

The Union of India and anr. Vs. Batchu Subba Rao and Co.

The Union of India and anr. Vs. Batchu Subba Rao and Co.

SooperKanoon Citation : sooperkanoon.com/426297

Court : Andhra Pradesh

Decided On : Aug-26-1976

Reported in : AIR1977AP289

Judge : Sambasiva Rao and ;Punnayya, JJ.

Acts : Railways Act, 1890 - Sections 76-F

Appeal No. : Letter Patent Appeal No. 159 of 1975

Appellant : The Union of India and anr.

Respondent : Batchu Subba Rao and Co.

Advocate for Def. : T. Ramachandra Rao, Adv.

Advocate for Pet/Ap. : P. Venkata Rama Reddy, Standing Counsel

Judgement :

Sambasiva Rao, J.

1. A question relating to the meaning and application of S. 76-F of the Indian Railways Act and the burden proof arising out therefrom falls for decision in this Letters Patent Appeal.

2. It is against the decision of Sriramulu, j. in S.A. 649 of 1972. While partly allowing the second appeal the learned Judge granted leave.

3. The material facts are these: On 28th April 1966, 350 tins of coconut oil were booked from Shertaley out agency on the Southern Railway for delivery at Kakinada Port Railway Station. The consignment was on owner's risk rate. The consignor, after taking a railway receipt in his own name, endorsed it in favour of the plaintiff who paid the value thereof to the Bank. The goods were taken from Shertaley out station and loaded in a railway wagon at Kochin Harbour Railway Station. Before they were loaded in the wagon, the tins were transported from Shertaley on boats. An official of the railway, D.W. 1 looked after the loading. His evidence shows that there were no signs of leakage in the tins shown; they were loaded in the wagon in the Kochin Harbour Railway Station. Coconut fibre was packed between each tin and between the rows of tins and the walls of the wagon and between layers of tins. The wagon arrived at Kakinada Port Railway Station some 38 or 39 days after the loading of the wagon had taken place. Though the seals were found to be intact as spoken to by D.W. 2 there was no oil at all in 20 out of the 350 tins and in another 20, 70 per cent of the contents were in shortage. The total shortage of oil was 450 K.Gs. amounting to 32 tins of oil in all. Estimating the value of the oil at Rs. 2,272/- and with the other incidental charges and interest the plaintiff firm demanded Rs.2,747-61 ps from the railway. The plaintiff stated that the loss was entirely due to the abnormal delay, negligence and misconduct on the part of the railway employees. This was resisted by the railways saying that there was no negligence or misconduct on the part of the railways.

4. The trial Court found that the claim of the plaintiff was proved and passed a decree for Rs. 2,320/-. It did not decree the claim for interest. The lower appellate Court however, dismissed the suit holding that the plaintiff did not discharge the burden cast on it to prove negligence and misconduct. In the second appeal Sriramulu , J. passed a decree in favour of the plaintiff but only for a reduced amount of Rs. 2,130/-. Though he considered the scope of very many sections including S. 77 he finally rested his conclusion that the case is covered by S. 76-F, since there was no disclosure as to how the consignment was dealt with throughout the time it was in its possession or control. The learned Judge came to the conclusion that the railway has not discharged the statutory obligation. Loss under S. 114(g) of the Evidence Act must be presumed to have occurred on account of the negligence or misconduct on the part of the railway. Consequently,

the learned Judge thought that this is sufficient to hold that the plaintiff had discharged the light burden that was imposed on him by law and in such a case. The railway has brought this Letters Patent Appeal against the decree passed against it. But there is no appeal or cross examinations by the plaintiff in respect of the disallowed portion.

5. Sri Venkataramana Reddy learned counsel for the railway challenges the view taken by the learned Judge. His criticism is that the consideration of various other provisions is erroneous and the case law has been wrongly applied by the learned Judge. We think all the discussion that is made in the judgment of our learned brother does not really arise in the circumstances of the case. This is a claim which falls squarely and clearly within the ambit of S. 76-F. It may be noted here that it is S. 74 that deals with responsibility of a railway administration for animals or goods carried at owner's risk. Sub-s. (3) of that section places the burden of proof on the claimant that loss, destruction, damage, deterioration or non-delivery in transit of animals or goods from whatever cause arising was due to negligence or misconduct on the part of the railway administration or of any of its servants, if the consignment was at the owner's risk rate. Section 76-F, however, provides for burden of proving misconduct in case of non-delivery or pilferage in transit of goods carried at owner's risk. Section 76-F is notwithstanding anything contained in S. 74. That is to say, what is provided in S. 76-F is in the nature of an exception to S. 74. That Section is in the following terms:

'76-F. Notwithstanding anything contained in S. 74-

(a) where the whole of consignment of goods or the whole of any package forming part of a consignment, carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the railway administration to have been due to fire or to any accident to the train, or

(b) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilfered in transit, the railway administration shall be bound to disclose to the consignor how the

consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor.'

6. The present consignment does not admittedly come within the ambit of Cl. (b) of the Section. Sri Ramachandra Rao fairly concedes that Cl. (b) applies only when there is pilferage in transit. In view of the concurrent findings of the trial Court as well as the appellate Court that there was no pilferage learned counsel has rightly stated that Cl. (a). According to him, Cl. (a) applies where even a part of the consignment of the goods is not delivered. That is how he wants to construe the words 'whole of a consignment is not delivered'. On the other hand Sri Venkatarama Reddy, learned Standing counsel for the railway maintains that Cl. (a) applies only to cases where the entirety of the consignment or the entirety of a package forming part of a consignment is not delivered. However, it is not necessary as far as this case is concerned to go into and resolve that controversy.

7. Indisputably 20 of the 350 tins were not delivered. That is to say the oil in 20 tins was not delivered at all since those tins were completely empty. To put it in other words, 20 tins out of the total consignment of 350 tins were not delivered to the consignee. That clearly comes under the second limb of Cl. (a). That is how the Supreme Court itself has understood the position in *Union of India v. Brijlal*, : [1969]1SCR910 . There, there were two consignments of 10 bales of staple fibre yarn. Out of the first consignment, only five bales were delivered and out of the second consignment only one bale was delivered. Thus 14 bales were not delivered. Noticing this Bachawat, J. speaking for the Court observed in para 6:-

'In the present case 14 packages were not delivered to the respondent and such non-delivery was not due to any accident to the train or to fire. The case, therefore fell within Cl. (a) of S. 74-D'.

It may be noted here that S. 74-D. of the old Act corresponds to S. 76-F of the Act as it now stands. It is not even the railway's case that there was any accident to the train or fire in the present case as well. Since the whole contents of 20 tins are

not delivered out of the consignment of 350 tins, the case squarely falls within the ambit of Cl. (a) of S. 76-F. We are supported in this view by two decisions of this Court in *Union of India v. Basavayya*, : AIR 1963 AP344 and *Union of India v. Krishnayya*, : AIR 1960 AP495 . However Sri Venkatarama Reddy says that even supposing that 20 tins were completely empty, it does not fall within the scope of the second limb or Cl. (a) of S. 76-F. According to him what is required under that limb is that the whole of the package should not be delivered before that provision is attracted. Here so learned counsel points out, the empty tins are available and therefore it cannot be said that the packages are not delivered. We are afraid we cannot accept this submission. What is important is that Cl. (a) postulates cases where the whole of a consignment or whole of any package forming part of a consignment is not delivered. Here the case of the plaintiff is, and that is also accepted by the Courts below, that the whole contents of 20 tins were not delivered. Those 20 tins form part of the total consignment of 350 tins. Therefore this objection raised by the learned counsel is not of any substance.

8. Then the question is whether the railway administration has disclosed to the consignor or to the Court how the consignment or the package was dealt with throughout the time it was in its possession or control. The disclosure contemplated by this provision is as to how the consignment or the packages were dealt with through the transit. The section itself is very clear on this aspect of the matter. The Supreme Court in *Brijlal's case* : [1969]1SCR910 (supra) said that S. 74-D (present S. 76-F) envisages a disclosure in the form of a precise statement as to how the consignment was dealt with by the administration followed by evidence at the trial in proof of the statement. The Section clearly contemplates that on this matter the administration should submit its evidence first at the trial and it is only when negligence or misconduct cannot fairly be inferred from such evidence that the burden of proving the negligence or misconduct shifts to the consignor.

9. Now what is the evidence which the railway administration has adduced as to the manner in which the consignment was shown that it was loaded at the Kochin Harbour Station in a wagon with certain precaution and that thereafter the wagon was sealed. The evidence of D.W. 2 shows that when the wagon arrived at

Kakinada Port Station the seals were intact. When open delivery was asked for, it was found that there was no oil at all in 20 containers and in some other containers 70 per cent of the oil was missing. The evidence also discloses that the wagon took nearly 39 days to reach Kakinada Port Station from the Kochin Harbour Station. What happened to the wagon during these 39 days where it was stranded why it took so many days at how many places it had to change the trains, what security measures were taken to safeguard the contents of the wagon when it was halted at some stations and marshalling yards have not been adverted to at all by the railway administration in statement as to how the consignment was dealt with, but there is altogether a lack of evidence as to what happened from the starting point to the closing point. Therefore there is no escape from the conclusion that the railway administration has altogether failed to disclose as to how the consignment was dealt with throughout the time it was in its possession or control. If such disclosure has been made and if negligence or misconduct on the part of the railway administration or any of its servants cannot be fairly inferred from such disclosure the burden of proving such negligence and misconduct shall lie on the consignor as provided for under S. 76-F. When there is no disclosure the burden does not shift to the consignor or the plaintiff. Further what we have is, as spoken to by D.W. 1 the tins were not leaking when they were packed at the Kochin Harbour Railway Station. D.W. 1 also stated that he took proper care to pack the tins. However, when they arrived 39 days later at the station of destination, 20 tins were completely empty and others were largely empty. Further as many as 39 days were taken for the wagon to travel from Kochin Harbour to Kakinada Port. In these circumstances the trial Court and our learned brother are right in thinking that the railway has not discharged its burden and consequently the liability must be fastened to it to reimburse the plaintiff for the value of the short delivered oil.

10. Our Learned brother has awarded a decree for Rs.2,130/-. The quantum is not disputed either by the railway or by the plaintiff- respondent. Consequently we affirm that decree and dismiss the Letters Patent Appeal. In the circumstances of the case, we direct the parties to bear their own costs of the Letters Patent Appeal.

11. Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com