
Lalji Raja and Sons Firm Vs The Governor General of India in Council

Appeal Preferred on the 2nd of May, 1927

Court: Calcutta High Court

Date of Decision: July 10, 1950

Acts Referred:

Contract Act, 1872 " Section 151, 152, 161

Citation: 54 CWN 902

Hon'ble Judges: Sen, J; Chunder, J

Bench: Division Bench

Advocate: Bankim Chandra Mukherjee and Muktipada Chatterjee, for the Appellant; Chandra Sekhar Sen and Ajoy Kumar Basu, for the Respondent

Final Decision: Dismissed

Judgement

Sen, J.

The plaintiff firm is the appellant in this case and the appeal arises from a judgment of affirmance. The firm of Gainsingh Ganeshdas

booked a consignment of 419 bags of rape seed from Tandilwala Railway Station in the United Provinces to Bankura. The railway receipt was

made out of self. The consignment reached Bankura on the 13th of June 1943. On that date the consignee who was the same person as the

consignor did not come to take delivery. The railway receipt it appears had been endorsed by the consignor to the plaintiff and it was in the

custody of the Imperial Bank of India. There was a dispute going on between the consignor, Gainsingh Ganeshdas and the plaintiff as a result of

which the railway receipt could not be made over to the plaintiff on the 13th or 14th of June 1943. The railway receipt was made over to the

plaintiff on or about the 22nd of June. In the meantime the consignor had asked the railway company to show him some consideration because the

railway receipt could not be made over to the plaintiff by reason of a dispute between him and the consignor and because the bank would not part

with the railway receipt without payment. It is thus clear that the plaintiff could not take delivery of the goods before the 22nd of June 1943. On

that date the plaintiff took part-delivery. Thereafter delivery of the rest of the rape seed was taken on the 3rd of July 1943. The plaintiff then

brought this suit claiming damages. It was alleged that the rape seed was left on the platform without any covering and that it was damaged by rain

water on the 13th and 14th of June and also on subsequent days. The Court below has awarded damages to the plaintiff for the damage done to

the rape seed by rain water during the period 13th of June 1943 to the 14th June 1943. For the remaining period the claim of the plaintiff was

refused on the ground that the plaintiff had wrongfully failed to take delivery of the rape seeds within a reasonable time, that is to say, by the 14th

of June, 1943 and that railway company were not liable to pay damages for any loss or deterioration of the goods after that date. Against this

decision the plaintiff has appealed. There was no cross-objection by the railway company regarding the award of damages for the deterioration

caused to the rape seed up till the 14th of June 1943.

2. The only question for determination therefore is whether the railway company is liable to pay any damages to the plaintiff for loss, deterioration

or damages caused to the rape seed after the 14th of June 1943. The liability of the railway company in a case of this description is defined in

section 72 of the Indian Railways Act which is as follows:

The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be

carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act.

3. It is clear from the section that the railway as bailee is bound to take as much care of the goods bailed to it as a man of ordinary prudence would

under similar circumstances take of his own goods of the same kind. We are really not concerned in this case as to whether the railway company

has taken such care of these goods as it should have taken in accordance with the provisions of section 151 of the Indian Contract Act which is

referred to in section 72 of the Indian Railways Act. The real question with which we are concerned is this: Up to what time does the liability of a

railway as bailee continue? Does it continue after the time at which delivery should have been taken by the consignee when the consignee

wrongfully or without any lawful excuse failed to take delivery?

4. On behalf of the plaintiff appellant it is contended that even if it be held that the consignee refused to take delivery within a reasonable time of the

arrival of the goods without lawful excuse, the railway company would still be liable to take such care of the goods as is laid down in section 151

of the Indian Contract Act and that if it fails to take such care it would be liable in damages. It was further argued that the plaintiff did not fail to

take delivery within a reasonable time.

5. We shall take up for consideration the second point namely, whether the plaintiff has failed to take delivery within a reasonable time without

lawful excuse. The finding of the court below is against the plaintiff. The court below has given cogent reasons for this finding and we have taken

the somewhat unusual course of going through the evidence in this matter and we find that delivery has not been taken through the default of the

plaintiff and not through any default of the railway company. The railway company was always ready to give delivery, but the plaintiff could not

take delivery because the railway receipt was not made over to him till the 22nd of June 1943 owing to differences between him and the consignor.

It has been established from the evidence that the consignee knew that the goods had arrived on the 13th of June 1943. There was therefore no

impediment in the way of the consignee taking delivery on or about the 13th of June 1943. The failure on the part of the plaintiff to take delivery

was therefore due to his own default.

6. Twenty-four hours are more than enough within which delivery should be taken. We hold therefore that the plaintiff in not taking delivery by the

14th June 1943 did not take delivery within a reasonable time and that such failure to take delivery was due to his default.

7. The next point for consideration is whether in spite of such default the railway company would still be liable as bailee. We are of opinion that no

such liability can continue after the expiry of a reasonable time within which delivery should be taken. The liability of the railway company as bailee

continues from the period when the goods are delivered to them to the period when the goods are ready for delivery. In short, the liability of the

railway company is limited to the period of transit or carriage of the goods with the addition of a reasonable period of time for loading the goods

and a reasonable period of time which is to be given to the consignee to take delivery. There is nothing in the Railways Act or in any other law in

India which would impose the liability of a bailee upon a railway company for any period beyond this time. This question came up for decision in

some cases with which we shall now deal. In the case of Joganath Marwari & ors. V. East Indian Railway Co. (1918) 22 C.W.N. 902, a Division

Bench of this Court took the view which supports the view that we have taken. At page 903 this is what is said:

The position then would seem to be that the suit must fail either for failure to comply with the provisions of section 77 of the Indian Railways Act or

because the goods were at the plaintiff's risk by reason of their failure to take delivery.

8. The same view has been taken by the High Court of Allahabad in the case of Bengal and North-Western Railway & another v. Mul Chand ILR

42 All. 655 (1920). In the case of Vidya Sagar v. The Governor-General in Council, New Delhi AIR (1949) Lah. 166, the matter was discussed

very fully and Mr. Justice Achhru Ram expressed the same view relying upon certain observations made by Mr. Justice v. Harikishen Das Kure

Mall (1925) Lahore 370. The observations are as follows:--

It is not the business of the railway administration to work as a Warehouseman or a bailee for hire. Its proper function is that of a public carrier and

it is only in connection with the performance of its duty as a carrier that it is held responsible as a bailee. The duty as a carrier is discharged on the

arrival of the goods at their destination and it is not for the railway administration to keep the goods after that as a warehouseman or a bailee for

hire. The consignee, on the other hand, is expected to take delivery within a time fixed by the rules and if he neglects to do so, the railway

administration can claim demurrage and not hire. That being so, its liability to the consignee after the arrival of the goods is not the same as that of a

warehouseman or a bailee for hire.

9. The only case which learned Advocate for the appellant could find which supported his view was the case of AIR 1948 65 (Nagpur) . With

great respect we are unable to accept the view there expressed and we respectfully agree with the view in the cases decided by this Court, by the

Allahabad High Court and by the Lahore High Court.

10. We hold therefore that there was no responsibility on the railway company as a bailee after the consignee was given a reasonable time to take

delivery and on his failure to take delivery without reasonable cause; in other words, we hold that the railway company is not liable to any damages

for damage caused to the rape seed after the 14th of June, 1943. That being so, we uphold the decision of the court below and dismiss this appeal

with costs.

Chunder, J.

I agree.