

(1965) 12 OHC CK 0012

In the Orissa High Court

Case No : Civil Revision No. 170 of 1964

Union of India (UOI) and Another

APPELLANT

Vs

Prabhulal Harilal

RESPONDENT

Date of Decision : 20-12-1965

Acts Referred:

Railways Act, 1890 — Section 77C(1), 77C(4)

Citation : AIR 1966 Ori 213

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : B.K. Pal and Bijay Pal, for the Appellant; M.K. Rao and A.K. Rao, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.

1. There is no dispute over most of the facts. Plaintiff claimed Rs 353.25 P for short delivery of 157 Kgs. of refined groundnut oil out of 660 tins booked from Wadi Bunder in Maharashtra to Balasore. The tins were packed with straw tied with ropes, but were not packed in wooden cases. Plaintiff's case is that the shortage is due to negligence and misconduct on the part of the servants of the defendants.

2. The defence case is that loading and unloading of the consignment which was a whole-load wagon was done by the sender and consignee at the forwarding and destination stations respectively. The tins were not packed in cases or crates as required under the Railway Rules. The forwarding notes contained the following remarks :--

" Tins new. Not packed in cases. Packed with grass and fixed by rope "

The consignment reached the destination station with seals intact. Thus, the admitted position on facts is that the senders consigned the goods and in their

presence the wagon was riveted and sealed. The seal was intact at the destination station. The learned S. C. C., Judge found that in the presence of the consignees the wagon was unloaded. It follows that the Railway servants could not have removed any part of the oil tins. The learned S C C , Judge decreed the suit holding that the Railway administration are responsible for the loss in transit of goods delivered to the administration to be carried by railway, u/s 73 of Indian Railways Act, hereinafter referred to as the Act. According to him the Railway was liable for the loss, mainly because if the tins had not been properly packed. Railway servants at the station of delivery would not have accepted the goods. The learned Judge, however, missed the expression "save as otherwise provided in this Act the opening clause of Section 73.

3. Section 77-C (1) (b) lays down that when any goods tendered to a railway administration to be carried by railway are either defectively packed or packed in a manner not in accordance with the general or special orders, if 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 (Section 73 is one of such provisions) the Railway administration shall not be responsible for the 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. Sub-section (4) lays down that 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.

5. Rule 20 of the General Rules for Acceptance, Carriage and Delivery of Goods contained in Goods Tariff- Part I published by Indian Railway Conference Association (hereinafter referred to as the Rules) is as follows :

"20. Packing condition for goods.

(a) X X X X

(b) X X X X

(c) When any goods for which packing conditions are not compulsory, are tendered to the Railway administration for carriage without the packing conforming to the packing conditions prescribed, the exact nature of the defects in the packing must be recorded by the sender or his authorised agent on the Forwarding Note.

This has been done in this case and the sender has noted it in the forwarding Note (Ex B).

6. At page 220 of the Rules the classification packing shows that groundnut oil

should be packed in accordance with P/24 P/24 at page 324 of the Rules is as follows-

" Must be packed in jars or bottles or tins or cartons, enclosed in "wooden or metal cases" in iron or steel drums, or in glass carboys securely protected with damage in crates, or in sound wooden barrels, casks or kegs."

7. The underlined (here into " " is mine) expression shows that the tins in this case should have been enclosed in wooden or metal cases which was admittedly not done. These Rules have been prepared by the Central Government u/s 77-C (4). The plaintiffs thus packed the consignment in a manner not in accordance with the general order. Railway administration u/s 77-C (1) shall not be responsible for the damages except if negligence or misconduct on the part of the railway administration is proved. No misconduct or negligence except by removal of the oil by the servants of Railway was alleged. On the findings of the learned S. C. C., Judge that consignee was present at the time of unloading of the wagon in which the seal was intact, the alleged misconduct or negligence has not been established The plaintiff has failed to discharge the onus and the railway administration is not liable.

8. In the result, the plaintiff's suit is dismissed and the Civil Revision is allowed. In the circumstances, parties to bear their own costs