(1990) 01 MP CK 0037

Madhya Pradesh High Court

Case No: None

Union of India (UOI)		APPELLANT
	Vs	
Western Coal Fields Ltd. and Another		RESPONDENT

Date of Decision: Jan. 16, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Railways Act, 1989 - Section 77

Citation: (1991) 1 ACC 599

Hon'ble Judges: S.K. Seth, J

Bench: Single Bench

Judgement

S.K. Seth, J.

The Additional District Judge, Manendragarh vide his judgment dated 30.8.86 decreed the claim for damages made by the plaintiff-respondent No. 1 Western Coal Fields Ltd. to the extent of Rs. 37, 117.52/- together with interest against the defendant No. 1-appellant-Union of India representing the administration of South Eastern Railway. It is being aggrieved by it that the defendant No. 1-Union of India has filed the present appeal in this Court.

2. The relevant facts, briefly stated, are these that the plaintiff-respondent No. 1 Western Coal Fields Ltd. had placed an order for supply of G.I.Pipes on the defendant No. 2-respondent No. 2 M/s. Jain Tube Company Ltd. sometime in 1981. According to the plaintiff-respondent No. 1, pursuant to the placing of the said order, the defendant No. 2-respondent No. 2 booked the relevant consignment consisting of 148 pieces of G.I. Pipes, admeasuring 897.26 metres, valued at Rs. 83.260.15P, at J.T.C. railway siding at Ghaziabad in the Slate of Uttar Pradesh on 22.4.81 vide Railway Receipt No. 1722044 for being delivered to the plaintiff-respondent No. 1 at Tiger Hill siding at Darritola in the State of Madhya Pradesh. The consignment reached its destination on 10.6.81. The

delivery of the same was taken by the plaintiff-respondent No. 1 on 24.6.81.

3. According to the plaintiff-respondent No. 1, at the time of taking delivery it was discovered that there was a shortage of 66 pieces of G.I.Pipes admeasuring 400 metres. As such, on behalf of the railway concerned, the said fact was acknowledged on the invoice (Ex. P/1), which had been received by the plaintiff-respondent No. 1 alongwith the. railway receipt from the defendant No. 2-respondent No. 2, by the Station Master, Dafritola. The plaintiff-respondent No. 1 lodged a claim for damages for the loss of the said quantity of G.I. Pipes valued at Rs. 38.617.52P vide notice u/s 78-B of the Indian Railways Act served on the relevant Railway Administration on 4.7.81. As the claim made by them was not satisfied by the Railway Administration, the plaintiff-respondent No. 1, after serving a notice u/s 80 CPC on the Railway Administration on 8.2.84, instituted the suit for recovery of Rs. 38.642.52P together with interest as damages against the Union of India representing the Railway Administration on 2.7.84. As stated earlier, the suit was decreed by the trial Court to the extent of Rs. 37.117.52P together with interest and it is being aggrieved by it that the Union of India i.e. the defendant No. 1-appellant has filed the present appeal in this Court

4. In the opinion of this Court, in view of the pleadings of the parties, and in view of the evidence produced in the case, there is no substance in the first argument of the learned Counsel for the defendant No. 1-appellant that the plaintiff-respondent No. 1 failed to establish that 148 pieces of G.I. Pipes admeasuring 897.26 metres valued at Rs. 83.260.15P had been handed over by the defendant No. 2-respondent No. 2 consignor to the Railway Administration at J.T.C. siding at Ghaziabad for delivery to the plaintiff-respondent No. 1-consignee at Tiger {fill siding at Darritola. It is significant to note that the plaintiff-respondent No. 1 had pleaded the abovesaid facts in para 4 of its plaint. The defendant No. 1-appellant, in its written statement admitted the said facts subject to only one qualification to the effect that the number of pipes and their measurement had not been done in the presence of its employee$ or officers. Thus, there was no denial of the fact on behalf of the defendant No. 1-appellant that the defendant No. 2-respondent No. 2-consignor had booked 148 pieces of pipes admeasuring 897.26 metres at J.T.C. railway siding at Ghaziabad for delivery to the plaintiff-respondent No. 1 at Tiger Hill siding at Darritola. Infact, the said facts were very clearly deposed to by the Loading Supervisor of the defendant No. 2-respondent No. 2-consignor, D.W.I Madanlal Gupta, in his evidence in the Court and in view of the defendant No. 1-appellant having failed to produce any evidence whatsoever, the evidence of the said witness remained unrebutted and there was no reason to disbelieve it.

5. Similarly, there is also no substance in the second argument of the learned Counsel for the defendant No. 1-appellant that the plaintiff-respondent No. 1 failed to establish that out of 148 pieces of G.I. Pipes admeasuring 897.26 metres only 82 pieces of GI pipes admeasuring 497.26 meters were delivered at the destination and as such there was a shortage of 66 pieces of G.LPipes admeasuring 400 metres. It is significant to note that the invoice dated 22.4, 81 (Ex. P/1) which had been sent by the defendant No.

2-respondent No. 2-consignor to the plaintiff-respondent No. 1-consignee alongwith the R.R. was admitted on behalf of the defendant No. 1-appellant in the case. The said document contained an endorsement made by the Station Master, Darritola at the time of delivery of the consignment to the plaintiff-respondent No. 1 to the effect that out of 14 8 pieces of G.I.Pipes only 82 pieces were received and that there was a shortage of 66 pieces admeasuring 400 metres. As a matter of fact, from the evidence of P.W.1 K.D. Sahay, the Store-keeper of the plaintiff-respondent No. 1, it was clearly established that the said witness had been present at the time of delivery of consignment by the Station Master, Darritola to the plaintiff-respondent No. 1 and that the relevant note regarding shortage had been written by the Station Master on the Ex. P/1 invoice in his presence. Thus, in the facts and circumstances of the case, there was no reason to doubt that at the time of delivery of consignment by the Railway Administration to the plaintiff-respondent No. 1-consignee, 66 pieces of G.I.Pipes admeasuring 400 metres were delivered ''short'' to it. As the total value of 148 pieces of G.I.Pipes admeasuring 897.26 metres was Rs. 83, 260.15P, there was sufficient material on record for the trial Court to determine the value of short delivery i.e. 66 pieces of G.I.Pipes admeasuring 400 metres at Rs. 37, 117.52P including CST.

6. Again, as far as the third argument raised by the learned Counsel for the defendant No. 1-appellant is concerned, it may be pointed out that it was amply established from the evidence produced in the case that there had been a separate Goods Clerk of the Railway working at J.T.C. siding, Ghaziabad. The evidence of D.W.I Madanlal Gupta, Loading Supervisor of the defendant No. 2-respondent No. 2, was clear regarding the fact that at the time of loading of goods the employees concerned of the railway were present at the siding and that the goods had been loaded after the said employees had counted the same. In view of the said evidence, there is absolutely no substance in the argument of the learned Counsel for the defendant No. 1-appellant raised for the first time in this appeal that Instruction No. 2515 (a) of the Indian Railway Commercial Manual was attracted in the matter and as such in the absence of better proof the quantity of consignment said to have been booked by the defendant No. 2-respondent No. 2 could not be accepted.

7. Last argument of the learned Counsel of the defendant No. 1-appellant is that the claim for damages made by the plaintiff-respondent No. 1 was barred by limitation in view of Sub-section (2) of Section 77 of the Indian Railways Act. In the opinion of this Court, the said argument of the learned Counsel for the defendant No. 1-appellant is also misconceived and cannot be accepted. Sub-section (2) of Section 77 of the Act applies to a case where the alleged loss on which the claim for damages is made arises after the expiry of the period of 7 days after the termination of transit. It is in such a case that it has been provided in the said sub-section that the Railway Administration shall not be responsible for the loss. In the present case, it was not the case of the defendant No. 1-appellant at any stage that the alleged loss in respect of which the claim for damages was made by the plaintiff-respondent No. 1 had arisen not during the period of transit as

alleged by the plaintiff-respondent No. 1 but after the expiry of the period of 7 days after the termination of transit. In the circumstances, Sub-section (2) of Section 77 has no application in the present case.

8. For the reasons stated above, there is no merit in, the appeal. The same is accordingly dismissed with costs. Counsel fee as per schedule or the certificate, whichever is less.