

(1986) 03 OHC CK 0017
In the Orissa High Court
Case No : First Appeal No. 94 of 1975

Union of India (UOI) and Another	Vs	APPELLANT
Aluminium Industries Ltd.		RESPONDENT

Date of Decision : 25-03-1986

Acts Referred:

Railways Act, 1890 — Section 73

Citation : AIR 1987 Ori 152

Hon'ble Judges : P.C. Misra, J;B.K. Behera, J

Bench : Division Bench

Advocate : B.Pal and N. Prusty, for the Appellant; P. Mohanty and S.K. Gajendra, for the Respondent

Final Decision : Allowed

Judgement

Behera, J.—Aggrieved by the judgment and decree passed by Mr. D. C. Guru, Subordinate Judge, Sambalpur, accepting the case of the plaintiff-respondent that there had been shortage of 521 pieces of aluminium ingots out of 1101 pieces booked under R.R. No. 335029 dated June 19, 1972, from Renukoot to Sambalpur, by the Hindusthan Aluminium Corporation Limited for delivery to the respondent at Sambalpur without the original seal and rivet for which a shortage certificate had been issued by the Railway Administration to the respondent which fact was owing to the negligence and misconduct on the part of the Railway Administration for which the respondent sustained a loss of Rs. 64,723.32 paise and rejecting the case of the defendant-Railway, the appellant herein, that in the absence of proof that the articles had been delivered to the Railway Administration and that the employees of the Railway Administration had supervised the loading at the place of booking, the appellant could not be liable for any claim with regard to damages for shortage of the articles merely because of the issue of a railway receipt and a shortage certificate, as the responsibility for carriage of the articles booked at the railway siding of the consignor was that of the consignor and the appellant had incurred no liability therefor.

2. The facts of the case pleaded by both the sides, briefly indicated in the foregoing paragraph, have been set out in details in the body of the impugned judgment. Each of the two sides has examined one witness. The learned subordinate Judge has found that on the evidence on record, it can be said that loading had been done under the supervision of the Railway Administration and it had not been established by it that the seals were intact at the time of delivery and in view of the certified copy of the railway receipt (Ext. 9), the original of which has been marked as Ext. A and the shortage certificate, the respondent was entitled to a decree.

3. It has been contended on behalf of the appellant that in view of the provisions made in the Indian Railways Act (IX of 1890) (the "Act", for short), the onus lies on the plaintiff in a suit of this nature to establish the actual loading of the goods for the loss of which claims have been made and if articles had been loaded at the consignor's private siding without the supervision of the Railway staff, as in the instant case and goods had not been delivered to the Railway Administration, no liability, of the latter arises. On behalf of the respondent, reliance has been placed on the principles laid down by this Court in Union of India (UOI) Vs. Krishna Stores, and it has been contended that on the evidence on record, the findings recorded by the learned Subordinate Judge are to be sustained.

4. It may be kept in mind that none of the two witnesses examined from both the sides was present at the time of the loading of the articles of Renukoot, P.W. 1 is the Railway Claims Assistant of the plaintiff-company. He has testified that the plaintiff-company purchased 1101 pieces of aluminium ingots from the Hindusthan Aluminium Corporation Ltd, Renukoot, which were despatched to the plaintiff-company under railway receipt No. 335029 dated June 19, 1972 from Renukoot to Sambalpur. He has further deposed that he was present when the consignment was taken delivery of at Sambalpur and it was noticed that the original seal of the wagon was not intact for which the plaintiff-company demanded open delivery to which the Railway Administration agreed and a shortage of 521 pieces of aluminium ingots was noticed. Ext. 5 is the shortage certificate issued by the Goods Supervisor of the Railway Administration. P.W. 1 has, however, admitted in his cross-examination that the Hindusthan Aluminium Corporation Ltd. has its own siding at Renukoot and the plaintiff-company has got its staff there to supervise the loading. He has admitted that the person in charge of supervising the loading belonging to the plaintiff-company had not come to the Court for examination. As would appear from his evidence, nothing had been mentioned in the shortage certificate (Ext. 5) regarding tampering of the original seal nor had this allegation been mentioned in the claim notice u/s 78-B of the Act or in the notice u/s 80 of the Code of Civil Procedure. The sole witness for the plaintiff-company (P.W. 1) has no personal knowledge about the Renukoot siding.

5. D.W. 1 was the Goods Clerk of the Railway Station at Sambalpur at the relevant time. According to him, the suit consignment reached Sambalpur with

seals intact and the rivets on both the sides were also intact. M.Os. III and IV were the original seals of the forwarding railway station, as stated by him. The expression "S.W.A." in Ext. A means, "'Sender's weight accepted", as testified by him. He was not present at the time of the loading and sealing of the wagon at Ranukoot and he cannot say whether the railway staff supervised the loading and sealing of the wagon at the siding of the consignor at Renukoot. He had not brought the specimen seal of the consignor to verify it. M.Os. III and IV were the original seals and according to the learned Subordinate Judge, M.Os. III and IV were not distinct for the purpose of comparison. It has been accordingly been held that it could not be said from the evidence that the seals on the wagon were the same as those of the consignor.

6. A reading of the judgment would give a clear indication that the learned Subordinate Judge has virtually placed the entire onus on the Railway Administration and has not duly taken note of the provisions made in the Act.

7. Even as deposed to by P.W. 1 himself, the place of loading of the articles in question was at a siding not belonging to the Railway Administration, but to the consignor. The onus is on the plaintiff-company to establish as to what quantities had actually been booked at the forwarding station. The consignment had been booked at the consignor's own siding and there is absence of evidence from the side of the plaintiff and there has been no admission from the side of the defendant that loading had been done with the supervision of the railway staff.

8. The case reported in AIR 1950 Nag 85, *Dominion of India v. Firm Museram Kishunprasad Melonigunj*, Jabalpur dealt with Rules 15 and 22 of the Railway Goods Tariff General Rules. It was held :

"Further there is no proof in this case that 255 bags were in fact loaded. According to Rule 22 of the Goods Tariff General Rules then in force coconuts were required to be loaded and unloaded by senders and consignees when in wagon loads. It is nowhere stated or proved by the plaintiff that the bags were loaded by railway servants or that they had opportunity to verify the number. The wagon was placed at the service of the consignor and the number stated was accepted as correct for the purpose of charging freight. It was thus that the receipt issued qualified the number by stating that the wagon was "said to contain" 255 bags. This was perfectly fair and in order, and the number was mentioned merely to calculate the freight.

Under Rule 15 *ibid* it is clearly stated that by mentioning weight etc., in the railway receipt the railway does not admit the correctness of the statement. This rule applies with even more rigour where the railway receipt in addition contains the "said to contain" remark."

In AIR 1956 Mad 176, *Union of India v. S. P. L. Lekhu Reddiar*, it has been laid down that where goods were loaded in the wagon by the sender and not by the railway servants and the information given by the sender is accepted as correct for the purpose of charging freight and receipt is granted and at the destination

station, shortage is detected, it is for the plaintiff to establish as to what actually were the goods delivered to the railway for carriage at the forwarding station.

As held in *South Eastern Railway Vs. Epari Satyanarayana*, , the railway receipt conveys no admission by the Railway Administration that the weight of the consignment as shown in the receipt or the description of goods as furnished by the consignor is correct. In the absence of evidence of actual booking of the goods as shown in the railway receipt, the railway is not liable for short delivery where goods are received in sound and intact condition. It is for the consignors or the consignees to adduce evidence as to the actual booking of the goods as these facts are within their special knowledge.

9. A shortage certificate amounts neither to an acknowledgment of liability nor holds out any hope to the consignee as to the time of delivery and is merely evidence of actual event that certain goods or articles have fallen short with reference to what the plaintiff states to have been despatched. A shortage certificate is no proof of the fact that the quantum of goods claimed to have been despatched has actually been despatched unless the fact of despatch of the quantum of goods is actually established. In this connection, reference may be made to the principles laid down in *Union of India (UOI) Vs. Prakash Ch. Sahu*, .

In *Union of India (UOI) Vs. Chotelal Shewnath Rai*, , it has been held that where there is no evidence to prove the actual weight of the goods loaded in the wagon and the loading had been done at the despatching station by the consignor, the Railway Administration is not liable for short delivery detected at the destination. From the mere mention of a particular weight in the railway receipt and the forwarding note for the purpose of calculating the freight charge, no admission on the part of the railway as to the correctness of the weight of the goods loaded can be made out to fix up the liability.

10. Approving decisions reported in AIR 1950 Nag 85 (supra) and AIR 1956 Mad 176 (supra), the Supreme Court has laid down in AIR 1970 SC 843, *Hari Sao v. State of Bihar*, which also deals with the expression "S.W. A.", as follows :

".....There would be no presumption that the goods put in the wagon were chillies because the railway did not accept the consignment as such and described it as 251 bags allegedly containing chillies. Nor was there any acceptance of the weight of the goods by the railways. The endorsement "S.W.A." would negative the plea, if any, that the weight was accepted by the railway. The endorsement "L/U" emphasised that the loading and unloading being in charge of the consignor the railway could not be held liable for any negligence in loading or unloading."

11. In *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, , a Division Bench of this Court with one of us (B. K. Behera, J.) has held that in a suit for damages for loss of goods against the Railway Administration, the onus lies on the plaintiff to establish the actual loading of the goods for the loss of which the claims have been made. That was also a case where the consignment had been loaded and

despatched from the siding of the consignor.

12. In Union of India (UOI) Vs. Krishna Stores, , on which reliance has been placed for the respondent, the Hon''ble Judges have dealt with the scope of Sections 73 and 74 of the Act. In that case, 660 tins of groundnut oil were despatched from ex-Navagudh by Saurashtra Oil Mill to be delivered at the Kantabanji Railway Station in a wagon as per the railway receipt for being carried by the defendant railway as a carrier at the railway risk rate and the groundnut oil tins had been delivered to the defendant railway at the point of despatch in properly packed condition. It was not a case where the loading had been done at the consignor's siding without any supervision by the Railway Administration. On the facts of the reported case and in view of the provisions made in Ss. 73 and 74 of the Act, the judgment and decree passed against the Railway Administration had been upheld by this Court.

13. There is no legal evidence to come to a finding that 1101 pieces of aluminium ingots had actually been loaded in the wagon at the consignor's siding at Renukoot. Apart from the shortage certificate (Ext. 5) and the description given in the railway receipt (Ext. A), there is no proof in support of the impugned finding that actually the consignor had loaded 1101 pieces of aluminium ingots at the siding of the consignor for delivery to the plaintiff at Sambalpur. The suit, mainly based on the shortage certificate and the railway receipt, the evidentiary value of which has been discussed above, was not to be decreed by the trial Court. There is no legal basis for a finding that there had been shortage of 521 pieces of aluminium ingots. There was no evidence, as earlier indicated, that the railway staff had supervised the loading and sealing of the wagon at the siding of the consignor and this should not have been assumed, as has been done by the learned Subordinate Judge.

14. The fact of actual delivery of goods by the consignor to the Railway Administration for carriage by railway marks the starting point of the Railway's liability as common carrier u/s 73 of the Act and the issue or non-issue of the railway receipt for the same, is at best merely of an evidentiary value and not decisive of the question whether actual delivery of the goods had been made by the consignor and accepted by the Railway Administration. The basic liability of the Railway Administration both under the provisions of the Act and under the general law as a common carrier is the same. To commence its liability, actual delivery of the goods to it by the consignor for carriage by rail must be proved. Unless that is shown, no contract of carriage is made out and therefore, there is no occasion to fasten any liability on the Railway Administration to return the goods. (See Radheshyam Agarwal Vs. Union of India (UOI) and Others, . In the instant case, there had been no actual delivery of goods by the consignor to the Railway Administration for carriage by rail, as already indicated in this judgment.

15. For the foregoing reasons, we would allow the appeal and set aside the judgment and decree passed by the Subordinate Judge, Sambalpur, leaving the parties, in the circumstances of the case, to bear their own costs of this appeal.

P.C. Misra, J.

16. I agree.