Governor General Of India In Council ... vs Radhey Lal And Anr. on 3 October, 1955

Equivalent citations: AIR1956ALL149, AIR 1956 ALLAHABAD 149

JUDGMENT

Gurtu, J.

1. This is an appeal by the Governor General of India in Council, representing the East Indian Railway. Plaintiffs, who are the respondents in the appeal sent a consignment of 400 Mds. of molasses in 550 tins from Nagina railway station on 25-5-1945 to Burdwan and a freight of Re. -/10/6 was charged from them. Upon the goods reaching Burdwan, the railway staff demanded an additional charge of Re.-/15/6 per maund, on the ground that the molasses booked were convertible Khandsari molasses, and not nonconvertible Khandsari molasses.

The railway by reason of reclassification of the goods demanded the additional sum of Re.-/ 15/6 per Maund. The plaintiffs refused to pay the additional charge and therefore the goods were not delivered. The plaintiffs then brought this suit for the recovery of the price of molasses, expenses and damages.

2. The defendant railway company relied on their power to reclassify the goods, and upon Section 55, Railways Act to detain the goods until the additional charge had been paid. The courts below found that the Khandsari molasses booked were non-convertible khandsari molasses, that they had been correctly classified at the despatching station and that the reclassiflcation could not be made because there was no error in the original classification.

The finding as to the nature of the khandsari molasses rested upon the report of the expert. The courts below therefore held that the railway was not justified in detaining the goods and granted a decree on that basis. The trial court, came to its own conclusion in regard to the price of the article and in regard to the damages suffered. All together the decree of the trial court was for Rs. 833/2/-.

There was also an order that plaintiffs should take delivery of the 550 tins now lying, at Burdwan. In case these were not delivered the plaintiffs were held to be entitled to recover Rs. 550/- as price of those tins.

3. The decree of the trial court was confirmed by the lower appellate Court. ,

4. The Governor General in Council representing the railway has appealed against the judgment of the lower appellate court. It has been contended before me that the plaintiffs were not entitled to refuse to take delivery of the goods even though an additional charge was claimed from them.

Certain cases were cited before me. The cases relied upon are as follows: 'Gangji Cotton Mills Co, Ltd. v. E. I. Rly.', AIR 1923 All 514 (An 'B. N. W. Railway Co. v. Mulchand', AIR 1920 All 280 (B); 'Dominion of India v. Adam Haji', AIR 1953 Mad 217 (C) ; 'Secretary of State v. Harkishan Das', AIR 1926 Lah 575 (2) (D); In these cases it was not the railway that was refusing to deliver the goods but it was the consignee that was refusing to take delivery unlesa certain conditions had been fulfilled. In one case the consignee refused to take delivery because wharfage was being demanded. The case of wharfage stands on a different footing because if the goods, have been stored in a ware house belonging to the railway, not having been taken delivery of in sufficient time, the railway company could demand the payment of wharfage because ware housing is not deemed to be a part of the contract of carriage made with a carrier.

The position in the present case, however, is that the railway was refusing to deliver the goods unless a charge, which has not been found to have been justifiably demanded, was paid. The goods had reached their destination. The duty of the railway, as a carrier had come to an end. It was bound to deliver the goods unless it was legally entitled to detain them under Section 55, Railways Act.

If it had been found that the reclassification was justified, and even then the plaintiffs had refused to take delivery, then obviously their suit would have been thrown out. But here the finding is that the reclassification was not justified. 'In E. I. Rly. v. Sheo Ratan Das', 11 All LJ 335 (E); the position has been clearly explained that where there is a wrongful detention of goods the railway administration is liable. It is stated there las follows :-

> "Where this power is exercised illegally or wrongfully the railway company is liable for the illegal or wrongful detention and it cannot claim exemption from liability any more than any other person who wrongfully detains another man's goods".

In view of this authority I must hold that the courts below were right in holding that the railway company was "liable. The lower appellate, court has granted the plaintiffs Rs. 400/- by way of damages on the ground that they would have made at least Re. 1/- per maund profit. According to the finding of the lower appellate court the goods were worth Rs. 150/- at the controlled rate, the controlled rate being Re.-/6/- per maund. The rate at which damages were awarded was Re. 1/-per maund.

Thus the courts below granted the plaintiffs a profit of about 300 per cent on the controlled price. In my view the damages awarded are speculative and in no case can damages be awarded to the plaintiffs at a profit of more than 100 per cent on the controlled rate. I accordingly cut down the damages from Rs. 400/- to Rs. 150/-.

5. This appeal is accordingly allowed in part and the decree is amended in this way that the damages are fixed at Rs. 150/- instead of Rs. 400/-

Parties shall receive and pay costs according to their success and failure in the appeal and in the Courts below.