

(1987) 03 OHC CK 0022
In the Orissa High Court
Case No : First Appeal No. 33 of 1979

Union of India (UOI)

APPELLANT

Vs

Jugal Kishore Khandelwal

RESPONDENT

Date of Decision : 31-03-1987

Acts Referred:

Railways Act, 1890 — Section 73

Citation : (1988) ACJ 842 : AIR 1988 Ori 113 : (1987) 64 CLT 418

Hon'ble Judges : L. Rath, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

L. Rath, J.—The Union of India as owning and managing the South Eastern Railway through the General Manager, S.E. Railway, Garden Reach Road, Calcutta-43 is the appellant against the decree passed against it for recovery of a sum of Rs. 4,359.05 with costs in a suit brought at the instance of the respondent claiming damages for short delivery of kerosine delivered to him at Soro.

2. The facts briefly stated are that the plaintiff-respondent had indented 24,500 liters of kerosine oil by way of self consignment from Budge-Budge and despatched the goods therefrom under invoice No. 1, R.R. 221658 dated 6-12-1970. It was the case of the respondent that while taking delivery of the wagon it was found to be broken and a shortage of 11,500 liters of kerosine oil was noticed for which the Station Master, Soro issued a shortage certificate and the suit was instituted on account of the loss suffered.

3. The suit was contested by the appellant contending that the goods were not loaded at Budge-Budge under the supervision of the Railway staff. The consignment was booked under L/U condition which meant that loading at the despatch station and unloading at the destination station were the responsibility

of the consignor. The goods were loaded in the wagon by the consignor himself, sealed by him and was delivered to the railways only for carriage. The railway receipt granted to the respondent itself contained the endorsement about the amount of kerosine oil loaded as only "said to contain" and there was no acceptance on the part of the railways at any time that actually 24,500 litres of kerosine oil had been loaded in the tanker and thus no liability on the part of the appellant could be found.

4. The learned Subordinate Judge, Balasore came to the conclusion that the appellant was responsible for the loss caused to the respondent since in the shortage certificate issued at the time of delivery, loss of 11,500 litres of kerosine oil had been admitted and that further the seal on the tanker had been found to be broken at the delivery site.

5. The plaintiff-respondent, to prove his case, had examined one witness, P.W. 1 who admitted in the cross-examination that the loading as per the contract was to be made by the consignor and unloading was to be done by the consignee. Since it was a self consignment both the functions were to be discharged by the respondent. The appellant also examined 2 witness of whom D.W. 1 is the Commercial Clerk at the Budge-Budge Railway Station. D .W. 1 stated that the wagon was loaded at the siding of the Oil Corporation and not in the Railway Station and that the loading had not been supervised by the Railway staff. He also duly proved Exts. A and B i.e. the Railway receipt and the forwarding note. On the Railway receipt the endorsement regarding number and description of the wagon was entered as "One F wagon said to contain 24,500 of ..." and Ext. B/1 contained the endorsement "Loading not supervised". Such evidence led on behalf of the appellant remained unchallenged and hence it goes without saying that the wagon had been loaded only at the Corporation siding and not in the Railway Station and that further the loading was also not done under the supervision of the Railways but by the consignor himself. The Railway receipt also never acknowledged the receipt of the wagon with 24,500 litres of kerosine oil but only stated that the amount was "said to contain" in the wagon. The respondent never examined any witness to prove that actually what amount of kerosine oil was loaded at Budge-Budge to establish that in fact 24,500 litres of kerosine oil was loaded in the wagon and that such quantity was delivered to the appellant for carriage.

6. Section 73 of the Indian Railways Act attaches responsibility on the Railway Administration for loss, destruction, damage, deterioration or non-delivery in transit of animals and goods delivered to it for being carried. What is important to note is that the goods in respect of which loss is alleged and damage is claimed must first have been delivered to the Railway administration and unless such delivery is proved, there can be no question of any claim for damages. In this case however there is absolutely no proof of 24,500 litres of kerosine oil to have been delivered to the Railway Administration. A shortage certificate issued by the Railway Administration at the delivery station is not an admission of actual

shortage but is merely a statement of a fact of what quantity has been taken delivery of at the destination station. It does not constitute an admission of the actual quantity received by the Railways for carriage. The law on the question was pointedly discussed by this Court in Union of India (UOI) Vs. Aluminium Industries Limited, and following the principles decided in that case, it must be held that the respondent has not been able to establish any loss caused to him and hence the claim of damages must be negatived.

7. In the result, the appeal is allowed and the judgment and decree of the learned Subordinate Judge are set aside. There shall be no order as to costs.