

(1934) 05 CAL CK 0001

Calcutta High Court

Case No: None

Laduram Hiralal

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision: May 8, 1934**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: AIR 1934 Cal 834 : 153 Ind. Cas. 867**Hon'ble Judges:** M.C. Ghose, J**Bench:** Division Bench

Judgement

M.C. Ghose, J.

In this case a Rule issued calling upon the opposite party to show cause why the judgment dated 25th July 1933 and the amended judgment dated 26th August 1933 in the Small Cause Court suit of the Sealdah Court as complained of in the petition should not be modified or why such other or further order should not be passed as to this Court may seem fit and proper. Upon hearing the learned advocates on both sides and upon consideration of the record the facts appear to be as follows: On 13th October 1931 at Kalukhali the plaintiff offered to the Railway Station 63 bales of jute for delivery at Cossipore Road Station near Calcutta, The officers of the Railway found that of these 63 bales, 31 bales were jute of good quality but 32 bales consisted of damaged jute which they declined to book as ordinary goods. They were booked under Risk Note A, being in bad condition, liable to damage, leakage or wastage in transit. The 63 bales however were all put into the same waggon and they arrived in the same waggon at Cossipore on 15th October and the plaintiffs sent their carters, and on the 16th took delivery of 32 bales which were said to be in bad condition and on a subsequent date they sent their men for the 31 bales in good condition. Then it was found that the 31 bales left in the waggon were all in bad condition. Upon this the plaintiffs claimed damages from the Railway Company and the Railway Company inter alia pleaded that the plaintiffs had committed a

fraud on the Railway by taking away the good bales on the 16th leaving the damaged bales for which afterwards they claimed damages.

2. The learned Subordinate Judge who tried the suit under the Small Cause Court procedure found upon consideration of the oral evidence that he was not satisfied that any fraud was committed by the plaintiffs party. It has been urged by Dr. Basak on behalf of the Railway Administration that apart from the oral evidence the circumstances disclose a state of affairs from which one may reasonably conclude that a fraud was committed. The damaged as well as the good bales were put in the same compartment and they arrived in the same compartment at Cossipore and the plaintiffs sent their carters first of all to take delivery of damaged goods omitting to take delivery of the good bales, but leaving them to be taken delivery of on a subsequent date, although they had been booked at the same date and arrived in the same waggon on the same day at Cossipore. The taking of the 32 alleged damaged bales away before claiming the 31 alleged good bales raises a strong presumption, that with or without the connivance of the subordinate Railway officers at Cossipore the 32 bales which were taken away included all the good bales and afterwards a false claim was lodged claiming that the Railway Company has caused damage in transit to the 31 good bales of jute. The very fact that the transit was completed, in the course of two days would raise a presumption against such damage having occurred. However as there is no cross objection on behalf of the respondent nothing more need be said on this point.

3. The Court below after weighing the evidence adduced on the point and with reference to a rate list, Ex. J, filed on the defendant's part considered that the reasonable price might be assessed at Rs. 6 per bale. Calculating at this basis he allowed a decree for Rs. 186. This was on 25th July 1933. Subsequently the plaintiffs filed a written petition u/s 151, Civil P. C, claiming that the trial Court had made a manifest error in thinking that each bale consisted of two maunds whereas each bale consisted of 3½ maunds. The Court accepted the petition and increased the decree to Rs. 325-8-0. In this Court it is urged on behalf of the plaintiffs first that the Court below was wrong to take into account the rates stated in the document Ex. J, filed by the defence, and secondly that the Court committed an error of law in awarding on the basis of the price at the place of booking whereas the damages ought to have been claimed on the basis of the price of jute at the destination, namely in Calcutta.

4. On the first point as to the admissibility of Ex. J, it appears to be a vernacular document written by a certain person of Kalukhali wherein he gives the rates at which jute was sold by him at different dates at Kalukhali. The paper was proved by a Railway officer who had obtained it from another person. The writer of the document was not examined. It is urged for the respondent that non examination of the writer was due to an omission on the part of the plaintiffs to object to the document Ex. J. It appears that the document was taken and marked as an exhibit

and the plaintiff's party raised no objection to it at all in the trial Court. It is argued that if the plaintiff party had objected to the document the person who had written it might have been produced by the defendant company. The case of *Banwari Lal v. Dwarkanath Missir* 1918 Cal 34 has been quoted in support of the proposition that the mere omission to object to the reception of a document which is absolutely inadmissible does not make it admissible. In this case it cannot be said that Ex. J, was a document which was inadmissible. It would have been quite admissible if the person who had written it had been examined. But it was marked on the evidence of a person who had obtained it from the writer. However the document is of little importance as it shows the price of jute at Kalukhali and not at Calcutta.

5. The learned advocate for the plaintiffs is correct on the second point that the measure of damages is to be assessed on the basis of the valuation at the place of destination and not at the place where the goods were booked: *I.G.N and Ry. Co. v. Eastern Assam Co. Ltd.* 1921 Cal 315. The learned pleader however urges that in this case the plaintiffs are not entitled to the value of the goods on the basis that the goods have been lost. The goods, according to them, were only deteriorated, not absolutely lost, but the plaintiffs refused to take delivery of them. It is urged by the Government pleader that it was the duty of the plaintiffs to take delivery of the goods and make a claim for damages for the deterioration which was caused. They not only refused to take delivery but they even prevented the Railway Company from selling the goods and realising what might be obtained by selling the goods. This appears from Ex. D written by the plaintiff company on 4th January 1932 wherein they objected to the sale of the goods. If, as is urged by the learned advocate for the plaintiffs, the goods were liable to progressive damage it is difficult to understand why 2 months after the goods have arrived at Cossipore the plaintiffs were still objecting to the sale of the goods. I agree with the argument of the learned Government Pleader that on the facts of this case the plaintiffs are not entitled to the value of the goods on the basis that they were totally lost. They do not prove actually what was the degree of the deterioration and the very fact that they prevented the Railway Company from selling the goods more than two months after they came to Calcutta would tend to show the mala fides of this case. In the result it does not appear that the plaintiffs can complain of the decree which has been awarded to them by the Court below. The Rule is accordingly discharged with costs. Hearing fee is assessed at three gold mohurs.