
(1983) 01 RAJ CK 0022
In the Rajasthan High Court
Case No : Second Appeal No. 270 of 1972

Union of India (UOI)

APPELLANT

Vs

Mohan Raj

RESPONDENT

Date of Decision : 17-01-1983

Acts Referred:

Goods Tariff General Rules — Rule 15
Railways Act, 1890 — Section 73

Citation : AIR 1983 Raj 200 : (1983) RLW 541 : (1983) WLN 258

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : Bhoj Raj Jain, for the Appellant; S.N. Vyas, for the Respondent

Final Decision : Allowed

Judgement

Dwarka Prasad, J.—This second appeal arises out of a suit for the recovery of damages on account of non-delivery of goods by the railway administration.

2, The facts which have given rise to this litigation and which are no longer in controversy, are that the Plaintiff Mohan Raj consigned firewood from Auwa Railway Station for Asarwa Railway Station on the Western Railway, under Railway Receipt No. 84618 dated 18-11-65. The plaintiff had indented a wagon for the carriage of the aforesaid goods and the firewood of the plaintiff was loaded in Wagon No. WR 26811 at Auwa Railway Station. In the railway receipt the Quantity of goods booked was mentioned as 108 qtls.. the railway administration having accepted the consignor's statement about weight of the consignment. When the representative of the plaintiff went to Asarwa Railway Station for taking delivery of the aforesaid consignment, it was found that wagon No. 26811 contained only 62.50 qtls. of firewood. There was another wagon No. 5594, in which also there was firewood weighing 36 qtls.. but there was nothing to show that the firewood contained in the other wagon No. 5504 also belonged to the plaintiff- The Station Master. Asarwa was prepared to deliver to the plaintiff's representative the fire wood contained in wagon No. 26811. but the

plaintiff desired him to give, delivery of the firewood contained in both the wagons Nos. 26811 and 5594. The Station Master was not prepared to give the delivery of the firewood contained in wagon No. 5594 to the plaintiff without making verification and obtaining the requisite particulars about the said wagon. In these circumstances, the Plaintiff's representative refused to take delivery of the firewood contained in wagon No. 26811, unless a short delivery certificate was given by the railway authorities. The plain-tiff thereupon approached the higher railway authorities at Ahmedabad and Bombay and also issued a notice to the Chief Commercial Superintendent of the Railway at Bombay, u/s 78B of the Railways Act. On January 11, 1966, the plaintiff received a letter from the Station Master, Asarwa asking him to take delivery of the goods after payment of due charges. But the plaintiff did not take delivery of the goods. Thereafter several intimations were given by the Railway administration to the plaintiff to take delivery of the goods and subsequently a notice was also issued to him intimating him that if he failed to take delivery of the goods, the same would be sold by public auction. However, the plaintiff did not take delivery of the goods and the firewood weighing 98.50 qtls. was sold by public auction on July 21, 1966 for a sum of Rs. 75. The plaintiff had already issued a notice through his counsel u/s 80, C.P.C. on May 25, 1966, claiming a sum of Rs. 1.716 towards the value of the firewood weighing 108 qtls. and other expenses. Thereafter, a suit was filed by the plaintiff for the recovery of Rs. 1.747 against the Union of India, through the General Manager, Western Railway on May 3, 1967.

3. The defendant's case was that the consignment booked by the plaintiff did not weigh 108 qtls.. but as the goods were loosely loaded in the wagon and the logs of wood were placed in such a disarranged manner that some of them were projecting out of the wagon. When the goods reached Mehsana Railway Station, the railway administration thought it proper to shift a part of the consignment to another wagon No. 5594 so as to ensure the safe movement of the goods and in order to avoid any chance of an accident on account of logs of wood projecting out of the wagon. As the other wagon No. 5594 did not bear any labels, the Station Master was unable to give delivery to the plaintiff or his representative of the goods contained in wagon No. 5594, as it was not possible for him then to connect the goods contained in the said wagon with the railway receipt produced by the plaintiff. The Station Master was, therefore, prepared to give delivery to the plaintiff of goods weighing 62.50 qtls. contained in wagon No. 26811. But he could not deliver the goods contained in another wagon No. 5594 to the plaintiff or his representative, without first ascertaining whether the goods in that wagon were connected in any manner with the consignment of the plaintiff. However, the plaintiff refused to take delivery of the goods contained in wagon No. 26811 only. An enquiry was made by the railway administration about the remaining goods, and as there was no indication regarding the contents of wagon No. 5594, the goods contained in the aforesaid wagon No. 5594 was returned to Mehsana Railway Station and after proper verification they were sent back to Asarwa Railway Station on January 13, 1966. According to the railway administration,

they were prepared to give delivery of the goods to the plaintiff contained in wagon No. 26811 on November 26, 1965 and further they were ready to give delivery of the entire goods to the plaintiff on January 21, 1966, but the plaintiff was not willing to accept the delivery and in spite of several notices issued by the railway administration, the plaintiff did not turn up to take delivery of the goods at the Asarwa Railway Station. Thus, according to the defendant, they had no option, in such circumstances, but to dispose of the goods by public auction, at which a sum of Rs. 75 was received as the sale price of the firewood belonging to the plaintiff. The trial Court decreed the plaintiff's suit for a sum of Rs. 1,740 towards the price of the firewood and other expenses incurred by the plaintiff. The Union of India preferred an appeal before the learned District Judge, Pali, who partly allowed the appeal and passed a decree for Rs. 1,168 by way of damages along with proportionate costs.

4. In this second appeal, learned counsel for the Union of India urged that the two courts below were not justified in decreeing the plaintiff's claim, inasmuch as the plaintiff himself was at fault in not taking the delivery of 62.50 qtls. of firewood, soon after the goods reached the destination. According to the relevant Rules, which I shall presently consider, the plaintiff could not have insisted upon the delivery of the whole consignment, even if a part of the goods was either misplaced or damaged or lost in transit. The contention of the learned counsel for the appellant is that the Station Master was justified in refusing to give delivery of the goods contained in wagon No. 5594 to the plaintiff, without any verification from the concerned railway officials, as it was not possible to connect, at the Asarwa Railway Station, the goods contained in wagon No. 5594 with the plaintiff's consignment. It was then argued that by the letter Ex. A-1 dated February 22, 1966 the railway administration had intimated to the plaintiff that he should take delivery of the entire consignment, but the plaintiff failed to take delivery of the goods even thereafter with the consequence that the railway administration had no alternative but to sell the consigned goods by public auction on July 21, 1966, after the lapse of 5 months and after giving proper notice to the plaintiff. As regards payment of charges, learned counsel for the appellant argued that the consignor or consignee was bound to make payment of all charges at the time of taking delivery of the consignment and if the charges or part, thereof were unjustified, the plaintiff could have claimed a refund of the excess charges after taking delivery of the goods. According to the learned counsel, the plaintiff was not willing to take delivery of the goods even of the full consignment, on the alleged ground that the contract, which he had entered into with a third party for the sale of the said goods, could not be fulfilled on account of the delay in the delivery of the firewood caused by the negligence of Railway Officials. It was also submitted by the learned counsel that the plaintiff did not produce any cogent evidence to prove the weight, or price of the goods, as neither a bill, purchase voucher or any other document or even an entry in the "Bahi Khata" was produced by the plaintiff in support of his contention regarding the price of the firewood, which was consigned by him under the aforesaid

railway receipt and, therefore, no decree could at all have been passed in favour of the plaintiff. Learned counsel submitted that the weight of the firewood mentioned in the railway receipt as 108 qtls. was only relevant for the purpose of charging the freight, but it did not represent the acceptance on the part of the railway administration that the said quantity of the goods was consigned under the railway receipt in question. Learned counsel pointed out that railway receipt was marked as "S.W.A.", which meant, that the sender's weight was accepted by the railway administration for charging the freight, but it was for the plaintiff to prove the actual quantity of goods booked by him under the railway receipt in question. It was pointed out by the learned counsel that when a full wagon was indented by a consignor then it is open to the consignor to place any quantity of goods into the wagon and the railway administration does not incur any liability on the basis of the weight mentioned in the railway receipt, unless some evidence of actual weight or quantity of goods contained in the consignment was produced by the consignor.

5. Rule 15 of the Goods Tariff General Rules (Part I) was relied upon by the learned counsel for the appellant in support, of this contention, which reads as under:--

"15. Right to correct charges on receipt notes:-- The weight, description and classification of goods and quotation of rates as given in the Railway receipt and forwarding note are merely inserted for the purpose of estimating the Railway charges and the Railway reserves the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminals and other charges and correction of any other errors at the place of destination and of collecting any amount that may have been omitted or undercharged. No admission is conveyed by a Railway receipt that the weight as shown therein has been received or that the description of goods as furnished by the consignor is correct."

6. In *Hari Sao v. State of Bihar*, AIR 1970 SC 843 their Lordships of the Supreme Court observed that in any railway receipt, the endorsement "S.W.A." would negative the plea that the weight mentioned therein was accepted by the railway, and it was also observed that, mentioning of weight in the railway receipt, did not amount to an admission of the railway about the correctness of the statement, more particularly when the railway receipt was marked as "S.W.A.". Thus, merely because in the railway receipt Ex. 1, it was mentioned that wagon No. 26811 contained 108 qtls. of firewood, it could not be understood that the railway administration had accepted the correctness of the statement made by the consignor with regard to the weight of the consignment but such statement was accepted for a limited purpose of calculating the charges in respect of the carriage of such consignment. The same was also subject to weighment of the consignment at the Station where the delivery was to be effected, in case there was any doubt about the actual weight of the goods carried.

7. Rule 1820 of the Indian Railway Commercial Manual (Vol. II) reads as under:--

"1820. Recovery of railway dues before delivery of goods,-- Before delivery of goods, it should be seen that all railway dues and other charges have been paid. Wharfage and demurrage charges should be levied under tariff rules and recovered, from the consignees before the removal of goods from railway premises. Similarly, all undercharges noticed as a result of check of invoices, weighment of goods, etc.. should be recovered from consignees before delivery of goods. As regards overcharges claimed at the time of delivery, the procedure indicated in Chapter XXI should be followed."

8. Similar provision is contained in Rule 10 of the Goods Tariff General Rules (Part I), which is as under:--

"10. Payment of Charges:-- Except in the case of dangerous and other goods specially provided for in this Tariff or in Exception Lists for which prepayment of freight is compulsory all charges must be paid either when goods are presented for dispatch or at the time of delivery, and all goods are subject to lien not only for the freight, wharfage demurrage and handling charges on the particular goods, but also for any general balance which may be due to the Railway by the owner or consignor or consignee of such goods. If the money in respect of which goods are detained, be not paid, they may be sold by auction, in the case of perishable goods at once and in the case of other goods, on the expiration of 15 days" notice of the intended auction and the proceeds applied in liquidation, or reduction of the amount, due and expenses."

Thus, the plaintiff was bound to make payment of all charges and dues of the Railway, before delivery of the goods could be made to him. It may be pointed out, that in the present case, the Railway Receipt Ex. 1 shows that even the freight for the carriage of goods was to be paid at the destination station, while taking delivery of the goods. The finding of the two courts below is that the railway administration knowingly refused to give delivery of the goods contained in wagon No. 5594 to the plaintiff and that the railway administration wanted that the plaintiff should give a receipt for having received the entire consignment of firewood contained in the consignment of Ex. 1. while giving delivery of only 62.51 qtls. of firewood, which was contained in wagon No. 26811. The aforesaid finding is not based on the evidence on record. On the other hand, even a bare perusal of the plaintiffs own statement goes to show that the plaintiff himself refused to take delivery of 62.50 qtls. of firewood on the ground that the railway authorities were not prepared to give him a short delivery certificate, when he went to take delivery of the goods. It appears from the statement of the plaintiff that he was insisting upon receiving the entire goods contained in both the wagons, which the Station Master. Asarwa Railway Station was not prepared to do, on the ground that there was no identification marks in respect of the goods contained in wagon No. 5594 to connect, the said goods with the consignment booked by the plaintiff, vide railway receipt EX. 1. The first Appellate Court, after a consideration of the legal position, held that the plaintiff could not insist upon the railway administration to issue short delivery certificate, but then he went on

to hold that the railway administration acted mala fide in refusing to give delivery of the goods contained in wagon No. 5594. even while knowing-that, the goods contained therein belonged to the plaintiff. It may be observed that the last mentioned finding recorded by the first appellate Court was without any basis whatsoever.

9. A perusal of the record shows that although the goods booked at Auwa Railway Station on November 18, 1965 were initially contained in wagon No. 26811, when they were booked by the plaintiff at. Auwa Railway Station but then while on transit, a part of the Roods was transhipped at Mehsana Railway Station to wagon No. 5594 in order to avoid or eliminate chances of: an accident occurring on account of logs of wood projecting outside the wagon. Both the wagons reached the destination station on November 23, 1965. But as there were no identification marks, in respect of the Roods contained in wagon No. 5594, they were sent back to Mehsana, where after an enquiry it was found that those goods formed Dart of the plaintiff's consignment and were originally contained in wagon No. 26811, the said goods were again sent back to Asarwa Railway Station on January 30. 1966. Ex. A-13 on record unfolds the aforesaid story, which contains the following endorsement:--

"Wagon containing loose firewood booked ex-Auwa to Asv under Inv. 1 of 18-11-65 transhipped at MGH from original wagon No. 26811 being overloading, in wagon No. 5594 to Asv. The said wagon No. 5594 transhipped at ASV in 3355 & sent to this. Actually the said contents of wagon 26811 ex-Auwa to ASV Inv. 1 of 18-11-65. Hence it is sent to you for delivery. Please charge excess contents and delivery accordingly."

The above message contained in Ex. A-13 was sent to Station Master, Asarwa by Station Master, Mehsana and a bare reading of the contents of Ex. A-13 goes to show that the allegations of misconduct, which have been made by the learned District Judge against the railway administration have no foundation. When the goods contained in wagon No. 26811 were found to be overloaded, the railway authorities thought it proper to tranship a part of the goods contained therein to another wagon. Of course, the mistake committed by them was that proper identification marks were not Put upon wagon No. 5594 and also proper documents were not prepared to show that the goods contained in wagon No. 5594 were part of the goods which were originally contained in wagon No. 26811. However, when both the wagons reached the destination station, the Station Master Asarwa was justified in refusing to give delivery of the goods contained in wagon No. 5594 to the plaintiff or his representative in the absence of proper identification marks. But he rightly offered delivery to the plaintiff of the goods which were still contained in wagon No. 26811, which after weighing were found to be 62.50 qtls. The plaintiff was bound to take delivery of 62.50 qtls. of firewood which was offered to him by the Station Master. Asarwa on November 26, 1965.

10. Rule 47 of the Goods Tariff General Rules (Part I) provides that a consignee

must take delivery of goods forming part of a consignment whenever they are available for delivery, notwithstanding that the remaining goods are short or damaged or have not arrived at their destination or are otherwise not available for delivery; and, if the consignee does not take delivery of such goods forming part of a consignment, as are available for delivery, they will be subject to wharfage charges, if not removed within the time allowed for removal."

11. In Rule 1837 of the Indian Railway Commercial Manual (Vol. II) a similar provision has been made which reads as under:--

"1837. Consignees must be advised in very clear terms that they cannot legally refuse to take delivery of a part of a consignment, because the remainder is short, or damaged, and that, if they do not take delivery of the portion which has been correctly received, it remains on the railway premises at their risk and subject to the usual charge for wharfage."

12. Thus, the plaintiff should have taken delivery of the part of the consignment weighing 62.50 qtls. when it was offered to him. which could have saved him from wharfage charges in respect of that part of the consignment which was still contained in wagon No. 26811. Rule 1850 of the Indian Railway Commercial Manual (Vol. II) provides that:--

"When on account of non-receipt, loss or damage of any package forming part of it, delivery of part consignment is effected, the railway receipt and full freight charges should be collected and the consignee or his agent allowed to make a remark in the goods delivery book regarding the part of the consignment not received. In such cases, a partial delivery certificate may be issued to the consignee or his agent and the number thereof noted in the goods delivery book."

13. The insistence of the plaintiff was that a short delivery certificate should be issued to him before he can take delivery of the part of the consignment weighing 62.50 qtls. Learned counsel for the railway administration submitted that as the plaintiff desired to obtain delivery of the entire consignment contained in both the wagons, the Station Master, Asarwa, at that stage when part delivery of the goods was offered to the plaintiff in respect of 62.50 qtls. of firewood, contained in wagon No. 26811, asked about the actual Quantity of firewood which was consigned by the plaintiff. As already mentioned above, the weight mentioned in the railway receipt, Ex. 1 was only specified for the purpose of charging freight and did not contain any admission of the railway administration about the actual weight of the consignment booked under the particular railway receipt. It was thus for the plaintiff to prove the actual quantity of goods booked and whether 108 qtls. of firewood were booked by him at Auwa railway station, for carriage with the railway under railway receipt Ex. 1. The Station Master at the destination, having no means to verify as to whether 62.50 qtls. of firewood contained in wagon No. 26811 represented the entire goods consigned under the aforesaid railway receipt Ex. 1 or merely constituted a part of the consigned Goods. In such circumstances, it was not possible for the

Station Master to issue a short delivery certificate, unless the consignee produced positive proof about the quantity of firewood booked in the consignment.

14. In *Union of India v. M/s. Ibrahim Gulaba*, AIR 1966 Madh Pra 52 it was held that the consignee could not claim an open delivery as of right and his remedy lay in taking delivery of the consignment in the condition in which it was found and claim damages. It was observed by the Madhya Pradesh High Court in the aforesaid case as under (at P. 55):--

"It is well settled that the Railway Administration is not bound to give open delivery on the demand of the consignor. The consignee has no right that the goods shall be opened and inspected in the railway premises before he can be called upon to take delivery. The proper course for the consignee is that he should take delivery of the consignment in the condition in which it is found after giving notice to the officer giving delivery as to its condition and then sue the Railway Company for damages."

15. The same view was taken in *Managing Agents (Martin and Co.) v. Seth Deokinandan*, AIR 1959 Madh Pra 276 wherein it was held that the consignee could not insist that delivery should be given to him after weighing the goods consigned and making an endorsement of the shortage. In that case, the consigned goods being bags of jaggery were damaged on account of unprecedented floods, caused on account of heavy rains and the consignment was received in a damaged condition. The consigned goods were carried in 3 wagons and the first wagon was received at Khandwa Railway Station on January 28, 1948, but the plaintiff refused to take delivery of the goods unless damage was assessed. In these circumstances, a Bench of the Madhya Pradesh High Court held as under (at P. 281):--

"It is quite clear from the evidence on record that after, the first part of the consignment reached Khandwa on 28-1-1948, the plaintiffs refused to take delivery unless damage was assessed and the shortage and fall in rate were certified. This was indeed not disputed before us although an unsuccessful endeavour was made in the lower court to show that the railway authorities themselves withheld delivery until the damage was assessed. The law on this point is this. A consignee has no right to insist that the railway officer giving delivery should weigh the goods consigned and make an endorsement as regards the shortage and to refuse to take delivery if the railway officer refuses to do. The consignee should take delivery of the consignment in the condition in which it is found after giving notice to the delivering officer as to its condition and then sue the railway administration for damages."

16. In *Dominion of India Vs. Netai Chandra Halder*, soft coke was booked in two consignments in two different wagons. Suspecting short-afle, the plaintiff demanded delivery after re-weighment, which was ordered, if the plaintiff paid cost of such re weighment, As the plaintiff was not prepared to pay the cost of re-

weighment, the delivery could not be effected. The plaintiff instituted a suit against the railway administration for the recovery of the price of goods. It was held in the aforesaid case that the railway administration was under no obligation to re-weigh the goods nor the plaintiff could claim as a matter of right that the goods must be re-weighed before he agreed to take delivery of the same and that the plaintiff was not entitled to claim any damages from the railway administration, if he refused to take delivery without re-weighment. It was held by the Calcutta High Court in the aforesaid case that the responsibility for not taking delivery of the goods lay upon the plaintiff as he had imposed a condition which he was not entitled to impose under the law.

17. My attention was also drawn by the learned counsel for the Railway to the provisions of Rule 2117 of the Indian Railway Commercial Manual (Vol. II) wherein the procedure, which the station staff is required to follow in order to connect the unconnected wagons received at the station, has been laid down. Clause 4 of Rule 2117 provides that in the case of loose consignments such as coal, kunker, timber etc.. which bear no identification marks, or in the case of bagged consignments or packages bearing no marks, enquiries should be made locally to ascertain if a consignment of such a nature was due at the station, and if so. the relevant railway receipt, should be examined in respect of wagon number, contents etc.. and the matter followed up. Clause 5 further provides that the possibility of the unconnected wagon being not the one in which the consignment was originally loaded, and being replaced by another one in which the contents were transhipped en route, should not be lost sight of during the course of enquiries. Thus, in case of unconnected wagons, the railway administration was under a duty to make proper enquiries in order to connect the goods carried in the unconnected wagon. As already mentioned above, the goods in the present case were initially loaded at Auwa Railway Station in wagon No. 26811, but. when it was found at Mehsana Railway Station that the wagon was not properly filled in and the firewood was loaded in such a manner that an accident might be caused on account of the logs of firewood protruding outside the wagon, a part of the goods was transhipped to wagon No. 5594 and both the wagons were sent to the destination namely, Asarwa Railway Station. But as the wagon No. 5594 did not bear any identification marks, the Station Master of the destination station was unable to deliver the goods contained therein to the plaintiff without being able to connect such goods with the other wagon No. 26811. The railway administration was bound to make enquiries about the unconnected wagon. But there was no reason for the learned District Judge to propose that the station staff at Asarwa Railway Station was well aware of the identity of the goods contained in wagon No. 5594 and that the Railway staff was guilty of "high degree of mis-conduct" in refusing to give delivery of the goods contained in wagon No. 5594 to the plaintiff on November 26. 1965. It does not appear from the record that some material was placed before the station staff at Asarwa Railway Station to connect, the goods contained in wagon No. 5594 with the railway receipt Ex. 1. produced by the plaintiffs representative and in the

absence of material to connect the goods contained in wagon No. 5594 to wagon No. 26811, the railway administration was justified in refusing to deliver the goods contained in wagon No. 5594 to the plaintiff's representative until upon verification they could come to the conclusion that the goods contained in wagon No. 5594 formed part of the goods booked by the plaintiff vide Railway receipt Ex. I. According to the legal position contained in the rules referred to above, it is apparent that the Plaintiff should have taken delivery of that part of the goods which was contained in wagon No. 26811, and which was offered to him. The railway administration had re-weighed the goods contained in wagon No. 26811 and they were found to be 62.50 qtls. and a note to that effect was also made on the railway receipt Ex. 1 and in the relevant registers of the Railway. The plaintiff could not have insisted that the railway administration should give a short delivery certificate without coming to the conclusion as to the quantity of firewood actually booked by the plaintiff and loaded at Auwa Railway Station in wagon No. 26811.

18. In Rule 1850 of the Indian Railway Commercial Manual (Volume I) it has been provided that when on account of any loss or damage to any package forming part of the consignment, delivery of part of the consignment is effected, the railway receipt and full freight charges should be collected and the consignee or his agent should be allowed to make a remark in the goods delivery book regarding the part of the consignment not received. It has also been provided therein that a partial delivery certificate may be issued to the consignee or his agent, but such certificate could have only been issued when it is definitely found by the railway officials that part of the goods were not received on account of loss or damage to such goods. But in the case of a wagon load consignment, it is difficult to visualise as to the quantity of goods actually booked and loaded in the wagon until proof in respect thereof is produced by the consignor/consignee and in such circumstances the railway administration could not be expected to give a partial delivery certificate. The plaintiff should have produced the bill of lading, bill of trade or other advice regarding the purchase of the goods, which could have constituted some proof of the quantity of the goods actually loaded in the wagon and then only the shortage could have been ascertained and a short delivery certificate could have been given by the concerned Railway Official.

19. Learned counsel for the appellant submitted that the railway administration had offered delivery of the goods contained in wagon No. 26811 to the plaintiff's representative on November 26, 1965, but he refused to take delivery of such goods until the goods contained in the other wagon No. 5594 were not simultaneously delivered to him. If the plaintiff failed to take delivery of the part of the goods contained in wagon No. 26811, when the delivery of part of the consignment was offered to him, then the plaintiff was liable to make payment of the wharfage or demurrage charges in respect of the goods contained in the said wagon No. 26811, as the plaintiff failed to take delivery of the goods at the time delivery thereof was offered to him. It was contended by the learned counsel for the appellant that repeated notices were given to the plaintiff by the railway

administration to take delivery of the goods but he did not turn up to take the delivery of the goods. On November 30, 1965 letter Ex. 3 was written by the Area Superintendent Ahmedabad, to the concerned railway official for making an enquiry about the remaining goods booked by the plaintiff and also for enquiring about the identity of the goods contained in wagon No, 5594. The plaintiff has stated as P.W. 1 that he did not take the delivery of the goods when the same was offered to him because the railway administration refused to give him a short delivery certificate. From the documents on the record, it appears that vide Ex. 6 dated January 21, 1966 an intimation was sent to the plaintiff to take delivery of the wagons loads of firewood contained in both the wagons, but the plaintiff did not turn up to take delivery. A further intimation was sent by the railway administration on February 22, 1966 vide Ex. A-I. Thus it is apparent that repeated endeavours were made on behalf of the railway administration that the plaintiff should appear and take delivery of the goods, but the plaintiff did not approach the railway administration for taking delivery of the goods, in spite of repeated letters to him in this respect. On May 10, 1968 notice Ex. 7 was sent by the railway administration to the plaintiff intimating him to take delivery of the firewood within 7 days, failing which the goods would be sold by public auction, on the failure of the plaintiff to comply therewith. The plaintiff was also informed that the consignment was lying at Asarva Railway Station at his entire risk, as to loss or damage etc. and subject to payment of usual wharfage charge. On account of the plaintiff's failure to take delivery of the goods in spite of several letters notices, reminders etc, the railway administration had no alternative but to dispose of the goods by sale at a public auction at which only a sum of Rs. 75 was received as the price thereof.

20. As the plaintiff was at fault in not taking the delivery of the goods forming part of the consignment, contained in wagon No. 26811, when the same was offered to him or his representative and further the plaintiff's failure to take delivery of the entire consignment of firewood contained in both the wagons even upon receiving an intimation dated January 21, 1966, the plaintiff has no right to claim damage from the railway administration on account of non-delivery of the goods. The railway administration was ready and willing to give delivery of part of the consignment to the plaintiff at the initial stage and of the entire consignment contained in two wagons in January 1966 and as such it could not be held liable for damages or loss on account of non-delivery of the firewood to the plaintiff. In this view of the matter, the question of assessment of the damages does not arise in face of the fact that the plaintiff was not entitled to obtain any damages because of his failure to take delivery of the goods when the same was offered to him.

21. In the result, the appeal is allowed and the judgment and decree passed by the learned District Judge, Pali dated December 18, 1971 is set aside and the plaintiff's suit is dismissed. The parties are left to bear their own costs in all the courts.