

(1990) 09 MP CK 0047
In the Madhya Pradesh High Court

Union of India (UOI) and Another

APPELLANT

Vs

Jai Kumar Raj Kumar and Company

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34, 96

Contract Act, 1872 — Section 161

Railways Act, 1989 — Section 72, 73

Citation : (1991) 2 ACC 703 : (1991) ACJ 732

Hon'ble Judges : D.D. Dharmadhikari, J

Bench : Single Bench

Judgement

D.D. Dharmadhikari, J.—This appeal u/s 96 of the Code of Civil Procedure, filed by the Railway administration, represented through the appellant Union of India, challenges the judgment and decree dated. 18.10.1985 .whereby the claim of the respondent, has been accepted to the extent of Rs. 12,250/- towards loss occasioned to the respondent for delayed delivery of his goods consigned to the railway for transport.

2. Admittedly, the plaintiff respondent had booked 120 quintals of batri pulses from . Jabalpur to Shalimar on 19.11.1978. The goods were carried to Shalimar and were delivered to M/s. Shewlal Durga Prasad who was the endorsed consignee and commission agent for dealing in the goods on behalf of the respondent. According to the plaintiff, the normal period of transit of goods was ten days and the goods were delivered as late as on 14.1.1979 at Shalimar. By that time market price of the goods had considerably fallen down and the plaintiff was required to sell the goods at a lesser price. He thus suffered loss and claimed the same in the sum of Rs. 21,000/-, being the difference of price of the goods at Jabalpur and Shalimar. The trial court accepted the case of the plaintiff that the normal period for transit of the goods is between ten to twelve days. On the basis of the evidence before it, the trial court determined the quantum of loss. The trial court held that on the date of delivery of the goods at Shalimar the rate of batri pulses had fallen down to Rs. 300/- per quintal and had the goods

been delivered within a reasonable time often to fifteen days, it would have been sold at the rate of Rs. 400/- per quintal. The 1 plaintiff is said to have suffered a loss at the rate of Rs. 100/- per quintal and for the total quantity of Rs. 122.25 quintals, the trial court determined the loss at Rs. 12,250/- and decreed the suit for the aforesaid sum with costs.

3. The learned Counsel appearing for the Railway first submitted that the claim towards loss due to fall in price of the commodity as a result of delay in transit is barred against the Railway under the provisions of Section 78(d) read with Section 73 of the Indian Railway Act. It was submitted that u/s 73 of the Act, the Railway can be held responsible only for deterioration of the quality of goods, but not on account of loss of market or fall in price. The above argument set up, on behalf of the Railway, has been answered against the Railway in several decisions, including that of the Supreme Court, quoted below:

- (i) Union of India (UOI) and Others Vs. Sheobux Satyanarayan,
- (ii) Union of India v. Madanlal Kejriwal and Ors. AIR 1968 Patna 94.
- (iii) Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona,
- (iv) Union of India (UOI) Vs. P.K. Parmeswaran Pillal,

4. In the case of M/s. Sheobux Satyanarayan (Supra) decided by Orissa High Court, on the point, the word "deterioration" used in Section 72 of the Railway Act has been construed to include depreciation in value on account of fall in the price of the goods. The Court took aid of Section 161 of the Contract Act to hold that if the bailee fails to deliver the goods within a reasonable time he will be responsible to the bailor for any loss destruction or depreciation of the goods from that time. In the case of Madanlal Kejriwal and Ors. (supra), it was held that such a claim is clearly sustainable. The provisions of Section 78(d) of the Railway Act were construed to hold that the words "for loss of particular market" used therein only mean that an owner of goods who is entitled to take delivery of the consignment cannot found his claim for damages on the ground that the goods were meant to be sold in a particular market and they could not be so sold because of the late or non delivery or that he would have made extra profit by selling the goods in a particular market but for the late or non delivery. The claim for damages on the ground of fall in market price is said to be entirely a different claim which did not attract the bar contained in Section 78(d) of the Act. The aforesaid decision of the Patna High Court was followed by the Kerala High Court in the case of M/s P.K. Purameswaran Pillai (supra). The Supreme Court in the case of the Steel Stock Holders Syndicate Poona (supra) has considered the case of Orissa High Court in Messrs Sheobux Satyanarayan (supra) and held that any claim for loss or damages arising from delayed delivery of the goods by the Railway is not barred u/s 78(d) of the Act, if the same is not based on loss of any particular market. The legal contention raising bar u/s 78(d) of the Railways Act by the Railway, has, therefore, no force.

5. The second submission on behalf of the Railway was that the Railway is not duty bound to deliver the goods within a specified time and in the present case there was some delay in delivery of the goods because the wagon had become sick and had to be routed through Kharagpur. The above contention has also no force in view of the clear provision of Section 73 of the Act where the Railway can claim exemption from its responsibility only under stated circumstances enumerated in Sub-clause (a) to (i) of the said Section which are acts beyond the control of the Railway as carrier of goods. If the wagon had become sick and there was late delivery of goods, the Railway cannot disown its responsibility.

6. The next contention of the learned Counsel for the Railway was that the reasonable period for delivery of goods could not be taken to be ten to fifteen days. According to the learned Counsel, the delivery of goods in the present case could not be said to be unreasonably delayed so as to infer any negligence on the part of the Railway. With regard to the question as to what should be the reasonable period for delivery of the goods, reference may be made to the decision of Calcutta High Court in the case of Lalchand Chowdhury Vs. Union of India (UOI), which was relied on by the Orissa High Court in the case of Messers Sheobux Satyanarayan (supra). In the aforesaid cases, it has been held "that in the absence of any express contract, the obligation of a carrier is to carry goods by the usual routes and to deliver the goods within a reasonable time...." It is true that the contract does not expressly or by necessary implication fix any time for the performance of the contractual obligation. That being so the law implies that it shall be performed within a reasonable time, and reasonable times mean what is reasonable looking to all circumstances of the case. In the present case the wagon had, become sick, and admittedly the goods were not carried by the usual route and had to be diverted through Kharagpur which caused delay in delivery of the goods. There is ample evidence on record, particularly of Mathura Prasad (P.W. 1) , who acted as Adhathiya for the party that the normal period of delivery of goods to Shalimar from Jabalpur would be 21 to 38 days. Keeping in view the transit period required for similar consignments as sought to be proved by Ex. P. 1-C, the time taken in normal course for such consignment is between 15 to 38 days and, therefore, it is reasonable to hold that the reasonable period required for transit of such goods could be more than 38 days. That means that if the goods had been delivered by 19.12.1978, the Railway could not have been held guilty of unreasonable delay in transit of goods. It may be mentioned that on similar facts and in respect of consignment of the same wagon one other party had filed a claim against the Railway which was partly decreed and the matter was decided in first appeal No. 29 of 1986 on 21.9.1989 by Gulab C. Gupta, J. It may also be mentioned that the evidence of the two witnesses examined on commission is common for the present case and the case decided by Gulab C. Gupta, J. in the First Appeal mentioned above. Appreciating the evidence on record the learned judge has come to a conclusion in the aforesaid case that the normal period of transit of such goods should be taken to be 38 days and I find myself in complete agreement with the said view. Admittedly in

this case, the goods were delivered after 56 days and, therefore, it can be said that the Railway was guilty of unreasonable delay in delivering the goods and is thus liable to compensate the loss caused to the consigner.

7. I have also heard the counsel for the parties on the question of quantum of loss. The learned Counsel for the Railway relying on the testimony of Mathura Prasad (P.W. 1), who was employed with commission agent Sheolal Durga Prasad of Calcutta and S.K. Jha (P.W. 2), Secretary of Bengal Dal Mill Association, who were examined on commission, submitted that no loss in fact was caused to the plaintiff on the date of delivery of the goods. The learned Counsel appearing for the plaintiff respondent further submitted that there was no justification for the court not to decree the whole claim when the plaintiff had proved that he had suffered loss in disposal of the goods due to later delivery.

8. The counsel for the plaintiff also claimed interest on the claim at the rate of 12% per annum, u/s 34 of the C.P.C. Reliance is placed on the case in *Union of India v. Visveswaraya Iron and Steel Limited and Ors.* AIR 1987Kamataka 161. So far as the quantum of loss is concerned. I would prefer to rely on the decision of the learned single Judge Gulab C. Gupta in F.A. No. 29/86, decided on 21.9.1989, in which the same evidence of the two witnesses Mathura Prasad and S.K. Jha, examined in both the cases in common has been appreciated and considered in paragraph 4 of the said judgment. The learned single judge in paragraph 4 of the judgment held that had the goods been delivered within a reasonable time i.e. upto 19.12.1976, they would have been sold at the rate of Rs. 400/- per quintal. The goods in the present case have been sold for a sum of Rs. 27,242.54. The Railway can be held liable to compensate the respondent for the difference between the price on 19.12.1978 which was proved to be at Rs. 400/- per quintal and the price on the date of delivery on 14.1.1979 i.e. at the rate of Rs. 370/- per quintal. The loss which the plaintiff can be said to have suffered was at the rate of Rs. 30/- per quintal for the total quantity of 122.25 quintal. The loss at the rate of Rs. 30/- per quintal can be determined to be Rs. 3,667.50. In assessing the quantum of damages and the manner in which it has to be assessed, I find myself in complete agreement with the decision of Gulab C. Gupta, J. in F.A. No. 29/86 cited above.

9. So far as the interest is concerned, the trial court had not granted any interest to the plaintiff and he has not preferred any cross-objection in the present appeal. The claim of interest, therefore, as laid by the plaintiff at the rate of 12% cannot be granted. As held by the learned single judge in the aforesaid case, the plaintiff can be granted interest u/s 34 of the C.P.C. at the rate of 6% per annum.

10. Consequently, the appeal succeeds partly. The decree granted by the trial court in the sum of Rs. 12,250/- is reduced to Rs. 3,667.50. The respondent shall get interest at the rate of 6% per annum from 5.9.1979 till realization. The appellant shall get the proportionate costs of this appeal. Counsel's fee shall be as per schedule, if certified.