
(1986) 03 OHC CK 0019
In the Orissa High Court

Union of India (UOI)

APPELLANT

Vs

Aluminium Industries Ltd.

RESPONDENT

Date of Decision : 25-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1988) ACJ 809 : (1986) 61 CLT 539 : (1986) 1 OLR 476

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

Bench : Division Bench

Judgement

B.K. Behera, J.—The suit instituted by the plaintiff-respondent against the Union of India, represented through the General Manager, South Eastern Railway, who is the appellant herein, for recovery of a sum of Rs. 31,556.82 paise on account of short delivery by the Railway Administration has been decreed by Mr. D.C. Guru, Subordinate Judge, Sambalpur, accepting the claim that the plaintiff-respondent, being the owner of a consignment of 1122 pieces of aluminium ingots booked under railway receipt No. 335024 dated June 15, 1972 from Renukoot to Sambalpur after being checked by the Railway Administration, suffered shortage of 252 pieces of aluminium ingots weighing 5412 KGs. when the consignment reached the Sambalpur Railway Station without the original seal and rivet for which the plaintiff had demanded open delivery and the Railway Administration had granted shortage certificate (Ext. 5), which, according to the findings of the learned Subordinate Judge, was owing to the negligence and misconduct on the part of the Railway Administration and their servants, while rejecting the case of the defendant-railway that the suit consignment was a wagon-load booked under the "L/U" condition by Hindusthan Aluminium Corporation Limited at their siding and unloaded by the plaintiff and that the loading had not been supervised by the railway staff and the wagon had been sealed at the plaintiff's siding and therefore, whatever had been loaded by the consignor had been delivered to the plaintiff and the defendant carrier was not responsible for the alleged shortage. The cases of both the parties pleaded by them have been set out in details in the body of the impugned judgment. Both

the sides had relied an oral and documentary evidence. The plaintiff-company had examined one witness and the Railway Administration had examined two witnesses. Ext. A is the original railway receipt and Ext. 5 is the shortage certificate.

2. It has been contended by Mr. Pal for the appellant that the learned Subordinate Judge has unreasonably held on the basis of Exts. A and 5 and the evidence on record that the defendant-railway was responsible for the alleged shortage and in view of the provisions made in Section 73 of the Indian Railways Act (IX of 1890) (for short, "the Act"), no liability can be fixed on the Railway Administration, in the absence of evidence showing that the goods had actually been delivered to the Railway Administration and the loading had been supervised by the railway staff at the siding of the consignor where the wagon had been loaded. It has been submitted on behalf of the respondent that the findings recorded by the learned Subordinate Judge cannot be assailed and are legal, reasonable and proper on the facts and in the circumstances of the case.

3. The only witness examined on behalf of the respondent-Company is its Claims Assistant dealing with the railway consignments and the claims of the plaintiff-company. He has no idea about the actual loading of the wagon at the consignor's siding at Renukoot. He is the person who had gone to take delivery of the consignment at Sambalpur and according to him, the seals of the wagon were not intact for which he demanded open delivery. He has spoken about the notices under Sections 78-B of the Act and 80 of the Code of Civil Procedure. Ext. A is the original railway receipt and he has testified that the plaintiff's man was present when the aluminium ingots were loaded at Renukoot. That person of the plaintiff who was said to be present at the time of loading has not been examined on behalf of the plaintiff-respondent. As deposed to by PW 1 himself, the plaintiff has not mentioned in the claim notice that the original seals of the wagon were not intact.

4. D.W. 1 for the Railway Administration is the Senior Assistant of the Punjab National Bank. His evidence is not of much consequence in so far as the contentions raised by the learned Counsel for both the sides are concerned. D.W. 2 for the Railway Administration was the Goods Clerk at the Sambalpur Railway Station at the relevant time. According to him, the seals and rivet of the wagon were intact when the same reached the Sambalpur Railway Station. He has testified that Renukoot siding is a private siding. Thus his evidence would clearly show that the siding at which the goods had been loaded did not belong to the Railway Administration. This private siding, according to DW2, is being used by the Aluminium Company and a member of the railway staff is there for the Aluminium Company. There is, however, complete absence of evidence that the wagon had been loaded by the Railway Administration or that this loading had been supervised by the railway staff.

5. Even as deposed to 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.

6. 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.

7. The case reported in *Dominion of India v. Firm Museram Kishunprasad Melonigunj*, Jubbulpore AIR 1950 Nag 85 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 cocoanuts 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.

8. In *Union of India and Anr. v. S.L.L. Lakhu Reddiar and Anr.* AIR 1956 Mad 176 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.

9. As held in *South Eastern Railway Vs. Epari Satyanarayana*, the railway receipt conveys no admission by the Railway Administration that the weight of 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.

10. 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 in 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 representing South Eastern Railway v. Prakash Ch. Sahu* 28 (1962) C.L.T. 504.

11. 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 mere mention of a particular weight on 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.

12. Approving the decisions reported in *Dominion of India v. Firm Museram Kishunprasad Melonigunj, Jubbulpore* (supra) and *Union of India and Anr. v. S.L.L. Lakhu Reddiar and Anr.* (supra) the Supreme Court has laid down in *Rari Sao and Anr. v. The State of Bihar* AIR 1970 SC 843 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 railway. 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.

13. 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.

14. 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-Havagudh 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 Sections 73 and 74 of the Act, the judgment and decree passed against the Railway Administration had been upheld by this Court.

15. There is no legal evidence to a finding that 1122 pieces of aluminium ingots had actually been loaded in the wagon at the consignor's siding at Renukopt. 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 1122 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 252 pieces of aluminium ingots. There was no evidence, as earlier indicated, that the railway staff and 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.

16. The fact of actual delivery of goods by the consignor to the Railway Administration for carriage by rail 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.

17. 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.

18. I agree.