

(1968) 08 OHC CK 0030
In the Orissa High Court
Case No : Second Appeal No. 534 of 1964

Union of India (UOI)

APPELLANT

Vs

Bhagaban Rout

RESPONDENT

Date of Decision : 23-08-1968

Acts Referred:

Evidence Act, 1872 — Section 114
Railways Act, 1890 — Section 743C(3)
Railways General Rules, 1954 — Rule 29

Citation : AIR 1969 Ori 100 : (1969) 35 CLT 196

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

Bench : Single Bench

Advocate : B.K. Pal and Bijoy Pal, for the Appellant; H. Sen, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—Plaintiff despatched 629 baskets of mangoes from Ellore station on 11-6-57 to Cuttack Station. The consignment in a whole wagon reached Cuttack on 20-6-57. Plaintiffs' case is that the usual time for arrival of the consignment was 5 days. Though the consignment was booked in good condition, at the time of delivery they were found to be rotten and unfit for human consumption. An open delivery was taken and the Station Master, Cuttack, granted a certificate showing damage of mangoes at sixty per cent. The damage was due to unusual delay in the arrival of the consignment. Defendant was responsible for the damage caused by the delay. The suit was for recovery of Rs. 3924/4/-.

The defence case is that the goods were sent at owner's risk. It was clearly stated in the railway-receipt that the goods were liable to perish, in transit. The distance between Ellore to Cuttack is 477 miles and the usual period of transit cannot be less than 7 days.

The Courts below concurrently found that the delay was unreasonable and it was responsible for the damage. They decreed the plaintiffs' suit for an amount of

Rs. 3890/7/-. The defendant has filed the second appeal.

2. There is no dispute that there was sixty per cent damage of the mangoes. The only point for consideration is whether the defendant was responsible for the damage. The findings of the lower appellate Court are that the consignment was despatched at the risk of the owner, the usual time for a consignment of mangoes to reach from Ellore to Cuttack is 4 to 5 days, the consignment reached Cuttack in 9 days, the delay of 4 to 5 days was unusual and was responsible for the damage, and the goods were sent in good condition at the time of loading.

3. Exhibits 7 and 8 show that consignments of mangoes from Ellore to Cuttack reached Cuttack within 4 and 5 days respectively. D. W. 2, the goods clerk at Cuttack, deposed that the normal time for arrival of mango wagons from Ellore to Cuttack was 5 to 6 days. This evidence is not, however, enough to hold that the delay was unreasonable or unusual.

4. The inter se liabilities of the parties depend upon the construction of Sec. 74-C (3) of the Indian Railways Act, prior to its amendment. In Second Appeal No. 276 of 1962 (Ori), *Fagumani Khuntia v. Union of India* this section was considered and the Court observed thus-

"The onus is on the plaintiff not only to prove that there was delay in transit but also to prove that the delay was not unusual and unreasonable that it amounts to negligence or misconduct on the part of the railway administration or of any of its servants and that such negligence or misconduct was responsible for the deterioration,"

In that particular case, the delay was of 3 days. There was no further proof that the delay was of such unusual character that it caused deterioration and that the goods could not have been deteriorated even during the normal period of transit of 9 to 10 days as claimed in that case.

5. Rule 49, Sub-rule (14) of the Goods Tariff No. 29 in force from 1st June, 1954, (General Rules for acceptance, carriage and delivery of goods) deals with contraband goods like arms and ammunition etc. It says that in every case when a consignment of any kind of arms, ammunition or military stores fails to reach the destination station within a reasonable period from the date of booking, as shown by the Invoice or Way-bill, the Station Master of the station to which such ammunition or arms is booked must report the facts by wire to the Station Master of the Booking Station, junctions concerned, if any, District Tariff/ Divisional Superintendent and Superintendent of Railway Police in whose jurisdiction booking and destination stations are situated. A reasonable time may be assumed to be an allowance of 100 miles per day in the case of goods trains and 250 miles per day in the case of passenger trains, plus two days for necessary formalities of booking and destination stations.

In terms this rule has no application to the booking of perishable goods. It, however, gives an idea as to what a reasonable time is. A reasonable time is

certainly not necessarily always the actual time for the consignment to reach the destination. In Fact sometimes the consignment might reach the destination earlier and sometimes later. To assess reasonable time one is not to be guided by the actual time taken by similar consignments in respect of identical goods. Rule 8 of the above Tariff Rules accordingly lays down that railways do not guarantee the dispatch of goods by any particular train nor will they be responsible for the arrival of goods at any station within any definite time.

The distance between Ellore and Cuttack is 477 miles. If the reasonable time for any goods carried by goods train is 100 miles per day, then it would take a little less than 5 days only for transit. Further 2 days more is necessary for the formalities of booking and destination stations. The reasonable time in this particular case therefore would be 7 days. The delay was hardly by 2 days. The Courts below committed an error of law in depending upon the time taken in Exts. 7 and 8 as the reasonable time for the arrival of the consignment from Ellore to Cuttack. It is not known whether Exts. 7 and 8 were despatched at owner's risk or were subject to special contract, on account of the nature of the perishable goods consigned thereunder.

If 7 days is the reasonable transit time for a whole mango wagon consignment from Ellore to Cuttack, the delay of 2 days cannot be said to be unreasonable. Moreover there is no assertion or proof that the mangoes despatched from Ellore would not have been damaged and were not in fact damaged during the reasonable time of 7 days required for transit. The delay was also not so unusual and unreasonable that a presumption u/s 114, Evidence Act, is to be drawn that the damage was due to the delay of those 2 days.

6. From time to time this Court has been laying down the strict standard of proof in cases of this nature. Plaintiff conducted the case in an unsatisfactory manner and the necessary elements for discharging (he onus were not established.

7. On the aforesaid conclusion the judgments of the Courts below are set aside and the plaintiffs' suit is dismissed. The second appeal is allowed; but in the circumstances, parties to bear their own costs throughout.