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Court : Punjab and Haryana

Decided On : Nov-15-1948

Reported in : AIR1949P& H285

Appellant : Romesh Chander

Respondent : Governor-general in Council

Judgement :

Bhandari, J.

1. The principal question intended to be raised between the parties in this-appeal is whether the Railway Administration is liable for the loss of the plaintiff's goods which was occasioned by the mis-delivery of the goods with or without the connivance of the railway servants,

2. It is common ground that on 6th June 1942 certain persons who represented themselves to be beoparies of Meerut appeared at the shop of one L. Bal Kishen Das at Amritsar and purchased a number of shawls of the value of RS. 2164. They paid a sum of Rs. 20 by way of an advance and agreed to pay the balance as soon as the goods were delivered to them at Meerut. L. Bal Kishen Dass directed his Munshi to take the package to the Railway station at Amritsar and have it booked to Meerut. The Munshi carried out the orders, consigned the-package to self in the presence of the customers and forwarded the Railway Receipt to a Bank at Meerut so that the customers may receive the Railway receipt from the

Bank on payment of the appropriate price and take delivery of the goods from the Railway station at Meerut.

3. But the so-called customers had plans of their own. It is alleged that as soon as the parcel was despatched from Amritsar to Meerut, they had a similar parcel, i.e., a parcel of practically the same weight, dimensions and, appearance and bearing the same marks, despatched from Kathauli to Meerut. Both the parcels arrived at the destination at about the same time. The customers or their representatives appeared at the Railway station at Meerut, presented the receipt which had been obtained; from the Railway station at Kathauli, and obtained delivery of the parcel which had been booked at the Railway station of Amritsar. The parcel which was received from Kathauli and which contained only some white and Khaki drill of little value remained lying at the Railway station of Meerut.

4. The Railway receipt was delivered to the Bank in due course but no one called for it. The Bank caused enquiries to be made for the persons for whom the receipt was intended, but these persons were not traceable in the town. The Bank communicated with L. Bal Kishen Dass and the latter sent a man to Meerut. The latter called at the Railway station with the object of taking delivery of the parcel, but the parcel shown to him was not the one which was despatched from Amritsar. On 5th August 1943, the plaintiff brought the present suit for the recovery of a sum of Rs. 2,134-15-0 on account of the price of the goods plus Rs. 154 by way of interest at the rate of 6 per cent-less a sum of Rs. 5-5-0 on account of the freight which was due by him to the Railway Administration. His total claim aggregated to a sum of Rs. 2,283-10-0. The trial Court held that the parcel contained shawls of the value of Rs. 2,134-16-0, that the plaintiff had failed to make a declaration in respect of the contents thereof, as required by Section 75, Railways Act, that the parcel in question was delivered to a wrong person with the active connivance of the servants of the Railway Administration, that had the parcel not been so delivered, Section 75 would not have authorised the Railway Administration to refuse to deliver it to the plaintiff and that the parcel having been designedly delivered to a wrong person, non-compliance with the provisions of Section 75 was a matter of little or no consequence. As a result of these findings, the trial Court awarded a decree to the plaintiff in a sum of Rs. 2,283 100 with future

interest at 6 per cent. The learned District Judge came to a contrary conclusion. He held that as the plaintiff had failed to comply with the provisions of Section 75, and had not done what he was required to do, he was not entitled to recover the price of the goods which were lost. The plaintiff is dissatisfied with the order and has come to this Court in second appeal.

5. Sub-section (1) of Section 75, Railways Act is in the following terms:

When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds three hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared, or declared them at the time of the delivery of the parcel or package for carriage by railway, and if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

6. This section is designed to protect the Railway Administration from liability for the loss, destruction or deterioration of parcels entrusted to them for carriage containing articles of special value unless the value and nature of such articles is declared and the increased charge or an engagement to pay the same is accepted. If goods which ought to be declared are not declared and lost, the railway is protected for their loss and its consequences.

7. The Courts below have found, and found as it seems to me on ample evidence, that the goods were not declared pursuant to the statute and that the parcel in question was delivered to a wrong person with or without the connivance of the railway servants who were in charge thereof. The question thus arises whether this misdelivery can fall within the ambit of the expression 'loss' so as to attract the provisions of Section 75, Railways Act. The expression 'loss' has not been denned and one must therefore turn to a standard dictionary for ascertaining its meaning. According to the Shorter Oxford Dictionary, the expression 'lose' means 'to incur the privation of something that one possesses or has control of; to part with through

negligence or misadventure; to be deprived of'. The expression 'loss' means 'the fact of losing'. The statute does not specify the manner or the circumstances in which the loss should be occasioned. The fact that an article has been lost by misappropriation or by theft or by mis-delivery does not alter the fact that it has been lost: Vide *Bala Ram Hari Chand v. S.M. Rly. Co., Ltd.* 19 Bom. 159 and *Seetha Rama Aiyar v. S.I. Rly., Ltd.* A.I.R. 1936 Mad. 491. In *Hill Sawyers & Co. v. Secretary of State* A.I.R. 1921 Lah. 1 a Full Bench of the Lahore High Court held that the word 'loss' in Ch. 7 includes loss to owner of goods made over to a Railway Administration which have been mis-delivered and so have been lost to the person entitled thereto. In *Skipworth v. C.W. Railway* (1889) 59 L.T. 520, the owner of a bag exceeding the value of 5 deposited it in a railway cloak-room and received a ticket with the following condition:

The company are not to be answerable for loss of any article exceeding the value of pound five unless at the time of delivery the true value be declared and a sum at the rate of one pence for every 20 shillings of the declared value be paid for such article above the ordinary charge.

8. The bag was delivered by mistake to a wrong person and never recovered. It was held that the word 'loss' included mis-delivery and that the defendants were not liable. As pointed out by Wills, J. "loss' must mean 'loss by the Company', and if the Company deliver the article to a wrong person, they in the ordinary acceptance of the term lose it'. These authorities make it quite clear that the only duty which devolves on a Court of law which is called upon to deal with cases of this kind is to enquire whether the Railway Administration has or has not been deprived, temporarily or permanently, of the article which has been entrusted to its care. If the Court comes to the conclusion that the article has been lost, it is not necessary for it to concern itself with the circumstances in which the loss was occasioned, or whether it was lost as a result of negligence, carelessness, wilful neglect or even the misconduct of Railway servants. Section 75 protects the Railway even where the articles are abstract, ed by servants of the Railway; *B. & N.W. Rly., Co. v. Tupen Das* A.I.R. 1926 Pat. 384 and *Illoor Kristniah v. G.I.P. Rly., & M.R.C.* 2 Mad. 310. If the loss is permanent, the Railway is fully protected; if the loss is temporary and the Railway delivers the goods within a reasonable time

after they are recovered, it will not be answerable. If, however, the goods lost are recovered and the Railway omits to deliver them to the owner it will be liable with effect from the date of the recovery in exactly the same manner as if they had not been lost. I am supported in this conclusion by the dictum of Lindley L.J. in the well-known case of *Millan v. Brasch* (1883) 10 Q.B.D. 142, in which his Lordship observed as follows:

If the carrier temporarily loses the goods and delivers them within a reasonable time after he recovers them, he will not be liable; but if he keeps them after he recovers them, the carrier's act will not protect him from such subsequent breach of duty. The obligation on the part of the carrier will remain or revive and he will be responsible for future breaches of that obligation.

As the goods have obviously been lost in the present case by reason of having been delivered to a wrong person, it is not within the competence of the owner to recover the price by bringing a suit for non-delivery. In *Piancini v. London and South Western Railway Co.* (1856) 118 C.B. 226, it was held that where goods are lost and the owner cannot recover the loss, he cannot recover for non delivery which is occasioned by the loss.

9. The only other point for decision in this case is whether it was open to the Railway Administration to invoke the help of Section 75 with-out making a specific allegation in the written statement that the goods had been lost. The plain, tiff's case was based on the allegations, (a) that the parcel in question was not delivered to him, (b) that the non-delivery of the parcel was due to the misconduct of the railway servants, (c) that the railway employees at Meerut, in conspiracy with one Abdullah, delivered the plain-tiff's parcel in place of the one received from Kathauli, and (d) that the police had prosecuted the said Abdullah and his companions and two clerks of the Railway.

10. The defendant admitted that the parcels had been exchanged, but was unable to say whether this had been done with or without the connivance of the Railway clerks. He stated clearly that as the consignment consisted of excepted articles exceeding Rs. 100 in value and as these articles were not insured, the plaintiff's claim was not maintainable under Section 75, Railways Act. In his replication, the

plaintiff reiterated his allegations that there was a clear case of misconduct on the part of the railway servants and that the police had after investigation prosecuted the offenders. On 7th December 1943, the trial Court proceeded to frame the following issues: namely,

(1) Whether the provisions of Section 75, Railways Act, have been complied with; if not, what is its effect? (2) Whether the bale in suit has been lost due to the misconduct of the railway servants?

About a year later, i.e., on 29th January 1945, the plaintiff applied for the amendment of issue No. 2 on the ground that the only allegation made by him in the plaint was that the goods had not been delivered to him and that he never alleged that the goods had been lost. The trial Court accepted the prayer and replaced issue No. 2 by the following issue: that is to say, (2) Was the non-delivery of the bale due to the misconduct of the railway servants?

11. On 26th March 1945, the counsel for the defendant pointed out that the amended issue would not enable the Court to ascertain the cause of non-delivery and he accordingly prayed (a) that para. 5 of his written statement should be amended so as to read that the suit parcel had got exchanged and lost without there being any misconduct on the part of the railway servants, and (b) that Issue No. 2 should be replaced by the following issue, viz., 'Was the non-delivery due to exchange and loss of the parcel by the Railway Administration?' This application was dismissed in due course and Issue No. 2 continued to remain as amended on 20th February 1945.

12. Mr. A.N. Chona, who appears for the plaintiff, invites our attention to E.I. Rly. Co. v. Firm Sukhdev Das and Anr. : AIR1924 Pat25 , where Foster, J. expressed the view that where the plaintiff had expressly described his claim as one of compensation for non delivery and the defendant had not pleaded that the goods had been lost, the plaintiff's case would rest on the presumption that the goods were still in the possession of the railway company. It is contended that the defendant in the present case has neither alleged nor proved the loss or destruction of the goods and consequently that the plaintiff's suit must be decreed. I regret I am unable to concur in this contention. The plaintiff did undoubtedly base

his claim on the allegation that the goods had not been delivered to him, but it must be remembered that he attributed the non-delivery to the misconduct of railway servants. In para. 7 (b) of the plaint he stated quite clearly that the railway employees in conspiracy with one Abdullah had delivered the plaintiff's parcel in place of the one received from Kathauli. He stated further that the police had challaned the said Abdullah and his companions and the two railway clerks who were concerned in the crime. This was a clear admission on the part of the plaintiff that the goods had been lost. The Court understood it to be so, and framed an issue with the object of ascertaining whether the goods had been 'lost' on account of the misconduct of the railway servants. About a year later, the Court proceeded to amend the issue on grounds which do not appear to be intelligible; and when the counsel for the defendant requested that the original issue be restored, or a new issue be framed, the Court declined to accede to the request. Be that as it may, the fact remains that the plaintiff was aware of the ground on which liability was being repudiated and produced his evidence accordingly. He has not, in my opinion, been prejudiced by reason of the fact that loss was not definitely pleaded by the defendant and that the word 'loss' did not appear in the issues which were framed.

13. For these reasons, I am clearly of the opinion that the goods were lost by misdelivery and that as the plaintiff had failed to declare these goods, he is not entitled to recover any compensation for their loss. I would uphold the order of the learned District Judge and dismiss the appeal with costs.

Teja Singh, J.

14. I agree in the order proposed.

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