
(2004) 04 BOM CK 0023
In the Bombay High Court
Case No : F.A. No. 879 of 1991

Union of India (UOI) and Another

APPELLANT

Vs

Abdul Karim Abdul Rahim and Co.

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 73, 74, 74(1), 74(4), 76

Citation : (2005) 1 ACC 656 : (2006) ACJ 2762 : (2004) 4 ALLMR 57

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : P.S. Lambat, for the Appellant; V. Palshikar, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—The Union of India through General Manager, Central Railway has filed this appeal, being aggrieved by the judgment and order dated 26.4.1991 passed by the Railway Claims Tribunal in Claim Case No. 1127/TA-I/RCT/NGP of 1990 whereby the claim of the respondent-plaintiff was partly allowed awarding the damages in the sum of Rs. 13,179 and the appellants-defendants were directed to pay the same with interest at the rate of 6 per cent per annum from the date of the suit till realisation.

2. Brief facts are required to be stated as under:

Plaintiff claimed damages on account of delay in delivery of clusters plantains of four consignments on the contentions that four separate consignments were got booked on 13.2.1979, 6.3.1979, 8.3.1979 and 5.11.1979 at Bhusaval for sending it to Howrah. The goods in the consignments were loaded at Bhusaval and same were actually delivered at Howrah on 20.2.1979, 15.3.1979, 15.3.1979 and 12.11.1979 respectively. It is contended that the clusters plantains were deteriorated during the transit on account of misconduct and negligence on the part of the railway administration causing loss or damages to the extent of Rs.

32,807.50 in all. It is contended that the damage certificates were issued by the railway administration when the claim was preferred before Station Superintendent, Howrah. The railway administration was served with notice u/s 74(1) of the Indian Railways Act 1890 and Section 80 of the CPC but in vain and, therefore, the plaintiff filed the claim application before Railway Claims Tribunal, claiming recovery of damages.

Railway administration strongly resisted the claim for damages on the contentions that the goods were damaged due to inherent vice of the goods and since all the four consignments were booked under owner's risk, the railway administration is not liable to pay any damages. It is further contended that the goods under all the four consignments were accepted by putting the signature in the register maintained at Howrah Railway Station. It is contended that the persons who had loaded the consignments at Bhusaval have not been examined to show that the goods were in proper condition at the time of loading and when the delivery has been taken without protest, plaintiff is not entitled to claim damages unless it is proved that there was misconduct or negligence on the part of railway administration or its servants during transit.

3. The Tribunal framed the issues on the aforesaid pleadings and the plaintiff had examined himself only and relied on oral as well as documentary evidence. The railway administration did not examine any witness. The Claims Tribunal on consideration of the evidence adduced before it, recorded the findings that when the goods were booked and loaded, were in sound condition and that the clusters plantains deteriorated due to negligence on the part of the railway staff during transit. The Tribunal also recorded findings that the damage was caused to the goods due to the delay in delivery of the goods as clusters plantains were perishable goods. Claims Tribunal, however, scaled down the damages to the tune of Rs. 13,179 and directed the defendant/railway administration to pay the same to plaintiff with interest at the rate of 6 per cent per annum from the date of suit till realisation. This judgment dated 26.4.1991 passed by the Tribunal is under challenge in this appeal.

4. Mr. Lambat, the learned Counsel for the railway administration contended that when the clusters plantains were booked at Bhusaval by the employees of the plaintiff, they were having inherent defect. Plaintiff did not examine the coolie Jagannath who loaded the goods in railway wagons. He contended that there was no negligence on the part of the railway servants when the goods were in transit and, moreover, the goods reached at the destination within the reasonable period. He contended that since goods were damaged due to inherent vice, the impugned order of Tribunal directing payment of damages cannot be sustained in law. Mr. Lambat further contended that admittedly all the four consignments were booked under owner's risk and in view of Section 74 of Indian Railways Act, the railway administration is not liable to pay the damages unless plaintiff establish by cogent evidence that there was negligence on the part of the railway administration. He contended that the goods of all the consignments reached the

destination within a reasonable period and there was no delay in delivery of the goods and moreover delivery of the goods was accepted without protest and in such circumstances the impugned order passed by the Tribunal is bad in law.

5. Mr. Palshikar, the learned Counsel for the plaintiff contended that the goods did not suffer from any inherent vice when they were booked at Bhusaval Railway Station and by its very nature the clusters plantains were perishable articles. He contended that no endorsement was recorded on the forwarding note that the goods were in defective condition or were improperly packed and the onus is on the railway administration to prove that the deterioration of the goods was not on account of any misconduct or negligence on the part of the railway administration or its servants. He contended that in the circumstances the railway administration cannot derive any benefit from the provisions of Section 74(1) of Indian Railways Act. In support of these submissions he relied on the decision of this Court in *Union of India v. Radhakisan Ramnath* AIR 1969 Bom 7, as well as on the decision in the case of *Union of India v. Kalinga Textiles Pvt. Ltd.* 1969 ACJ 248.

6. Mr. Palshikar further contended that the plaintiff's agent had preferred the claim before the Station Superintendent, Howrah and that the four damages certificates have already been issued by him showing that the goods were deteriorated in transit and the authority has also mentioned the percentage of the deterioration in the damage certificates. He contended that there was 2 days" delay so far as three consignments are concerned and there was four days" delay in one consignment in delivering the flusters plantains to the agent of the plaintiff at Howrah Railway Station and this delay was unreasonable. He contended that the railway administration did not examine any witness in support of its contentions and, therefore, did not discharge the burden to show as to how the goods were handled in transit. He contended that the railway administration did not adduce any evidence to show that it had taken reasonable care while goods were in transit and, therefore, inevitable conclusion is that the damage was caused due to misconduct and negligence on the part of railway administration. In support of these submissions he relied on the Division Bench decision of this Court in the case of *Union of India Vs. United India Insurance Co. Ltd.*, .

7. This court has given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. In order to appreciate the contentions of the learned Counsel, it is necessary to reproduce section 77-C of Indian Railways Act, which reads thus-

(1) When any goods tendered to a railway administration to be carried by railway.-

(a) are in a defective condition as a consequence of which they are liable to damage, deterioration, leakage or wast-age, or

(b) are either defectively packed or packed in a manner not in accordance with

the general or special order, if any, issued under Sub-section (4), and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage,

and the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, then notwithstanding anything contained in the foregoing provisions of this Chapter, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage, or for the condition in which such goods are available for delivery at destination, except upon proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(4) The Central Government may, by general or special order, prescribe the manner in which goods delivered to a railway administration to be carried by railway shall be packed.

8. In *Union of India v. Radhakisan Ramnath* AIR 1969 Bombay 7, this Court observed as under:

Before the railway authorities wants to take advantage of Section 77-C certain essential conditions are required to be satisfied as enumerated in that section. These conditions are-

(1) That the goods which are tendered to the railway administration must be in a defective condition or must be either defectively packed or packed in a manner not in accordance with the general or special order as provided by Sub-section (4) thereof;

(2) That the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note; and

(3) Deterioration, leakage, wastage or damage in transit must be a consequence of the defective condition or the defective packing must result in the leakage, wastage or damage in transit. It is only if these conditions are satisfied that it is open to the railway administration to take recourse to this section and then say that the railway administration shall not be liable for any deterioration, leakage, wastage or damage or for the condition in which such goods are available for delivery at destination, except upon a proof of negligence or misconduct on the part of the railway administration or of any of its servants.

9. In the present case no evidence was tendered by the railway administration to show that the goods were in defective condition or had inherent vice when they were loaded in the railway wagons at Bhusaval Railway Station. There is no endorsement on the forwarding note or R.R. to show that the goods had inherent vice or they are defective and it is admitted position that the goods were deteriorated during transit. In such situation, it is not possible to accept the contentions of learned Counsel for the railway administration that by virtue of Section 77-C, railway administration is not liable to pay the damages.

10. In *Union of India v. Kalinga Textiles Pvt. Ltd.* 1969 ACJ 248, it has been held that "the burden to prove how the wagon was handled on the way is on the railway administration".

11. In *Union of India Vs. United India Insurance Co. Ltd.*, , it has been held that "the onus of proof of reasonable care is on the railway administration and if the said onus is not discharged, inevitable conclusion would be that the damage was caused due to misconduct and negligence on the part of the defendant/railway administration". In the present case, the railway administration did not examine any witness nor has adduced any evidence to show as to how the goods were handled in transit and, therefore, the railway administration is not entitled to the advantage of Section 74(1) of the Indian Railways Act.

12. It is not in dispute that four consignments were booked on different dates and the clusters plantains were delivered to the plaintiff. It is also not disputed that the goods were booked at owner's risk and the goods were found to have deteriorated at the time of delivery. There is also no dispute that there was about 2 days" delay in delivering the goods of three consignments and there was a delay of four days in the delivery of one consignment. When the railway administration did not adduce any evidence as to how the goods were handled in transit, the delay in delivery would certainly cause the deterioration of the goods.

13. It is not disputed that the plaintiff had preferred the claim for damages before the Station Superintendent of Howrah Railway Station and upon that application four different damage certificates were is-sued which are marked by the Tribunal as P2, P3, P4 and P5. In absence of any evidence adduced by railway administration to show that the perishable goods reached the destination within a reasonable time, that the goods were handled in the transit with utmost care and that the deterioration of the goods cannot be attributed to the misconduct or negligence on the part of the railway administration, it is not possible to accept the contention of Mr. Lambat, the learned Counsel for railway administration that the railway administration can claim the benefit of Section 74(1) of the Indian Railways Act.

14. Section 76 of the Indian Railways Act contemplates that the railway administration shall be responsible for the loss, destruction, damage or deterioration of animals or goods proved by the owner to have been caused by delay or detention in their carriage unless the railway administration proves that the delay or detention arose without negligence or misconduct on the part of the railway administration or of any of its servants. This provision of law casts responsibility on the railway administration for delay in delivery of the goods or if the goods are deteriorated during transit, the detention of the same in transit. Section 74 of Indian Railways Act deals with the goods which are to be carried at the owner's risk rate and contemplates as under:

When any animals or goods are tendered to a railway administration for carriage by railway and the railway administration provides for the carriage of such

animals or goods either at the ordinary tariff rate (in this Act referred to as the railway risk rate) or in the alternative at a special reduced rate (in this Act referred to as the owner's risk rate), the animals or goods shall be deemed to have been tendered to be carried at owner's risk rate, unless the sender or his agent elects in writing to pay the railway risk rate.

(2) Where the sender or his agent elects in writing to pay the railway risk rate under Sub-section (1), the railway administration shall issue a certificate to the consignor to that effect.

(3) When any animals or goods are deemed to have been tendered to be carried, or are carried, at the owner's risk rate, then, notwithstanding anything contained in Section 73, the railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery, in transit, of such animals or goods, from whatever cause arising, except upon proof that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on the part of the railway administration or of any of its servants.

15. Simple reading of the aforesaid provisions of law would reveal that the burden is on the railway administration to prove that there was no negligence or misconduct on the part of the railway administration or its servant if the goods are deteriorated, damaged, destructed or not delivered on reaching its destination within a reasonable time.

16. In the present case the railway administration did not adduce any evidence to show as to how the goods were handled in transit. There is no evidence to show that the goods when tendered for its carriage, they were suffering from any inherent vice or there was any inherent defect in the goods. On the contrary, the clusters plantains were certainly perishable articles and, therefore, it was necessary on the part of railway administration to carry the goods to the destination within a reasonable time. It is admitted position in the present case that there was a delay of 2 days in reaching the goods to the destination so far as three consignments are concerned and there was a delay of about four days in reaching the goods to the destination so far as one consignment is concerned and, therefore, considering the delay, goods are bound to get deteriorated during transit and hence in absence of the proof as to how the goods were handled during transit, it is not possible to accept the contention of learned Counsel for the railway administration that the delivery of the goods was accepted under protest and hence railway administration is absolved from the liability to pay damages by virtue of Section 74(1) of the Indian Railways Act.

17. On close scrutiny, this Court is of the considered opinion that delay in delivery of the perishable goods are certainly on account of misconduct or negligence on the part of railway administration and, therefore, there is no error or illegality in the impugned order passed by the Tribunal. There is no merit in the appeal and hence the same is liable to be dismissed. Appeal is, therefore, dismissed with the costs.