



S.A.Nos.1499 and 2064 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.1499 and 2064 of 2000

and

C.M.P.No.13962 of 2000

S.A.No.1499 of 2000:

- 1.Union of India,
Postal Department,
Chief Postmaster, New Delhi.
- 2.Union of India,
Postal Department,
Postmaster General,
Trichy Region.
- 3.Union of India,
Department of Post,
Rep., by Superintendent of Post Offices,
Kumbakonam Division.
- 4.Union of India,
Rep., by Postmaster,
Head Post Office,
Kumbakonam.



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5. Union of India,
Rep., by Secretary to Government,
Central Govt. Secretariat,
New Delhi.

... Appellants/Appellants/
Defendants 1 to 4 & 6

Vs

1. K.G.Sarangapani Chettiar & Brothers,
Rep., by Managing Partner,
G.Shyam Sundar,
75, 76, Big Bazaar,
Kumbakonam.

... 1st Respondent/
1st Respondent/Plaintiff

*[Memo in USR 2616 is recorded as per order
dated 13.06.2019]*

*[R1, who is namely G.Shyam Sundar substituted
vide order dated 27.09.2019 made in C.M.P.(MD)
No.5933 of 2019 in S.A.No.1499 of 2000]*

2. M/s.Dhamani & Co.,
1181B, Kuthchamageni,
Chandni Chowk,
New Delhi.

... 2nd Respondent/
2nd Respondent/5th Defendant

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 22.09.1999 made in A.S.No.11 of 1998 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam, confirming the judgment and decree dated 27.11.1995 made in O.S.No.66 of 1991 on the file of the Subordinate Judge, Kumbakonam.



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For Appellants : Mr.H.Lakshmi Shankar
Senior Panel Counsel,
Government of India

For R1 : Mr.V.K.Vijayaragavan

2nd Respondent : Exparte (vide order dated 12.09.2019)

S.A.No.2064 of 2000:

M/s.K.G.Sarangapani Chettiar & Brothers,
Rep., by its Partner, G.Shyam Sundar,
75, 76, Big Bazaar Street,
Kumbakonam.

... Appellant/Appellant/Plaintiff

*[Memo in USR 2616 is recorded as per
order dated 13.06.2019]*

*[1st appellant, who is namely G.Shyam Sundar
substituted vide order dated 27.09.2019 made in
C.M.P.(MD) No.5610 of 2019 in S.A.No.2064 of 2000]*

Vs.

- 1.Union of India,
Postal Department,
Rep., by Chief Postmaster,
New Delhi.
- 2.Union of India,
Postal Department,
Rep., by Postmaster General,
Trichy Region.



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3.Union of India,
Rep., by Superintendent of Post Offices,
Kumbakonam Division, Kumbakonam.

4.Union of India,
Rep., by Postmaster,
Head Post Office,
Kumbakonam.

5.M/s.Dhamani & Co.,
1181B, Katchamahajini,
Shanthini Chowk, New Delhi.

6.Union of India,
Rep., by Secretary to Government,
Central Govt. Secretariat,
New Delhi.

... Respondents/Respondents/
Defendants

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 22.09.1999 made in A.S.No.3 of 1998 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Thanjavur at Kumbakonam, confirming the judgment and decree dated 27.11.1995 made in O.S.No.66 of 1991 on the file of the Subordinate Judge, Kumbakonam.



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For Appellant : Mr.V.K.Vijayaragavan

For RR1 to 4 & 6 : Mr.H.Lakshmi Shankar
Senior Panel Counsel,
Government of India

2nd Respondent : Exparte (vide order dated 12.09.2019)

COMMON JUDGMENT

1.1. The first respondent in S.A.No.1499 of 2000/appellant in S.A.No.2064 of 2000 filed a suit for damages for the loss of goods sent by post. The suit was partly decreed by directing appellants 1 to 4 in S.A.No.1499 of 2000 to pay a compensation of Rs.40,000/- to the first respondent in S.A.No.1499 of 2000. Aggrieved by the same, the appellants in S.A.No.1499 of 2000 filed an appeal in A.S.No.11 of 1998 and the first respondent in S.A.No.1499 of 2000, aggrieved by the negatived portion of the decree, filed another appeal in A.S.No.3 of 1998. Both the appeals were dismissed by the first appellate Court. Aggrieved by the same, defendants 1 to 4 and 6 in the suit filed S.A.No.1499 of 2000. Aggrieved by the disallowed portion, the plaintiff filed S.A.No.2064 of 2000.



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1.2. In this second appeal, for the sake of convenience, the term 'appellants' will refer the appellants in S.A.No.1499 of 2000 and respondents 1 to 4 and 6 in S.A.No.2064 of 2000; the term 'first respondent' refers to the first respondent in S.A.No.1499 of 2000 and the appellant in S.A.No.2064 of 2000; and the term 'second respondent' refers to the second respondent in S.A.No.1499 of 2000 and the 5th respondent in S.A.No.2064 of 2000.

1.3. The first respondent filed a suit seeking recovery of damages of Rs.66,512/- together with 18% interest from appellants 1 to 4 herein. According to the first respondent, he had been engaged in jewellery business and he requested the second respondent herein to send him 10 kgs of silver. The second respondent sent the silver ingots by post in Parcel Nos.0353, 0354, 0355 and 0356 from Delhi General Post Office. As per the invoice of the second respondent, a sum of Rs.65,000/- was already paid to the second respondent towards the costs of the silver ingots sent to the first



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respondent. On 13.09.1990, it was informed by the 4th respondent that four insured parcels were received by his office for delivery to the first respondent. The representative of the first respondent viz., Ramesh went to the post office and met the Beat Postman. On seeing the parcels addressed to the first respondent, the said Ramesh requested the 4th respondent to make open delivery. There was no response from the postal authorities. After receiving the parcel, the said Ramesh returned to his shop, wherein it was found that there were corrections in the weight noted in the parcels. Though the stamps affixed therein correspond to the higher silver weight of 2½ kgs, on seeing the corrections in the weight, the Managing Director of the first respondent and the said Ramesh went to the office of the Superintendent of Post Offices, Kumbakonam and gave a statement to that effect. The parcels were not at all opened till that time. In the next day, a complaint was lodged to the Postmaster and the first respondent requested for open delivery of the goods, but the same was refused by the Postmaster. Hence, telegrams were sent to the Superintendent of Post Offices, Kumbakonam and Postmaster General Trichirappalli narrating the facts. Since the complaint lodged by



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the first respondent was not met with proper response, the first respondent was constrained to file a suit for recovery of damages against the appellants and the second respondents.

2.1. The appellants herein filed a written statement and resisted the suit. In the written statement, it was stated by the appellants that the first respondent's representative had taken delivery of the goods and acknowledged the same. Thereafter, it was not open to the first respondent to seek open delivery of the goods. The suit was also resisted by the appellants on the ground that the first respondent had no *locus standi* to maintain a suit against the Postal Department and it was only the sender of the goods viz., the second respondent is entitled to claim compensation, if any, in respect of the insured articles.

2.2. According to the appellants, four parcels were sent by the second respondent to the first respondent for an insured value of Rs.10,000/- each. It was also contended by the appellants that if the insured value of the



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parcels was above Rs.8,000/- it would be delivered at the window of the Post Office after intimating the same to the addressee. It was further contended that on receipt of parcels at Post Office at Kumbakonam, an information was sent to the first respondent to attend the Post Office and take delivery of the articles.

2.3. It was further contended that the representative of the first respondent viz., Ramesh after having satisfied with the outward appearance of the cover, signed the delivery receipts and acknowledged the same as a token of taking delivery. Since the parcels were taken delivery by the representative of the first respondent without any protest, the first respondent was not entitled to seek open delivery later on. It was also pleaded by the appellants that since the insured value of the goods was only Rs.40,000/- the first respondent cannot claim more than the insured value.



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3.1. On these pleadings, the parties went to trial. The Managing Director of the first respondent was examined as P.W.1 and his brother was examined as P.W.2. On behalf of the first respondent/plaintiff, 27 documents were marked as Ex.A.1 to Ex.A.27. On behalf of the appellants, the retired Delivery Clerk of Head Post Office, Kumbakonam was examined as D.W.1. Two other official witnesses were examined as D.W.2 and D.W.3. Two documents were marked on behalf of the appellants as Ex.B.1 and Ex.B.2. The trial Court, on its part, appointed an Advocate Commissioner, whose report came to be marked as Ex.X.1.

3.2. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the shortage of weight in the insured article had taken place only when the postal article was in the custody of the Postal Department and consequently, appellants 1 to 4 were liable to pay a sum of Rs.40,000/- to the first respondent as damages. Aggrieved by the same, the appellants herein filed an appeal in A.S.No.11 of 1998 on the file of the Additional District Judge cum Chief



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Judicial Magistrate's Court, Thanjavur at Kumbakonam. The first respondent, aggrieved by the disallowed portion, filed A.S.No.3 of 1998 on the file of the same Court. Both the appeals were heard together and the first appellate Court affirmed the findings of the trial Court and dismissed the appeals. Aggrieved by the same, the appellants/defendants 1 to 4 and 6 filed second appeal in S.A.No.1499 of 2000 and the first respondent/plaintiff preferred separate second appeal challenging the disallowed portion in S.A.No.2064 of 2000.

4. This Court, at the time of admission of these second appeals, formulated the following substantial questions of law:

No.	S.A.No.1499 of 2000	S.A.No.2064 of 2000
1	<i>Whether the first respondent violated the provision of Clause 175(g)-209(g) of the P.O. Guide Part-I and hence he is not entitled to get compensation.</i>	<i>On the facts and circumstances, disallowance of interest claimed by the appellant for the wrongful loss suffered is tenable in law.</i>



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No.	S.A.No.1499 of 2000	S.A.No.2064 of 2000
2	<i>Whether the interpretation of the Rule 33 of the Indian Post Office Act 1898 given by the first appellate Court as well as the trial Court are sustainable.”</i>	<i>Whether the decree and judgment of Courts below vitiated by illegality for not awarding amount for the actual loss suffered by the appellant?”</i>

5. Heard the arguments of the learned Central Government Standing Counsel for the appellants and the learned counsel for the first respondent. Perused the typed set of papers and other relevant records.

6.1. The learned Central Government Standing Counsel appearing for the appellants, by relying on clause 182 of Post Office Guide Part-I, submitted that when the insured article has been delivered to the addressee and he received the article without protest and signed the acknowledgement, no compensation is payable for any damage allegedly caused to the articles during postal transit. The learned counsel further submitted that in any case, it is only the sender of the article is entitled to maintain a suit for recovery of damages against the Post Officer, but however, the addressee is not entitled to maintain a claim for damages.



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6.2. The learned counsel by relying on Section 33 of the Indian Post Office Act, 1898 submitted that the liability of Union of India to pay compensation for the loss of postal articles or its contents is restricted to the sender of the postal articles and the addressee of the postal article is not entitled to maintain a suit for damages.

7.1. Per contra, the learned counsel for the first respondent submitted that the representative of the first respondent, on noticing the tampering of the parcels, made a request to the officials of the Postal Department to effect open delivery, but there was no response from them. Thereafter, a written complaint was lodged to the Postal Department seeking open delivery of the goods and the same was not acceded to. The learned counsel further submitted that the evidences available on record clearly establish that the shortage in the weight of the silver sent to the first respondent had taken place only during postal transit and hence, the Postal Department is liable to pay compensation for the same.



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7.2. The learned counsel, by relying on the judgment of the Patna High Court in ***Post Master General Vs. Ram Kripal Sahu*** reported in ***AIR 1955 Patna 452***, submitted that the Postal Department is liable to pay compensation in case of loss to the article even to the addressee of the parcel. Therefore, it is the submission of the learned counsel that the technical objection raised by the appellants based on Section 33 of the Indian Post Office Act has to be rejected.

7.3. The learned counsel further submitted that the Courts below ought not to have restricted the compensation amount to the sum insured. The learned counsel further submitted that as per the weight noted in the Post Office of its origin, the second respondent sent 10 kgs of silver to the first respondent and hence, the appellants are liable to pay the entire value of shortage of silver articles equivalent to the market value. Ex.A.1 is an invoice of the second respondent dated 08.09.1990. The same was in the name of the first respondent. The weight of the silver bullion was



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mentioned as 9.944 gm. The value of the said silver bullion was mentioned as Rs.64,512/-. It was further mentioned that the silver bullion was sent by postal insured parcels in Receipt Nos.0353, 0354, 0355 and 0356. D.W.3 is an official of the Postal Department, who weighed the parcels at Madras Airport. He admitted that when he weighed the four parcels in question, he found shortage of weight. He also produced the records maintained by him regarding weighing of parcels at Madras Airport and the same was produced as Ex.B.2. A combined reading of D.W.3's evidence and Ex.B.2 produced by him would make it clear that there was shortage in the weight of the postal articles sent by the second respondent to the first respondent and the same was found at Madras Airport during postal transit. Therefore, the Postal Department is answerable to the shortage in the weight of the articles that had taken place when the article was in its custody.

8.1. The liability of the Postal Department to pay compensation is covered by Section 33 of the Indian Post Office Act, which reads as follows:

*“33. Liability in respect of postal articles insures. -
Subject to such conditions and restrictions as the [Central*



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Government] may, by rule, prescribe [the Central Government] shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.”

8.2. A reading of the above provision would make it clear that the Central Government is liable for the loss of postal article or its contents or for any damage caused to it in the course of transmission by post. The provision also makes it clear that the Central Government is liable to pay compensation to the sender of the article. There is no reference in the said section that the Central Government is liable to pay compensation to the addressee of the article.



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8.3. A Division Bench of this Court in ***Union of India by Postmaster General, Madras Vs. Amjad Miyan*** reported in ***1972-II-MLJ 363*** had taken a view that the liability of Central Government in case of loss of postal article is statutory in nature and the same is not covered by any contract. The relevant observation of the Division Bench of this Court is as follows:

“The liability of the Union Government in the case of any mis-delivery, non-delivery or loss of the insured article or V.P article is to be found within the four corners of the Act and the Rules framed thereunder; otherwise there will be no liability.”

Therefore, the liability of Postal Department to pay compensation for the loss to the postal article is governed by statute viz., the Indian Post Office Act.

8.4. Section 33 of the Indian Post Office Act makes it clear that in case of loss to the postal article, only the sender of the article can claim compensation from Union of India.



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8.5. The learned counsel for the first respondent vehemently contended that the right available to the sender of the article can also be extended to the addressee of the article and in this regard, he pressed into service, the judgment of the Patna High Court in **Ram Kripal Sahu** cited *supra*, wherein the Patna High Court observed as follows:

“Section 32(3), which is to be found in Chap. VI of the Act, dealing with “Registration, Insurance and Value-payable Post”, provides that “Postal articles made over to the Post Office for the purpose of being insured shall be delivered, when insured, at such places and times and in such manner as the Director General, may, by order, from time to time appoint.”

This provision therefore casts a duty upon the post office to deliver the insured article, and the manner, place and time of the delivery is to be determined the Director General of Post Offices. Some stress was laid upon the provisions of Sec. 33 which prescribe that subject to such conditions and restrictions as the Central Government may, by rule prescribe, the Central Government shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post,



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in support of the argument that only the sender is entitled to compensation or damage, as the case might be, and not the addressee. This section, it is true, speaks of the sender and it does not speak of the addressee. The mere omission of the word 'addressee', in my opinion, in this section is not enough to disentitle an addressee to get redress in respect of an insured article not delivered to him. The fact that certain Government currency notes were despatched in an insured cover for delivery to the plaintiff is enough to show that the plaintiff had beneficial interest in the insured article; it was for his benefit that the sender had entrusted to the post office the insured cover in question for being delivered to him."

8.6. As discussed earlier, a Division Bench of this Court has taken a view that the liability of Central Government to pay compensation in case of loss to the postal article is statutory in nature. In the light of the said decision, we have to examine the relevant provision of law in Indian Post Office Act. Section 33 of the said Act imposes liability on Central Government to pay compensation only to the sender. The legislature in its wisdom, had chosen to omit the word 'addressee'. When the relevant statute confers right to claim compensation only to the sender of the goods, the same cannot be extended to the addressee of the goods.



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8.7. In the case on hand, according to the first respondent, he already paid the entire value of the articles to the second respondent and hence, he had become owner of the goods. In case, the first respondent was not supplied with the agreed quantity of silver bullion, it is always open to the first respondent to proceed against the second respondent to whom he paid the entire value of the silver bullion. Unfortunately, in the present case, the first respondent claimed compensation only against appellants 1 to 4 and he has not made any prayer as against the second respondent.

9.1. In view of the law laid down by the Division Bench of this Court in *Union of India by Postmaster General, Madras Vs. Amjad Miyan* cited *supra*, that the liability of the Central Government to pay compensation has to be found within the four corners of the Indian Post Office Act and the Rules framed thereunder or otherwise there will be no liability, I am unable to follow the view expressed by the Patna High Court. Therefore, I have no hesitation in coming to a definite conclusion that under Section 33 of the Indian Post Office Act, 1898, the first respondent herein is not entitled to



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claim any compensation against appellants 1 to 4. As a result, the judgments and decrees passed by the Courts below are liable to be set aside. The substantial questions of law framed at the time of admission in S.A.No.1499 of 2000 are answered accordingly in favour of the appellants and against the first respondent.

9.2. In view of my answer to the substantial questions of law framed in S.A.No.1499 of 2000, the substantial questions of law framed in S.A.No.2064 of 2000 are answered against the appellant and the second appeal filed by the first respondent is liable to be dismissed.

9.3. In the result,

(a) S.A.No.1499 of 2000 is allowed by setting aside the judgments and decrees passed by the Courts below;

(b) O.S.No.66 of 1991 on the file of the Sub Court, Kumbakonam stands dismissed;



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(c) in view of allowing of S.A.No.1499 of 2000, S.A.No.2064 of 2000 stands dismissed;

(d) in the facts and circumstances of the case, there would be no order as to costs; and

(e) C.M.P.No.13962 of 2000 is closed.

03.03.2023

NCC: Yes
Index: Yes
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To



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- 1.The Additional District Judge-cum-
Chief Judicial Magistrate,
Thanjavur at Kumbakonam,
- 2.The Subordinate Judge, Kumbakonam.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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