Dominion Of India As Owner Of G.I.P. Rly. ... vs Gaya Pershad Gopal Narain on 9 February, 1955

Equivalent citations: AIR1956ALL338, AIR 1956 ALLAHABAD 338, 1956 ALL. L. J. 173 ILR (1956) 1 ALL 526, ILR (1956) 1 ALL 526

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Kidwai, J.

1. This Full Bench has been constituted -to consider the following question which has been formulated by a Division Bench of this Court, namely :

> "Whether a consignee, who is not the owner of the goods but to whom the goods are consigned for the purpose of sale on commission basis, is entitled to maintain the suit for loss in respect of damage caused to the goods in transit?"

2. The facts necessary for the decision of this question are not disputed and lie within a very narrow compass. Four different persons each booked a wagon of oranges from Katol in C. P. (now Madhya Pradesh) for Lucknow. In each case the plaintiff-respondent was mentioned in the Railway Receipt as the consignee. The plaintiff took delivery of one wagon but found that the goods had deteriorated greatly owing to the late arrival of the wagons at Lucknow and he refused to take delivery of the other three wagons. He then instituted the four suits out of which these appeals arise for damages.

3. One of the defences taken by the appellants was that the plaintiff, being admittedly only a commission agent, had no 'locus standi' to maintain the suits.

4. The trial Court rejected this defence and held that, even though the plaintiff was merely a commission agent, he was entitled to sue. The suits were all decreed.

5. The defendants appealed and the appeals came before a Division Bench of which one of us was a member. Reference was made before the Bench to a large number of reported decisions, the latest being -- 'Sheo Prasad v. Dominion of India, AIR 1954 All 747 (A). This decision being contrary to the trend of earlier decisions both of this court and of other High Courts, the Division Bench framed and referred the question which has been stated at the commencement of this judgment.

6. Before us also the appellants' contention has been that a commission agent does not suffer any loss by reason of the deterioration of the goods and consequently he cannot sue.

7. On the other hand the respondent's learned Counsel urged that, vis-a-vis the Railway, the plaintiff was the holder of title and was entitled to receive delivery of the goods. He, therefore, had sufficient interest in the goods to sue for damage to them.

8. It must first of all be determined what is the position of the owner, the consignor and the consignee. The Railway is principally concerned with the consignor, since the contract for the carriage of goods is with him and, by reason of Section 72 of the Indian Railways Act, the liability of the Railway is that of a bailee under Ss. 150, 151 and 161 of the Indian Contract Act. Under Section 161 of the Contract Act it is primarily to the consignor as bailor that the Railway is liable for damages for that Section reads :

> "If, by the 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 deterioration of the gooda from that time."

9. The owner of the goods as such does not come into the picture at all. Though the Railway has, under Section 57 of the Railways Act, the right to withhold delivery if the goods are claimed by more persons than one, yet under Section 166 of the Contract Act, (the application of which is not excluded by the Railways Act), it, as a bailee, is not responsible to the owner in respect of the delivery of the goods even "if the bailor has no title to the goods and the bailee, in good faith, delivers them back to or according to the directions of the bailor."

10. The consignee, however, stands on a different footing. It is well established in India that not only can parties to a contract sue upon it but also persons who are entitled to a benefit under it, or to whom the rights created by it have been transferred. Further Section 160 of the Contract Act provides for a return of the goods bailed not only to the bailor but also according to his directions. Sections 163 and 166 of that Act also contemplate delivery not only to the bailor but according to his directions.

11. Moreover the Rule framed for the railways and printed on the back of the railway receipt as Clause 3 under the heading "Notice to consignors" contemplates delivery to the consignee and provides that the railway receipt "must be given up at the destination by the consignee to the railway company or the railway may refuse to deliver and that the signature of the consignee or his agent in the delivery book at the destination shall complete evidence of delivery."

The same clause also provides that "If the consignee does not himself attend to take delivery he must endorse on the receipt a request for delivery to the person to Whom he wishes it to be made,....."

12. Indeed the appellants' learned Counsel was constrained to admit, that, in case of non-delivery of the goods it is the consignee or the person in whose favour the railway receipt has been endorsed that can sue for delivery.

13. In -- 'Mercantile Bank of India, Ltd. v. Central Bank of India, Ltd.', AIR 1938 PC 52 (B), their Lordships held :

> "In all the consignments in question in these proceedings the merchants were entitled to obtain delivery of the goods under the railway receipts either because they were named as the consignees or because if they were not the consignees so named the document had been endorsed by the named consignee."

14. The above quoted passage, was relied upon by a learned Judge of Patna High Court in -- 'Sri Ram Krishna Mills, Ltd. v. Governor General in Council', AIR 1945 Pat 387 (C), who proceeded further to hold that it is the consignee or the endorsee alone who can sue for delivery.

15. Further according to one of the terms of the contract of bailment -- vide clause 3 quoted above -- the consignee or his agent can relieve the railway of all liability in respect of the delivery of the goods. Once the consignee has accepted delivery no other person be he the consignor or the owner -- can be heard to say that the goods have not been delivered.

The owner or consignor cannot in these circumstances sue for delivery nor can he sue for loss due to non-delivery. It would be startling, in these circumstances, if the consignee could not claim damages for any deterioration that may have resulted to the goods. The authorities do not support such a proposition.

16. It cannot now be disputed that a railway receipt is a document of title --vide -- 'Ramdas Vithaldas Durbar v. S. Amerchand & Co.', AIR 1916 PC 7 (D) and AIR 1938 PC 52 (B).

17. Even in AIR 1954 All 747 (A), the learned -Chief Justice says :

> "It can no longer be seriously contested that the railway receipt is a document of title and by endorsement of the railway receipt the title in the goods can be transferred to the endorsee. If the case stood merely at that there would be no difficulty in holding that the plaintiff was entitled to bring a suit, being the endorsee of the railway receipt and prima facie the owner of the goods.
>
> The difficulty, however, has arisen by reason of the plaintiff's own statement that the goods were merely kept in his 'arhat' for sale and after the sale the price less the commission was to be paid to the person to whom the goods belonged."

18. In -- 'The Firm of Dolatram Dwarkadas v. E. B. & C. I. Rly. Co.', AIR 1914 Bom 178 (E), a railway receipt was endorsed by the consignor to a person who was admittedly only a commission agent. The endorsee went to take delivery, paid the freight and demurrage charges, signed the receipt book and actually took delivery of most of the bags of which the consignment was composed. He refused to take delivery of 19 bags which appeared to be partially empty and He sued for damages in respect of them. The learned Judges held that the railway receipt being a mercantile document of title "it necessarily follows that the endorsee of such a receipt has sufficient interest in the goods covered by

it to maintain the action."

19. This decision was followed in -- 'Firm Peare Lal Gopi Nath v. The E. I. R. Co.', AIR 1924 All 574 (F) and -- 'Jalan and Sons, Ltd. v. Governor General in Council', AIR 1949 EP 190 (E). In the latter of these two cases the learned Judges remarked that a railway receipt was a document of title and that a valuable right was conferred upon the endorsee by the endorsement in his favour and he stood on an entirely different footing from an ordinary agent. The learned Judges remarked :

> "It is not denied that the endorsee of a railway receipt not only can take delivery but he can also give a complete discharge. I am of the opinion that it follows that he is also competent to bring a suit in respect of the goods."

The learned Judges did not accept the contrary view propounded by a learned single Judge of the Lahore High Court, in -- 'Maula Bakhsh-Muhammad Shafi v. Secy. of State', AIR 1929 Lah 590 (H), nor did they agree with some remarks made by Bhagwati, J. in -- 'Shamji Bhanji and Co. v. North Western Railway Co.', AIR 1947 Bom 169 (I), to which reference will be made later.

20. The same view has been taken in --'Bhayyalal Ramratan v. Agent & General Manager, B. N. Rly.', AIR 1944 Nag 362 (J) and -- 'Governor General in Council v. Joynarain Ritolia', AIR 1948 Pat 36 (K).

21. A different view was taken in AIR 1929 Lah 590 (H), but this view has not been accepted in a later case' by the East Punjab High Court and it does not consider the various principles involved.

22. A learned single Judge of this Court held in -- 'Chunna Lal v. Governor General in Council', AIR 1950 All 89 (L), that if the consignor could establish that the consignee was merely a commission agent he could sue. It seems that the earlier cases of various High Courts were not placed before the learned Judge except for one case of the Madras High Court which he distinguished.

23. The case of -- 'Ram Narain v. Dominion of India, New Delhi', AIR 1953 All 460 (M), does not have much bearing on the question. In that case the consignee sued for damages for some packages which had been lost. It was pleaded that he, having appointed an agent could not sue (a plea which is exactly the reverse of the plea which has been taken in the present case). It was held that there was no endorsement of the railway receipt in favour of the alleged agent and consequently the consignee still had the right of suit.

24. Although Clause 3 of the "Notice" to consignors of which relevant passages have been quoted and the judgment of Bhagwati J. in AIR 1947 Bom 169 (I) indicate that the position of the person in whose favour a railway receipt is endorsed is somewhat different, there can be no doubt that when a person other than the consignor is mentioned as the consignee there is an express contract by the railway to deliver the goods in good condition (Subject to the other terms of the contract including the risk note) to the consignee. If, therefore, the goods are not in good condition it is the consignee. who can enforce the contract and sue for damages for a breach of the contract vis-a-vis the consignor or the owner. The consignee may only be an agent but vis-a-vis the railway he is the

person who is entitled by reason of the contract to receive the goods in good condition and to give a valid discharge.

25. Some confusion has arisen in certain decisions because the two capacities of the consignee have not been kept apart: his capacity as agent (if he is an agent) vis-a-vis his principal to whom he must account and his capacity vis-a-vis the railway against which he has, merely by being named as the consignee, the right to enforce the contract. With all respect to the learned Judges who decided AIR 1954 All 747 (A) we think that in that case also this distinction was lost sight or.

26. One of the reasons given for the view that the consignee if he is only an agent, cannot sue is that he has suffered no loss. It is not a matter which concerns the railway as to who has actually suffered the loss; the railway is primarily liable to the consignor who is the bailor although the consignor himself ' may be merely an agent.

There is, however, nothing to prevent the consignor and the railway entering freely and voluntarily, into a contract for the benefit of a third person. In such an event one of the contracting parties -- the railway -- cannot without the consent of the other party resile from the contract and refuse to make delivery to the third party.

If the goods have deteriorated to such an extent that delivery cannot be properly made, their equivalent, which is their cash value must be delivered to the consignee, and it is the consignee who can enforce payment of this cash value which is, after all what the suit for damages is.

27. It is with great regret, therefore, that we cannot agree with the view expressed in AIR 1954 All 747 (A) and we answer the question in the affirmative.

28. The appeal will be laid with our opinion before the learned Judges who framed the question for disposal.