Supreme Court of India
Juggilal Kamlapat Oil Mills vs Union Of India (Uoi) And Ors. on 3 December, 1975
Equivalent citations: AIR 1976 SC 227, (1976) 1 SCC 893, 1976 (8) UJ 94 SC
Bench: K Mathew, N Untwalia, P Goswami
JUDGMENT

1. In this appeal, by certificate, the question for consideration to whether the respondents were liable to the appellant in damages for non delivery of mustard oil consigned by the appellant to the employees of Eastern Railway at Kanpur Central Station on 29.8.1949 for carriage and delivery to the appellant at Sabeb Bazar Jagannath Ghat Railway Station, Calcutta.

2. There is no dispute that the consignment was duly accepted by the Railway employees and that it was carried to the particular station at Calcutta on 4.9.1949. However, on 6.9.1949 the appellant wrote to the railway authorities at Kanpur to redirect the consignment to Kanpur and to deliver the same to the appellant there. But the appellant was asked by the railway authorities at Kanpur to take delivery of the consignment at Calcutta. Delivery could not be made at Calcutta on 6.9.1949, as the oil was seized by the Food Inspector of Calcutta in pursuance of an order of the Health Officer of the Calcutta Corporation under Section 419 of the Calcutta Municipal Act. On 17.9.1949, two samples of mustard oil contained in the tank were taken under the order of the Municipal Magistrate before whom the case was placed for orders and they were sent for analysis to the. Public Analyst. The Public Analyst reported on 20.9.1949 that the samples were adulterated. It then became necessary for the Magistrate to decide whether he should pass orders for destruction of the oil as prayed for by the Corporation. After hearing the appellant, he passed an order acquitting the appellant and rejecting the prayer for destruction of the oil. The Corporation filed a revision against the order rejecting its prayer for destruction of the oil before the High Court of Calcutta. The Court directed the destruction of the oil on the basis of the report of Public Analyst.

3. The appellant thereafter issued a notice under Section 80 of the Civil Procedure Code to the respondent claiming damages on the basis that the railway authorities were bound to deliver the oil at Kanpur as subsequently directed by the appellant and since the railway authorities did not deliver the oil at Kanpur or at Calcutta, they were guilty of negligence, Thereafter the appellant filed the suit from which this appeal arises.

4. The trial court found that the Railway had no obligation to deliver the oil at Kanpur as subsequently directed by the appellant and that it was not any way negligent in not delivering the oil to the appellant at Calcutta as the oil was seized under the lawful orders of the competent authority under the Calcutta Municipal Act and dismissed the suit. The appellant filed an appeal against the decree to the High Court and the Court dismissed the appeal.

5. The two courts concurrently found that the oil which was consigned by the appellant was carried by the railway to the particular station at Calcutta and that the wagon containing the oil reached Calcutta on 4.9.1949. The Court further found that there was no tampering with the tank containing the oil as the padlocks on the tank wagon put by the appellant were intact when the wagon reached Calcutta on 4.9.1949.

6. One contention of the appellant before us was that the Railway authorities ought to have taken the tank wagon containing the mustard oil to Kanpur as requested by it and given delivery of the oil to it at Kanpur. This contention was negatived by the High Court on the basis of the rule analogous to Rule 48 of the General Rules framed under the Indian Railways Act which was in force at the relevant time. Under that rule, the consignor had to apply for re-consignment to the Station Master of the station where the consignment was stored. The appellant admittedly requested only the Goods Inspector at Kanpur on 6.9.1949 for returning the wagon to Kanpur. By this time, the tank wagon had reached Calcutta. So, the appellant ought to have applied for reconsignment to the Station Master of the station at Calcutta. The rule also required that the original Railway Receipt should be forwarded with the application for reconsignment. There is nothing in evidence to indicate that the original Railway Receipt was forwarded by the appellant along with the application. The High Court was right in holding that there was no obligation upon the Railway administration to direct the return of the tank wagon from Calcutta to Kanpur and to give delivery to the appellant at Kanpur. Quite apart from that, on 6.9.1949, the wagon was seized in pursuance of the orders of the competent authority under the Calcutta Municipal Act. This in itself would be a sufficient answer for the failure to comply with the appellant's request.

7. The obligation of a bailee is set out in Section 151 of the Indian Contract Act. The section says that a bailee is bound to take as much care of the goods failed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. Section 152 of that Act says that the bailee, in the absence of any special contract, is not responsible, for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151. A bailee is excused from returning the subject matter of the bailment to the bailor or his agent where the subject matter was taken away from him by authority of law exercised through regular and valid proceedings See Corpur Juris Secundum Vol. 8, p. 308.

8. The consignment in question was accepted by the Railway authorities at Kanpur under the risk note in form Z (Exhibit A). The material portion of Ex. A runs:

I...do hereby agree and undertake to hold the said Railway Administration harmless and free from all responsibility far any loss, destruction or deterioration of or damage to all any of such consignment from any cause whatever, except upon proof that such loss, destruction, deterioration or damage arose from the misconduct on the part of the Railway Administration or its servants, provided that in the following cases:

(a) non-delivery of the whole of a consignment where such non-delivery is not due to accidents to trains or to fire:

The Railway Administration shall bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct, but, if misconduct on the part of the Railway Administration or its servant cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consignor.

9. So, if the loss, destruction or damage arose from the misconduct on the part of the Railway Administration or its servant, then the Railway would be liable to pay damages. The question then is whether the loss or destruction of the oil resulted from any misconduct on the part of the Railway Administration.

10. The non-delivery of the oil was not due to any accident to the train, nor was it due to fire or any other circumstance within the control of the Railway. As already indicated, when the tank wagon reached Calcutta, the locks put by the appellant on it and the railway seal were found to remain intact. There was. therefore, no loss or destruction of the goods during transit between Kanpur and Calcutta. The inability of the Railway Administration to deliver the consignment at Calcutta was due to the fact that the tank wagon was seized by a competent authority and its contents destroyed under the orders of the High Court of Calcutta. The risk note lays down the rule of presumption on the question of misconduct. The respondents having proved that the wagon containing the mustard oil reached Calcutta safely, there is no room for inferring any misconduct on the part of the Railway Administration or its servants, The respondent cannot, therefore, be held liable under Exhibit A.

11. Even under the general law, the respondent cannot be held liable for non-delivery of the consignment. The tank wagon was seized at Calcutta by the Food Inspector not because of any negligence of the Railway authorities, but because the Health Officer of the Calcutta Corporation suspected that the oil was adulterated.

12. In Exhibit 11-the notice given under Section 80 of the Civil Procedure Code, it was stated that since the tank wagon was not returned to Kanpur according to the direction of the appellant and the goods delivered to the appellant there, the respondents were liable in damages. On reading Ex. 11, it would seem that the main grievance of the appellant was that the respondents failed to return the tank wagon to Kanpur as requested by it and give delivery of the oil at Kanpur. In that notice, the appellant did not complain about the non-delivery of the oil at Calcutta or about tampering with the padlocks by the Railway authorities.

13. Mr. Goel, on behalf of the appellant, however, contended on the strength of certain observations in Corpus Juris Secundum See Vol. 8 p. 309 that a notice ought to have been given by the Railway authorities to the appellant about the seizure of the tank wagon on 6.9.1949 or within a reasonable time and that the failure to do so would make the Railway Administration liable in damages.

14. The object of the notice is to given an opportunity to the bailor to litigate his rights to the property bailed. The appellant was a party to the proceedings before the Magistrate and the High Court. The High Court passed the order for destruction of the oil after finding that the tank wagon was law-fully seized by the Food Inspector and that the samples of oil were taken in accordance with law. We fail to see what prejudice was caused to the appellant by the failure to give the notice. There is also great force in the contention of the respondents that the appellant was aware of the seizure of the wagon on 6.9.1949 as the appellant was to take delivery of the oil on its arrival in Calcutta. Quite apart from this, the case that the Railway authorities ought to have given notice to the appellant of the seizure of the take wagon within a reasonable time & that the failure to give notice has prejudiced it was not pleaded either before the trial court or the High Court. We think the appellant

is not entitled to urge this plea before this Court for the first time as it involves a mixed question of law and fact.

15. We dismiss the appeal but without costs.