
(1920) 02 MAD CK 0026

Madras High Court

Case No: None

A.S. Venugopala
Aiyangar

APPELLANT

Vs

S.I.R. Co.

RESPONDENT

Date of Decision: Feb. 27, 1920

Citation: 62 Ind. Cas. 602 : (1921) 13 LW 309

Hon'ble Judges: Seshagiri Aiyar, J

Bench: Single Bench

Judgement

Seshagiri Aiyar, J.

The plaintiff consigned a log of timber weighing 81 maunds from the Qailon Railway Station to Negapatam to a constituent. At the former station the Goods clerk charged him according to the weight of the timber and the said charge was paid. On arrival at Negapatam the authorities at this station demanded that the charge should be according to the wagon rate, and not according to the weight, and refused to deliver the goods. The wagon charge was paid under protest. The authorities also demanded from the plaintiff demurrage or wharfage for the days during which the goods were lying in the Railway Yard. The plaintiff paid that charge also under protest. This is a suit to recover from the Railway Company these charges.

2. On the first question, as to whether the charge should be according to weight or according to the wagon schedule rate, it is not open to the authorities at the terminus station to vary the contract entered into at Qailon. The rule, which empowers the company to change the rate, viz, Rule 22, does not enable it to do so; where power is reserved under a contract to one of the contracting parties to vary the terms, the power should be very strictly construed and the indulgent party should not be allowed to travel beyond a mining the rule in this light, the language, "The Railway reserves the right of re-measurement, re-weighment, re classification and re-calculation of rates, terminals and other charges and correction of any other errors at the place of destination and of collection of any amount that may have been omitted on undercharged," does not support

the contention of the Railway Company. This is not a case of re-measurement or re-weighment. The real question is whether the action taken by the Railway Authorities at Negapatam comes under the expression "re classification of rates." The decision in *Chunni Lal v. Nizam's Guaranteed State Railway Company Limited* 29 A. 228, which is that of a Full Bench, makes it clear that the word "re classification" must be limited to errors in calculation, and not to any fundamental readjustment of the basis of the calculation itself. In that case, which is the converse of the present one, the learned Judges held that where originally at the consignment station charges according to wagon rates were levied, it was not open to the authorities at the delivery station to charge the consignor according to the weight of the goods. The principle of the judgment is equally applicable to the present case. Moreover there is the decision of Mr. Justice Bannerjee in *Alla.ud.din v. G.I.P. Railway Company* 34 Ind. Cas. 104, which exactly covers the present case. The clause which enables the Railway Company to collect any amount that may have been omitted or undercharged has reference only to the earlier portion of the rule and should not be regarded as an independent authority to collect the excess charges which, according to the authorities, should have been levied at the consignment station. I respectfully follow the Allahabad rulings and hold that the Railway Company were not justified in demanding charges according to the wagon rate.

3. The Railway Company, as I said before, also levied demurrage charges treating the log as if it weighed 280 maunds instead of 81 maunds. The rule which enables the Railway Company to levy demurrage charges is 51. The present case is covered by the sub-clause (a) (2) (a), which provides that "where freight is levied on weight, upon such the plain words weight." The learned Vakil for the Railway Company contended that the present case is covered by 51 (b) (3). As I have come to the conclusion that the Railway Company were not justified in levying the wagon rate, the levy of demurrage comes under 51 (a) (2) (a) and not under 51 (b) (3). The schedule of charges under that section enables the Railway Company, in the case of certain particular description of goods, viz., loose cotton, wet hides and skins and salt fish, to levy one anna per day or part of a day in excess of the free time; in the case of all other goods they can only levy four pies for such period. Calculating according to this rate, the plaintiff is entitled to a refund in respect of wharfage charges upon 299 maunds of goods. It is open to doubt, having regard to the action taken by the Railway Company, whether the defendants are entitled to make any claim at all for demurrage but as the point was not raised in the lower Court, I express no opinion on it. There will be a decree in favour of the plaintiff for the whole of the excess charges at the wagon rate as well as the demurrage charges upon 299 maunds. The respondent must pay the costs of the petitioner in this and in the lower Court.