

(1985) 10 KL CK 0021
In the High Court Of Kerala

Union of India (UOI)

APPELLANT

Vs

P.K. Parmeswaran Pillal

RESPONDENT

Date of Decision : 31-10-1985

Acts Referred:

Railways Act, 1989 — Section 73, 78

Citation : (1986) 1 ACC 69

Hon'ble Judges : P.C. Balakrishna Menon, J;K. Sreedharan, J

Bench : Division Bench

Judgement

P.C. Balakrishna Menon, J.—The defendant, the Union of India represented by the General Manager, Southern Railway, appeals against the decree for damages passed by the lower court. The plaintiff has on 10-7-1975 booked 166 bags of Nepal rice at the Jogbani Railway Station of the North Frontier Railway for consignment to the Trivandrum Central Railway Station. The consignment is covered by invoice No. 6. He had on the same day booked other consignment of Nepal rice as per invoices Nos. 1 to 5 and 7 to 9 in the same railway station for consignment to Trivandrum. All the consignments except the one covered by invoice No. 6 were delivered at the Trivandrum Central Railway Station between the dates 29-8-1975 and 3-9-1975. There was considerable delay in the delivery of goods covered by invoice No. 6. The plaintiff issued a notice Ext. A-2 dated 13-10-1975 to the Chief Commercial Superintendent, Thiruchirapalli informing him that the consignment of rice covered by invoice No. 6 had not been delivered at the destination, that there is steep decline in the price of Nepal rice in the market and the loss that the plaintiff is likely to suffer will have to be borne by Railway administration. There was no reply to Ext. A-2. The plaintiff thereafter sent a telegram Ext. A-4 to the Chief Commercial Superintendent on 20-10-1975 informing him that the railway administration will be responsible for the loss that the plaintiff may have to incur for non-delivery or delayed delivery of the goods covered by invoice No. 6. He issued a reminder Ext. A3 dated 6-11-1975 claiming damages to cover the cost of the rice as per the purchase bill Ext. A8, interest at 18%, bank commission and the loss of profit estimated at Rs. 4150/-.

There was also no reply to Ext. A3. Thereafter on 18-11-1975 the plaintiff got delivery of 163 bags of the rice covered by invoice No. 6. There was shortage of 3 bags when the consignment reached the destination. The plaintiff filed the suit for recovery of damages based on the fall in price of Nepal rice between 23-8-1975 and 18-11-1975. He has also claimed interest on the amount covered by Ext. A 8 bill from 23-8-1975 to 18-11-1975. Since the consignments covered by invoice Nos. 1 to 5 and 7 to 9 were delivered at the destination during the period between 8-8-1975 and 3-9-1975, the plaintiff has taken 23-8-1975 as the reasonable time within which the goods should have been delivered. The price of Nepal rice in the Trivandrum market on that date was Rs. 378-57 per quintal, the price on 18-11-1975 was only Rs. 315/-and the difference due to the fall in price is claimed as damages. The plaintiff has not made a separate claim in this suit for short delivery of three bags of rice.

2. The suit was resisted by the defendant Railway Administration raising the contention that there is no time specified for the delivery of goods booked at Jogbani Railway Station ; the damages claimed fall within the scope of clause (d) of Section 78 of the Indian Railways Act and it cannot be decreed for the reason of its remoteness and also for the reason that the loss of a particular market cannot be the basis to sustain a claim for damages. They also resist the plaintiff's claim for interest on the amount covered by Ext. A8 bill.

3. The court below found that the plaintiff is entitled to damages for the deterioration in value of goods in the market for the reason of the delay in delivery at its destination. It was however found that the plaintiff is not entitled to interest on the price of the goods paid in addition to the damages referred to above. The suit was accordingly decreed for recovery of Rs. 10,569-22. It is against this decree that the defendant has come up in appeal.

4. There is no dispute that there was delay in the delivery of the goods. The goods booked as per invoices Nos. 1 to 5 and 7 to 9 on 10-7-1975 at the Jogbani Railway Station were delivered at the Trivandrum Central Railway Station on the dates between 18-8-1975 and 3-9-1975. The goods booked on the same day as per invoice No. 6 were delivered at the Trivandrum Railway Station only on 18-11-1975. The price of Nepal rice in the Trivandrum market on 23-8-1975 was Rs. 378-57 per quintal. The price came down to Rs. 315/- per quintal on 18-11-1975, the date on which the goods were delivered. The claim for damages is based on the fall in price of Nepal rice in the Trivandrum market between these two dates. Exts. A13 to A16 counterfoil bill books produced by the plaintiff show the price of Nepal rice in the Trivandrum market during the period 21-8-1975 to 18-12-1975. The price on 23-8-1975 was Rs. 378-57 per quintal. It came down to Rs. 311/-on 9-12-1975 and there was a further fall in price to Rs. 302/- per quintal on 12-12-1975 and subsequent dates. Ext. A12 day book produced by the plaintiff shows the price at which the 163 bags of Nepal rice delivered to the plaintiff at Trivandrum on 18-11-1975 were sold. Fifteen bags of rice were sold at Rs. 311-75 per quintal on 9-12-1975 and the remaining bags were sold at Rs.

302/- per quintal on 12-12-1975 and subsequent dates. PW 1 examined on behalf of the plaintiff firm has proved Ext. A13 to A16 and the different entries in Ext. A12 day book. The court below was perfectly right in accepting the plaintiff's case that he had suffered loss of Rs. 10,569-22 for the reason of the fall in price of rice in the Trivandrum market between the dates 23-8-1975 and 18-11-1975. The goods booked at Jogbani Railway Station on 10-7-1975 had been delivered between the dates 18-8-1975 and 3-9-1975. The court below was also right in accepting the plaintiff's case that the reasonable time for delivery of the goods involved in the case was on or before 23-8-1975. Counsel for the appellant submits that the plaintiff is not entitled to claim damages for delayed delivery on the basis of the fall in price in the market. Counsel relies on clause (d) of Section 78 of the Indian Railways Act as per which the Railways Administration shall not be responsible "for any indirect or consequential damages or for loss of particular market." The Supreme Court in the decision in Union of India (UOI) Vs. The Steel Stock Holders Syndicate Poona, has held that the liability of the Railway Administration as per Section 73 of the Indian Railways Act as amended by Act 39 of 1961 is that of an insurer. It is stated at page 884:

We are of the opinion that Section 73 of the new Act, while converting the liability of the railway administration from that of a carrier to that of an insurer, has imposed heavier responsibility on the railway administration.

It is further stated at page 885:

It is well settled that the liability of an ordinary carrier even in the English common law does not extend to a damage which is indirect or remote. Loss of profit or loss of a particular market has been held by a number of decisions to be a remote damage and can be awarded only if it is proved that the party which is guilty of committing the breach was aware or had knowledge that such a loss would be caused. Section 78(d), however, seeks to bar the remedy of this kind of damage.

In the case before the Supreme Court there was no claim for damages based on the fall in price of the goods in the market. The claim for damages was only for interest on the value of goods for the period of delay due to the negligence of the railway administration in delivering the goods to the plaintiff. The fall in price of goods due to delayed delivery does not fall under Clause (d) of Section 78. It is a direct damage for which the railway administration is liable u/s 73 of the Indian Railways Act. This position seems to be clear from the decision of Untwalia J. in the Union of India v. Madan Lal AIR 1968 Pat 94. The learned judge has held that the bar of a claim for damages "for loss of particular market" in Clause (d) of Section 78 of the Indian Railways Act does not relate to a claim for damages on the ground of fall in market price. If the plaintiff had got delivery of the goods consigned in due time, he would have succeeded in selling them at a higher price; in other words, the goods were more valuable at the time when they ought to have been delivered, but deteriorated in value due to fall in market price on

the date on which the goods were actually delivered. The learned Judge accordingly held:

That being so, I think an owner of the goods is entitled to claim damages from the Railway Administration for late delivery based upon the deterioration in their value due to the fall in market price. Ordinarily, it will be difficult to visualise cases where, on account of late delivery an owner of goods will be entitled to claim damages on any other basis.

Chitty on Contracts, 24th edn. states at volume 1 page 745 paragraph 1579:

A carrier who fails to deliver goods within the agreed time may also cause loss of business profits to the consignee. The normal measure of damages is the difference between the market value of the goods on the due date of the arrival and their market value on the actual date of delivery.

The same view is expressed by McGregor on Damages, 14th edn. at page 512 paragraphs 892 and 893:

892. The normal measure of damages is the market value of the goods at the place of delivery at the time they should have been delivered less their market value there at the time they were in fact delivered....

893. (a) Carriage by land. Where the carriage of the goods is by land and the market price has fallen during the period of delay, the normal measure of damages applies and damages are given for the fall in the market price....

The basis of the claim for damages in such cases is not the loss of profit or the loss of a particular market, such as a seasonal market, but the deterioration in value of the goods due to the delay in reaching the destination.

5. We are of the view that the plaintiff is entitled to damages based on the fall in market price between the due date of arrival and the actual date of delivery. The appeal fails and is dismissed with costs.