
(1959) 03 PAT CK 0008
In the Patna High Court
Case No : A.F.A.D. No. 212 of 1956

Vishun Prasad Bhadani

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-03-1959

Acts Referred:

Railways Act, 1890 — Section 47(1)
Railways Rules, 1890 — Rule 2

Citation : AIR 1960 Patna 323

Hon'ble Judges : R.K. Choudhary, J

Bench : Single Bench

Advocate : Shabananda Mukherji and Surendra Prasad Sinha, for the Appellant;
P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Choudhary, J.—This is an appeal by the plaintiff. The short facts are these: On the 1st of September 1948, one hundred bags of Sugar were consigned to the plaintiff at Gaya. The consignment arrived at Gaya on the 11th of September 1948 and it was unloaded by the railway staff on that date. On the 12th of September 1948, the agent of the plaintiff went to take delivery of the consignment and, after paying freight, etc. obtained gate pass to take away the one hundred Bags of Sugar from the railway goods godown. Since, however, the gate pass was given late in the evening, the bags could not be removed from the railway goods godown on that date, and they remained in charge of the railway employees for which the railway charged wharfage from the plaintiff's agent, which was duly paid.

It is alleged that the bags were kept in an open shed, and as unfortunately there was rainfall on the night between the 12th and the 13th of September 1948, some of the bags of sugar soaked with rain water and were damaged. On the next day, that is, on the 13th of September, 1948, when the agent of the plaintiff went to take delivery of the Sugar, he found that forty bags had been damaged.

The plaintiff was informed and he came to the railway station and found forty bags drenched with rain water and heavily damaged.

He took delivery of only sixty bags of sugar and declined to take delivery of the above forty bags which remained with the railway administration. After correspondence with regard to the matter in question and service of notices u/s 77 of the Indian Railways Act and u/s 80 of the Code of Civil Procedure, the plaintiff instituted a suit for recovery of a sum of Rs. 4,637/8/- as damages caused to the above forty bags of sugar against the Union of India as owner of the East Indian Railway.

2. The suit was contested by the defendant on various grounds, but the only grounds with which I am concerned in this appeal now are that the goods were kept under proper cover and the railway employees were not negligent, that the defendant was not to pay any damages and that the plaintiff should have taken delivery of the damaged bags. It appears that on the 11th of June, 1949, the above forty bags of sugar were sold at auction by the railway administration for Rs. 2,070. The railway authorities claimed a sum of Rs. 1,904, as wharfage for keeping the bags of Sugar in their custody. The defendant, therefore, pleaded that the plaintiff could get the price of Sugar after deducting the wharfage so charged and the defendant was willing to pay the same.

3. Both the courts below held that the railway employees were negligent in causing damage to the bags of sugar and the railway administration was liable to pay damages. They also held that the railway administration was entitled to wharfage from the 13th of September 1948, till the 11th of April, 1949, and the amount of wharfage according to the decision came to be Rs. 1,433/14/6. The trial court however, decreed the suit for a sum of Rs. 818/1/6 only. According to it, the plaintiff, was entitled to the sum of Rs. 2,070, being the price at which the forty bags of Sugar were sold at auction from which a sum of Rs. 1,433/14/6 had to be deducted as wharfage.

After deducting that amount of wharfage, the amount due came to be Rs. 636/1/6 to which were added a sum of Rs. 116 being the excess wharfage recovered by the railway administration and a sum of Rs. 66 as being pendente lite interest. Thus the total amount decreed was Rs. 818/1/6. The lower appellate Court however, held that the plaintiff was entitled to the price of sugar at the rate of Rs. 28 per maund. It may be noted that the forty bags of sugar when weighed came to be about 111 maunds 10 seers. The price of the same at the rate of Rs. 28 per maund amounted to Rs. 3,115. Deducting from the above amount a sum of Rs. 1,433/14/6 the wharfage charge referred to above, the lower appellate court gave a decree to the plaintiff for a sum of Rs. 1,681/1/6. The plaintiff still being dissatisfied with this decree has presented this appeal in this Court.

4. The main point taken in support of the appeal is that the railway authorities were not entitled to charge any wharfage. It is contended on behalf of the appellant that the damage to the bags of Sugar was caused by the negligence of

the railway administration and the plaintiff was not bound to take delivery of the same and so the bags remained in the custody of the railway authorities for which they could not legally charge any wharfage. On the other hand, the contention raised on behalf of the defendant respondent is that it was incumbent on the plaintiff to take delivery of the goods even though they were damaged on obtaining a proper certificate of the amount of damage and that not having been done, the plaintiff was bound to pay wharfage for keeping the goods in the custody of the railway administration. Counsel for the appellant in support of his argument, has placed reliance on two decisions of the Allahabad High Court in *G.I.P. Railway Vs. Firm Radhey Mal Manni Lal*, . and *Bengal and North-Western Railway Vs. Matru Ram and Others*, and one decision of this Court in *The East India Railway Co. Vs. Bhagwan Das and Others*, .

In the two Allahabad cases the question of the liability for wharfage was not at all under consideration and they have, therefore, no relevancy to this case. In *The East India Railway Co. Vs. Bhagwan Das and Others*, the consignee who had lost the receipt was willing to take delivery of the consignment, but the consignment had to be retained in the custody of the railway employees as they took long time in investigating the claim of the consignee. In those circumstances it was held in that case that the Company was not entitled to charge demurrage for the period during which the goods were in its custody on account of its own delay. This case, therefore, has no application to the facts of the present case. In this case, as appears from the judgment of the lower appellate court, the damage was assessed by the railway claims inspector at Rs. 2/8/- per maund, but the plaintiff claimed the loss at the rate of Rs. 10 per maund.

The railway authorities were prepared to give delivery of all the bags with a certificate of damage both as assessed by the railway claims inspector and as claimed by the plaintiff, but the plaintiff refused to take delivery and the forty bags of sugar had to be kept in the custody of the railway authorities on account of the refusal of the plaintiff to take delivery of the same. I perfectly agree with the view taken by the court of appeal below that the plaintiff should have taken the delivery of the goods with the certificate of damage and the retention of the same in the custody of the railway authorities was due to the default of the plaintiff himself. In that view of the matter, the railway authorities were in fact justified to claim wharfage from the plaintiff.

5. Section 47(1) (f) of the Indian Railways Act provides for making general rules for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner. Rule 2 of rules for warehousing and retention of goods so framed runs as follows:

"A consignee must take delivery of the goods forming part of a consignment whenever they are available for delivery notwithstanding that the remaining goods are short or damaged or have not arrived at their destination or are otherwise not available for delivery and if the consignee does not take delivery of

such goods forming part of a consignment as are available for delivery, they will be subject to wharfage charges if not removed within the time allowed for removal."

This rule, therefore, entitles the railway authorities to charge wharfage if the consignee or owner of the goods refuses to take delivery of the same though they are available for being delivered to him. The plaintiff, therefore, was liable to pay wharfage in the present case because of his refusal to take delivery of the sugar in question when the railway authorities were prepared to give delivery of the same to him with a certificate of damages as referred to above. This view gains support from some of the decisions of this Court.

In *Suraj Mal Marwari v. Agent B.N. Ry. Co.* 68 Ind Cas 200: (AIR 1920 Pat 493) the plaintiffs refused to take delivery of the consignment without the same being reweighed. It was found that their refusal was not justified and it was held that the Railway Company were entitled to charge demurrage or wharfage for warehousing or keeping the goods until such time as they found that for the sake of their preservation, they must be sold. In *Badridas Firm of Purulia Vs. Governor-General for India in Council*, the consignee refused to take delivery as his claim for open delivery was refused.

It was held that the railway administration was justified in charging wharfage for the period that the goods remained in the goods shed of the railway company. The same view was taken in an unreported decision of this Court in *Hariram Kedia v. Dominion of India*, S A. No. 1 of 1949 disposed of on the 24th of September 1951. The argument of the learned Counsel for the appellant that the defendant was not entitled to any wharfage, therefore, fails and is rejected.

6. The second point taken in support of the appeal is that the court of appeal below did not grant a decree for a sum of Rs. 116 as being the excess wharfage recovered by the Railway and Rs. 66 as interest pendente lite which had been decreed by the trial court without assigning any reason for the same and, therefore, the amount of the decree passed by the lower appellate court should be increased by adding the above two items. No such ground has been taken in the grounds of appeal in this Court. A ground was taken as being ground No, 16 that the court of appeal below ought to have given pendente lite interest, but that was deleted later on. In that view of the matter, it is not possible, to allow the appellant to raise this point.

7. The third contention raised on behalf of the appellant is that the price for the sugar should have been given at the rate of Rs. 38 per maund as claimed by the plaintiff and not at the rate of Rs. 28 per maund. The price of sugar at the control rate was Rs. 28 per maund and as the court of appeal below has observed, it was so admitted by the plaintiff himself. No evidence has been placed before me by Counsel for the appellant to show as to what was the market rate of sugar at the relevant time. It is not, therefore, possible to vary the decree of the lower appellate Court on this ground.

8. Lastly it was submitted that the forty bags of sugar were sold without weighment and the railway authorities had no right to sell the same without having the sugar weighed. But it appears that the sugar was sold at auction by bagwise with a notice to the plaintiff and no objection was taken by him to such a sale. This contention also, therefore, has to fail.

9. No other point has been raised. For the reasons given above, there appears to be no merit in this appeal which is accordingly, dismissed with costs.