ORISSA HIGH COURT

Union of India

Vs

Sheobux Satyanarayan

Second Appeals Nos. 240 and 241 of 1960

(G.K. Misra, J.)

24.07.1962

JUDGMENT

G.K. Misra, J.

1. Defendants are the appellants against the reversing judgment of the learned District Judge of Cuttack decreeing the plaintiffs' claim for Rs. 680/10/- in each of the suits. Second appeal No. 240/60 and Second Appeal No. 241/60 correspond to money suit No. 198/56 and Money Suit No. 197/56 respectively. Facts alleged in both the cases are almost identical. In each case the facts are that the plaintiff booked a consignment of 220 bags of sugar weighing 605 mds. (each bag weighing 2 maunds 30 seers). One consignment was under Invoice No. 2 R/R No. 124163 dated 5-6-55 and the other was under Invoice No. 3 R/R No. 124154 dated 5-6-55. |These consignments were delivered on 18-7-55 though they were to reach Cuttack on 15-6-55. On enquiry the plaintiff came to know that the wagon containing the consignments was misdirected to Kantapukur Station on the Eastern Railway and was detained there for more than a month. The plaintiff suffered loss of Rs. 1512/8/- due to this extraordinary delay in delivery as the market price of sugar came down by Rs. 2/8 per maund between the due date of delivery and the actual date of delivery.

2. In both the suits defendants asserted that there was no loss due to fall in the market rate and there was no special contract for the goods to reach before a special date.

3. The learned Munsif found that there was delay in transit due to the negligence and misconduct of the servants of the Railways and that the Plantiff was not entitled to any damages due to depreciation in value of the goods on account of the fall of price. He accordingly dismissed both the suits.

4. Before the lower appellate Court, the finding that the railway administration was guilty of negligence and misconduct for the delay in the delivery of the goods was not challenged. The learned District Judge held that the defendants were liable to pay damages on account of the fall in price between the due date of delivery and the date of actual delivery; that there was delay of 26 days and the fall in the price was calculated at the rate of Rs. 1/2/- per maund and not at the

rate of Rs. 2/8/- per maund as claimed. He passed a partial decree for Rs. 680/10/- in each suit with proportionate costs tnroughout.

5. Mr. B. K. Pal for the appellant did not challenge the finding that there was delay of 26 days in the delivery of goods and that the market price had fallen to the extent of Rs. 1/2/- per maund and that the delay was due to the negligence and misconduct of the servants of the railway administration. He advanced the only contention that the plaintiff was not entitled to damages represented by the fall in the market price. According to him the plaintiff is entitled to the value of the goods at which they were purchased and, in this case, the plaintiff is entitled to no compensation as the goods were in fact delivered to him.

6. As a large number of authorities has been cited in support of the respective Contentions, it is necessary to refer to the various provisions of law which have bearing on this contention. Section 72(1) of the Indian Railways Act, as it stood prior to its amendment by Act 39 of 1961, governs the present case and 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 152 and 161 of the Indian Contract Act".

Section 161 of the Indian Contract Act runs as follows :

> "If, by default of the bailee, the goods are not returned, delivered, or tendered, at the proper time, he is responsible to the bailor for any loss, destruction, or depreciation of the goods from that time".

It is now well settled that in the absence of an express contract the obligation of a carrier is to carry by the usual routes and to deliver the goods with in a reasonable time. Mr. Pal argues that in contracts of this nature time is not the essence of the contract. It is true that the contract does not expressly or by necessary iimplication fix any time for the performance of the contractual obligation. That being so, the law implies that it shall be performed within a reasonable time, and reasonable time means what is reasonable looking at all circumstances of the case. *Lalchand v. Union of India*[1], cited by Mr. Pal supports this view.

7. Though there was some difference of opinion as to the import of the word "deterioration" used in Section 72 of the Indian Railways Act and in Section 161 of the Indian Contract Act, the position is now well settled that it is wide enough to include depreciation in value on account of a fall in the price of the goods. Even paragraph 7 in *Firm Kishanlal Shrilal Patwa v. Union of India, Rly. Administration now Northern Rly*[2]. cited by Mr. Pal supports such a contention. The position was clearly laid down in *G. P. Railway v. Jugal Kishore*[3], It must therefore, be held that the Railway Administration did not deliver the goods within a reasonable time and the delay was on account of the misconduct of the servants of the defendants and that
there was depreciation in the value of the goods as a result of the fall in the market price.

8. The next important question is what would be the measure of damages in case of this nature. Mr. Pal relied upon Section 73 of the Indian Contract Act in support of this contention that the compensation for delay in delivery did not naturally arise in usual course of things from such breach of contract, nor did the parties know when they made the contract that the loss or damage would be the likely result from the breach of it. The relevant portion of Section 73 of the Indian Contract Act is as follows :

> "When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach". The leading case on the point is the decision of the Privy Council in *Sally Wertheim v. Chicoutimi Pulp Co*[4]*.,* their Lordships observed:

> "The general intention of the law in giving damagas for breach of contract is that the plaintiff should be placed in the same position as he would have been if the contract had been performed. In the case of late delivery the measure thereof in order to indemnify the purchaser is the difference between the market price at the respective dates of due and actual delivery of the goods purchased; but if the purchaser had resold at a price in excess of the prevailing at the date of delivery he must in estimating his damages give credit therefor".

In the particular case, the action for damages was for breach of the contract dated 13-3-1900 to deliver 3000 tons of moist wood pulp between 1st September and 1st November of that year. The appellant claimed to recover 27s. 6d. a ton, the difference between 70s., the market price at the port delivery on the due date, and 47s. 6d., the market price on the same place on the date of actual delivery; it however appeared that he had sold the goods at 65s. a ton involving a loss to him of only 5s. a ton. It was held that he was entitled to recover only 5s. a ton. This decision was followed in *Union of India v. Baijnath*[5]*,* which was directly a case arising out of delay in delivery. In my view these two decisions state the correct law on the point and to that extent AIR 1930 Allahabad 132 needs a slight modification. In *Managing Agents Martin and Co. v. Deokinandan*[6]*,* their Lordships observed that where a railway deviates from the usual way they profess to carry the goods and the deviation was not imperative, the railway administration forfeits the protection, afforded to them by Risk Notes A and B.

9. Mr. Pal cites *G. A. Jolli v. Dominion of India*[7]*,* AIR 1960 Calcutta 270, AIR 1960 Madhya Pradesh 289 and *Union of India v. Ms. Natabarlal Jayshankar*[8]*,* in support of
a contention that the plaintiff is not entitled to loss of profits as an ordinary consequence of delay unless the circumstances are brought to the knowledge of the carrier at or before the date of the contract. AIR I960 Cal 270 and AIR 1960 Madhya Pradesh 289 are cases relating to delay in delivery of the goods. Mr. Pal drew my attention to paragraphs 29 and 30 in AIR 1960 Calcutta 270. In paragraph 29 his Lordship does not differ from the conclusion I have arrived at. His

Lordship lays down that in giving damages for breach of contract the plaintiff should be placed in the same position as he would have been if the contract had been performed. That is the dictum which was laid down in 1911 A C 301. But in this case, only the price paid by the plaintiff for the goods was decreed on the extraordinary ground that the railway administration was not itself responsible for the delay in delivery, but merely failed to inform the consignor or the consignee that the goods had been seized by the land Custom Officer. The ultimate conclusion in that case is not strictly justifiable on the principle discussed by me or on the principle adopted in para 29 of the judgment. At any rate it is distinguishable on the facts of the case. AIR 1960 MP 289 involves peculiar facts. There the depreciation in the value of the goods ultimately ensued as the immediate consequence of an order passed by the Central Government on 25-10-1950 controlling the price of goods and fixing Rs. 21/- per maund. In paragraph 9 Mr. Justice Krishnan observed :

> "It is not a case of deterioration naturally arisen in due course from the delay or is theoretically conceivable, even apart from physical decomposition, that there was a steady downward trend. . . . . .

In natural course of things such a fall in price would not have happened". His Lordship was of the view that the fall in price by itself would not be outside the scope of a claim under section 73 of the Indian Contract Act, but the fall in price due to control by the Central Government was outside it. This case is therefore no authority in support of the general proposition contended for by Mr. Pal and is contrary to what is laid down in 1911 AC 301 and AIR 1951 Patna 219.

10. AIR 1949 Calcutta 380 refers to a case of non-delivery and not to delay in delivery. The plaintiff in that suit claimed compensation for loss and damage which he assessed at Rs. 1,20,000/- being the total of the value of the goods on 24-6-47 when the said goods should have been delivered to the plaintiff and the expected profit on the sale thereof. In paragraph 50 his Lordship followed the dictum laid down in 1911 AC 301. In paragraph 51 his Lordship observed that the loss or profit is not the ordinary consequence of delay or default and cannot be recovered unless the circumstances are brought to the knowledge of the carrier at or before the date of contract. This is a correct proposition of law and rightly the claim for profits was negatived. This decision was approved in ILR 1962 Cut 395 which was also a case of non-delivery and short delivery and the plaintiff based his claim on the price of the missing bales of yarn besides the frieght and the profit at 7¼ per cent. following AIR 1949 Calcutta 380 their Lordships repelled this contention.

11. There is some confusion in the line of thought that the measure of damages representing the difference between the market price on the due date of delivery and on the date of actual delivery includes loss of profits. The value of the goods on the due date of delivery represents the real value to the owner without any relation to the question of profit. If by lapse of time there is a fall in the price it necessarily means only the loss in value of the goods and that the loss in value in the compensation claimed.

12. In the present case no argument has been advanced before me by either side that in fact the goods were sold by the plaintiff. If there was evidence of actual sale of goods by the plaintiff then directly 1911 AC 301 and AIR 1951 Patna 219 would apply and the plaintiff's case would have

been dismissed for not stating the actual price realized on sale. But as no such case was advanced either in the Courts below or before me, examination of such a question is not called for.

13. There is no substance in the contention advanced by Mr. Pal. The appeals fail and are dismissed with costs. Appeals dismissed.

Cases Referred.

[1] AIR 1960 Cal 270
[2] AIR 1960 Mad Pra 289
[3] AIR 1930 All 132
[4]1911 AC 301
[5] AIR 1951 Pat 219
[6] AIR 1959 Mad Pra 276
[7] AIR 1949 Cal 380
[8] ILR 1962 Cut 395