

(1998) 11 DEL CK 0056
In the Delhi High Court
Case No : C.R. No. 972 of 1989

Union of India (UOI)

APPELLANT

Vs

Super Traders Corpn.

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 76 DLT 903 : (1999) 121 PLR 42 : (1999) 3 RCR(Civil) 133

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Jagjit Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.—None appears. As this revision petition is of the year 1989 and arises out of an impugned order dated 15.4.89 passed by the learned Judge of Small Causes Court, Delhi in Case No. 160/87, it is taken up today for final disposal.

2. The present revision petition arises out of impugned order dated 15.4.1989 passed by learned Judge of Small Causes Court, Delhi. The impugned order arises from a plaint filed by the respondent-firm for recovery of Rs. 880/- against the defendant-Railways on account of short delivery of one bag and one katta of rice respectively in two consignments tendered to the Railways for carriage. The Trial Court had delivered a judgment, finding that it is the duty of the consignor as to whom receipts have been issued to establish that exact quantity as mentioned in the consignment is loaded.

3. Learned Counsel for the revision petitioner has relied upon the Madras High Court judgment reported in AIR 1956 Mad 176, Union of India v. S.P.L. Lekhu wherein it has been held that :

So long as the seals were intact, the Railway was not in any way responsible for any shortage. The learned Judge evidently missed the significance of these facts

and held that as the freight had been charged for the entire 200 bags, the Railway Authorities must be responsible for all the 200 bags. That would be so, if the railway staff had loaded the goods after verifying them. In the circumstances that have emerged in this case, the Railway cannot be held responsible for any shortage, so long as there is no proof of tampering with the seals.

In "Domsf India v. Museram Kushunprasad" AIR 1950 Nag 85 (A), it was held by a Division Bench that where goods were loaded in the wagons by the sender and not by the Railway servants, and the information given by the sender was accepted as correct for the purposes of charging freight and a receipt was made out in the same way as in this case, viz. "said to contain 255 bags" there was no admission on the part of the Railway Authorities that the wagons did contain 255 bags, and if at the destination the wagon was found to contain less number of bags, the Railway Administration was not liable.

4. The above judgments squarely cover the present case as the judgment of the Trial Court does not take into account its own finding that the plaintiff had not established exact quantity of goods loaded in wagons. In fact, the Railway receipt bears endorsement that Railways staff had no occasion to check the consignment. In this view of the matter, the impugned order dated 15.4.89 cannot be sustained and accordingly is set aside. The revision petition is accordingly allowed. There shall be no order as to costs.

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