

S. Chinnaswani Nadar

Vs

The Home Insurance Co., Madras

Civil Appeal No. 224(N) of 1970

(A. C. Gupta, N. L. Untwalia JJ)

18.03.1980

JUDGMENT

UNTWALIA, J. –

1. In this appeal by certificate the defendant-respondent was the Home Insurance Co. On nationalization of the general insurance business the said company was taken over by United Insurance Co. At the request of the parties, therefore, before the commencement of the hearing of the appeal we directed the United India Insurance Co. to be substituted in place of the original respondent. But, hereinafter in this judgment, by the defendant or the respondent would be meant the Home Insurance Co.

2. The plaintiff-appellant consigned 25 cases of scented betel nuts valued at Rs. 37,500 from Nagapattinam to M/s. M.P. Company of Penang in Malaysia as per the invoice Ex. A-1. The shipping agents of the appellant were M/s. Jayaveerapandia Nadar and Company. The goods were given to the Port Officer, Nagapattinam with an application for export on January 11, 1960. According to the invoice each of the 25 cases contained 600 packets of betel-nuts each weighing half lb. The total weight of one case was 336 lbs. including the weight of the case. The total weight of the 25 cases came to 75 cwts. The Customs Collector, Nagapattinam issued a certificate of shipment by 'S.S. State of Madras' which sailed from Nagapattinam on January 15, 1960. The plaintiff insured the goods with the defendant company under Marine Insurance Policy of that date. The risk was covered from warehouse to warehouse. The 25 cases were loaded in boat No. 11 which left Nagapattinam port wharf at 6.00 a.m. on January 15, 1960 to discharge the cargo on board 'S.S. State of Madras'. At that time the wind and the sea were normal and moderate. The boat reached along side the steamer at 7.00 a.m. and was kept for her turn to discharge. In the meantime strong winds suddenly set in and the sea became rough, as a result of which high swells splashed into the boat and the cargo became wet by sea water. The turn of the boat to load the cargo on the ship came at about 2.00 p.m. and the 25 cases were delivered on board in a wet condition. The bill of lading issued by the Eastern Shipping Corporation Ltd. on January 15, 1960 also contained a note - "all the goods wet by sea water". It was also noted that the ship was not responsible for the condition of the contents. It reached Penang on January 20, 1960 and the consignee M.P. Company found the goods wet and damaged. They gave intimation to this effect to the defendant's agent at Penang and also applied for survey as per the provisions of the Policy. The survey of the goods was conducted by one Mr. N. F. Paul on January 30, 1960 and a report was issued on February 23, 1960. Damage was assessed at hundred percent of the value of the stained goods and as per the order of the Chief Public Health Officer, Penang the entire goods were destroyed.

3. M.P. Co. submitted a claim bill to the American Foreign Insurance Association, Singapore to

whom the claim was to be made under the terms of the Policy. They declined to entertain the claim. M.P. Co. then sent all the papers to the plaintiff in India to take suitable legal action. The plaintiff gave a legal notice to the defendant-company and in reply the latter disputed the claim of the former on various grounds. Hence the suit was instituted for recovery of Rs. 39,344.25 made up of Rs. 37,500 the price of the goods and Rs. 1,687.50 being the interest thereon plus Rs. 156.75 being the fee of the Chemist and the surveyor.

4. The defendant-respondent in its written statement took a plea of jurisdiction of the Nagapattinam court to try the suit. The learned Subordinate Judge who tried it overruled this objection. The point was not reagitated in the High Court and, therefore, we did not permit learned counsel for the respondent to raise the question of jurisdiction in this Court. Moreover no prejudice was shown to have been caused to the respondent on account of the alleged lack of jurisdiction in Nagapattinam court.

5. The main plea taken up by the respondent was that fraud was practised by the plaintiff with a view to profit himself and he had deliberately inflated the weight and value of the consignment by giving a higher rate. The bill of lading for the shipment of the goods in question puts down the measurement as one ton 14 feet 7 inches on the footing of which the plaintiff paid freight. As against the claim of the plaintiff that the size of the case was 31" X 19" X 36" the shipping agents recorded the dimension of each case to be 25" X 15" X 12". On that basis the value of 25 cases was recorded in the bill of lading. A case of such dimension could not contain betel-nuts weighing 300 lbs. as was claimed by the plaintiff. The maximum quantity of betel-nuts contained in a case of that dimension could not be more than 89 lbs. The prevailing market price of betel-nuts on the relevant date was only Rs. 3.57 per lb. and not Rs. 5 per lb. as stated by the plaintiff. Thus the claim was hotly contested by the respondent-company.

6. The learned Subordinate Judge framed several issues for trial and accepting the case of the plaintiff as regards the size of the case, the weight and rate of the betel-nuts to be correct, decreed the suit in full with a subsequent interest at 6% per annum and costs.

7. The defendant took the matter in appeal before the Madras High Court. The High Court has reversed the decision of the trial Court and after recording many adverse findings against the plaintiff has allowed the appeal and dismissed the plaintiff's suit with costs in the trial Court as well as in the High Court. On grant of a certificate under Article 133(1)(a) as it stood prior to the 30th Constitution amendment the matter has been brought to this Court in this appeal.

8. In our judgment the High Court has unnecessarily embarked upon too many questions which were not very germane and relevant for the decision of the case. On the main question as to the size of each of the 25 cases in which betel-nuts were despatched the High Court recorded a finding against the plaintiff. And it appears to us that the High Court thereupon drifted to all other questions also to vehemently criticize the plaintiff's conduct and record findings against him. In our opinion it was not quite necessary to find out in this case how and wherefrom the plaintiff arranged money to purchase betel-nuts for despatch to Penang. As a matter of fact a consignment of betel-nuts was purchased by the plaintiff and it was despatched by the ship 'State of Madras'. On the question of rates also the finding of the High Court is not quite correct. It was not right in relying upon the evidence of the man of Rashiklal & Co. for holding that the rate of betel-nuts in question could not be Rs. 5 per lb. We have carefully examined the relevant pieces of evidence which were placed before us by the learned counsel for the parties and have come to the conclusion that the plaintiff had not exaggerated the rate of the consignment when it claimed that it was worth Rs. 5 lb. The

goods were of a superior quality. The plaintiff did not know and had absolutely no inkling of it that the goods would be damaged during the course of transit. No suggestion was ever given even faintly that the goods were damaged as a result of any conspiracy by the plaintiff and not by act of God. If that be so then it is difficult to appreciate the reasoning of the High Court as to why the plaintiff from the very beginning would have made an endeavour to increase the weight and rate of the consignment. The goods were duty-free goods. In ordinary course they were despatched to Penang. The plaintiff paid insurance charges on the value of Rs. 37,500 and if the goods would not have been wet after they left the Nagapattinam wharf in boat No. 11 no occasion would have arisen to make any claim against the insurance company. Why then the plaintiff would have thought of a plan to make an exaggerated claim. Generally in cases of this kind one finds that a conspiracy is hatched up to made exaggerated claims on the basis of a planned design of causing damage to the goods. The High Court has completely missed this very important aspect of the matter in this case and this has resulted in a very wrong approach to the plaintiff's claim all through.

9. The main question in this case, however, is as to what was the size of each of the 25 cases in which the goods were despatched and what was the weight of the betel-nuts contained therein. In that regard there is a direct conflict between the plaintiff's evidence mainly based upon the evidence of PWs 1 and 5, Ex. A-6, the application for permission to export, Exs. A-2 to A-4 the shipping bills in triplicate and Ex. A-1 the invoice, and the defendant's evidence mainly consisting of oral testimony of DWs 1 and 2 and Exs. B-3, B-4 and B-1. The evidence adduced on behalf of the plaintiff shows that each case is 31" X 19" X 36" containing 600 packets of betel-nuts of half a lb. each while defendant's evidence shows that the measurement of each was 25" X 15" X 12" and if that be so such a small case indisputably could not contain 300 lbs. of betel-nuts. It could contain only about 90 lbs. The trial Court accepted the plaintiff's evidence to be correct and rejected that of the defendant. The High Court did just the reverse. On a careful consideration of the matter we have come to the conclusion that the trial Court was right in this regard and the view of the High Court is erroneous and cannot be upheld.

10. Exhibit A-1 is the invoice signed by the plaintiff which gives the description of the goods and the value. In the application to export dated January 11, 1960 in column (2) is mentioned 25 cases and in column (4) as against "Description and contents of each package" is mentioned "Scented betel-nuts (at 336 lb. each)". The total weight mentioned is 75 cwts. The evidence of the plaintiff is that he gave Ex. A-1 along with the goods to his clearing agents Jayaveerapandia Nadar & Co. whose agent is PW 5, Dharmarajan. His evidence is of great importance and we will, therefore, refer to portions of it. He says that on receipt of the application for export, he prepared the shipping bills Exs. A-2 to A-4 and signed them. He filled up the various columns in the shipping bills and gave the description of the goods, their weight and value as per the invoice. In the shipping bill Ex. A-2 and similarly in the other bills also the gross weight of 25 cases is mentioned as 75 cwts. and the net weight mentioned is 66 cwts. and odd. The c.i.f. value mentioned is Rs. 37,500. Dharmarajan in his testimony says that he opened three cases and checked them as to whether there was any false bottom in any of them. He opened a packet of betel-puts to find out whether it was scented betel-nuts. He weighed 4 or 5 packets and each weighed uniformly half a pound. He calculated the net weight and adding the weight of the cases arrived at the figure of the gross weight. The cases were made of deal wood of big size like cigarette deal wood cases. Each case contained 600 packets. He paid Rs. 40 based on the weight as Port dues. The Customs Collector ordered examination of the goods as per his order on Ex. A-3, P-W-1 B. Vincent, Inspector of Customs then posted at Nagapattinam checked the goods in presence of Dharmarajan. He opened 3 cases and checked for false bottom, counted the packets in each, weighed 2 or 3 packets; and each weighed half a pound. Then the goods were brought to the wharf. Thereafter they came under the custody of the weighing

department of the shipping company and could not be removed by others. PW 1 made the endorsements on the shipping bills. PW 5 then produced them to the Customs Collector who after verifying the report of PW 1 made the order - "Pass". The order of the Customs Collector enabled the goods to be exported.

11. Declaration by the owner of the goods has to be made under Section 29 of the Sea Customs Act, 1878. Clearance for shipment was done under Section 137 and if there is any false declaration then penalty is provided in Section 167. Under Section 12 of the Foreign Exchange Regulation Act, 1947 declaration of value had to be made for payment of the exported goods. Sections 22 and 23 provided for punishment for false statements. According to the Rules all particulars and declarations had to be given to the Collector. In such a situation it does not stand to reason that the plaintiff as well as Dharmarajan, the man of Jayaveerapandia Nadar and Company for no rhyme or reason would take the risk of giving false declaration. Nobody at that point of time knew that the sea would be rough at about noon on January 15, 1960 and the consignment will get wet by sea water in the boat.

12. PW 5 Dharmarajan also says in his evidence that he would have been punished if goods other than those mentioned in the invoice were sought to be exported and his licence as clearing agent would have been cancelled. How and why could Jayaveerapandia Nadar & Co. take such a risk to give such a false declaration ?

12. Evidence of PW 5 further is that on January 14, 1960 he asked PW 4 the tindal to load the goods in his boat. He gave the triplicate shipping bill and a boat note in form like Ex. A-24 after filling the details. PW 4 took the boat to the ship on January 15, 1960. He or the plaintiff did not accompany him. PW 4 informed him on January 15, 1960 that the case got wet by sudden sea swelling and gave him the mate's receipt. The freight as per the bill of lading was paid. Exhibit B-1, dated January 15, 1960 is the bill of lading. Since freight was charged on the basis of the technical measurement mentioned in the bill of lading PW 5 could not understand it and verify it. In our opinion the evidence of PW 5 is trustworthy and ought not to be discarded as it had been done by the High Court.

14. Now we come to the evidence of Vincent, PW 1. After stating the practice of checking the consignment under the orders of the Customs Collector and then submission of report to him the witness stated that Ex. A-1 is the invoice in this case, Exs. A-2 to A-4 are the shipping bills in triplicate. All these four documents bear the Custom House rubber stamp of January 11, 1960 with the initials of the Customs Collector. Exhibit A-3 contains the order by the Customs Collector to him. It is in rubber stamp and is dated January 12, 1960. The Inspector was asked to verify the seals, open, examine, inspect and check the weight and report. He called for the goods covered by A-2 to A-4 from the Customs House agent viz. Jayaveerapandia Nadar and his authorised agent in the Customs House was one Dharmarajan (PW 5). Dharmarajan presented the goods to him. He then inspected the lot of 25 cases. The cases were of uniform sizes. Vincent selected 3 cases at random and caused them to be opened. He emptied the contents to verify whether there was any concealment of contraband goods in it. He then asked the agent to fill the cases back and counted the individual packets in each of the cases. Each of the cases contained 600 packets. He then took representative packets and weighed them. Every packet weighs half a lb. uniformly. He ripped open some packets to see the contents. They were scented betel-nuts. He submitted his report on the reverse of Exs. A-2 and A-3. Exhibit A-3 bears his original report and Ex. A-2 bears the carbon copy of it. This was dated January 14, 1960. Vincent says further in his deposition that the cases were made of deal wood. They were big ones and had to be handled by collies for examination. It was not necessary for him to measure the dimensions of the cases. Therefore, he did not do it. It is

difficult to appreciate the approach and reasoning of the High Court as to how on January 14, 1960 the Inspector of Customs would be a party to the alleged conspiracy of the plaintiff to cheat the Insurance Co. Nobody knew the act of God which was to happen on January 15, 1960 when the cases were lying in boat No. 11 for being loaded in the ship 'State of Madras'.

15. As against this unimpeachable evidence of the plaintiff both documentary and oral the only evidence produced on behalf of the defendant which created the difficulty in the way of the plaintiff's claim is the wrong mentioning of the sizes in Exs. B-3 and B-4 on the basis of which the total measurement weight mentioned in the bill of lading was wrong. DW 1 Perlyanayagam was a wharf clerk of the shipping company and his duty was to take measurements of bales and cases to be loaded in the ship "State of Madras". At page 221 of Ex. B-3 there is an entry dated January 14, 1960 in respect of S.C. Penang marked goods Ex. B-4. According to him he measured 4 or 5 cases. The cases were of uniform sizes. He noted the measurements of one case only in Ex. B-4 as 25" X 15" X 12". After noting the measurements in the measurement book, Ex. B-3, he handed it over to the office. But it is to be noted that some entries were in pencil made by DW 1 and there were overwritings in ink made by DW 2 Aravamudu, the chief clerk in-charge of freight department in K.P.V.S. & Co., Nagapattinam. The entries are said to have been made at the fag end of the day when it was getting dark. According to the evidence of the man of Rashiklal & Co. betel-nuts for internal despatch in the country are generally contained in cases of the sizes of 25" X 15" X 12". It appears to us that DW 1 was careless in performing his duty. On learning that the cases were of betel-nuts, just by estimate, on the basis of his knowledge of the general size of the betel-nuts cases he noted the size of the cases to be 25" X 15" X 12". It would appear from the evidence of DW Aravamudu, the chief clerk in-charge of the freight department of the shipping company at Nagapattinam that DW 1 was clerk in-charge for taking the measurements. DW 2 had nothing to do with it. He merely entered the measurements on the basis of what was claimed to have been done by DW 1. The measurement book, Ex. B-3 contained the pencil entries made by DW 1. The ink entry in Ex. B-4 was made by DW 2. If the goods were not wet and would have been delivered to the consignee in a good condition, in all probability, more freight would have been charged as there was a charge of under freight at Nagapattinam. But DW 2 admits in cross-examination that in a case where the goods are lost or destroyed or become damaged no question of collection of extra charge arises. Exhibit B-4 is at page No. 221 in Ex. B-3. This contains the entry in question showing SC 25-C/c Scented nuts. The measurement of each case noted is 25" X 15" X 12". On the basis of this measurement in the bill of lading Ex. B-1 the measurement and weight mentioned is 1 ton 14 feet and 7 inches. This is a very technical way of putting the measurement and weight by the shipping company which could not be intelligible to PW 5 or any other man. Nor did PW 5 care to verify as to whether in the bill of lading the measurement and weight mentioned was correct. He was merely asked to pay the total freight of Rs. 142.08 which he paid. As against the weighty and overwhelming evidence both oral and documentary on behalf of the plaintiff we are not prepared to give credence and weight to the evidence of DW 1 and the entry Ex. B-4 made by him in the measurement book, Ex. B-3. In our opinion he did not actually measure the cases and just to show the discharge of his duties at the fag end of the day he made the entry by guess.

16. Exhibit A-34 is the Lloyd's Survey Report dated February 23, 1960. Of course the Surveyor was merely concerned with the condition and the value of the cases as per the invoice. Nothing is found mentioned in his report either way to show the actual number of packages of betel-nuts contained in each case. But in column 12(a) of the survey report the market value of the damaged cases mentioned is 1.85 (Singapore dollars) "per 1/2 lb. packet". In absence of the mentioning of total number of packets contained in one case the survey report by itself neither supports the plaintiff nor goes against him. But relying upon the other pieces of evidence which we have discussed above we

hold that the conclusions arrived at by the trial Court were correct and we do not agree with the sweeping and wide observations made and the findings recorded by the High Court against the plaintiff.

17. In the result we allow the appeal with costs, set aside the judgment and decree of the High Court and restore that of the trial Court. We make no order as to costs in the High Court.

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