

(1972) 12 PAT CK 0017
In the Patna High Court
Case No : A.F.A.D. No. 183 of 1967

Union of India (UOI)

APPELLANT

Vs

Chotelal Shewnath Rai

RESPONDENT

Date of Decision : 01-12-1972

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 73

Citation : AIR 1973 Patna 244 : (1973) 6 PLJR 560

Hon'ble Judges : Shambhu Prasad Singh, J; A.N. Mukherji, J

Bench : Division Bench

Advocate : P.K. Bose, for the Appellant; N.N. Roy and B.N. Chatterji, for the Respondent

Final Decision : Allowed

Judgement

Mukherji, J.—This second appeal by the defendant is directed against the judgment and decree of the Additional District Judge, Jamshedpur, Singhbhum, setting aside the judgment and decree of the trial Court and decreeing the suit of the plaintiff-respondent claiming compensation of Rupees 8,679.26 P. on account of short delivery of consignment of groundnut oil which was booked from Kharsalia Railway Station to Tata Nagar.

2. Facts giving rise to this appeal are that a consignment of one tank wagon of 565 maunds 16 seers = 211 quintals of groundnut oil was booked from Kharsalia railway station on 7-3-1962. When the consignment reached the destination station at Tata Nagar, it was found that the tank wagon was leaking. Delivery was taken by depth measurement. After delivery the groundnut oil was weighed and it was noticed that 112 maunds 35 seers and 5 chhataks of the groundnut oil was missing. Hence the plaintiff who is the consignee of the goods filed the suit after the service of necessary notice.

3. The suit was resisted by the defendant representing several railway administrations on the ground that 565 maunds and odd of groundnut oil was not

consigned in the tank wagon from the despatching station; that the consignment was loaded by the sender; that the wagon was leaking slightly; that there was no appreciable shortage in the quantity of oil delivered to the consignee and that there was no negligence or misconduct on the part of the railway administration in carrying the consignment from Kharsalia to Tata Nagar.

4. The suit was disposed of by the Subordinate Judge of Jamshedpur who held that the plaintiff had not been able to prove that 565 maunds and odd of groundnut oil was booked from Kharsalia and that the plaintiff had not also been able to prove that 112 maunds of oil had leaked out in transit. On these findings the learned Subordinate Judge dismissed the plaintiff's suit. There was an appeal against this judgment and decree of the learned Subordinate Judge which was disposed of by the Additional District Judge of Singhbhum who held that:

(i) There is sufficient documentary evidence to show that 211 quintals of oil had been booked from Kharsalia railway station.

(ii) Quantity of oil in the tank wagon at the time of the delivery was found by depth measurement to be 452 maunds and odd,

(iii) The story of leakage of oil during transit was accepted,

(iv) The railway administration was negligent and it was due to their negligence that the loss of 112 maunds of oil had occurred.

(v) The suit was not barred by limitation.

5. Mr. P.K. Bose, learned counsel appearing on behalf of the defendant-appellant has raised the following points in this appeal:--

(1) The onus is on the plaintiff-respondent to establish the quantity of groundnut oil despatched in the wagon and the learned lower appellate Court was in error in placing reliance on the railway receipt, Bijak and forwarding notes for this purpose as there, is no evidence of the actual quantity loaded in the wagon. His contention is that there is no legal evidence to prove the actual quantity of the groundnut oil loaded at the starting station and as such the court below committed an error in determining the shortage at the time of delivery.

(2) The plaintiff-respondent has not been able to prove negligence or misconduct on the part of the railway administration in carrying the goods from the sending station to the destination station and, as such, he is not entitled to claim any compensation for the loss and damage in transit.

(3) The court below should have held that the suit is barred by limitation.

6. Point No. (1): In order to determine the actual quantity of shortage in the delivery of the groundnut oil, the plaintiff has to prove the quantity of groundnut oil loaded at the despatching station and also the quantity of oil received at the destination station. So far as the destination station is concerned, the plaintiff's case is that open delivery of goods was refused by the railway and he agreed to

take the delivery of the goods by depth measurement. P. W. 1 who is the partner of the firm stated that he got the oil in question weighed at the destination station and found that he had received 452 maunds and odd groundnut oil instead of 565 maunds and odd groundnut oil which was loaded in the wagon at the starting station. The defendant-appellant did not deny this fact either in the written statement or in evidence. The lower appellate Court has also held "the quantity of the oil contained in the wagon by depth measurement (5 ft. 9 1/2") was only 452 maunds and odd". This is a finding of fact arrived at by the lower appellate Court on the basis of cogent evidence adduced before it. This finding of fact is binding on this Court and I do not find any sufficient material to disagree with this finding of the lower appellate Court. But from this finding alone the lower appellate Court was not justified in concluding that there was a shortage of 112 maunds and odd groundnut oil at the destination station.

7. In order to determine the actual shortage it is necessary for the plaintiff-respondent to prove the quantity of oil loaded at the sending station. It will appear from the railway receipt (Ext. A) that in this case the consignment was despatched under L/U condition which means that the loading and unloading had to be done by the sender OB his agent. It follows that the groundnut oil was loaded inside the wagon by the sender at the starting station and this fact has been stated by D.W. 2 who was station-master at the starting station at the relevant time. He has further stated that the goods could not be weighed at the starting station for want of any facility of weighing at that place. My attention has no doubt been drawn to the railway receipt (Ext. A) which shows that the wagon contained 211 quintals of groundnut oil and this is alleged to be in the hand-writing of the railway staff at the destination station. But this entry in the railway receipt does not mean that actually 211 quintals of groundnut oil was loaded inside the wagon. There is an expression C. C./211 on the back of the forwarding notes. This expression has been marked Ext. F. It is not denied that this expression means that the carrying capacity of the wagon was 211 quintals. The contention of Mr. P.K. Bose appearing on behalf of the appellant is that 211 quintals are mentioned in the railway receipt as the weight of the consignment for the purpose of calculation of the freight and it is never an admission of railway department about the actual quantity of goods despatched from the starting station. In support of this contention reliance has been placed on the case of *Dominion of India v. Firm Museram Kishun Prasad* AIR 1950 Nag 85. In this case their Lordships have referred to Rule 15, Part I, of the Goods Tariff which provides inter alia that the weight given in the railway receipt and the forwarding notes are merely inserted for the purpose of estimating the railway charges and that there is no admission of the railway about the weight shown therein. In the case before their Lordships 255 bags of dry coconut were booked from the despatching station and it was noticed at the destination station that there were only 251 bags. It was mentioned in the railway receipt that 255 bags of coconut were consigned. Their Lordships held that by mentioning the weight in the railway receipt the railway did not admit the correctness of the statement.

8. The lower appellate Court placed reliance on railway receipt (Ext. A) forwarding note (Ext. G) and some writing (Ext. F) on the back of the forwarding notes and the Bijak (Ext. 2) for the purpose of holding that 211 quintals of the groundnut oil were despatched from the sending station. According to the learned counsel appearing for the appellant none of these documents on which the lower appellate Court has placed reliance is legal evidence for the purpose of proving the quantity of the ground nut oil despatched from the starting station. I have already adverted to above that the entry about the weight of the consignment mentioned in the railway receipt and the forwarding note are no admission of the railway department about the weight carried in that consignment because in the case before us the railway has not weighed the consignment at the despatching station and the loading was done by the sender. I have also adverted to above that Ext. F is also no admission of the railway department about the weight of the consignment. It only indicates the capacity of the wagon in which the groundnut oil was despatched from the sending station. This does not mean that the oil was filled to the capacity of the tank when it was despatched from the sending station. So far as Bijak (Ext. 2) is concerned, this is a statement made by the consignor that 565 maunds and odd groundnut oil was despatched from Khar-salia to Tata Nagar. The person who wrote this Bijak (Ext. 2) has not been examined in this case nor is it known that the said person was actually present at the time when the groundnut oil in question was loaded in the tank wagon. As such this document (Ext. 2) too cannot be said to be a legal evidence to prove that 565 maunds of groundnut oil was actually despatched from the sending station. So on the basis of Ext. 2, it cannot be held that 565 maunds and odd groundnut oil was despatched in the tank wagon from Kharsalia.

9. The plaintiff has not examined any witness in this case to prove that 565 maunds and odd groundnut oil was actually despatched from the starting station. None of the witnesses examined by the plaintiff-respondent was present at the time the groundnut oil was loaded by the sender at the starting station. Mr. P.K. Bose learned counsel appearing for the appellant contends that when goods are loaded in the wagon by the sender and short delivery is detected at the destination the railway administration is not responsible for the short delivery. In support of this contention reference is made to the case of *Union of India v. S.P.L. Lekhu Reddiar* AIR 1956 Mad 176. In this case 200 bags of white door was despatched from the sending station. At the destination station only 189 bags were delivered. So there was a shortage of 11 bags. Seals were found intact at the end of the journey. It was held in this case that the railway was not liable for the loss as there was no admission on the part of the railway that the wagon contained 200 bags in spite of the entry to that effect on the railway receipt because the loading was done by the party and not by the railway administration. It is significant to note that both these cases reported in AIR 1950 Nag 85 and AIR 1956 Mad 176 were approved by their Lordships of the Supreme Court in the case of *Hari Sao and Another Vs. The State of Bihar*, . In

this case too 251 bags of dry chillies are alleged to have been despatched from the destination station under L/U condition. Later on it was detected that the wagon contained 197 bags of Bhusa instead of 251 bags of dry chillies. A criminal case was started against the consignor and it ended in his conviction upto the High Court stage. Their Lordships of the Supreme Court observed in that case that it was the duty of the consignor to prove that he had put on rail 251 bags of chillies. According to their Lordships, the owner "would also have to prove the weight of the chillies and the approximate value thereof. For this he would have to call evidence to show how and when he acquired the goods and the price he paid for them and exactly what quantity he loaded in the wagons. 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."

10. In this connection, reference may be made to an unreported Single Judge decision of this Court in Civil Revn. No 203 of 1966 (Arthur Butler & Co. Ltd. v. Union of India) disposed of on 29-6-1967 (Pat.). In this case 303 pieces of angle-irons were despatched from Tata Nagar. At the destination station at Muzaffarpur 297 pieces only were delivered. This Court upheld the judgment of the Small Cause Court's judgment dismissing the suit on the finding that the appellant (plaintiff-company) failed to prove that the consignment said to have been despatched by the consignor was correctly despatched.

11. For the reasons mentioned above, disagreeing with the lower appellate Court, I hold that there is no legal evidence of the actual quantity of the groundnut oil loaded at the despatching station. The documents relied upon by the lower appellate Court in coming to the conclusion that 565 maunds and odd groundnut oil was despatched from the despatching station are not such documents from which such a conclusion can be legally arrived at. Since there is a want of legal evidence on this point, I hold that the plaintiff-respondent has failed to prove that there was short delivery of 112 maunds and odd of groundnut oil.

12. Point No. (2): In view of the discussions made above, the appellant succeeds in this appeal but since the question raised under point No. 2 was argued at length, I think it desirable to give my finding on this point as well. In the instant case, the plaintiff-respondent simply asserted in he plaint that when the consignment reached Tata Nagar station it was found that the tank wagon was leaking badly and that the non-delivery of 112 maunds and odd of groundnut oil was due to negligence and misconduct of the railway servants. P.W. 1 stated in the trial Court that the wagon was found leaking at 3 or 4 places from the bottom. This witness further stated that the wagon got damaged due to rough shunting but no such allegation was made in the plaint. There is no evidence that a defective or leaky wagon was supplied to the consignor at that starting station. When that is not the case of the plaintiff-respondent it must reasonably be

presumed that the wagon supplied was in good condition and that there was no defect in it nor was it leaking at the time of loading, otherwise the consignor would surely not have loaded the groundnut oil in the defective or a leaky wagon.

13. Mr. Bose appearing on behalf of the appellant contends that if the loading of the ground-nut oil in the present case was done in a good wagon, the railway administration will not be liable for any compensation for damage if subsequently it transpired at the time of delivery at the destination that the wagon had become defective. In support of this contention, learned counsel has placed reliance on the case of *B.N. Ry. Co. Vs. Moolji Sicka and Co.*, . Their Lordships observed in a case similar to the instant case that "it is possible that the wagon got damaged on the way by the elements or by some other cause not referable to the misconduct of the railway servants. The plaintiff must establish by positive evidence that it was owing to some defect in the wagon in which the goods were loaded that injury was caused to them. By merely proving that when the Wagon reached its destination it was found in a defective state they do not discharge the onus which lies heavily upon them to prove misconduct by the servants of the railway company". My attention has also been drawn to another unreported Single Judge decision of this Court in Civil Revn. No. 925 of 1958 (*Union of India v. Kamla Prasad Bishwanath*) disposed of on 7-3-1960 (Pat.). In this case too his Lordship, Justice Untwalia (as he then was) observed that there was no legal evidence on behalf of the plaintiff that the goods were loaded in a leaky wagon. There is absolutely no evidence in the instant case that the groundnut oil in question was loaded at the starting station in a leaky wagon.

14. It is well settled that it is necessary for a party who alleges negligence on the part of the railway administration in the carriage of goods from one station to another to prove negligence by cogent evidence. The only evidence which has been adduced in this case is that the tank was found leaking at the destination. The D. D. message (Ext. B) shows that the wagon was leaking drop by drop. So there is some evidence about the wagon being found leaky at the destination but that would be no justification for holding that the railway provided a defective wagon at the starting station or it became defective due to negligence of the railway or its servants. A wagon may be quite fit at the starting station and may get defective during the course of transit for various reasons which may not be attributable to the negligence of the railway administration. In my opinion, the plaintiff-respondent on whom lies the burden of proof of negligence on the part of the railway administration has not discharged the same. Simply because the wagon which carried the consignment was found a bit leaky at the destination, no inference can be drawn in law that the railway administration was negligent and that the short delivery of 112 maunds and odd of groundnut oil was due to the misconduct on the part of the employees of the railway administration in the carriage of goods. It is urged on behalf of the respondent that the appellant was bound to disclose to the respondent how the consignment was dealt with throughout the time it was in possession or control of the appellant and it having failed to do so the suit has been rightly decreed. It being not a case of non-

delivery of the whole of the consignment or whole of any package forming part of the consignment or pilferage of any part of such consignment or such package there was no burden of disclosure on the appellant. This point, therefore, is answered in favour of the appellant.

15. Point No. (3) : This point though urged could not be substantiated at the time of the argument. The suit does not appear to be barred by time.

16. For the reasons mentioned above, the appeal is allowed, the judgment and decree passed by the lower appellate Court are hereby set aside and those of the trial Court dismissing the plaintiff's suit are restored; but in the circumstances of the case, I direct the parties to bear their own costs throughout.

Shambhu Prasad Singh, J.

17. I agree.