
(1961) 11 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Revision Application No. 214 of 1957

Union of India (UOI)

APPELLANT

Vs

Shivjas Ram and Others

RESPONDENT

Date of Decision : 24-11-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : AIR 1963 Raj 1 : (1962) RLW 220

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : S.K. Agarwal, for the Appellant; R.C. Airun, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, J.—This is a revision application by the Union of India against a decree of Judge, Small Causes Court, Ajmer, decreeing a suit for recovery of a sum of Rs. 95-9-0.

2. The plaintiff delivered a consignment of 275 bags of cotton seed to the Western Railway at Barnagar Railway Station for being carried to Ajmer on 20th October 1951. In accordance with the rules contained in the Goods Tariff in force from 1st December, 1950, the goods were loaded by the plaintiff in two four wheel wagons and a railway receipt Ex. A. 2 was issued on 27-10-1951. The material particulars contained in it run as follows:

1. Description: Two four wheel wagons containing 275 bags of cotton seed.
2. Actual weight: 419 maunds 15 seers.
3. Weight charged: 419 maunds 20 seers.
4. Rate: Rs. -/11/6.
5. Total freight to pay: Rs. 301/8/-.
3. When the goods arrived at the destination the Railway demanded a further

sum of Rs. 95-9-0 before delivering them. The amount of Rs. 397-1-0 was paid by way of protest by the plaintiff and the delivery was taken. He thereafter served a notice u/s 80 C. P. C. and Section 77 Railways Act and instituted the present suit. It may be mentioned here that the Railway refunded a sum of Rs. 10-9-0 to the plaintiff before the above notice was served.

4. There are two rates which can be applied by the Railway--a maundage rate and a wagon rate. According to the rules contained in the Goods Tariff, maundage rate is charged on the actual weight of the goods consigned, whereas wagon rate is charged on the total carrying capacity of the wagon in which the goods are actually consigned. In the present case the actual carrying capacity of the two wagons in which the goods were consigned was 9 tons (245 maunds) and 10 3/4 tons (292 maunds and 26 seers) respectively. Initially the charge of Rs. 95-9-0 was calculated taking the carrying capacity of the wagons to be 300 maunds each. According to Rule 6 (12) contained in Chapter VIII of the Goods Tariff, if wagons of lower carrying capacity -than 300 maunds are used, the charge can only be made on the actual carrying capacity of such wagons. That is why a refund of Rs. 10-9-0 was made to the plaintiff by the Railway on the discovery of the error.

5. The case of the Railway is that there was a mistake in preparing the railway receipt at Barna-gar inasmuch as the calculation of the freight was based on the actual weight of the goods even though the wagon rate was employed. The contention on behalf of the plaintiff on the other hand is that the railway receipt contains the contract between the parties and it is not open to the Railway to alter it unilaterally. The following decisions of the Allahabad and Madras High Courts were referred to by the learned counsel for the parties: Chunnilal v. Nizam's Guaranteed State Railway Company, Ltd., ILR 29 All 228 ; Ram Govind Pandey Vs. Brij Ratan Das and Another Gulab Dei Vs. G.I.P. Railway, Secy. of State Vs. B. Harbans Prasad Vaish, M. Sheik Dawood Rowther Vs. South Indian Railway Co. Ltd. and Another, Chhotey Lal Panna Lal Vs. R.K. Railway and Another

6. The case of Chunnilal, ILR 29 All 228 is distinguishable. In that case two wagon loads of chillies were received by the Station Master at Bezwada on the Nizam's Guaranteed State Railway for carriage to Agra station on the Great Indian Peninsula Railway at a rate of Rs. 270/-per wagon for the whole distance. On arrival at Agra the Great Indian Peninsula Railway Company's station master demanded payment of higher rates, calculated per maund; and refused delivery until such rates were paid. The consignees paid under protest and sued both Railway Companies for a refund of the excess charges. It was held that

"the contract for carriage of the goods for the whole distance was one entire contract with the receiving company who were liable for the overcharge, if any, wrongfully demanded from the consignees".

It appears that there was no rule in the Goods Tariff of the Nizam's Guaranteed State Railway Company corresponding to paragraph 31 of the Great Indian

Peninsula Railway Goods Tariff, which runs as follows;

"It must be distinctly understood that the weight and description of goods, as given in the railway receipt and forwarding note, are inserted for the purpose of estimating the railway charges and the railway reserves the right of measurement, reweighment, recalculation and reclassification of rates, terminals and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or undercharged".

In the present case condition No. 6 printed at the back of the railway receipt runs as follows:

"That the Railway have the right of re-measurement, re-weighment, re-classification and re-calculation of rates, terminal and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or undercharged."

7. As has been pointed out above by me, there was an error on the part of the agent of the Railway at Barnagar, who prepared the railway receipt, inasmuch as he could either have charged on the actual weight of the consignment at the maundage rate, which in this case is -/15/2/- per maund or he could have charged on the total carrying capacity of the two wagons, in which the goods were loaded, at the wagon rate, which in this case is -/11/6 per maund.

8. The view taken by me above finds support from the Division Bench decision of Allahabad High Court in Secy. of State Vs. B. Harbans Prasad Vaish, With all respect, I am unable to agree with the decision in Chhotey Lal Panna Lal Vs. R.K. Railway and Another Assuming that the consignor cannot be assumed to have constructive notice of the rules contained in the Goods Tariff, he had notice of condition No. 6 printed on the back of the railway receipt, and if the agent of the Railway, who prepared the railway receipt committed a mistake in calculating the freight, the Railway Administration is entitled to correct that mistake. In the case of 34 Ind Cas 104: (AIR 1917 All 424) it was assumed in the circumstances similar to the present one that Chunnilal's Full Bench case, ILR 29 All 228 was applicable. I have shown above that that case is distinguishable. I am also unable to agree with the decision in Gulab Dei Vs. G.I.P. Railway, The other remaining cases, referred to above, support the contention put forward on behalf of the Railway.

9. I accordingly hold that the Railway was entitled to recover an extra sum of Rs. 85/- besides the sum of Rs. 301/8/- shown in the railway receipt, as wagon rate freight had to be paid on 245 maunds and 292 maunds and 26 seers, and not on the actual weight of the goods.

10. The trial court committed another error inasmuch as it allowed interest on the sum of Rs. 85/-, which cannot be recovered by way of damages. In this connection, the decision of their Lordships of the Privy Council in AIR 1938 67 (Privy Council) may be referred to.

11. I accordingly allow the revision application, set aside the decree of the court below and dismiss the suit. In the circumstances of the case, I direct that the parties shall bear their own costs throughout.