

(1982) 03 RAJ CK 0002
In the Rajasthan High Court
Case No : Second Appeal No. 630 of 1971

Union of India (UOI)

APPELLANT

Vs

Ram Prasad Prahladrai

RESPONDENT

Date of Decision : 23-03-1982

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 104
Railways Act, 1890 — Section 56, 74, 74(3), 76

Citation : AIR 1982 Raj 253 : (1982) RLW 213 : (1982) WLN 88

Hon'ble Judges : Dwarka Prasad, J

Bench : Single Bench

Advocate : A.K. Mathur, for the Appellant; R.L. Jangid, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.—In this second appeal by the Union of India two questions have been raised by learned counsel for the appellant.

2. The first argument made by the learned counsel is that the Railway Administration was not bound to give open delivery at the instance of the plaintiff. According to learned counsel, seeking open delivery was unjustified and as such the Railway Administration was within its rights to sell the goods by public auction. The argument of the learned counsel appears to be well founded. There is no provision in the Railways Act or THE Rules authorising the consignee to claim open delivery or assessment of damages before delivering the goods In Manbhardayal and Co. Vs. Union of India (UOI) and Others, Union of India (UOI) Vs. Jutharam and Another, and Union of India (UOI) and Another Vs. Hukumchand and Others, it has been held that the consignor/consignee cannot claim open delivery or assessment of damage before delivery, as of right. If the consignee does not take delivery of goods alleged to have been damaged in transit or before delivery is given, he does so at his own risk and the Railway Administration would be justified in disposing of the goods by public auction, after due notice to the consignee, in accordance with the provisions of Section

56(1) of the Railways Act.

3. The other contention raised by learned counsel for the Railway Administration was that all the intervening Railways should have been made parties to the suit and the suit should have been dismissed because the Southern Railway and the Western Railway were not made parties to the suit. In *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, their Lordships of the Supreme Court observed as under:--

"Under Section 80 of the Railways Act it is for the consignor to establish, if he wants to sue a Railway Administration other than the one which booked the consignment, that the damage had occurred on its system. The contention seems to us to be correct. But where a consignor receives his consignment in a damaged condition from the delivering railway, the burden would shift to the delivering railway to show that the damage had not occurred on its railway. The burden could be discharged by showing that the consignment was already damaged before it was received by that railway. Here no evidence having been given on behalf of the D.H. Rly. on the point we hold that the presumption has not been rebutted."

4. No doubt that under Sub-section (3) of Section 74 burden lies on the plaintiff to prove that the particular Railway Administration was responsible for any loss, destruction, damage, deterioration or non-delivery in transit of goods due to negligence or misconduct on the part of the Railway Administration or its servants, but Section 76 makes the Railway Administration responsible for the loss, destruction, damage or deterioration of goods proved by the owner to have been caused by delay or detention in their, carriage, unless the Railway Administration proves that the delay Or detention arose without negligence or misconduct on the part of the Railway Administration or its servants. Section 76 is not controlled by Section 74(3). Therefore, in cases of delay in delivery or detention in carriage, the burden to prove that deterioration was not caused due to misconduct or negligence of its servants, was on the Railway Administration and failure to prove the same relieved the consignee of burden u/s 74(3). However, it was for "he consignee to prove that damage or deterioration in the condition of goods was caused due to delay or detention during carriage of goods. Because of the existence of these provisions, their Lordships of the Supreme Court in *Jeunull Bhojraj*"s case held that where a consignor received his consignment in a damaged condition from the delivering railway, the burden would shift to the delivering railway to show that the damage had not occurred on its railway and that can be done if it is shown that the consignment was already damaged before it was received by that Railway.

5. In the present case, 11 bags of "Khopra" (Coconut) were booked at Tiptur Railway Station in Karnataka on March 1. 1967. The goods should have ordinarily reached its destination, Sujangarh within a month Or so, but they actually reached there on July 26. 1967 as admitted by the defendant Railway Administration in its written statement Thus there was, no doubt, detention in

the carriage of goods causing delay in delivery thereof and it was or the Northern Railway Administration to show that they received the goods in the same condition or the goods were damaged already before they were received by it or that the goods were carried promptly to their destination after they were handed over to the Northern Railway by the Western Railway. In that event the plaintiff's suit against the Northern Railway would have been dismissed on the ground that the other Railway Administrations viz.. Southern Railway and Western Railway have not been made parties to the suit. But as the Northern Railway has not produced any evidence to show that the consignment was already delayed or detained for a long time or that H was already damaged or deteriorated before it was received by that Railway and as such the presumption referred to by their Lordships of the Supreme Court in the aforesaid case that deterioration or damage has been caused by non-delivery or detention, in carriage arises in the present case, making the Northern Railway liable for the loss suffered by the plaintiff.

6. In *Shri Mahesh Metal Works v. Union of India* AIR 1974 Raj 33 it was observed by this Court that if negligence or misconduct cannot fairly be inferred from the evidence of the Railway, then the burden of proving the negligence or misconduct shifts to the consignor. In that case definite evidence was led by the Railway to show that the goods were sent by the Western Railway in a proper condition and so no case of misconduct or negligence on the part of the Western Railway could be made out. It was, therefore, held that the plaintiff could not obtain a decree against the Western Railway, in the absence of any material to show as to within whose jurisdiction the loss to the consignment by pilferage was caused. It was observed in that case that where a consignor received the consignment in a damaged condition from the delivering railway the burden would shift to that Railway to show that the damage has not occurred on its Railway. As not an iota of evidence has been led on behalf of the Northern Railway that the delay or detention has been caused, or the condition of the goods had deteriorated, before the consignment reached the Northern Railway, the delivering railway cannot be absolved of its liability in this respect. Thus the suit cannot be held to be not maintainable against the Northern Railway because the non-joinder of the other Railway Administrations, whose presence "would have been necessary, if the Northern Railway Administration would have shown that the delay or detention had occurred prior to the receipt of goods by the Northern Railway.

7. There is another aspect of the matter. D. W. 2 Tej Raj stated that the goods were received at Sujargarh Railway Station on April 29, 1967. If that was so, no explanation is forthcoming as to why the delivery of the goods was not offered to the plaintiff before July 28, 1967 and where the goods remained from April 29, 1967 to July 25, 1967. If the statement of Tej Raj D. W. 2 is accepted, then the liability for delay in making the delivery and the consequent deterioration in the condition of the goods, squarely falls upon the Northern Railway. In such circumstances it was not necessary for the plaintiff to show that the Northern Railway Administration or its servants were negligent in the performance of their

duties.

8. According to the Bijak, produced by the plaintiff as Ex. 12, the goods were purchased for a sum of Rs. 2289,58 including expenses. The Railway Administration has realized a sum of Rs. 1851.00 by auction sale of the goods. The defendant's own witness D. W. 1 Brahma Swaroop Saxena admitted that 5% of the goods consigned with the Railway was broken while the condition of 10% had deteriorated as it had turned black. Thus deterioration and loss to the extent of 15% of the goods was admitted by D. W. 1, Shri Saxena and the Northern Railway was liable to compensate the plaintiff for the loss suffered by him. On account of a part of the goods being broken or the condition thereof having deteriorated, it was held in Union of India (UOI) and Another Vs. Hukumchand and Others, that the plaintiff is entitled to recover the Bijak price in such circumstances. The suit has, therefore, been rightly decreed by both the courts below for a sum of Rs. 2292/-.

9. In the result, the appeal fails and is dismissed. The parties are, however, left to bear their own costs.