
(1955) 08 PAT CK 0004
In the Patna High Court
Case No : A.F.A.D. No. 1220 of 1950

Union of India (UOI)

APPELLANT

Vs

Shamsu Mian and Another

RESPONDENT

Date of Decision : 03-08-1955

Acts Referred:

Evidence Act, 1872 — Section 114
Railways Act, 1890 — Section 72, 80

Citation : AIR 1956 Patna 71

Hon'ble Judges : Choudhary, J

Bench : Single Bench

Advocate : P.K. Bose, for the Appellant; M. Rahman, for the Respondent

Final Decision : Allowed

Judgement

Choudhary, J.—This is a defendant's second appeal. It is directed against the judgment and the decree of the learned Additional Subordinate Judge, second court, Patna, reversing those of the Additional Munsif, third court Patna, who dismissed the suit of the plaintiffs for recovery of damages against the defendant-appellant.

2. The case of the plaintiffs, stated briefly, is as follows. The plaintiffs were consignees of 224 baskets of soft pears weighing 200 maunds which were booked in a full load wagon from Peshawar, a railway station in the then North Western Railway, to Patna Junction which was in the then East Indian Railway line. The consignment was booked on the 28-7-1946, and it reached Patna Junction on 18-8-1946, by which time the goods were completely decomposed and got rotten. At the time of delivery, the damage was assessed at 40 per cent. by the Station Master of Patna Junction. The loss is said to have been caused due to misconduct on the part of the Railway Administration.

As appears from paragraph 7 of the plaint, the claim u/s 77, Railways Act, was sent only to the Chief Commercial Manager, East Indian Railway at Renares

Cantonment. The suit was brought against the Governor-General of India in Council, Central Government (Railway Department). New Delhi. Reading the entire plaint it appears that the suit was instituted only against the East Indian Railway Administration, and this point has not been disputed by Counsel appearing for the plaintiffs-respondents.

3. The defendant contested the suit on various grounds, only two of which are relevant for the purpose of the present appeal. They are (1) that the Railway Administration was not guilty of any misconduct and (2) that the train carrying the goods was stalled at Kalu Station due to congestion of Lahore Yard.

4. The trial court accepted the contention of the defendant and dismissed the suit. On appeal by the plaintiffs, the lower appellate court reversed the findings of the trial court and held that the Railway Administration was guilty of misconduct. It, therefore, decreed the suit.

5. The learned Additional Subordinate Judge has based his finding, as regards the misconduct on the part of the Railway Administration, on three grounds, namely, (1) that it was improper on the part of the Railway Administration to have loaded perishable goods into the type of wagon in which they were sent, (2) that there was no evidence that the consignment was sent by fast goods express and (3) that there was delay in delivery of the consignment.

. There appears to be no merit, in my opinion, in the first ground. According to the evidence of D.W. 2, there is a special type of wagon with windows for despatch of perishable goods, and from the evidence of D.W. 3 it appears that the wagon into which the fruits were loaded was of "C" type of B.A. Railway which had holes at the top for ventilation. The learned Subordinate Judge has, therefore, held that the Railway Administration was at fault in loading the fruits into this type of wagon. But P.W. 2, who is said to have booked the consignment, has himself admitted that the railway authorities at Peshawar told him that the only wagon that, was available at that time was of the unventilated type and that he could book his goods in that wagon at his choice.

Thus, P.W. 2 was himself responsible for having the fruits loaded in the particular type of wagon, and I do not see how the learned Subordinate Judge found fault with the Railway Administration when it clearly pointed out to the consignor that no ventilated type of wagon was available. The second ground, in my opinion, is equally without any merit. D.W. 3 has admitted that the wagon containing the consignment of perishable goods is carried by fast express. The wagon was admittedly sent onward from Moghulsarai by 214 Dn. which was a fast goods express. At Moghulsarai, however, the wagon was received by 212A Dn. and from Peshawar it had been sent by 18 Dn.

There was nothing on the record to show whether 18 Dn. or 212A Dn. was a fast goods express, that on this ground the learned Additional Subordinate Judge held that it was not shown that the railway authorities took the ordinary precaution of sending the wagon marked "perishable" by fast goods express as

they were required to do. The consignment was booked under Risk Note forms A and B. I have dealt with the legal position of these risk note forms at length in -- Union of India (UOI) Vs. Banshidhar Prasad and Another, , the judgment in which case also has been delivered to-day, and I do not think any useful purpose will be served by repeating the same in the present case.

Suffice it to say that in view of the consignor having executed Risk Note Form A, no obligation was cast upon the Railway Administration to make any disclosure. Nor, even in case of Risk Note Form B, could the court draw an adverse inference against the Railway Administration for any non-disclosure without following the procedure as laid down in that case. It was incumbent upon the plaintiffs to have made a prayer to the Court to direct the Railway Administration to make any disclosure, and it was only when the Railway Administration failed to obey the direction given by the Court that an inference adverse to it could be drawn u/s 114, Evidence Act.

In the present case, the Railway Administration was not bound to make any disclosure in view of the execution of Risk Note Form A by the consignor, and, even if it be assumed that it had to make any disclosure, there is nothing to show that the procedure as laid down above was followed in this case.

No inquiry seems to have been made from the Railway Administration or its witnesses as to whether the aforesaid 212A Dn. and 18 Dn. goods trains were fast goods express or not. Apart from that the plaintiffs could have led evidence to establish that those two trains were not fast goods express. For these reasons, I am unable to agree with the view taken by the learned Additional Subordinate Judge that the failure of the Railway Administration to show that the consignment was sent by fast goods express could lead to an inference of misconduct on its part.

As regards the delay in the delivery of the goods the Railway Administration had disclosed that the train carrying the wagon in question had to be stabled at Kalu Station due to congestion of Lahore Yard. A Yard chart was produced by the Railway Administration which was marked as exhibit G by the trial Court. The learned Additional Subordinate Judge, however, held it not to have been legally proved, and, therefore, rejected the same as being evidence in the case. The fact, however, remains that the Railway Administration made the disclosure about the congestion at Lahore Yard.

The onus of proving misconduct being on the plaintiffs, they could have very well adduced evidence to show that there was no congestion. They, having failed to do that, cannot rely simply on the delay in the delivery of the consignment as proving misconduct on the part of the Railway Administration.

6. There is yet another difficulty in the way of the plaintiffs in this case. I have already observed that the suit was instituted by the plaintiffs against the Governor-General of India in Council representing the then East Indian Railway. The written statement that was filed in this case by the Dominion of India also

shows that it was filed lay it as the owner of the East Indian Railway. The consignment was booked at Peshawar which at that time was in the line of a different railway, namely, the North Western Railway. Section 80, Railways Act deals with the liability where goods are booked through over the railways of two or more Railway Administrations. It runs as follows:

"Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred".

A simple reading of the section itself gives an impression that a suit for compensation for loss can be brought either against the Railway Administration under whose railway the consignment was booked or against the Railway Administration on whose railway the loss occurred. The former railway is bound to compensate by reason of the contract of consignment whether the loss may have occurred at a place within that railway or not. But the latter railway is only bound for such loss if the loss has occurred at any place within its railway.

This view gains support from the observation of their Lordships made in a Bench decision of this Court in -- Bengal and North Western Ry. Co. Ltd. Vs. Kameshwar Singh Bahadur, which is to the following effect:

"Such a suit (their Lordships were referring to a suit u/s 80 of the Indian Railways Act) may be brought either against the company with whom the contract for carriage was directly made or against the railway administration on whose railway the loss occurred".

This observation was quoted with approval in another Bench decision of this Court in -- Governor-General of India in Council Vs. Sukhdeo Ram Marwari and Another, . It was held in that case that where the goods are consigned to a Railway for delivery at a railway station on another railway and the suit for damages for short delivery is brought against the Governor-General representing the latter railway where, however, the loss does not take place the latter cannot be made liable for the loss on the theory of agency or partnership.

On behalf of the plaintiffs-respondents reliance has been placed on the case of -- Jankidas Marwari Vs. Governor-General of India in Council and Another, where it was held that where goods are consigned at the railway of one administration and are carried over and delivered at the railway of another administration, both the administrations are jointly and severally liable, and, therefore, the former is equally liable to make good the loss by payment of compensation to the same

extent as the latter.

In that case the question whether the latter railway could not be made liable unless the loss is proved to have occurred within its administration, was not under consideration. An argument was advanced before their Lordships on behalf of the former railway, namely, the railway where the consignment was booked, that it was not liable for the loss that occurred on the latter railway and that argument was repelled by reason of Section 80, Railways Act and it was held that the former railway was in all cases liable for the loss. That case has, therefore, no application to the present case inasmuch as in the present case there is no evidence to show that the loss occurred at any place within the administration of East Indian Railway. In that view of the matter also, the suit of the plaintiffs was liable to be dismissed.

7. For the reasons given above, I am unable to agree with the view taken by the lower appellate court. The result, therefore, is that the appeal is allowed, the judgment and the decree of the lower appellate court are set aside and the decree of the trial court is restored. The suit of the plaintiffs is dismissed with costs throughout.