
(1991) 02 OHC CK 0012
In the Orissa High Court
Case No : First Appeal No. 130 of 1982

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

Date of Decision : 01-02-1991

Acts Referred:

Railways Act, 1890 — Section 73

Citation : (1991) 1 OLR 283

Hon'ble Judges : A.K. Padhi, J

Bench : Single Bench

Advocate : R. Pal, for the Appellant; S.S. Basu, for the Respondent

Final Decision : Allowed

Judgement

A.K. Padhi, J.—Aggrieved by the judgment and decree passed in Money Suit No. 65 of 1977 of the Subordinate judge, Sambalpur, defendant has preferred this appeal.

2. It is alleged in the plaint that the plaintiffs-respondents had booked 1081 pieces of aluminium ingots at Renukoot. a station lying on the Eastern Railway for carriage, at railway risk from Renukoot to Sambalpur. At the time of taking delivery of the consignment at the destination, the defendant-Railway administration delivered only 964 pieces of aluminium ingots, therefore there was shortage of 117 pieces of aluminium ingots. With the above averments the plaintiffs claimed a decree for Rs. 15.276 81 with interest alleging the negligence and misconduct on the part of the defendant for the short delivery.

3. The defendant appeared and cont sted the matter. In the written statement it was alleged that in the absence of proof that 1081 pieces of aluminium ingots had been delivered to the Railway administration who supervised the loading and booking, the defendant is not liable for any claim with regard to the damages for shortage of the articles merely because of the issue of any Railway receipt or a shortage certificate. The original wagon arrived at the destination with

forwarding station seal intact, therefore defendant is not liable for the alleged shortage.

4. To prove its case, plaintiff exhibited various documents and examined two witnesses. After assessing the evidence on record, the learned trial Court gave the finding that Railway authority is liable for short delivery and there was shortage of 117 aluminium ingots and decreed the suit.

5. The learned Advocate for the appellant submits that in view of the provisions made in the Indian Railways Act (IX of 1890) (hereinafter referred to as the "Act") the onus lies on the plaintiffs to establish as to how many aluminium ingots were loaded at the consignor's private siding. If goods had not been delivered to the Railway administration no liability of the later arises. For this submission the learned Advocate for the appellant relies on the decision reported in Union of India (UOI) and Another Vs. Aluminium Industries Ltd., . On behalf of the respondents it has been contended that on the evidence on record the findings recorded by the trial Court are to be sustained.

6. In the decision reported in Union of India (UOI) and Another Vs. Aluminium Industries Ltd., Hon'ble Justice Behera, J. relying on the decisions reported in South Eastern Railway Vs. Epari Satyanarayana, , Union of India (UOI) Vs. Prakash Ch. Sahu, , AIR 1970 SC 843 Hari Sao and Anr. v. The State of Bihar), Union of India (UOI) Vs. Chotelal Shewnath Rai, and various decisions of other High Courts speaking for the Court has observed :

"...The onus is on the plaintiff-company to establish as to what quantities had actually been booked at the forwarding station...

xx xx xx

...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..."

While concluding in paragraph 13 it was held :

"...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 facts of this case are almost similar to the above cited case. The only relevant document which has been relied on is Ext. 10, the shortage certificate. The plaintiff to prove the shortage has examined P.W. 2. P.W. 2 in his cross-examination admitted that he was not present at the siding station when the articles were loaded which proves that he has personal knowledge as to how many pieces of aluminium ingots were actually loaded. Therefore his evidence is

of no avail to the plaintiff. P.W. 1, the other witness has been examined for the Insurance Company (plaintiff No. 2). Admittedly he has no personal knowledge regarding the factum of loading and how many aluminium ingots were loaded. The onus is on the plaintiffs to establish as to what quantity had actually been despatched at the forwarding station. A shortage certificate is no proof of the fact that the quantum of goods claimed to have been despatched were in fact despatched unless it is established that the quantum of aluminium ingots said to have been despatched were actually so loaded, There is no evidence that the Railway staff had supervised the loading and sealing of the wagon at the siding of the consignor. Starting point of the Railway's liability as common carrier u/s 73 of the Act is when the goods are actually delivered to it by the consignor for carriage. The basic liability of the Railway administration both under the provisions of the Act and under the general law as a Common Carrier is same and to fasten the liability, actual delivery of goods to the Railway Administration by the consignor for carriage by rail must be proved. There is no legal evidence in this case to come to the finding that 1081 pieces of aluminium ingots had actually been loaded. Only basing on the shortage certificate, the suit could not have been decreed.

7. For the above reasons, I allow the appeal and set aside the judgment and decree passed by the trial Court.

In the circumstances of the case, there shall be no order as to cost.