Union Of India And Ors vs Sugauli Sugar Works (P) Ltd on 11 March, 1976

Equivalent citations: 1976 AIR 1414, 1976 SCR (3) 614, AIR 1976 SUPREME COURT 1414, 1976 3 SCC 32, 1976 2 APLJ 28, 1976 UJ (SC) 328, 1976 3 SCR 614, ILR 1976 KANT 1185

Author: A.N. Ray

Bench: A.N. Ray, M. Hameedullah Beg, Jaswant Singh

PETITIONER:
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:
SUGAULI SUGAR WORKS (P) LTD.

DATE OF JUDGMENT11/03/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SINGH, JASWANT

CITATION:
1976 AIR 1414 1976 SCR (3) 614
1976 SCC (3) 32

ACT:
Indian Railway's Act as it stood amended by Act 46 of 1959 and prior to 1961 amendment Ss. 72 and 74-Liability of the Railway in respect of goods sent at Railways risk is the same as that of a bailee under the Indian Contract Act 1872 Ss. 151, 152, 161-Enquiry under Sections 83 and 84 of the Railways Act read with s. 2 of the Indian Railways Board Act (4 of 1905) and rule 18 of the Railway Board Rules is a Joint Enquiry, admissible under Ss. 5,7 and 9 of the Evidence Act-Not covered, for claim of privileges, under s. 123 of the Evidence Act read with Art. 298 of the Constitution-Correct measure of damages for purposes of awarding damages for negligence under the Railways Act-What is.

HEADNOTE:

The non-delivery of the goods booked by the respondent on September 5, 1955 to several destinations under "Railway Risk" due to the sinking of "Barge No. 6, carrying the wagons containing the goods" led to the filing of four suits which were dismissed by the Trial Court holding that the accident was not due to the negligence of the Railway employees. The High Court, accepting the appeal of the respondent by its judgment dated April 13, 1966 held that the sinking of Barge was not due to "inevitable accident" but due to the serious negligence of the Railway employees and their failure of duty to take due care which it was required to take as a bailee as revealed by their own Enquiry Committee held with reference to Ss. 83 and 84 of the Railways Act read with section 2 of the Indian Railways Board Act (4 of 1905) and rule 18 of the Railway Board Rules. The High Court remanded the suits for determination of the quantum of the decretal amount due to the respondent. The trial court after remand gave decrees in favour of the respondent on 10th September, 1966 without interest claimed up to the date of filing of the suit and interest "pendent-lite". The High Court, on appeal by the respondent by its judgment dated 3-9-1968 allowed interest "pendent-lite" and future interest at the rate of 4 1/2% per annum.

Dismissing the two sets of appeal by the Union, one by Special Leave against the order dated 13-4-1966 determining the liability and another by certificate against the judgment dated 3-9-1968 awarding interest the High Court.
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HELD: (1) The liability of the Railway was that of a bailee. The consignments were booked at Railway risk. The onus of proving that the Railway employees took the necessary amount of care and they were not guilty of negligence rested on the Railway Authorities. The question of onus is not important when the entire evidence is before the court. In the instant case there was no legal evidence to prove "inevitable accident" but suppression of important documents and non production of important witnesses in charge of the Barge. The Barge sank because of the serious and gross negligence of the railway employees and the railways did not take due care which it was required to take as a bailee. [617B-D; 618F-G]

(II) The Enquiry Committee, in the instant case, is a Joint Enquiry, under the rules and the report is admissible under Ss. 5, 7 and 9 of the Evidence Act. The claim for privilege is not admissible because no such claim was made before the Courts below and there was no affidavit of the Minister incharge or the Secretary of the Department to support a claim for privilege. [616G-H]

(III) One of the principles for award of damages is that so far as possible he who has proved a breach of a bargain to supply what he has contracted to get is to be

placed as far as money can do it, in as good a situation as if the contract had been performed. The fundamental basis thus is compensation for the pecuniary loss which naturally flows from the breach. Therefore,
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the principle is that as far as possible the injured party should be placed in as good a situation if the contract has been performed. In other words, it is to provide compensation for the loss which naturally flows from the breach. The market rate is a presumptive test because it is the general intention of law that in giving damages for breach of contract, the party complaining should, so far as it can be by money, be placed in the same position as he would have been in if the contract had been performed. The rule as to market price is intended to secure only an indemnity to the purchaser. The market value is taken because it is presumed to be the true value of the goods to the purchaser. In the instant case, the High Court correctly applied these principles and adopted the contract price in the facts and circumstances of the case as the correct basis of compensation. [619-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1562 to 1573 of 1971.

From the Judgment and Decree dated the 13-4-1966 and 3- 9-1968 of the Patna High Court in Appeals from Original Decree Nos. 127-130, 246 and 247 of 1958.

S. P. Nayar for the Appellants.

P. K. Chatterjee and Rathin Dass for Respondents in C. As. 1566. 1567, 1572 and 1573 of 1971.

A. N. Sinha and P. K. Mukherjee for Respondents in C.As. 1562-65 and 1568-71 of 1971.

The Judgment of the Court was delivered by RAY, C.J.-These appeals are by certificate from the judgment and decree of the High Court at Patna dated 13 April, 1966 and 3 September, 1968.

Four suits were filed by Sugauli Sugar Works Limited for recovery of money on account of non delivery of consignments. Two suits were filed by Majhaulia Sugar Works for recovery of money on account of non delivery of two consignments. The suits were filed in the Court of the Subordinate Judge, Motihari in Bihar.

The plaintiffs are respondent. The case of the respondents was that goods were booked on 5 September, 1955 to several destinations under railway risk. The goods did not reach the destinations. The respondents alleged that non delivery was on account of gross negligence and

misconduct on the part of the Railways.

The defence was that the wagons containing the goods in suit along with other wagons were taken on Barge No. 6 from Samaria Ghat to Mokamah Ghat on 7 September, 1955. There was an accident. The Barge with all the wagons sank in the river Ganges. The Railways contended that the employees were not guilty of any negligence or misconduct.

The Subordinate Judge dismissed all the suits and held that the accident was not because of the negligence of the railway employees.

The High Court accepted the appeals filed by the respondent. The High Court held that the consignments were booked at railway risk and there was no explanation given for the sinking of the Barge.

The High Court held that the Barge sank because of serious negligence of the railway employees and it was not a case of inevitable accident. The High Court also held that the railway did not take the care which it was required to take as a bailee. The High Court delivered the judgment on 13 April, 1966 and sent to the trial court for determination of the issue: "What is the amount for which the plaintiffs are entitled to a decree in this case?"

> One group of appeals is against the judgment of the High Court dated 13 April, 1966 which determined the liability.
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> The Additional Subordinate Judge, Motihari, who tried the issue on remand by an order dated 10 September, 1966 gave decrees in favour of the respondent. The High Court by judgment dated 3 September, 1968 set aside the judgment and decree of the trial court on remand. The High Court awarded decrees in favour of the respondents.
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> The second group of appeals is by certificate against the judgment of the High Court dated 3 September, 1968.
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> One of the contentions raised before the High Court and repeated here is that the High Court should not have relied on an enquiry report into the accident. The High Court held that there was an enquiry under Rule 18 of the Rules made by the Railway Board. The High Court referred to sections 83 and 84 of the Railways Act. Section 83 provides that if there is any accident attended with loss of human life or grievous hurt or with serious injury to property, notice shall be given to various persons. Section 84 confers power on the Central Government to make Rules for several purposes including the purpose of prescribing the duties of railway servants, police officers, inspectors and Magistrates on the occurrence of an accident. Section 2 of the Indian Railway Board Act authorises the Central Government to invest the Railway Board with all or any of the powers or functions of the Central Government under the Railways Act. The Central Government authorised the Railway Board to make rules in pursuance of section 84 of the Railways Act. Rule 18 of the Railway Board Rules

provides that whenever an accident has occurred in the course of working a Railway, the Agent or Manager shall cause an enquiry to be promptly made by a committee of railway officers (to be called a joint enquiry) for the thorough investigation of the cases which led to the accident. It is also provided in the rule that an enquiry may be dispensed with in certain cases.

In the present case the enquiry was held by three officers. The enquiry report which is marked as Exhibit 9 was contended by the respondent to be admissible under sections 5, 7, 9 and 35 of the Evidence Act. The Railway contended that the report was a privileged document and further claimed that the enquiry was a private enquiry. The High Court rightly rejected both the contentions. First, the High Court held that no privilege had been claimed and there was no affidavit of the Minister in charge or the Secretary of the department to support a claim for privilege. The High Court also referred to the fact that the report was called for by the Court of the Subordinate Judge at Gaya and the Railways did not claim any privilege there. Second, the High Court also rightly held that the enquiry report was admissible under sections 5, 7 and 9 of the Evidence Act. The High Court did not go into the question whether it was admissible under section 35 of the Evidence Act.

The High Court further held that the Railways did not examine important witness, viz., the Commander of the ferry who was on the spot when the Barge was in trouble. The High Court held that the Railways suppressed important documents like the marine certificate and the stock register which would have given the life history and the capacity of the Barge. The High Court correctly drew adverse inference against the appellants for non production of important witness and important documents.

The liability of the railway was that of a bailee. The consignments were booked at railway risk. The onus of proving that the railway employees took the necessary amount of care and that they were not guilty of negligence rested on the Railway Authorities. The High Court held that it was not a case of unavoidable accident and that the Barge sank because of gross negligence of railway employees and the railways did not take the amount of care which it was required to take as a bailee.

The question of onus is not important when the entire evidence is before the Court. The High Court found that Rasul the Sarang of 'Chapra' was responsible for the accident because he had failed to exercise proper judgment while manoeuvring his own vessel for the purpose of heaving up the anchor of Barge No. 6 and he failed to exercise initiative to save the barge by breaching it on the nearest char, instead of taking it to the Simariaghat goods jetty. The High Court also held that the Commander of the ferry found that he visited the steamer 'Samastipur' and Barge No. 6 when there was difficulty in heaving the anchor of the barge and thereafter went away, leaving the matter entirely in the hands of the sarang. The High Court held that these officers were responsible for not staying on board until the barge was out of trouble.

The High Court found that Barge No. 6 was very old. It was built in 1897. It underwent heavy repairs in 1953. The time of the accident was at about 2-20 p.m. on 7 September, 1955. "Samastipur" started towing the barge, went about a mile when the radius rod of Samastipur broke down. Radius rod is a part of the paddle by which a steamer is driven. The radius rod of Samastipur was repaired in due course. It then heaved up its anchor. The anchor of the barge could not be lifted. There was a danger whistle. Rasul, the Sarang of "Chapra" came with his steamer to the aid of Samastipur. Two officers Lall and Devia herein before mentioned left the matter in the hands of the three sarangs. Lall, the Commander of the Ferry was not examined. The Assistant Mechanical Engineer was examined. The High Court found that Rasul did not take the steamer and the barge to the Diara but took them to Simarighat. The steamer and the barge reached jetty at Simariaghat. When the barge was about to be attached to the jetty, it sank.

The High Court found that the strength of the current in the month of September was a known factor. The railway employees were used to ply the steamer and the barge between the two ghats during the month of September. The railway employees were found to equip themselves with appropriate appliances and necessary skill for the job of taking the barge across. The High Court found that there was no satisfactory explanation for the sinking of the barge. The High Court also found that there was no explanation why the anchor of the barge could not be lifted. According to the High Court, this might have been due to defective or insufficient appliance for haulage of the anchor. The High Court also found that there was no evidence to show that there was any unforeseen difficulty, by reason of which the anchor could not be heaved up. The fact that the anchor could not be lifted was held by the High Court to be on account of the negligence of the railway employees.

The High Court also referred to the fact that the barge developed a big hole and there was no explanation how this happened. The High Court felt that this could be explained by assuming that Chapra pulled the barge in such a way as to make the anchor chain rub against the bottom plates of the barge so as to create the hole. The High Court found no other reasons because there is no suggestion that there was any submerged tree or stone, and the hole was caused because the barge accidentally struck against any such substance. Since the creation of the hole could not be attributed, according to the High Court to anything unforeseen, it was due to the negligence of the railway employees.

The High Court further found that if the barge had been towed to the Diara, it could not sink. The water near the Diara must have been shallow so that the wagons upon the barge could not be submerged in the water near it. On the other hand, Rasul took the steamer and the barge to a much longer distance and the passage must have taken a considerable time. Besides, the water near the jetty was undoubtedly deep and the wagons were also submerged.

The High Court on these findings correctly came to the conclusion that the barge sank because of the serious negligence of the railway employees and the railways did not take the care which it was required to take as a bailee.

The High Court passed decrees awarding the respondents price of sugar and costs of damages and interest pendente lite and future interest.

The appellant contended that the contract price should not have been awarded. The High Court said that the evidence of plaintiff's witness Gaya Prasad showed the selling rate of sugar and there was no challenge to that evidence. The High Court found that the goods were despatched on 4 September, 1955. The barge sank on 7th September, 1955, and, therefore, the contract price would be the correct measure of damages. The High Court on the facts and circumstances of the case found that the contract price would also be the same as the market price at that time.

The market rate is a presumptive test because it is the general intention of the law that, in giving damage for breach of contract, the party complaining should, so far as it can be done by money, be placed in the same position as he would have been in if the contract had been performed. The rule as to market price is intended to secure only an indemnity to the purchaser. The market value is taken because it is presumed to be the true value of the goods to the purchaser. One of the principles for award of damages is that as far as possible he who has proved a breach of a bargain to supply what he has contracted to get is to be placed as far as money can do it, in as good a situation as if the contract had been performed. The fundamental basis thus is compensation for the pecuniary loss which naturally flows from the breach. Therefore, the principle is that as far as possible the injured party should be placed in as good a situation as if the contract had been performed. In other words, it is to provide Compensation for pecuniary loss which naturally flows from the breach. The High Court correctly applied these principles and adopted the contract price in the facts and circumstances of the case as the correct basis for compensation.

For these reasons, the judgment of the High Court is affirmed. The appeals are dismissed with one set of costs.

S.R. Appeals dismissed.