

(1970) 12 CAL CK 0009
In the Calcutta High Court
Case No : A.F.O.D. No. 396 of 1963

Union of India (UOI)

APPELLANT

Vs

Sree Narayan Agarwalla

RESPONDENT

Date of Decision : 17-12-1970

Acts Referred:

Railways Act, 1890 — Section 74C(3)

Citation : AIR 1971 Cal 449

Hon'ble Judges : Sarma Sarkar, J; S.K. Chakravarti, J

Bench : Division Bench

Advocate : Ajay Kumar Basu, for the Appellant; K.P. Sinha and Gurudas Ghose, for the Respondent

Final Decision : Allowed

Judgement

Chakravarti, J.—This appeal is at the instance of Union of India representing certain railways. A consignment containing 293 bags of Dhanias weighing 329 mds. 24 seers was booked at Vikarabad a station on the N. S. Railway for carriage to and delivery at Midnapore, a station on the erstwhile B. N. Railway against R. R. No. 83746 dated 20th December, 1950. The consignor was himself the consignee. The consignment reached Midnapore on or about 20th January, 1951 and then it was found that 220 bags out of the aforesaid consignment got damaged by water and the damage was also assessed by the railways and it was found that the damage was to the extent of 60 per cent, in 150 bags, 20 per cent, in 50 bags and 15 per cent, in 20 bags, the total thus coming to 115 mds. 35 seers, the plaintiff claims to be the owner of the goods by purchase from the consignor after the goods had been booked and alleges that the goods got badly damaged by rainwater during transit on account of negligence and misconduct on the part of the railways, and there was also considerable delay on the part of the railways in handling this consignment. He claimed a sum of Rs. 12,746-4 annas as the price of this 115 mds. 35 seers @ Rs. 110/- per md., a sum of Rs. 330/- as the price of 220 empty bags @ Rs. 1.50 per bag, a sum of Rs. 6411-12 annas as

the loss on account of market fluctuation on 213 mds. 29 seers @ Rs. 30/- per md, together with a sum of Rs. 2531-12 annas by way of interest. The total claim thus reached at Rs. 22,019-12 annas. The loss on account of market fluctuation was claimed on the basis that there was inordinate delay on the part of the railways and the market had come down from Rs. 110/- to Rs. 80/-, and it was at that rate that the plaintiff had to sell the better portion of the consignment. The railways denied that there was any negligence or misconduct on their part, or that the goods were damaged by rainwater. They further alleged that claim has been grossly exaggerated and also that the plaintiff was not the owner of the goods. The learned Subordinate Judge at Midnapore overruled the contention of the defendant, and found the defendant guilty of negligence and decreed the suit in part for a sum of Rs. 12,746/-namely the price of the damaged goods @ Rs. 110/- per maund. He disallowed the other claims of the plaintiff and the plaintiff did not file any cross-objection in respect of the same.

2. The first point that was pressed on behalf of the appellant by Mr. Ajoy Kumar Basu, learned Advocate is to the effect that the plaintiff is not the owner of the goods. The delivery was made to the plaintiff and there are documents already admitted into evidence which would show that the plaintiff had purchased this consignment. He produced also the R. R. and the R.R. also bears the endorsement of Messrs. Ram Avatar Agarwalla of Bankura and that endorsement he got from the Central Bank of India Ltd. and that would appear also from Exts. 7 and 8. We, therefore, agree with the learned Subordinate Judge that the plaintiff is the owner of the goods and as such he is entitled to sue the railways. (Vide Union of India (UOI) Vs. West Punjab Factories Ltd.,).

3. The next point that has been pressed on behalf of the appellant by Mr. Basu is to the effect that the railways would not be responsible inasmuch as the goods were defectively packed. Mr. Basu relies on Section 74A of the Indian Railways Act, and hereinafter referred to as the Act. Now, under the rules it is necessary for the consignor to note in the Forwarding Note the condition in which the consignment was being booked. In this particular case Ext. A is the Forwarding Note and it shows that the defective packing was to this effect: "single gunnies stitching defective". Mr. Basu, therefore, contends that the railways would not be responsible. Now the evidence adduced even on behalf of the railways would show that this part of its consignment got soaked in water. That damage could not be attributed to the defective packing as stated above. As we read Section 74A, deterioration, leakage, wastage or damage referred in that section must be due to defective packing or the defective condition of the goods. In the circumstances Section 74A would be of no help to the appellant.

4. Mr. Basu next relies on Section 74C of the Act and submits that at in this particular case the goods were booked at owner's risk the railways would not be liable at all until and unless it is proved that the "damage was due to negligence or misconduct on the part of the railway administration or of any of its servants . Mr. K. P. Sinha, learned Advocate, appearing for the respondent has very fairly

conceded that the onus would be on the plaintiff in these circumstances to prove that the railways had been guilty of such negligence or misconduct.

5. The plaintiff's case in this respect is based on two grounds. Firstly, it has been alleged that there has been inordinate delay in dealing with this consignment and the consignment should have reached Midnapore within a week from the date of its booking. There is no satisfactory evidence on this point. P.W. 1 himself never booked any such consignment and in the circumstances it cannot be held that the plaintiff had been able to prove that there has been inordinate delay on the part of the railways in the handling of this particular consignment.

6. The second ground on which the plaintiff lays his claim is that the goods were damaged by rainwater and that by itself would show that the railways have been guilty of negligence. Mr. Sinha in this connection relies on the doctrine of "Res Ipsa Loquitur" and has referred to page 110 in Charlesworth on Negligence, 4th Edition. This doctrine means in effect that there is evidence of negligence if the facts proved are more consistent with negligence on the part of the defendant than with other causes. In such case the plaintiff will succeed simply if he can prove the happening of the accident and nothing more. Now that would be a doctrine which may be applicable in ordinary cases. But the Railways Act has actually gone against this principle and purposely the legislature has included Section 74C. If this doctrine applies, then Section 74C would have no meaning. u/s 74C, as we have already pointed out, the negligence or misconduct will have to be proved by the plaintiff, and, as such, this contention will also fail (Vide Union of India (UOI) Vs. Bishwanath Agarwalla,).

7. The fact however remains that a part of the consignment did get damaged by water. D.W. 7 A. C. Bhattacharyya was posted at Midnapore as goods clerk in January 1951 and his evidence would show that he found water on a portion of the floor of that particular wagon in which these goods were brought to Midnapore. He has further stated that the condition of the wagon was such that water could leak out from the corner of the side walls of the wagon inside the wagon. No questions were put to him that the roof was leaking. On the evidence, as adduced, we are not in a position to accept the evidence adduced by the plaintiff that the roof of this particular wagon was also leaking. He did not bring it to the notice of the station authorities, nor did he ask for any inspection of the wagon. In the circumstances, we can but only hold that the water did get into the wagon on account of a sudden spurt of rain through the corner of the side walls of the wagon.

8. Now this wagon in question was not a water tight one. That is an admitted position. Mr. Sinha submits that Dhania was a commodity which was liable to be damaged by water and as such it should have been sent in a water tight wagon and not in a not-water-tight wagon as in this instant case. Mr. Sinha has also drawn our attention to Clause IV of Rule 1506 of the Indian Railway Commercial Manual, 1967. This rule states that before commencing to load goods into wagon, care should be taken to see that goods likely to be damaged by water are

not loaded into wagons which are not, water-tight. Now all these rules do not appear to be of any statutory value and it has not been shown to us that actually this rule was framed by the Railways, under the rule-making power given to the railways. This particular book in question is not a saleable book but is meant For the use of the railway staff in the second place the consignment in question was booked in December, 1950 and arrived at Midnapore in January, 1951. That this was a rule in December, 1950 or even in January, 1951 has not been shown.

On the other hand, the evidence of D.W. 7, whom the learned Subordinate Judge found to be an extremely reliable and trustworthy witness, would show that It is only during the monsoon period that commodities which are highly damageable like sugar, rice, atta should not be loaded in wagons which are not water-tight. Thirdly, it is actually questionable as to whether Dhanias could be treated as goods likely to be damaged by water. The goods in question were booked in December which was not monsoon period at all. It was booked at a place which is now a part and parcel of Andhra Pradesh, or in other words, would be situated in Central India, and not in the south. It was coming to Midnapore which would also be a dry area in these two months. The liability of the railways would be only as of an ordinary prudent man. The question would be whether ordinary prudent men in the circumstances would take care to load such goods in water-tight wagons. No one could expect rains during the months of December or January at the place where the consignment was booked or on the route by which it was coming. Railways no doubt produced Raineharts to show that there have been no rains, but we agree with the learned Subordinate Judge that the reports did not cover the entire route and there might be sudden rains somewhere, otherwise the goods could not have been damaged by rainwater, as the plaintiff himself also admits in his plaint. An ordinary prudent man in similar circumstances would not take care to load goods in water-tight compartment, and, if, in spite of that, the goods are damaged by rainwater, it cannot be held that the railways have been negligent or guilty of misconduct. It would be nothing but an accident pure and simple, and the railways cannot be held liable. Mr. Bhattacharyya has also made it clear that the monsoon period is counted from June to October every year and that there is written rule to that effect. Even if there is no such written rule, the conduct would be of a prudent man in similar circumstances, as we have already pointed out, and, on that principle, we cannot find the railways guilty of any negligence. The position might have been different if the goods had been booked in such wagons in the monsoons as has been held in some cases by this Court.

9. Mr. Basu has further contended that the compensation is to be allowed at the rate of the price prevailing when the damage occurred or the goods ought to have been delivered (All India Reserve Bank Employees Association Vs. Reserve Bank of India,) and that the learned Subordinate Judge erred in granting compensation at the rate of Rs. 110/- per maund, when Plaintiffs own evidence would show that Rs. 80/- per maund was the prevalent price at the time of delivery. Mr. Sinha, with his usual fairness, has conceded the position, and has

submitted that in case we find that the suit should be decreed it should not be decreed at a rate higher than Rs. 80/- per maund. However, as we find that the suit has to be dismissed, this question would not arise.

10. The appeal accordingly succeeds and is allowed- The judgment and decree passed by the learned Subordinate Judge is set aside and the suit is dismissed.

Each party will bear its own costs in this Court as also in the trial Court.

Sarma Sarkar, J.

11. I agree.