

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.694 of 1976

(Against the judgment and decree dated 07.08.1976 passed by Subordinate Judge, Purnea in Money Suit No.13 of 1975).

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Union of India & Anr.

.... Defendants-Appellants

Versus

Bihar State Co-Operative Marketing Union, Patna & Anr.

.... Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Anil Singh, Advocate

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 24-03-2017

This First Appeal has been filed by the Union of India representing North East Frontier Railway Administration, Maligaon, Pandu against the impugned judgment and decree dated 07.08.1976 passed by the learned Subordinate Judge, Purnea in Money Suit No.13 of 1975 whereby the learned Sub Judge has decreed the plaintiff-respondent's suit for money of Rs.11,558.72/- and also Rs.257/- as cost of notice.

(2) It appears that the plaintiffs-respondents filed the aforesaid money suit praying for realization of Rs.11,558.72/- being the price of 12,523 Kgs of Urea which was short in delivery to the plaintiffs at the destination station. The plaintiffs also claimed Rs.257/- as cost of the notice.

(3) The plaintiffs claimed the aforesaid relief alleging that



a consignment of 1724 bags of Urea each containing 51 Kgs. was booked from Kantapukur Railway Station to Farbesganj Railway Station under Invoice No.1 R.R. No.940, 960 dated 29.12.1971. Plaintiff No.2 was the consignee of the said article. The consignment reached at the destination station and delivery was taken by plaintiff No.2. However, 12,523 Kgs. Urea was found short and a short certificate was issued by the destination station. According to the plaintiff, the shortage was due to gross misconduct and negligence on the part of the Railway administration and the plaintiffs are entitled to realize the price of the goods. Notice under Section 78B of the Railway Act and also Section 80 C.P.C. was served but it was not paid.

(4) Written statement was filed by the defendant-appellant denying the issuance of notice by the plaintiffs. The defendant also contended that the plaintiffs are not the owner of the goods and the consignment was booked by the consigner without adhering the procedure prescribed by the Act and packing conditions and the shortage was due to non-observance of the packing conditions by the consigner. Therefore, the railway is not liable.

(5) The learned trial court framed the following issues:

- I. Is the suit as framed maintainable?
- II. Have the plaintiffs got valid cause of action for the suit?
- III. Is the suit bad for non service of notice as alleged by



the defendants?

- IV. Are the plaintiffs entitled to get compensation for the alleged shortage of Urea claimed by them?
- V. To what relief, if any, is the plaintiff entitled?
- (6) On the basis of the evidences and materials, the trial

court held that admittedly, there is shortage of the Urea as claimed by the plaintiffs and, therefore, the plaintiffs are entitled for realization of the price of the goods from the Railway and accordingly, decreed the plaintiff-respondent's suit.

(7) The learned counsel, Mr. Anil Singh appearing for the appellants submitted that there is absolutely no evidence produced by the plaintiff to show any negligence committed by the Railway Department. In fact, the consigner is Food Corporation of India. The Urea bags were loaded at the site of the consigner without the verification of the same by Railway employee. The goods were booked at owner's risk and Exhibit A was produced by the appellant but the learned court below relied on the evidence of P.W.1 and has decreed the plaintiff's suit without considering the fact that except the statement of P.W.1 to the effect that due to negligence of Railway administration there is short delivery, there is nothing on record. According to the learned counsel, the consigner even has not been made party. In such circumstances, when the consigner loaded the goods at his own siding, the negligence has to be proved by the consigner. However, the plaintiffs had not made the consigner a party-



defendant, therefore, there is no question of proving the negligence of Railway Department arises. According to the learned counsel, by merely saying that because of negligence there is short delivery, the plaintiff will not be entitled for the price of the goods. In support of his contention, the learned counsel relied upon Division Bench decision of this court in 1973 PLJR 560(Union of India as owner of South Indian Railway and Ors. v. Chotelal Shewnath Rai) and 2014(1) PLJR 608(Kanhaiya Bhalotia v. Union of India).

(8) As stated above, nobody appeared on behalf of the plaintiffs-respondents.

(9) In view of the submission of the learned counsel for the appellants, the only point arises for consideration in this First Appeal is as to “whether the plaintiffs-respondents are entitled for the price of the goods on account of short delivery by the Railway administration” and “whether the impugned judgment and decree are sustainable in the eye of law?”

(10) Admittedly, the consigner, Food Corporation of India is not a party to the present money suit. The plaintiffs are claiming the amount of the Urea for which short delivery was given. P.W.1 has been examined on behalf of the plaintiffs who has stated that because of negligence on the part of the Railway administration, there is short delivery. The plaintiffs have also produced the short



certificate issued by the destination railway station which has been marked as Exhibit I. Except these oral and documentary evidences, there is no evidence to show the negligence committed by the Railway administration. The plaintiffs have not adduced any evidence to show that in fact the goods were loaded after weighing the same by the Railway Department. The defendant-appellant produced Exhibit A, the Railway receipt which shows that the goods were loaded by the consigner. Exhibit I only shows the short delivery. There is nothing on record to show that the weighing was done by F.C.I. in observance of the Railway administration.

(11) From perusal of the impugned judgment and decree, it appears that the learned trial court has given much emphasis that the Railway administration has failed to explain the defect of packaging. The learned trial court also did not accept the submission on the ground that if there has been defective packing of the bags in question, the contents must have been there in the wagons itself and there would not have been shortage of 12523 Kgs. of Urea. In my opinion, these are only assumption and presumption and nothing else.

(12) Section 65 of the Railways Act, 1989 reads as follows:

“65. Railway Receipt- (1) A railway administration shall,-

(a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading;



or

(b) in any other case, on the acceptance of the goods by it, issue a railway receipt in such form as may be specified by the Central Government.

(2) A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein:

Provided that in the case of a consignment in wagon-load or train-load and the weight or the number of packages is not checked by a railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consignor, the consignee or the endorsee."

(13) In view of this provision, Railway receipt is issued by the Railway administration whenever the goods are entrusted after completion of loading also. In view of the proviso to sub-section (2) if the packages and the weight is not checked by railway servant authorized in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein, shall lie on the consigner, the consignee or the endorsee. In the present case, the Railway receipt has been produced by the defendant-appellant. It is not the case of the plaintiff that the number of packages or the weight was checked by Railway servant authorized in this behalf. The only case pleaded is that there is short delivery. The consigner has not been made party. The consignee did not produce any evidence showing misconduct or negligence.

(14) The Division Bench of this High Court in the case



of Union of India as owner of South Indian Railway and Others(supra) has held that “the entry about the weight of the consignment mentioned in the railway receipt and the forwarding note are no admission of the railway department about the weight carried in that consignment because, the goods, having been dispatched under L/U condition, the railway has not weighed the consignment at the dispatch station and the loading was done by the sender. The endorsement on the forwarding note is also no admission of the railway department about the weight of the consignment.” At paragraph 14, it has been held that “it is well settled that it is necessary for a party who alleges negligence on the part of the railway administration in the carriage of goods from one station to another to prove negligence by cogent evidence.”

(15) As stated above, in the present case at our hand, there is absolutely no evidence regarding misconduct or negligence of Railway administration except the bald statement. In view of the above factual and legal position, merely because there was short of Urea, no inference can be drawn in law that the short delivery was given because the Railway administration was negligent and guilty of misconduct on the part of the employee of the Railway administration.

(16) In the case of Kanhaiya Bhalotia(supra) also, it has been held by this court that “if the goods are booked at owner’s risk



rate then the consigner has to prove the weight or the number of packages actually loaded by cogent evidence and had also to prove the negligence or misconduct by the Railway.”

(17) In the present case, the owner has not been made party. It is not the case of the plaintiffs that the Urea was loaded in presence of the plaintiffs or the weight and packings were verified by the Railway employee authorized for that purpose.

(18) From perusal of the impugned judgment and decree, it appears that the learned trial court has not considered in the light of the above settled law laid down by this court. It is not denied that the consignment was loaded at owner’s risk at its own siding of the owner.

(19) In view of my above discussion, I find that the plaintiffs-respondents failed to prove that the consignment was booked by the Railway administration after weighing the Urea by the Railway administration. The plaintiffs-respondents also failed to prove any negligence or misconduct on the part of the Railway administration. On the contrary, the defendant-appellant has been able to prove that the consignment was booked at owner’s risk at the siding of the Food Corporation of India. The plaintiffs did not claim from Food Corporation of India anything. Therefore, the finding of the trial court on this point is hereby reversed.



(20) In the result, this First Appeal is allowed. The impugned judgment and decree are set aside. The plaintiff-respondent's suit is hereby dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

Saurabh/-

AFR/NAFR	NAFR
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