

Union of India

Vs

West Punjab Factories Ltd.

Civil Appeals Nos. 601 and 602 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

24.08.1965

JUDGMENT

WANCHOO, J. –

These three appeals raise common questions and will be dealt with together. They arise out of two suits filed against the Government of India claiming damages for loss of goods which were destroyed by fire on the railway platform at Morar Road Railway Station. One of the suits was filed by Birla Cotton Factory Limited, now represented by the West Punjab Factories Limited [hereinafter referred to as the Factory]. It related to six consignments of cotton bales booked from six stations on various dates in February and March 1943 by the Factory to Morar Road Railway Station. In five of the cases, the consignment was consigned to J. C. Mills while in one it was consigned to self. The consignments arrived at Morar Road Railway Station on various dates in March. Delivery was given of a part of one consignment on March 7, 1943 while the remaining goods were still in the custody and possession of the railway. On March 8, 1943, a fire broke out at the Morar Road Railway Station and these goods were involved

In the other suit there was one consignment of 45 bales of cotton yarn. This consignment was booked from Belanganj to Motor Road Railway Station on February 22, 1943 and the railway receipt relating to this consignment was endorsed in favour of Ishwara Nand Saraswat who filed the suit. This consignment arrived at Morar Road Railway Station on February 23, 1943. Ishwar Nand Saraswat went to take delivery of this consignment on March 10, 1943, his case being that he had received the railway receipt on March 9, 1943. He then came to know that the consignment was involved in a fire which had taken place on March 8, 1943 and severe damage had been done to the consignment. Ishwara Nand Saraswat therefore filed the suit on the ground that damage and loss was due entirely to the gross-negligence of the railway administration. He claimed Rs. 72,000/- and odd as damages and also claimed interest upto the date of the suit and pendente lite and future interest.

The suits were resisted by the Government of India. In the first suit by the Factory, it was pleaded that the Factory could not sue as the goods in five of the receipts had been consigned to the J. C. Mills; secondly, it was pleaded that delivery had been given of at least five of the consignments to the J. C. Mills before the fire broke out and the railway administration was not therefore responsible for the damage done by the fire, for it was the fault of the J. C. Mills not to have removed the goods immediately after the delivery; thirdly, it was pleaded that damages should have been granted at the rate of Rs. 38/- per bale, which was the price contracted for between the buyer and the seller and not at the market rate on the date of the damage as was done by the courts below; fourthly, it was pleaded that no interest should have been allowed for the period before the suit; and lastly, it was

pleaded that the conduct of the railway administration was not negligent and therefore the railway was not bound to

On these pleas, five main issues relating to each of them were framed by the trial Court. The trial court found that the Factory could maintain the suit and decided accordingly. It also found that in the case of five consignments by the Factory, delivery had been given before the fire broke out and therefore the railway was not responsible; in the case of the sixth consignment it held that there was no proof that delivery had been given before the fire broke out and that the railway would be responsible if negligence was proved. On the quantum of damages, the trial court held that the damages had to be calculated at the market price on the date of the fire and not at the contract price between the buyer and seller. On the question of interest, the trial court held that interest before the date of the suit should be allowed on equitable grounds. Finally, on the question of negligence, the trial court held that there was negligence by the railway and it was therefore liable for loss and damage caused by the fi

The same issues were raised in the suit by Ishwara Nand Saraswat. But there was one additional issue in that suit based on the contention of the Government of India that it had given notice to Ishwara Nand that the consignment had arrived on February 23, 1943, Ishwara Nand however did not come to remove the goods till March 8, 1943 when the fire broke out; therefore it was urged that the liability of the railway administration as carrier had ceased after the lapse of reasonable time after arrival of the consignment at the railway station. This reasonable time could not be beyond three days in any case and therefore the railway administration was not bound to make good the loss even if it had been occasioned on account of the negligence of the administration. As Ishwara Nand should have removed the consignment within three days of February 23, it was his failure to do so which resulted in the damage and loss. The issues which were common to this suit and the suit by the Factory were decided on the same lines

Then followed three appeals to the High Court two in the suit by the Factory and one in the suit of Ishwara Nand. The appeal in the suit by Ishwara Nand was by the Government of India; one appeal in the suit by the Factory was by the factory with respect to that part of the claim which had been dismissed, and the case of the Factory was that in fact no delivery had been made to it and it was entitled to the entire sum claimed as damages. The other appeal was by the trial court and it raised all the contentions which had been raised before the trial court.

The High Court dealt with the three appeals together. In all appeals the High Court confirmed the finding of the trial court that there had been negligence on the part of the railway which resulted in damage to the goods. On the question whether the suit could be maintained by the plaintiffs, the High Court affirmed the finding of the trial court that both the suits were maintainable. The High Court also affirmed the finding of the trial court with respect to the rate at which damages should be calculated and on the question of interest before the date of the suit. Further in the suit by Ishwara Nand, High Court held that even if the railway administration ceased to be responsible as a carrier after a reasonable time had elapsed after the arrival of the goods at Morar Road Railway Station, it was still responsible as a warehouseman. The appeal therefore of the Government of India in Ishwara Nand's suit was dismissed. On the question of delivery in the Factory's suit the High Court disagreed with the finding

Then followed application to the High Court for leave to appeal to this court in the Factory's suit. The High Court granted the certificate as the judgment was one of variance and the amount involved was over Rupees twenty thousand. However, in the suit of Ishwara Nand, the High Court

refused to grant a certificate as the judgment was one of affirmance and no substantial question of law arose. Thereupon the Government of India applied to this court for special leave in Ishwara Nand's suit and that was granted. The three appeals have been consolidated in this court for as will be seen from what we have said above, the principal points involved in them are common.

Learned counsel for the appellant has not and could not challenge the concurrent finding of the trial court and of the High Court that the fire which caused the damage was due to the negligence of the railway administration. But the learned counsel has pressed the other four points which were raised in the courts below. He contends - [i] that the suits as filed were not maintainable, [ii] that the High Court was in error in reversing the finding of the trial court that the delivery had been given with respect to five of the consignments in the Factory's suit, [iii] that damages should have been awarded at Rs. 38/- per bale which was the contract price between the buyer and seller and not at the market price on the date on which the damage took place, and [iv] that interest could not be awarded for the period before the suit on the amount of damages decreed.

The contention of the appellant with respect to five of the consignments in the suit of the Factory was that as the consignee of the five railway receipts was the J. C. Mills, the consignor [namely, the Factory] could not bring the suit with respect thereto and only the J. C. Mills could maintain the suit. Ordinarily, it is the consignor who can sue if there is damage to the consignment, for the contract of carriage is between the consignor and the railway administration. Where the property in the goods carried has passed from the consignor to some one else, that other person may be able to sue. Whether in such a case the consignor can also sue does not arise on the facts in the present case and as to that we say nothing. The argument on behalf of the appellant is that the railway receipt is a document of title to goods [see s. 2[4] of the Indian Sale of Goods Act, No. 3 of 1930], and as such it is the consignee who has title to the goods where the consignor and consignee are different. It is true that a rai

The contract between the Factory and the J. C. Mills was that delivery would be made by the seller at the godowns of the J. C. Mills. The contract also provided that the goods would be dispatched by railway on the seller's risk up to the point named above [namely, the godowns of the J. C. Mills]. Therefore the property in the goods would only pass to the J. C. Mills when delivery was made at the godown and till then the consignor would be the owner of the goods and the goods would be at its risk. Ordinarily, the consignments would have been booked in the name of self but it seems that there was some legal difficulty in booking the consignments in the name of self and therefore the J. C. Mills agreed that the consignments might be booked in the Mills name as consignee; but it was made clear by the J. C. Mills that the contract would stand unaffected by this method of consignment and all risk, responsibility and liability regarding these cotton consignments would be of the Factory till they were delivered to

As to the suit by Ishwara Nand, he relies on two circumstance in support of his right to maintain the suit. In the first place, he contended that he was the owner of the goods and that was way the railway receipt was endorsed in his favour by the consignor though it was booked to self. In the second place, it was contended that as an endorsee to a document of title he was in any case entitled to maintain the suit. The trial court found on the evidence that it had been proved satisfactorily that Ishwara Nand was the owner of the goods. It also held that as an endorsee of a document of title he was entitled to sue. These findings of the trial court on the evidence were accepted by the High Court in these Words:-

"It was not contended before us that the finding arrived at by the learned court below

that the plaintiff had the right to sue was wrong, nor could, in view of the overwhelming evidence, such an issue be raised. The evidence on the point has already been carefully analysed by the court below. We accept the finding and confirm it. It was also pointed out that Ishwara Nand was the endorsed consignee and in that capacity he had in any case a right to bring the suit. The correctness of this statement was not challenged before us."

Thus there are concurrent findings of the two courts below that Ishwara nand was the owner of the goods and that was why the railway receipt was endorsed in his favour. In these circumstances he is certainly entitled to maintain the suit. The contention that the plaintiffs in the two suits could not maintain them must therefore be rejected.

Re. [ii].

The contention under this head is that five of the consignment had been delivered to the J. C. Mills before March 8, 1943 and therefore the railway was not responsible for any loss caused by the fire which broke out after the consignments had been delivered on March 6 and 7, 1943. It was urged that it was the fault of the J. C. Mills that it did not remove the consignment from the railway station by March 7 and the Liability for the loss due to fire on March 8 must remain on the J. C. Mills. The trial court had held in favour of the appellant with respect to these five consignments. But the High Court reversed that finding holding that there was no real delivery on March 6 and 7, though the delivery book had been taken. It was not disputed that the delivery book had been signed and the railway receipts had been delivered to the railway; but the evidence was that it was the practice at that railway station, so far as the J. C. Mills was concerned, to sign the delivery book and hand over the railway receipts a

Re. [iii].

It is next contended that damages should have been awarded at the rate of Rs. 38/- per bale which was the contract price between the factory and the J. C. Mills. This contract was made in November 1942. The contract price is in our opinion no measure of damages to be awarded in a case like the present. It is well settled that it is the market price at the time the damage occurred which is the measure of damages to be awarded. It is not in dispute that the trial court has calculated damages on the basis of the market price prevalent on March 8. In these circumstance this contention must also be rejected

Re. [iv].

The next contention is that no interest could be awarded for the period before the suit on the amount of damages decreed. Legal position with respect to this is well settled: [See Bengal Nagpur Railway Co. Limited v. Ruttanji Ramji and Others]. That decision of the Judicial committee was relied upon by this court in Seth Thawardas Pherumal v. The Union of India. The same view was expressed by this Court in Union of India v. A. L. Rallia Ram. In the absence of any usage or contract, express or implied, or of any provision of law to justify the award of interest, it is not possible to award interest by way of damages. Also see recent decision of this court in Union of India v. Watkins Mayer and Company. In view of these decisions no interest could be awarded for the period upto the date of the suit and the decretal amount in the two suits will have to be reduced by the amount of such interest awarded.

We now come to the additional point raised in Ishwara Nand's suit. It is urged that Ishwara Nand's consignment had reached Morar Road Railway Station on February 23, 1943 and Ishwara Nand should have taken delivery within three days which is the period during which under the rules on wharfage is charged. The responsibility of the railway is under s. 72 of the Indian Railways Act [No. 9 of 1890] and that responsibility cannot be cut down by any rule. It may be that the railway may not charge wharfage for three days and it is expected that a consignee would take away the goods within three days. It is however urged that the railway is a carrier and its responsibility as a carrier must come to an end within a reasonable time after the arrival of goods at the destination, and thereafter there can be no responsibility whatsoever of the railway. It is further urged that three days during which the railway keeps goods without charging wharfage should be taken as reasonable time when its responsibility as a carrier

The appeals therefore fail with this modifications that the decretal amount would be reduced by the amount of interest awarded for the period before the date of each suit. The rest of the decree will stand. The appellant will pay the respondent's costs - one set of hearing fee. In CA 603/63 interest will be calculated from 6-8-62 in accordance with that order.

Appeal dismissed and decree modified.

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