

# RAJASTHAN HIGH COURT

Union of India

Vs.

Kesri Chand Manak Chand

Civil S.A. No. 108 of 1986

(Prakash Tatia, J.)

07.11.2005

## JUDGEMENT

### **Prakash Tatia, J.**

1. Heard learned counsel for the appellant as well as learned counsel for the respondent.

2. Brief facts of the case are that the plaintiff-respondent filed suit for recovery of Rs. 6305.62/- against the appellant-defendant. According to plaintiff, the plaintiff booked certain goods for sending by railway transport from Varanasi to Bikaner. The goods were received by the appellant and a due receipt was issued by the appellant-railway to the plaintiff. When the plaintiff did not find the goods at Bikaner, he immediately informed the Commercial Superintendent of the Northern Railway, Bikaner on 16-2-1972 and submitted his claim under Section 78-B of the Indian Railways Act. The plaintiff also submitted the railway receipt to the appellant-defendant. Despite lodging claim, the amount was not paid by the defendant to the plaintiff-respondent; therefore, plaintiff filed the suit for recovery of the said amount after serving notice. According to plaintiff since the goods, which were booked by the plaintiff to be delivered at Bikaner was not delivered to the plaintiff; therefore, he is entitled to recover the cost of the goods along with interest from the defendant-appellant.

3. The defendant submitted written statement and admitted that the goods were booked for sending to Bikaner by the plaintiff for which a P.W. Bill No. 381780 dated 18-1-72 was given by the defendant to the plaintiff respondent. The defendant-appellant further admitted that plaintiff submitted claim and defendant demanded the receipt dated 18-1-1972, but denied that goods were lost because of the negligence of the railway administration. The defendant-appellant admitted receipt of the notice under Section 80, Civil Procedure Code. However, even after admitting the facts, the defendant-appellant took a plea that the goods booked contained, fancy Saris and, therefore, the plaintiff should have insured the goods or should have declared the

value of the goods and since the plaintiff did not get the goods insured nor declared the goods and its value and, therefore, the plaintiff is not entitled for any cost of the goods from the defendant-appellant.

4. The trial Court framed as many as 8 issues. The plaintiff produced witness P.W.1 Jhawarlal and also produced documentary evidence in support of his case whereas the defendant-appellant produced witness DW-1 Ramavtar, DW-2 Ajeet Singh, DW-3 Mahendra Kumar and DW-4 Ashok Kumar. The trial Court held that the plaintiff produced the certificate of registration of the firm and, therefore, the plaintiff is registered partnership firm and, therefore, the suit is maintainable as filed by the plaintiff-firm. The plaintiff able to prove that the goods were lost because of the negligence of the railway administration, but while deciding the issue No. 3, the trial Court held that the goods, which were booked for transportation were falling in Schedule-II and as per Section 77-B of the Indian Railways Act, the plaintiff should have disclosed the goods and its price and should have insured the goods, which he did not do, therefore, the plaintiff is not entitled to recover the amount from the appellant. The trial Court also held that the cost of the goods was more than Rs. 500/- and since Section 77-B provides no liability of the Insurance Company in case, the value of the goods are not disclosed when goods cost is more than Rs. 500/-. In view of the findings recorded by the trial Court on issues No. 3 and 7, the trial Court dismissed the suit of the plaintiff by giving protection to the defendant-appellant under Section 77-B of the Indian Railways Act.

5. The plaintiff being aggrieved against the judgment and decree of the trial Court dated 13-1-1986, preferred appeal, which was allowed by the appellate Court vide judgment and decree dated 21-4-1986. The first appellate Court upheld that finding of the trial Court on issue No. 3 and held that the goods were lost because of the negligence of the railway administration. However, the first appellate Court while deciding Issue No. 7 held that the trial Court rightly decided the issue No. 7 in favor of the defendant. In view of the finding on issue No. 3, the first appellate Court held that the appellant- defendant-railway cannot take benefit under Section 77-B of the Indian Railways Act because of the reason that the defendant failed to prove that the goods were covered under Schedule-II of Section 77B. The first appellate Court held that the trial Court committed error of fact in holding that the goods were silk Saris whereas this was not even the defense of the defendant in the written statement. Therefore, even after holding that the goods were lost, but that loss is because of the negligence of the railway, the plaintiff is entitled for the cost of the goods along with interest @ 6% per annum.

6. This appeal was admitted on 23rd Sept. 1986 on the following substantial question of law.

"Whether the learned Addl. District Judge, Bikaner was justified in decreeing

the plaintiff's suit in spite of the fact that he had decided issue No. 7 against the plaintiff?"

7. Learned counsel for the appellant submitted that since the goods were lost and it is not a case of non-delivery of goods by the railway administration and this finding has been given by the trial Court and upheld by the appellate Court, therefore, the appellate Court's judgment and decree awarding money decree against the appellant is self-contradictory. It appears that because of said argument only, the substantial question of law was framed by this Court while admitting the appeal. So far as the finding on issue No. 3 about the negligence of the defendant-appellant is concerned, that is finding of fact based on evidence and this finding cannot be challenged. It is clear from the facts also that the goods were booked by the plaintiff for transporting to Bikaner, but the same have not been delivered, the plaintiff lodged complaint forthwith and submitted his claim, but amount has not been paid to the plaintiff by the appellant-defendant. The plaintiff's role was nowhere after booking the goods for transporting it to Bikaner through railway administration. The appellant-defendant failed to bring on record any circumstance which may be a ground for exonerating the appellant-defendant from their liability. The defendant also even failed to explain any reason for claiming defense against the claim of the plaintiff.

8. It appears that issue No. 7 confuse the whole matter. The issue No. 7 was only to the effect whether the goods were lost in way and, therefore, defendant not liable to pay the cost of the goods. The loss of the goods when they were in custody of the defendant is not a defense available to the defendant from the liability. The first appellate Court considered various judgments on the point to draw distinction between the loss of goods and non-delivery of the goods. That fact was not at all relevant in the facts of this case because of the simple reason that two Courts below concurrently held that goods were lost because of the negligence of the employees of the railway. Only defense of the defendant-appellant in the written statement was that the plaintiff was required to disclose the cost of the goods, the quantity of the goods and was under obligation to insure the goods. The appellate Court found from the receipt issued by the railway that the appellant disclosed the fact that consignment contains the Saris and it also disclosed that the Saris were having work of Art over it. Therefore, the appellant did not suppress any fact nor can be held to be guilty of non-disclosure of the goods. As per the Schedule-II appended, it is clear that even the silk Saris were included in Schedule-II, but the first appellate Court held that the defendant failed to prove that the Saris in question were of silk. Not only this, but even that was not the defense taken in the written statement. Therefore, once it has been held by the two Courts below that the goods were lost because of the negligence of the employees of the railway and plaintiff is entitled for the cost of the goods, therefore, the finding recorded on issue No. 7 in the facts of this case was unnecessary finding and

otherwise also the finding on issue No. 7 even in favor of the defendant cannot be treated a finding effecting the claim of the plaintiff adversely in any manner.

9. In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

Appeal dismissed.