Union of India (Uoi) Vs. Haji S. Umbichi Koya

LegalCrystal Citation : legalcrystal.com/718195

Court : Kerala

Decided On : Aug-14-1972

Reported in : AIR1973Ker83

Judge : M.U. Isaac and; N.D.P. Namboodiripad, JJ.

Acts : Railways Act, 1890 - Sections 73 and 77(5)

Appeal No. : A.S. No. 222 of 1967

Appellant : Union of India (Uoi)

Respondent : Haji S. Umbichi Koya

Advocate for Def. : K. Chandrasekharan,; T. Chandrasekhara Menon and; K. Vij

Advocate for Pet/Ap. : K.P. Pathrose and; M.C. Cherian, Advs.

Disposition : Appeal allowed

Judgement :

Isaac, J.

1. This is an appeal by the Union of India, against whom the respondent got a decree in O.S. No. 23 of 1964 from the Sub-Court, Kozhikode for a sum of Rs. 14,604/- together with interest at 6% from the date of suit

2. The facts are not in dispute to a large extent. The respondent sent 43 bags of betel nuts from Calicut Railway Station to Shalimar by railway on 24-1-1963. The goods reached Shalimar on 7-2-1963; and they were unloaded and stored in Shed No. 4/1 on the same day awaiting delivery to the consignee. Unfortunately at about 3-00 P.M. on 8-2-1963, a fire broke out in Shed No. 4; and it affected the goods stored in Shed No. 4/1 also, with the result 40 bags of the respondent's goods were partly destroyed. The undestroyed part was refilled in 25 bags; and those bags were delivered to the consignee after assessing the damages at 60%, along with the three bags found in sound condition. On the basis of the market value of the goods at the relevant time, the respondent claimed Rs. 14,604/-as the loss suffered by him. Now there is no dispute about the quantum of the loss. The claim was resisted mainly on the ground that the railway administration was not liable to make good that loss, by virtue of Section 73 of the Indian Railways Act, 1890, since the fire was an accidental one, and the goods got damaged for reasons beyond the control of the administration. The trial Court, after a critical examination of the evidence, came to the conclusion 'that the causation of the fire can only be traced to want of exercise of reasonable foresight

and care on the part of the railway servants' and that the incident happened due to the negligence and misconduct on the part of the railway administration. Accordingly, he found that Section 73 of the Act did not give stay protection to the appellant, and it was liable for the loss. The only question canvassed before us is the correctness of the above finding.

2-A. Before examining the evidence in the case, it is advantageous to consider the legal position regarding the railway's liability. Section 73 of the Act is the relevant statutory provision; and it reads:--

'73. General responsibility of a Railway Administration as a carrier of animals and goods. -- Save as otherwise provided in this Act, a railway administration shall be responsible for the loss, destruction, damage, deterioration, or non-delivery, in transit of animals or goods delivered to the administration to be carried by railway, arising from any cause except the following, namely,--

(a) act of God,

(b) act of war,

(c) act of public enemies,

(d) arrest, restraint or seizure under legal process,

(e) orders or restrictions imposed by the Central Government or a State Government or by any officer or authority subordinate to the Central Government or a State Government authorised in this behalf.

(f) act of omission or negligence of the consignor or the consignee or the agent or servant of the consignor or the consignee.

(g) natural deterioration on or wastage in bulk or weight due to inherent defect, quality or vice of the goods.

(h) latent defects,

(i) fire, explosion Of any unforeseen risk;

Provided that even where such loss, destruction, damage, deterioration or nondelivery is proved to have arisen from any one or more of the aforesaid causes, the railway administration shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery unless the administration further proves that it has used reasonable foresight and care in the carriage of the animals or goods.'

The Indian Railways (Amendment) Act, 1961 made sweeping changes in the statutory provisions relating to the Railway's liability for loss caused in respect of goods entrusted to it for transport. Hence, decisions rendered by courts with reference to such amended provisions would not naturally be of any assistance in interpreting the above section. So many of the decisions cited at the Bar can be eschewed out of consideration. A plain reading of the section shows that the Railway's liability is absolute, except in the nine cases enumerated therein. The proviso to the section

states that even in these nine cases, the Railway would not be relieved of its responsibility for the loss, unless the administration proves that it has used reasonable foresight and care in the carriage of the 'animals 01 goods.'

3. There is no dispute that the instant case falls under Clause (V), the loss having been caused by fire. Then the question is whether the Railway has proved that it has used reasonable foresight and care in the carriage of the goods. The loss took place after the goods reached its destination in good condition and were stored in the Railway's shed, awaiting delivery to the consignee. So a subsidiary question arises whether it is a loss which arose in the carriage of the said goods. If it is not so, the appellant is not liable, since the goods admittedly reached its place of destination in good condition. We think that this question is answered by the provision contained in Sub-section (5) of Section 77, which deals with responsibility of the railway administration after termination of transit, Subsection (5) reads:--

'(5) For the purpose of this Chapter,--

(a) unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagon without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage;

(b) 'demurrage' and 'wharfage' have the meanings respectively assigned to them in Clause (d) and Clause (h) of Section 46-C.' It is clear from the above provision that the goods are in transit till the expiry of the free time allowed for their unloading from the railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed till the expiry of the free time allowed for their removal from the railway premises without payment of wharfage.

There is no case that the free time allowed for removal of the goods had expired in the instant case, when they were destroyed by fire. It was contended by counsel for the appellant that the word defined or explained in Sub-section (5) of Section 66 is 'transit', that the said word occurs in several sections in Chapter VII of the Act as well as the word 'carriage', and that the extended meaning given to the word 'transit' in Sub-section (5) of Section 77 can be given only wherever this particular word is used in any of the sections in Chapter VII, and that the said meaning cannot be given also to the word 'carriage'. We are unable to accept this contention. On a reading of the various sections in Chapter VII, it appears to us that the word 'transit' and carriage' have been used synonymous, and that it is necessary for giving full effect to the legislative object of enacting a special provision like Sub-section (5) of Section 77, that the said two words should be construed to mean the same thing. We also find that the case has been dealt with in the trial Court on the admitted basis that the loss occurred in the carriage of the goods. In our view, this is the right basis.

4. So, two questions would arise for consideration. One is whether the railway exercised reasonable foresight and care to prevent the fire; and the other question is whether, the fire having occurred, the railway exercised such foresight and care in detecting and extinguishing it. The railway examined 11 witnesses to show that it exercised reasonable foresight and care in both respects. Immediately after the fire, the railway set up a committee of enquiry consisting of three top officials of the

railway, which looked into the following aspects --

1. to ascertain the cause of the fire and to fix responsibility, if possible;

2. to assess the extent of damages;

3. to investigate the adequacy of the fire fighting equipment and organisation;

4. to find out whether immediate action was taken by all concerned for detection of the fire; and

5. to review the extent of orders governing the general working of the Shalimar goods sheds.

Ext. I is a copy of the Committee's report. Its findings are not obviously binding on the respondent; but he has rightly sought to make use of it against the appellant. In order to appreciate the evidence in the case and the rival contentions of the parties, it is necessary to have an idea of sheds Nos. 4 and 4/1 wherein the fire occurred. They are two parts of a single building. The southern part is shed No. 4; and the northern part is shed No. 4/1. The railway lines run along the northern and southern sides of the building, so that wagons can come to the southern side of shed No. 4 and to the northern side of shed No. 4/1 for loading and unloading goods. There are pillars at a distance of about 30 feet along the northern and southern walls of the building; and there are gates between these pillars through which goods are brought into, and taken out from, the sheds. There are a number of railway employees in charge of these sheds, discharging different functions.

5. The fire admittedly started in shed No. 4 at 3-15 P. M. on 8-2-1963. The commodity which caught fire first was loosely packed aloe fibre bundles, which were unloaded from the wagon and stacked between pillars 7 and 8 at about 12-30 P.M. on that day. The fire was first noticed by D.W. 2, who was the gate pass writes for that shed and sitting near pillar No. 1, when the flames rose about 5 feet high. He immediately raised an alarm. All the railway employees rushed up, and every fire fighting equipment available there was put into operation. Immediate intimation was given to all nearby fire stations. A number of fire engines rushed up from all the neighbourhood. The sheds were almost full with goods; and there was also unfavourable wind. In spite of all the efforts to extinguish the fire, Shed No. 4 collapsed and the fire spread also to shed No. 4/1 with the result most of the goods in Shed No. 4 and part of the goods in shed No. 4/1 were damaged. The fire could be curtailed only by about 10-30 P.M. on that day. The evidence has established that in the construction of the sheds and the arrangements made therein for the storing of goods and for preventing fire and other accidents, the railway has acted with reasonable foresight and care. It has also established that all possible efforts were done, immediately after the fire was noticed, to extinguish the fire. On these matters, there is no dispute. However the trial Court found that it was due to the negligence of the railway employees that the aloe fibre stored in shed No. 4 caught fire, and that it was also due to their negligence that the fire was not detected earlier. To the above extent he held that the railway did not exercise reasonable foresight and care to prevent the fire, and also in detecting it at the earliest. The correctness of these findings it seriously attacked by the appellant.

6. The trial Court has stated various reasons for holding that the fire occurred due to

the negligence of the railway employees; and they can be put under three heads. The first ground is the alleged mishandling of a consignment of 63 barrels of alcohol. According to the learned Judge alcohol must have leaked from those barrels in front of shed No. 4, which was not noticed by the railway employees, and alcohol, being an easily inflammable article, caught fire by some unknown reason. It is necessary to refer to the evidence in order to examine the correctness of the above finding. 63 barrels of alcohol had been railed from Cochin to Shalimar, which reached the destination on 7-2-1963. The wagon carrying the above barrels came in the line to the south of shed No. 4, and it was stationed between 6 A.M. and 3 P.M. on that day a few yards to the west of that shed. After that, it was shunted to the yard, where it was during the night At 6 A.M. on the following day, the wagon was brought in the line in front of shed No. 4/1; and the barrels were taken delivery of by the consignee direct from the wagon between 8 and 9 A.M. on the same day. At the time of delivery, it was found that two of the barrels were broken and leaking, and a major part of their contents was lost. There is absolutely nothing to show where the barrels were broken and the leakage took place. It could happen at any place between Cochin and Shalimar. The positive evidence, as stated above, is to the effect that the said barrels of alcohol were not unloaded anywhere near shed No. 4, but they were delivered over to the consignee direct from the wagon more than six hours before the fire was noticed. The learned Judge, however, states that the said barrels of alcohol must have been unloaded in front of shed No. 4, and the leaked alcohol must have come into contact with the aloe fibre, and caught fire. He also conveniently forgets that the aloe fibre was unloaded from the wagon only at 12-30 P.M. on that day, while the barrels of alcohol were cleared before 9 A.M. from a different railway line. The finding is devoid of any basis and contrary to the positive evidence in the case.

7. The second ground stated by the learned Judge is that the aloe fibre must have caught fire by sparks emitting from railway engines. This finding is also baseless and contrary to the evidence in the case, which is to the effect that the engines are fitted with spark arresters, that no sparks could, therefore, emit from the engines, and that the engines are never brought by the side of the goods sheds. The learned Judge thinks for absolutely no reason that the above evidence must not be true, and that what must be happening is just the opposite. This is a strange way of judicial approach.

8. The third ground stated by the learned Judge is that the fire must have occurred due to some person throwing the end of a lighted cigarette into the aloe fibre, and that could have happened due to the negligence of the railway employees. In support of this finding, he relies on Ext. I, the report of the Committee of Enquiry. According to him, the Committee has found that the fire must have been caused by some careless persons throwing away some burning cigarette stump carelessly. That is not a proper reading of his report. The Committee has positively stated that 'all the available evidence could not directly establish the cause of the fire'. There is no finding that the fire must have occurred in the above manner. That is clear from the Committee's conclusion regarding the cause of the fire. It states--

'The examination of the likely causes of the fire given above indicates that the fire may have been caused by the careless throwing of a cigarette end or a match stick which may have occurred during unloading or after the consignment was stacked in the shed. In view of the heavy damages caused by the fire which destroyed all evidence that may have entitled a definite finding as to the cause of the fire, the Enquiry Committee finds itself unable to arrive at a positive finding regarding the

cause of the fire.'

Even assuming that the fire was caused by some careless person throwing a burning cigarette tip or a match stick into the bales of aloe fibre, there is nothing to show that the railway employees had not taken all necessary precautions to prevent the happening of such a thing. On the other hand the evidence is to the contrary effect. The learned Judge has relied on the evidence of P.W. 2 for holding that the railway employees must be allowing all sorts of persons to get into the goods sheds and indiscriminately smoke therein, though boards have been put up there prohibiting smoking. P.W. 2 is stated to be a dealer in hardwares and electric goods in Taliparamba, Malabar. According to him, he was representing some Malabar dealers in Calcutta between 1956 and 1963, when he used to go to the Shalimar railway station, and he has then seen persons indiscriminately going into the goods sheds and smoking therein without any objection from the railway employees, and also railway engines coming and stopping by the side of goods sheds. His credibility was seriously attacked in cross-examination. There is nothing to show that he is a person of any position, or he was in Calcutta as he claimed to be. At any rate, his evidence is irrelevant for determining whether the fire in question took place due to the negligence of the railway administration. Therefore, none of the reasons stated by the trial court for holding that the fire occurred due to the negligence of the railway administration can be sustained.

9. The next question for consideration is whether the trial court's finding that the administration was negligent in not detecting the fire earlier is justified. That finding is based on two assumptions. One is that the aloe fibre which caught fire must have been emitting smoke for a considerable time on account of smouldering before the fire broke out into flames. The other is that the railway employees were not present in shed No. 4, as they should be, when the smoking started. The report of the Enquiry Committee states that experiments carried out with aloe fibre indicated that throwing of a cigarette end in an aloe fibre bale did not produce immediate flames, that smouldering took place for about half an hour before the flames started, and that it was reasonable to assume that fibre must have been smouldering for some considerable time, before it broke out into flames, It is remarkable that the report does not state that the smouldering would emit any smoking. If it would, the report would have certainly stated so. There are numerous articles which would smoulder without emitting smoke. The first assumption that the aloe fibre must have been emitting smoke for a considerable time, before the flames broke out is, therefore, baseless. The second assumption that the railway employees must not have been there, when the fire started is contrary to the positive evidence in the case. In fact the learned Judge has found in another context that not only the railway employees but even outsiders, who were being permitted to go into the goods sheds indiscriminately were there when the flames were noticed. There can be little doubt that if the smouldering fibre emitted any smoke, it would have been immediately noticed by the railway employees and other persons who would naturally be there for taking delivery of goods, and immediate action would have been taken to quench the fire. The finding of the trial court that the railway was negligent in not detecting the fire earlier has no basis.

10. A question was mooted before us whether negligence can be attributed to the railway from the very fact that the cause of the fire is unknown. Section 73 of the Indian Railways Act itself indicates the contrary. Loss by fire is one of the things in respect of which the railway is protected, provided it proves that it has used

reasonable foresight and care in the carriage of goods. A fire may occur due to numerous causes; and it may often happen, particularly in a case like the instant one when the fire is extensive, it may not be possible to ascertain the cause of the fire. Therefore, the mere inability or impossibility to ascertain the cause of the fire cannot be attributed to negligence or want of care on the part of the railway administration. The nature of the liability of the railway in respect of loss arising in the transit of goods from any of the specified causes enumerated in Section 73 seems to be that of a bailee, namely it would be liable for the loss, unless it proves that it has used reasonable foresight and care to prevent the cause and the consequent loss. The relevant statutory provisions regarding a bailee's liability are contained in Sections 151, 152 and 161 of the Indian Contract Act, 1872. The same was the character of the liability of the railway administration in respect of loss occurring from any reason whatsoever under Section 72 of the Indian Railways Act, as it stood before the amendment of 1961. A number of decisions of Indian and English Courts which deal with the liability of a person for negligence and also of a bailee in respect of goods entrusted with him were cited at the Bar. We consider it unnecessary to refer to those decisions since the law is well settled that the bailee would be liable, only if he failed to use reasonable foresight and care in respect of the goods entrusted to him, and that the burden of proving that he used such foresight and care is on him. In the instant case, the railway administration has established beyond doubt that it has used such foresight and care. As Lord Goddard, C. J. said in Sochacki v. Sas, (1947) 1 All ER 344.

'Everybody knows fires occur through accidents which happen without negligence on anybody's part.'

Precisely that was the case here; and everything possible was done expeditiously to extinguish the fire and salvage the goods. Under these circumstances, the railway administration does not incur any liability for the loss.

11. For the reasons stated above, we set aside the decree of the trial court, and allow the appeal. The parties will bear their own costs throughout.