
(1973) 04 OHC CK 0014
In the Orissa High Court
Case No : First Appeal No. 83 of 1966

Union of India (UOI) and Others

APPELLANT

Vs

B. Kameswar Subudhi

RESPONDENT

Date of Decision : 05-04-1973

Acts Referred:

Railways Act, 1890 — Section 77B
Railways Act, 1989 — Section 75

Citation : AIR 1974 Ori 18

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : B.K. Pal, Bijoy Pal and A. Mohanty, for the Appellant; R.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patra, J.—This is an appeal by the defendants against a decision of the Additional Subordinate Judge, Berhampur decreeing against them the plaintiff-respondent's claim for damages for non-delivery of a consignment despatched through the appellant's railway. The respondent is merchant of Berhampur town. His case in short is this : He had purchased some art silk clothes worth Rs. 3,250.58 p. on 30-11-1960 in the open market at Bombay. He also purchased cloths worth Rs. 2,049.42 p. from M/s. Shah Tekchand Pratap Chand, General Merchants, Bombay. The plaintiff deposited the articles purchased by him in the open market with the firm of Tekchand with instructions to despatch the same along with the clothes purchased from the firm by Railways. Accordingly the entire consignment was despatched through the Railway by the firm of Tekchand on 5-12-1960 from Wadi Bandar to Berhampur Railway Station (Ganjam) under Parcel Way Bill No. A 256749 dated 5-12-1960. The plaintiff paid the price of the clothes purchased from the Firm to the State Bank of India on 2-1-1961 and released the bill and thus became the owner of the consignment. This consignment however never reached Berhampur and was not delivered to the plaintiff. He, therefore, sent the requisite notices to the defendants and filed the

suit giving rise to this appeal claiming Rs. 5,300/- towards the value of the goods and Rs. 662-50 p. towards profits thereon at 12 per cent per annum.

2. The suit was contested by defendants 2 and 3 only. They contended that notices u/s 77 of the Indian Railways Act and Section 80 of the CPC had not been received by the defendants Railway and consequently the suit was not maintainable. They further stated that the loss of the suit consignment was due to running train theft between Bajwada and Rajahmundry over which the defendants had no control, that the plaintiff has no title to the suit goods and that he is not entitled to the profits claimed by him. As the defendants had taken all care and caution with regard to the disputed consignment, they are not liable for the loss and damage to the same.

3. The plaintiff examined as P. W. proved the office copy of the notices sent u/s 77 of the Indian Railways Act and Section 80 CPC (sic) also proved he postal receipts and postal acknowledgments showing that these notices had been (sic) delivered to the defendants. The Subordinate Judge found that the notices were in proper form and contained all the necessary averments. He believed the plaintiff's case that he had purchased art silk cloth worth Rs. 3,250.58 p. from some hawkers at Bombay and that the disputed consignment consisted of these clothes and also clothes worth Rs. 2,049.42 p. purchased by the plaintiff from the consignor M/s. Shah Tekchand Pratap Chand. He, therefore, held that the plaintiff has proved his title to the goods covered by the consignment. As admittedly the consignment had not been delivered to the plaintiff and as according to the learned Judge the defendants had failed to prove that the loss was due to causes beyond the control of the Railways he held that the defendants are liable to pay damages to the plaintiff for the loss arising due to non-delivery of the suit consignment.

4. In answer to an objection raised by the defendants that the plaintiff had not declared these goods or insured them as required u/s 75 of the Indian Railways Act, and consequently is not entitled to any relief, the Court held that as the consignment consisted of art silk clothes and not real silk. Section 75 is not attracted and that the plaintiff's claim on that ground cannot be defeated. He rejected the plaintiff's claim regarding profits on the ground that no such contract had been established. In the result, he passed a decree only for Rs. 5,300/- the cost of the clothes contained in the consignment and allowed pendente lite and future interest thereon at six per cent per annum. Aggrieved by this decision, the defendants have filed this appeal.

5. Although the appellants in their grounds of appeal have contested the correctness of all the findings given by the learned Subordinate Judge the only grounds pressed before me at the time of hearing relate to the value of goods said to have been purchased by the plaintiff in the open market at Bombay and the liability of the appellants in relation thereto. The consignment booked under the parcel way bill Exhibit 4 had not been delivered to the consignee. The Railway administration has not put in any evidence disclosing how the

consignment was dealt with throughout the time it was in its possession. The learned Subordinate Judge was therefore right in holding that defendants are liable to pay to the plaintiff the value of the consignment as damages.

6. The only question, therefore, is what the value of the consignment is. According to the plaintiff the consignment consisted of two parts, namely, the articles worth Rs. 2,049.42 p. purchased by the plaintiff from the firm of M/s. Shah Tekchand Pratap Chand under the Invoice Exhibit 3 and goods worth Rupees 3,250.58 p. purchased by the plaintiff in the open market at Bombay which he had entrusted to M/s. Shah Tekchand firm for being despatched along with the articles mentioned in Exhibit 3. P. W. 2 is a partner in the firm of Tekchand Pratap Chand. He has proved the invoice Exhibit 3 sent by his firm to the plaintiff. This invoice gives details of the goods purchased by the plaintiff from the firm and the value thereof is Rs. 2,049.42 p. At the foot of this invoice, there is an entry to the effect-

"We have packed herewith yours 50 sarees and seven pieces of art silk of 200 yards which is lying here....."

The articles mentioned at the foot-note represent the articles which the plaintiff had purchased in the open market and left with the plaintiff's firm to be despatched to the plaintiff along with the articles purchased from the firm. Regarding the value of the articles purchased in the open market we have the testimony of the plaintiff (P. W. 1) that he had purchased the same for Rs. 3,250.58 p. As they were purchased from hawkers there was no question of obtaining any vouchers from them. But the oral evidence given by the plaintiff is corroborated by an entry made by his goomasta in his Day Book Exhibit 8. On 24-11-1960 when the plaintiff left for Bombay he had taken with him Rs. 4,500/- from his shop which is evidenced by the entry Ext. 7 in the Day Book. He returned from Bombay on 3-12-1960 and on the very same day he got noted by his goomasta in the Day Book the open market purchase made by him at Bombay. Exhibit 8 shows that he had purchased goods worth Rs. 3,250.58 p. in the open market at Bombay and had left the goods in the firm of Tekchand Pratap Chand for being consigned to the plaintiff. The Day Book has been kept in the regular course of business and the entry Exhibit 8 lends corroboration to the oral evidence given by the plaintiff that he had purchased goods worth Rs. 3,250.58 p. in the open market at Bombay. In the circumstances, the learned Subordinate Judge was right in accepting the plaintiff's evidence on this point.

7. Section 77-B which corresponds to Section 75 of the Act as it stood before the Act was amended by Act 39 of 1961 reads-

"77-B. (1) Notwithstanding anything contained in the provisions of this Chapter, when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration to be carried by railway and the value of such articles in the parcel or package exceeds five hundred rupees, the railway administration shall not be responsible for the loss, destruction, damage

or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared in writing or declared them in writing at the time of the delivery of the parcel or the package for carriage by railway, and if so required by the administration, paid or engaged to pay in writing a percentage on the value so declared by way of compensation for the increased risk.

(2) When any parcel or package of which the value has been declared under Sub-section (1) has been lost, destroyed, or damaged or has deteriorated the compensation recoverable in respect of such loss, destruction, damage or deterioration shall not exceed the value so declared.

(3) A railway administration may make it a condition of carrying a parcel or package declared to contain any article mentioned in the Second Schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel or package actually contains the article declared to be therein.

(4) The Central Government may, by notification in the Official Gazette, direct that any article mentioned in the Second Schedule may, without being contained in any parcel or package, be delivered to a railway administration to be carried by railway and upon the issue of such notification, the provisions of this section shall apply in relation to such article as they apply in relation to any article mentioned in the Second Schedule and contained in any parcel or package."

Item (1) in the second Schedule is-

"Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;"

Exhibit 8 which contains the details of purchases made by the plaintiff in the open market at Bombay shows that all the articles purchased were of art silk. The foot-note at the bottom of Exhibit 3 also mentions that the articles left by the plaintiff with the Tekchand firm were of art silk. But Mr. Pal appearing for the appellants contends that art silk is silk within the meaning of Entry (1) of the Second Schedule of the Indian Railways Act. I am unable to accept this contention. This specific question came up for consideration before a Division Bench of the Lahore High Court in *B. B. & C. I. Rly. Co. v. Mt. Abdul Raqib*. AIR 1934 Lah 186 and before a Division Bench of the Mysore High Court in *Chief Secretary to Government of Mysore V. A. Rama Chetty* AIR 1953 Mys 65 and both the Courts held that artificial silk is not silk. It has not been shown that the view taken in these two cases is wrong.

8. In the result I find no merit in this appeal which I hereby dismiss, but, in the circumstances, without costs of this Court.