

(1967) 02 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 66 of 1958

Union of India (UOI)

APPELLANT

Vs

Panipat Woollen and General Mills Co., Ltd.

RESPONDENT

Date of Decision : 21-02-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 73
Interest Act, 1839 — Section 1
Railways Act, 1890 — Section 72, 73, 77

Citation : AIR 1967 P&H 497

Hon'ble Judges : R.S. Narula, J; D.K. Mahajan, J

Bench : Division Bench

Advocate : Partap Singh and Birinder Singh, for the Appellant; Gokal Chand Mittal and Prakash Chand Jain, for the Respondent

Judgement

R.S. Narula, J.—The Union of India has preferred this appeal against the decree of the trial Court, dated January 14, 1958, for Rs. 9,418-2-0 and half costs of the suit which had been filed for the recovery of Rupees 18,462-12-0, on account of loss suffered by the respondent partly on account of short delivery and partly on account of late delivery of the suit consignment. Seventeen bales of Australian wool tops were entrusted on November 13/14, 1955, by the National Transport Company to the Railway Administration at Caranc Bridge for being delivered at Kurali in Ambala District to the consignor or his endorsee. The railway receipt was endorsed by the consignor to the Punjab National Bank Ltd. Ludhiana, from whom it was obtained by the respondent on payment of the price of the goods. The bank endorsed the railway receipt in favour of the plaintiff-respondent. The goods not having arrived at the destination station within the normal time, the respondent company sent its representative to Bombay, who came to know from enquiry at the starting station that the goods had been erroneously sent to Kulu instead of being despatched to Kurali. The plaintiff's man is then stated to have gone to Kulu and got the goods redirected from there to Kurali, where they were

delivered to the respondent on January 10, 1956. At the request of the respondent, open delivery of the goods was effected. The goods were short delivered to the extent of 459 lbs., according to the plaintiff-respondent. There was also partial damage to the goods actually delivered which was assessed by the Railway Traffic Inspector at Rs. 900

After serving usual notice u/s 80 of the Code of Civil Procedure, the suit from which the present appeal has arisen, was filed on January 12, 1957, for the recovery of the aforesaid sum of Rs. 18,462-12-0 composed of the following items:--

1. Expenses incurred by the plaintiff's representative in tracing the goods--Rs. 450.

2. Loss suffered on account of late delivery at the rate of Rs. 1-6-0 per lb. on total quantity of 6,000 lbs.--Rs. 8,250.

3. Price of non-delivered goods weighing 459 lbs. at the rate of Rs. 7-4-0 per lb.--Rs. 3,327-12-0.

4. Loss on account of deterioration in a part of the goods, the goods comprised in 32 rolls of wool tops--Rs. 900.

5. Interest on Rs. 42,000 the total price of the goods from 23rd November 1955 to 22nd January 1956 at 9 per cent per annum--Rs. 630.

6. Interest at 9 per cent per annum on Rs. 13,557-12-0 representing the total amount of damages from 23rd November 1955 to 22nd January 1956--Rs. 1,305.

7. Expenses incurred in keeping the factory closed as a result of non-receipt of the goods--Rs. 3,600.

2. The suit was resisted by the defendant-appellant on all conceivable grounds. Short delivery to the extent of 458 lbs. was admitted and assessment of damage to the extent of Rs. 900 was also not disputed. From the pleadings of the parties, the trial Court framed the following issues:--

"1. Whether the plaintiff is a public limited company having its registered office at Kharar carrying on the business of hosiery, etc. ?

2. Whether the plaintiff's suit is within limitation ?

3. Whether the Punjab National Bank consignee of the goods endorsed the said railway receipt in favour of the plaintiff for consideration thus passing ownership of the goods to the plaintiff ?

4. When should the goods in dispute have arrived in normal course and whether there was any extraordinary delay for the consignment to reach its destination ?

5. Whether the goods were despatched to Kulu Instead of Kurali through the gross negligence of the Railway Administration ?

6. Whether the shortage in the consignment in dispute was by 459 lbs. and not 458 lbs. ?

7. Whether the above shortage and damage to the goods were due to the gross negligence and misconduct on the part of the Railway Administration ?

8. Whether the price in dispute fell down in the market by the time the consignment was received ?

9. Whether the plaintiffs had entered into the alleged contracts with their dealers for the supply of the wool yarn manufactured from woollen tops in dispute, to them in the beginning of December 1955, and if so, whether the plaintiffs were not able to perform those contracts due to late receipt of the consignment in dispute ?

10. To what amount of compensation if any, were the plaintiffs entitled to recover from the defendants and under what heads and details ?

11. Whether the notices served by the plaintiffs on the defendants u/s 77 of the Indian Railways Act and Section 80 of the CPC were invalid and if so, in what manner and in what respect P

12. Whether Shiv Kumar Gupta is the General Manager and the principal officer of the plaintiff company and is he authorised by the Board of Directors to institute the suit ?

13. Relief."

3. By its judgment under appeal, the trial Court held that the plaintiff was a public limited company having its registered office at Kharar and that Shiv Kumar Gupta was the General Manager of the plaintiff company and had been duly authorised to file the suit. On issue No. 2, it was held that the suit was within limitation. The Punjab National Bank was found to have endorsed the railway receipt to the plaintiff-respondent for consideration. The goods were held to have been normally due for delivery at the destination station after about ten days of the date of their despatch. The despatch of the goods to Kulu instead of Kurali was found to be due to the negligence of the Railway Administration. The plea of the defendant-appellant to the effect that the short delivery was to the extent of 458 lbs. only, was given effect to. The damage and the short delivery was ascribed to the negligence and misconduct of the Railway Administration. The price of the goods was held to have fallen in the market at Sydney from where they had been originally secured. While disallowing the claim for interest and expenses said to have been incurred by the plaintiff's representative in tracing the goods and expenses alleged to have been incurred in keeping the factory closed for some time, the suit of the plaintiff was decreed to the extent of Rs. 5,195-10-0 on account of the alleged fall in the price of the goods, to the extent of Rs. 3,320-8-0 on account of the value of the goods short delivered, and Rs. 900 on account of the admitted deterioration in partially damaged goods.

4. Mr. Partap Singh, the learned counsel for the appellant has not questioned the findings of the trial Court on issues Nos. 1, 4, 6, 7 and 9. He has confined his arguments to the assailing of findings of the trial Court on issues Nos. 2, 3, 5, 8 and 11. The result of issues Nos. 10 and 13 is of consequential nature and depends on the findings on the other issues. On issue No. 2 the learned counsel has contended that though the suit when filed was admittedly within time, it became time-barred by the correction made in the name of the consignor with the leave of the Court while amending the plaint. In Para. 2 of the original plaint, it had been stated that goods were consigned by Messrs. Khimji Poonja and Company, Dalai Street, Fort Bombay-1. During the trial of the suit, an application under Order 6, Rule 17 of the Code of Civil Procedure, was made on November 5, 1957. In the application it was stated that the plaintiff had mentioned the name of Messrs. Khimji Poonja and Company, on account of incorrect reading of the entry in the plaintiff's register and that as a matter of fact, the goods had been sent by Messrs. National Transport Company. By order, dated November 14, 1957, the amendment was allowed by the trial Court. According to the learned counsel for the appellant, the suit by the correct plaintiff should be deemed to have been filed for the first time on the 20th of November 1957, when the amended plaint was filed, because the plaintiff claims through the consignor and since the name of the consignor was wrongly mentioned in the original plaint, the correct plaintiff is not deemed to have come to the Court on the date of the institution of the suit. We fail to appreciate the logic behind this argument advanced on behalf of the appellant. Admittedly no change has been effected in the parties to the suit. The consignor was not impleaded either originally or by amendment as a respondent. No part of cause of action has been changed by the amendment. The learned counsel conceded that the suit could have been filed even without specifically mentioning the name of the consignor. In these circumstances, it cannot be held that the suit should be deemed to have been instituted on the date on which the amended plaint was filed in Court. The finding of the trial Court on this issue is, therefore, upheld.

5. Counsel concedes that if the decision of the trial Court on issue No. 2 is upheld, he has no other argument to advance regarding the finding on issue No. 3. The only basis of his argument on issue No. 3 is that the Punjab National Bank itself was not an endorsee of the consignor whose name is mentioned in the original plaint. Once it is found that this makes no difference, the finding of the trial Court on issue No. 3 which is based on the evidence of Shri Ram Kumar, Clerk, Punjab National Bank Ltd., Ludhiana, must be upheld.

6. The only contention pressed on behalf of the appellant regarding issue No. 5 is that the suit consignment was marked for Kulu instead of Kurali by the representative of the consignor and not by that of the Railway Administration. Reliance for this argument is placed on the evidence of Hari Waman Joshi, Loading Clerk of Carnac Bridge. According to learned counsel for the appellant, it is not clear from the evidence of the said witness as to whether the incorrect marking on the goods had been made by the representative of the consignor or

by an employee of the Railway Administration. Counsel does not appear to have been correctly instructed in this respect. Hari Women Joshi, D. W. 1 has clearly stated in his examination-in-chief that the packages had the word "Kulu" written on them and has made it clear in his cross-examination that the goods had been booked for Kurali and the word Kulu" on the various packages had been written "by the Government marker". Admittedly no other evidence has been led by either of the parties about the person who made the incorrect marking. All that Mr. Partap Singh has argued is that "the Government marker" may be the representative of the consignor. It is impossible to appreciate this argument. "Government marker" obviously means the persons employed by the Government for making the requisite marking on the goods. It is, therefore, not disputed that wrong markings were made by the employee of the Railway Administration. It amounts to negligence of the defendant. In these circumstances there is no ground for interfering with the findings of the trial Court on issue No. 5 either.

7. Regarding the validity of the notice u/s 77 of the Indian Railways Act and Section 80 of the Code of Civil Procedure, the common objection of the appellant is that the name pf the consignor has been wrongly mentioned, the statutory ingredients of a valid notice u/s 80 of the CPC are only the name, description and place of residence of the plaintiff and the relief which he claims. It is only if some of the necessary Ingredients are missing or have been incorrectly given that an argument of this type can possibly be advanced. The mere fact that an incorrect statement of fact has inadvertently been made in the body of the notice relating to a matter which would make no difference to the real issue involved in a controversy, cannot render the notice invalid. The only additional objection raised to the validity of the notice u/s 77 of the Railways Act is that it has not been served on the despatching Railway Administration as well as on the Administration within whose territory the destination station falls. Since all the Railway Administrations are now owned by the State, it is settled law that there is no force in an objection of this type and that service of the notice u/s 77 on either of the Railway Administrations is enough to satisfy the requirements of that provision.

8. The last matter on which the learned counsel for the appellant has addressed his arguments relates to the claim for Rs. 5,195-10-0 allowed by the trial Court under issue No. 8. The learned Senior Subordinate Judge has held that the wool in dispute had been purchased from Sydney at the rate of 123d per pound and that the invoice, Exhibit P-60, produced by the respondent, showed that on January 17, 1956, the rate of wool in Sydney had fallen to 108d, per pound. On the basis of this date furnished by the plaintiff-respondent, the amount allowed by the trial Court was worked out after taking into consideration the statement of Om Parkash, P. W. 3 to the effect that even in the Ludhiana market, the prices of woollen yarn had fallen in January 1956, as compared to the rates prevailing in November 1955.

9. On behalf of the appellant two arguments have been addressed under this issue. It is firstly contended that there is no proper evidence on the record of this case to prove a fall in prices of Australian wool tops between the 23rd of November 1955, when the goods should have arrived at the destination station, and the 10th of January 1956, when they were actually delivered. It is secondly contended by him that the loss suffered by the consignee of goods due to fall in prices at the destination station cannot be treated as loss within the meaning of Section 73 of the the Railways Act. and would in any case be too remote. We are not inclined to agree with the second contention of the learned counsel, but need not finally pronounce on this aspect of the matter in this case because of the view we are taking of the first point. The evidence led by the plaintiff-respondent in support of the claim covered by this issue is confined to the statement of Om Parkash, P. W. 3 and that of Shiv Kumar Gupta P. W. 7, Manager of the plaintiff-mills. Om Parkash, P. W. 3, the proprietor of a Ludhiana firm, stated that his firm was the seling agent of the plaintiff-mills for woollen yarn manufactured by the said mills, and that the rate of wool tops went down in January 1956, as compared to the rates of November 1955, by -/8/-or -/10/- per pound. He did not refer to any particular transaction of sale or purchase of wool tops either in November 1955, or in January 1956. He did not even state whether the averment about the fall in prices related only to indigeneous wool tops or to imported ones, and even if they related to the latter category, whether the fall in prices was confined to any particular imported wool tops or also to the Australian ones. It is impossible to rely on a general and vague evidence of this type to support the claim for damages for the loss suffered by fall in prices. Shiv Kumar Gupta, P. W. 7, General Manager of the plaintiff-mills relied on an extract from the quality register of the plaintiff-mills (Exhibit P-57), and stated that woollen yarn was being sold at Ludhiana at Rs. 9-4-0 per pound in November and December 1955, and that the woollen yarn manufactured by the plaintiff-mills out of the disputed wool tops was despatched for sale to Ludhiana in January 1956, and could fetch only about 8/-/- per pound. It is in evidence that the wool tops which had been received out of the suit consignment had been partially damaged. It would, therefore, be normal that woollen yarn manufactured out of the damaged wool tops should fetch lower price. Even if the evidence of this witness is taken on its face value, the plaintiff having already obtained a finding in his favour to the extent of Rs. 900 on account of deterioration in the goods, cannot claim damages which may possibly be , related to the same cause of action second time. Still greater difficulty in the way of the plaintiff-respondent is that the witness has not stated about the percentage of Australian wool tops used in the manufacture of the woollen yarn sold in January 1956. He has not even stated that the quality of the yarn was the same.

Learned counsel for the respondent has referred to credit bills, Exhibits P-3 to P-42 (printed on pp. 52 to 111 of the paper book) showing that woollen yarn was sold by the plaintiff-mills during November and December 1955, at rates varying from Rs. 9-2-0 to Rs. 9-4-0 per pound. As compared with this, argues Mr. Gokal

Chand Mittal, learned counsel for the respondent, the credit bill, Exhibit P-43 dated February 17, 1956, shows that the woollen yarn sold under it could fetch the price of Rs. 8 per pound only. As stated above, there is nothing on the record of this case to show whether the quality of the yarn was exactly the same in each case or not. The description of the yarn is the same in some of the credit bills, but different in others. Moreover, we are not really concerned with the prices of yarn, but with the goods which were the subject-matter of the consignment, that is wool tops. Evidence of the price of wool tops on the two relevant dates could have been given to prove the fall in the market value of the goods at the destination station. Nor has any evidence of the market value of even woollen yarn on the 10th of January 1956, been produced by the plaintiff-respondent. The burden of proof of damages lay on the plaintiff. The prices in Sydney are not relevant in the circumstances of this case as the plaintiff-respondent had not to re-acquire the short delivered goods from Sydney. The normal amount of compensation to which a consignee is entitled in a matter of this type is the difference in the market value of the goods at the destination station between the date on which the goods were due for delivery and such value of the goods on the date on which they were actually delivered. In the state of evidence referred to above, it is impossible to uphold the decree of the trial Court to the extent of Rs. 5,195-10-0 based on the alleged loss suffered by the plaintiff on account of fall in the market price of the goods contained in the suit consignment.

10. Mr. Gopal Chand Mittal has then submitted that the plaintiff-respondent should be allowed the amount of expenses incurred on its representative's travelling to Bombay and Kulu and the expenses incurred in keeping the factory closed on account of the non-receipt of the suit consignment. We have no reason to differ from the finding of the trial Court to the effect that these amounts cannot be claimed as legitimate damages as the said damages, even if suffered, are too remote.

11. Learned counsel for the respondent has then claimed that the plaintiff should be allowed interest on the amount decreed against the Union of India for the period during which this litigation has been pending. In view of the law laid down in Bihar Agents Ltd. Vs. Union of India (UOI) and Others, , this contention of the counsel is well founded. Interest upto the date of the suit cannot be allowed as this would amount to awarding damages on damages, but interest pendente lite and future interest can be allowed on the amount to which the plaintiff is found entitled in a suit of this type. In the circumstances of the case, we would hold that the plaintiff is entitled to get interest on the amount found to be due to him at the rate of 6 per cent per annum from the date of the institution of the suit till the date of actual payment.

12. The result is that this appeal succeeds to the extent of Rs. 5,195-10-0 and we direct that for the decree of the trial Court shall be substituted a decree for Rs. 4,220-8-0 with proportionate costs throughout with interest at 6 per cent per annum from the date of the institution of the suit till the date of actual payment.

D.K. Mahajan, J.

13. I agree.