, equivalent to Section 34 of the present Code, observed thus:

We are asked to amend this decree on the ground that it is at variance with the judgment in the appeal, inasmuch as the decree contains an order

for payment of interest from the date of suit onwards, whereas interest was adjudged by the judgment for the period prior to the institution of the

suit only. But no variance with the judgment is involved in this additional order contained in the decree. The decree agrees in all the respects with

the judgment according to the requirements of Section 206 of the Civil Procedure Code...the Court is competent u/s 209 to "order" in its decree

that interest at a reasonable rate should be paid on the principal sum adjudged from the date of suit to the date of the decree, in addition to any

interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at a reasonable rate on the aggregate

sum so adjudged from the date of the decree to the date of payment, or such earlier date as the Court thinks fit.

We respectfully adopt the observations of the learned Judges.

10. There is also a clue in Sub-section (2) of Section 34, which provides for the interpretation of the meaning and content of Section 34 of the Civil

Procedure Code. Sub-section (2) of Section 34 as already noticed reads:

Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of

payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

It is therefore clear that it is only at the time of drafting the decree and signing of the decree by the trial Judge that the question of his discretion

springing from his jurisdiction u/s 34 of the CPC to provide for interest in a money decree would arise. If he does not provide for such interest, it

becomes final and the aggrieved party has no relief. It, therefore, follows that if he provides for interest in the decree, it is lawful and is backed up

by express statutory provisions and is not questionable on the technical ground that it is prima facie at variance with the judgment, which in turn is

silent about the provision of interest. In *Ramamurthy v. Narasimham* AIR 1957 A.P. 476 *Umamaheswaram, J.*, stated that it cannot be contended

that because no subsequent interest was provided for in the judgment, it ought not to be included in the decree. This again is based on the literal

interpretation of Section 34 of the CPC and it is the primordial intent and purpose in the case of a decree for money. We are, therefore, unable to

agree with the argument of the learned Counsel for the appellants that the provision for interest ought not to have been made in the decree and such

interest so provided cannot be granted to the respondent.

11. The second contention which is, of course, very hesitant and which, in the circumstances sinks into insignificance, is the attack on the grant of

damages of Rs. 874.70. It is very curious that the appellants have filed this appeal against the trial Court's decree for the grant of damages in the

sum of Rs. 874.70 when almost 9/10 of such claim has not been questioned. No doubt, very eloquent grounds of appeal have been drafted to

contest the claim for damages awarded by the Court below, but for reasons best known to the appellants themselves, they have restricted in the

Memorandum of valuation the appeal to an attack on about 1/10 of the claim for damages. This itself is sufficient to show that the second

contention of the appellants is not only hesitant but hopelessly devoid of any reasonableness.

12. The contention of Mr. Srisailam is that the plaintiff did not afford ample proof before the trial Court to sustain his claim for damages. We do

not see any substance in this argument at all. The plaintiff produced documents such as Exhibits A-75, A-76, A-79, A-80, B-24, B-25, A-77, A-

83, A-81, B-16, A-82, B-28, and A-78, to prove his claim for damages. In fact, in the plaint, the plaintiff would seek damages at the rate of Rs.

20 per basket, but he restricted his claim to Rs. 16 per basket. In the evidence so let in, he has placed such hypothesis before the trial Court to

prove the market value of similar goods at the places of destination during the relevant months, namely, March, April, May and June, 1962. During

March, the price ranged between Rs. 14 and 22 per basket; in April, it ranged between Rs. 14 and 18; in May between Rs. 10 and 13; and in

June between Rs. 10.35 and 14. It is fairly conceded that there is no contrary evidence let in by the appellants to prove that such was not the

market price of similar goods at or near the place of destination. The learned Judge considered these exhibits as also the oral evidence let in by the

plaintiff and came to the conclusion that such market rate was ranging between Rs. 10 and 22 between March and June, and he assessed the

damages at Rs. 15 per basket, but actually gave Rs. 13.80 per basket as the computable damages to which the plaintiff would be entitled.

Undoubtedly "market price" means the price which prevails at the place of destination and such is the data on which damages have to be reckoned

particularly in cases of contracts of affreightment and carriage. In the absence of any other proof or material, we are unable to state that the rule in

The Union of India (UOI) Vs. West Punjab Factories Ltd., , to the effect that the market price at the time of the damage is the measure of the

damage to be awarded and that the price has to be reckoned at the place of destination has in any way been violated in the instant case. What is

however contended is that there is no proof that these very goods which were consigned by the plaintiff to his commission agents in North India

were sold at a higher price or at a particular price. This is, of course, one of the methods by which the plaintiff can substantiate his case. But

nothing prevents him in law from adducing such acceptable evidence such as the market price of similar commodity at or near the place in question

to prove his claim for damages. The plaintiffs in the instant case had adopted this alternative method. For this reason alone, the plaintiffs method of

proof based on the evidence let in by him, which remains uncontroverted, cannot be lightly brushed aside. We accept the evidence adduced on

behalf of the plaintiff as regards the market price of similar goods at or about the time when the consigned goods were damaged and we agree with

the Court below that the plaintiff is entitled to reasonable damages and that the sum of Rs. 13.80 per basket awarded by the Court below as

equable damages sustained by the plaintiff is neither unreasonable nor unjustified.

13. In the view that we have already expressed on the first point urged by Mr. Srisailam, the application--C. M. P. No. 3995 of 1974 seeking for

amendment of the decree in accordance with the judgment by deleting the interest portion in Clause (1) of the decree, has to be dismissed, and it is

accordingly dismissed.

14. The appeal therefore fails and is dismissed. In the peculiar circumstances of the case, there will be no order as to costs.