



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2017

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THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD) No.60 of 2014

M/s.King Flour Unit (Pvt) Ltd
Rep by its Managing Director,
No.5, Sub Jail Road,
Trichy 620 008

.. Appellant/Appellant/Plaintiff

vs.

1. The Union of India
Southern Railway
Rep by the General Manager
Office at Park Town, Chennai.

2. The Chief Goods Supervisor
Southern Railway,
Office at Trichirappalli Good Shed,
Trichy

3. The Divisional Commercial
Manager Southern Railway
Office at Trichy Office,
DRM Office,
Trichy Junction.

.. Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.110 of 2011 dated 16.02.2012 by the learned Principal Sub Judge, Trichy, modifying the judgment and decree passed in O.S.No.861 of 2005 by the Principal District Munsif, Trichy, dated 25.04.2011, and to allow the appeal filed by the appellant.

For Appellant : Mr.P.Ganapathi Subramanian

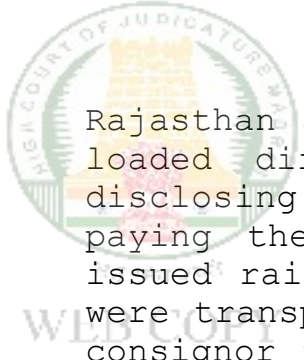
For Respondent : Mr.S.Manohar

JUDGMENT

The plaintiff, who has lost before the Courts below, has preferred the above appeal.

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2. The plaintiff is a Private Company engaged in the production of wheat products. Raw materials would be procured from



Rajasthan and other places from Northern India. The wheat will be loaded directly on their own account in the Railway Wagons disclosing the quantity to the Railway Authorities and also by paying the necessary freight charges. The Railway Authorities issued railway receipts in the name of the traders and the goods were transported to the destination, namely, Tiruchirappalli. The consignor would be the owner of the goods transported till it is sold to a purchaser. On completion of the sale at Tiruchirappalli, the Railway authorities would endorse the railway receipts in favour of the purchaser to collect the goods from the railway authorities on production of the railway receipts. The second and third defendants are under the control of the first defendant. The plaintiff, as a purchaser, had received 28 wagon loads of wheat from trader, namely, K.S.Enterprises on 28.12.2003. On receipt of the wheat, the plaintiff had transported the same to the mill and weighed the goods and the charges due to the traders were paid after assessing the value of the wheat. The trader is the owner of the goods transported till the endorsement is made on the railway receipts at Trichy. While so, after a year, the plaintiff received a proceedings from the second defendant stating that he is liable to pay a sum of Rs.1,83,109/- towards rental charges for the receipt of excess wheat over and above its permissible limit in the wagon. The plaintiff was called upon to pay the charges immediately. According to the plaintiff, the plaintiff was never informed about the excess weight before the delivery of goods either by the second defendant or the trader. If the plaintiff had knowledge about the alleged excess weight before the delivery of goods, the plaintiff would have had the option of taking delivery or not. The disclosure made by the defendant at the belated stage will cause irreparable loss to the plaintiff. It is further stated that the defective weighing machines or improper maintenance of the wagons should not result in causing loss to the plaintiff.

3. Denying the allegations supporting the cause of action of the suit, the third defendant had filed its written statement which was adopted by the first and second defendants. The jurisdiction of the Court was challenged. It was contended that the Railway administration has got every jurisdiction to weigh the consignments in the weigh bridge and if the load as stated by the consignor is not correct, the Railway Administration has right to charge for over loading. The differences in charges are recoverable from the consignor, consignee or endorsee at the time of delivery and this fact is mentioned in the Indian Railway Commercial Manual. Thus, stating dismissal of the suit was prayed.

4. Based on the above pleadings, the trial court has framed appropriate issues. In order to prove the case, on the side of the plaintiff, one witness was examined as P.W.1 and as many as 6



documents were exhibited as Ex.A1 to Ex.A.6. On the side of the defendants, one witness was examined as D.W.1 and as many as 24 documents were exhibited as Ex.B.1 to Ex.B24.

5. Upon the oral and documentary evidence adduced on either side, the trial Court dismissed the suit and on appeal, it was declared that the second part of the impugned proceedings dated 03.12.2004 of the second defendant with regard to the stoppage of future consignments alone is void abinitio, illegal and without jurisdiction and with respect to grant of injunction restraining the defendants from in any manner giving effect to the impugned proceedings was concerned, it was dismissed. Aggrieved by the same, the above Second Appeal has been filed.

6. At the time of filing of the appeal, the following Substantial questions of law were framed:

"1. Whether the 1st Appellate Court can dissent the order of the 2nd defendant, dated 03.12.2004 and gave a finding in two different manner?

2. Whether the Courts below are correct in disallowing the claim of the appellant, when the plea of limitation is taken by the appellant?

3. Whether the Courts below are correct in disallowing the claim of the appellant, when there is a flagrant violation of natural justice on the part of the 2nd defendant, while passing the impugned order, dated 03.12.2004?"

7. The learned counsel appearing for the appellant / plaintiff contended that

(i) firstly, the payment of penal charges is not legally maintainable as a trader was the owner of the goods till the endorsement is made.

(ii) Secondly, the impugned proceedings was served upon the appellant after a lapse of one year and as such, the appellant was not able to inform the trader and was also not in a position to recover the money from the trader, in the event, if at all there is any fault in the delivery of the goods.

(iii) Thirdly, if the plaintiff was made known of the fact earlier about the excess weight, he would have informed the consignor at the earliest point of time. Due to the delay on the part of the defendants, the appellant cannot be jeopardized.

(iv) Fourthly, it is pointed out that there was every chance of defect in weighing machines and also improper maintenance of wagons which could have contributed for the alleged excess weight.

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Fifthly, the impugned order was passed in flagrant violation of natural justice as no notice was issued to the plaintiff before passing the impugned order.



8. The question that has to be decided is as to whether the defendants had caused any loss or damage or deterioration to the goods entrusted to it to be carried by the Railway.

9. So far as the question of jurisdiction is concerned, the plaintiff is seeking declaration based on the contract of carriage entered into between the Railways and the trader. Therefore, the claim has to be adjudicated only by the Civil Court and the Railway Tribunal may not have jurisdiction. It is contended by the appellant that as per Section 73 of the Railways Act, "*penal charges for every loading in the wagon can be recovered from the Consignor, Consignee or endorsee as the case may be before the delivery of the goods only*". Admittedly, in this case, the impugned proceedings itself has been issued only after a year. As contended by the learned counsel for the appellant, the respondents having exercised their power for imposing penal charges well after the delivery of goods, the plaintiff is deprived of its right to reweigh the load as per Section 79 of the Railways Act, 1989. The punitive charge for overloading a wagon arises only before the delivery of goods which would enable the consignee or endorsee to allow the weighment of consignment in wagon-load or train-load. When the notice itself was issued beyond the period of one year, the same is impermissible. Therefore, the Railway Authority has lost its right to collect the charges for excess loading, having not collected the same before the delivery. Hence, the demand raised by the Railway Authorities as per Ex.A2 is illegal. As contended by the learned counsel for the appellant, the impugned order is also issued in violation of natural justice as no notice was issued before passing the impugned order.

10. The question to be decided is whether the plaintiff can be slapped with punitive charge for overloading a wagon beyond its permissible carrying capacity as exhibited under sub section (2) or sub section (3) or notified under sub section 4 of Section 72 of the Railways Act, 1989. Chapter III of the Act deals with jurisdiction, powers and authority of the Claims Tribunal. Section 13(1)(a) of the Railways Claims Tribunal Act confers exclusive jurisdiction on the Tribunal to decide the responsibility of the Railways to carriers under Chapter VII of the Railways Act, 1989 in respect of the above mentioned claims made against Railways. Chapter IX of the Railways Act deals with carriage of goods. Section 61 of the Railways Act, 1989 says that every Railway administration shall maintain the rate books, etc., for carriage of goods and Section 62 imposes conditions for receiving, etc., of goods. Section 73 of the Railways Act deals with the punitive charge for overloading a wagon, which reads as follows;

<https://hcservices.ecourts.gov.in/hcservices/> 73. Punitive charge for overloading a wagon.- where a person loads goods in a wagon beyond its permissible carrying capacity as



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exhibited under sub-section (2) of sub-section (3), or notified under sub-section(4) of Section 72, a railway administration may, in addition to the freight and other charges, recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods:

Provided that it shall be lawful for the railway administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination station and to recover the cost of such unloading and any charge for the detention of any wagon on this account."

The reading of the above makes it clear that charges recoverable as penalty can be done before the delivery of goods only. However, in this case, it is made after a lapse of one year, which is unsustainable.

11. So far as the question of principles of natural justice is concerned, there is no notice or intimation to the appellant till the goods were delivered. Adherence to the principle of natural justice is a fact of procedural fairness. Even if it is to be said that the operation of the same may reasonably be restricted, in the instant case, the demand is made one year after the delivery of goods, which is against Section 73, depriving the appellant of the procedural benefits. Thus, the questions of law are answered in favour of the appellant/plaintiff.

12. In the result, this second appeal is allowed and the judgment and decree passed by the first appellate Court are set aside and the suit is decreed as prayed for. No costs.

To

1. The Principal Subordinate Judge ,
Trichy.
2. The Principal District Munsif ,
Trichy.

+One cc to Mr.S.Manohar, Advocate, SR.No.71850

+One cc to Mr.P.Ganapathi Subramanian, Advocate, SR.No.71975
srn

RL/5C/5P/JC/SAR1/28/8/2017

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