

(1963) 08 OHC CK 0012
In the Orissa High Court
Case No : Second Appeal No. 233 of 1961

Union of India (UOI)

APPELLANT

Vs

Endupudi Narsimham and Sons and Another

RESPONDENT

Date of Decision : 09-08-1963

Acts Referred:

Railways Act, 1890 — Section 72

Citation : AIR 1964 Ori 34

Hon'ble Judges : S. Barman, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

S. Barman, J.—The unsuccessful railway defendants in the Courts below are the appellants. This appeal arises out of a suit filed by the plaintiff for recovery of a sum of Rs. 4875-19nP. against the Central Railway, Bombay, Southern Railway, Madras and South Eastern Railway, Calcutta.

2. The material facts are these: On March 16, 1958, Hyderabad Asbestos Cement Products Limited, Hyderabad consigned 200 A. C. Sheets and 100 pairs of serrated ridges from Santanagar on Central Railway for delivery at Berhampur (Ganjam) on South Eastern Railway. The plaintiff belonging to Berhampur (Ganjam) purchased the goods through the State Bank of India at Berhampur (Ganjam) and released the Railway receipt and then wanted delivery of the goods. Admittedly the wagon containing the assignment was by mistake sent to Berhampur on Central Railway instead of the station of destination, namely Berhampur, Ganjam. It is said that the consignment was unloaded at Berhampur on Central Railway. After about 4 months the goods were again reloaded in another wagon. The original wagon in which the consignment was booked at Santanagar was Wagon No. SR 4863 which was unloaded at Berhampur on Central Railway.

The goods were again reloaded in another wagon at Berhampur and the said wagon number is NR 63866. As a result of the goods having been carried by mistake to a wrong place there was delay. In fact the goods did not reach Berhamputi (Ganjam) being the station of destination until July 17, 1958, that is to say, it took four months for the goods to reach Berhampur (Ganjam) from Santanagar. At Berhampur (Ganjam) upon unloading it was found that some A. C. sheets were broken. It appears that even after reaching the station of destination at Berhampur (Ganjam) in July 1958 the goods remained untraced till the first week of September, 1958. At short intervals during the period from July 3, 1958 to September 6, 1958, the plaintiffs godown clerk had been presenting the railway receipt to the railway authorities at Berhampur Railway Station for taking delivery of the consignment. It was reported by the Station authorities that the said consignment had not yet arrived at the destination and endorsements were accordingly made by the station authorities on the railway receipt.

It was not until September 7, 1958, that the Station master, Berhampur (Ganjam) wrote a letter (Ex. 3) to the plaintiff intimating that the consignment was unloaded on July 17, 1958, and asked the plaintiff to take delivery. It is said that on September 9, 1958, the plaintiff wrote a letter to the Railway authorities demanding open delivery. Again on September 17, 1958 the plaintiff wrote another letter (Ext. 6) to the Station master, Berhampur (Ganjam) stating that the Railway should give open delivery of the goods free from demurrage. On October 14, 1958, the South Eastern Railway authorities at Khurda intimated to the plaintiff that the railway foregoes all demurrage and wharfage, but requested the plaintiff to take delivery under clear receipt. The plaintiff however did not agree to take delivery under clear receipt. On April 3, 1959. the plaintiff filed the suit for recovery of the amount claimed on the basis of total loss. It is said that during the pendency of the suit on January 22, 1960, the Railway again offered to give delivery on reasonable assessment provided delivery was taken within 15 days.

3. The railway's defence to the suit, so far as relevant for the purpose of this appeal, is this: In view of the plaintiff's refusal to take delivery, the plaintiff has no right to sue assuming that there was loss or damage. The Railways deny negligence or carelessness in handling the goods and also deny any breakage due to their negligence. The Railways further contend that the plaintiff having failed to prove the exact extent of damage suffered by him due to the railways' negligence, the plaintiff is not entitled to claim any damage even if he proves that he suffered some damage. This in short is the stand taken by the Railways.

4. The trial Court held that the plaintiff is entitled to demand open delivery and refuse to take delivery under clear receipt: that on the defence evidence itself, condition of the goods after unloading was broken (Ext. J); that the Railways are bound to compensate the plaintiff on damage as found on unloading as mentioned in the unloading tally book (Ext. F). The suit was accordingly decreed.

The learned lower appellate Court while finding that the plaintiff was not entitled to open delivery confirmed the other findings of the trial court and decreed the plaintiff's suit. Hence this Second Appeal.

5. The points urged on behalf of the defendant-appellants herein are these: The plaintiff is to prove the extent of damage; it cannot prove damage unless it proves the condition of goods in which they were booked at Santanagar; the mere fact that the goods were unloaded in a damaged condition does not prove that they were damaged after booking; assuming that there was total loss even so the court must be satisfied as to the condition of the goods at the time of booking, at the time of unloading and after refusal by the plaintiff. In support of the defendants' contentions they relied on various decisions.

6. In my opinion it is a clear case of negligence on the part of the Railways. As the learned lower appellate Court rightly found, it is an undisputed fact that the goods were damaged during transit due to diversion of the route and transfer of Wagon. The Railway Administration is responsible for the consequential damages due to deviation from the usual route which caused delay of four months. Even after the goods reached the station of destination at Berhampur (Ganjam) the goods could not be traced for about a month and a half, and no delivery was given to the plaintiff although his godown clerk was presenting the Railway receipt, at short intervals for taking delivery as aforesaid. This is a staggering circumstance showing the negligence of the railways.

The diversion of the goods is admitted in para 4 of the written statement--where it is stated that the consignment was wrongly despatched from the forwarding station to Berhampur on Central Railway, and that on the advice of the Station Master of the forwarding station the consignment was reloaded and sent to the destination station by the Station Master, Berhampur on Central Railway. The endorsements on the railway receipt dated March 15, 1958 (Ext. 2) show that by reason of the diversion of the consignment the goods were loaded from one wagon to another and then again reloaded at Berhampur on Central Railway. They also show that the goods were lying unconnected (sic) at the destination station at Berhampur (Ganjam) since July 17, 1958. It is well settled that if the goods are taken across a different route, and loss is incurred by the consignor, the carrier, that is, the railway, is responsible. When the contract is to relieve the railway from liability for loss, damage, misconveyance, misdelivery, delay or detention of or to such goods during transit, the exemption is only from liability during the transit and when once the goods are diverted from that route the protection ends; change from ordinary route therefore puts an end to the protection.

7. As regards damages, the defendants did not take the point before either of the Courts below that the plaintiff did not adduce evidence regarding the condition of the goods at the time of booking. In fact no specific defence on this point was taken by the railways. However the findings of the learned lower appellate Court on facts after appreciation of the evidence is that the goods were unloaded at the

destination station at Berhampur (Ganjam) in a completely damaged condition and that the goods would not fetch any price by sale as they were completely damaged. D. W. 1 the unloading goods clerk of Berhampur Railway Station gave evidence to the effect that he unloaded the consignment on July 17, 1958 in a damaged condition and he made entries in the unloading tally book (Ext. F) accordingly. There is thus sufficient evidence for a finding that it was a case of total loss to the plaintiff.

8. In this view of the case I find no merit in this appeal. The decision of the learned lower appellate Court is upheld.

9. The appeal is dismissed with costs.