627317 - Is the driver or shipping company liable if goods get damaged because of rain?

the question

I have a shop selling medical equipment, and I bought 26 boxes of syringes from a factory in Cairo. When the truck, which belongs to the factory who sold me the syringes, arrived I found that they were soaked from the rain, and I cannot sell them. I contacted the factory and they said that this was an error on the driver's part, and he should have stopped driving when the rain became heavy, or he should have covered the boxes to prevent the water reaching them. And they said that the driver will be liable for the goods, the value of which is 91,000. The driver is weeping and refusing to leave my store, so I told him: I will be liable for 20,000-worth of the boxes [and you will be liable for the rest].

My question is, am I liable for anything, and is the driver liable?

Summary of answer

You do not have to accept these faulty goods and you are not liable for what happened to them; the driver is liable because of his negligence and failure to protect them from the rain.

Detailed answer

Praise be to Allah.

I.

If you bought some goods and the agreement was that they would be delivered to your store, or the transaction would be done when the goods reached you, then you are not liable until you receive the goods; before that, the seller is liable.

Al-Bahuti (may Allah have mercy on him) said in *Ar-Rawd al-Murbi`*, p. 333: Whoever buys goods that are sold by a unit price and the like – which are goods that are sold by weight, or by number, or by length – the transaction is valid and becomes binding once the contract is drawn up, when there is no option to cancel.

It is not valid for him to dispose of the goods by selling them, giving them as gifts, renting them out, using them as collateral and so on until he has received them and taken possession of them, because the Prophet (blessings and peace of Allah be upon him) said: "Whoever bought any foodstuff should not sell it until he has received it in full." Agreed upon.

If the item that is sold by weight and the like is destroyed, or some of it is destroyed before the purchaser receives it, then the seller is liable. The same applies if it is damaged before he receives it. End quote.

Based on that, you do not have to accept these goods after they were damaged, and you are not liable for what happened to them, because you did not take possession of them.

II.

The driver was working for the factory only, so he is not liable unless he deliberately caused damage or was negligent.

It says in *Durar al-Hukkam Sharh Majallat al-Ahkam* (1/454): Hired workers are of two types:

The first type is the hired worker who works for the one who hired him only, like a regular employee. End quote.

It says in *Al-Mawsu`at al-Fiqhiyyah*, 13/277: The scholars are unanimously agreed that the hired worker is like a trustee who is entrusted with a job, so he is not liable for anything that is destroyed whilst in his possession or anything that is destroyed because of his actions, unless he deliberately caused damage or was negligent, because he is acting on behalf of the owner by disposing of it in accordance with his instructions, therefore he is not liable, just as one who is acting as an agent is not liable. And because he is not liable for his work, he is not liable for that

which was destroyed when he was doing his job – like the case when a *qisas* (legal retribution) punishment is carried out and the person dies due to complications resulting from that punishment – and he has not done anything that could be grounds for him being deemed liable. End quote.

However, in the case of a hired worker who works for more than one company, some scholars say that he is liable in all cases, and some of them regard him as being like one who works for one company, so he is not liable unless he deliberately causes damage or is negligent. Shaykh Ibn `Uthaymin (may Allah have mercy on him) regarded this view as more likely to be correct.

See: *Ash-Sharh al-Mumti`*, 10/83.

Shaykh `Abd ar-Rahman al-Barrak (may Allah preserve him) was asked: I sent some goods with a shipping company and they were destroyed by rain; who is liable?

He replied: Was there any negligence on the part of the company? In other words, does this product require protection from the rain, and should it have been covered properly, but they were negligent, or is it the case that they were not negligent and this happened due to circumstances beyond their control?

If that happened due to circumstances beyond their control and there was no negligence on their part, then the liability is borne by the supplier of the goods, because the goods were like a trust (amanah) that was given (for safekeeping) to the shipping company, and it was in their possession for the purpose of shipping, and if what is entrusted to someone for safekeeping is destroyed when in his possession without any deliberate action or negligence on his part, then he is not liable.

End quote from the shaykh's website

The negligence in this case is clear, because it is known the boxes will become wet if it rains and the water will reach what is inside the boxes.

The driver should have stopped driving and sought shelter under a bridge and the like until the

rain stopped, or he should have covered the boxes with something to prevent the water reaching them, or he should have contacted the one in charge of the factory to ask him what he should do. As he did not do that, and the goods were destroyed, then he is liable.

III.

The basic principle with regard to liability is that if the goods can be replaced, they should be replaced with something similar or close to it, and if the goods cannot be replaced but their value can be evaluated, then that value must be paid.

Al-Bukhari (5225) narrated that Anas said: The Prophet (blessings and peace of Allah be upon him) was with one of his wives, when one of the Mothers of the Believers sent a bowl in which there was some food. The one in whose house the Prophet (blessings and peace of Allah be upon him) was struck the hand of the servant, and the bowl fell and broke. The Prophet (blessings and peace of Allah be upon him) picked up the pieces of the bowl, then he began to collect the food that was in it, and said, “Your mother got jealous.” Then he made the servant wait until the bowl belonging to the one in whose house he was, was brought. He gave the intact bowl to the one whose bowl had been broken, and he kept the broken bowl in the house of the one who had broken it.

At-Tirmidhi (1359) narrated a similar hadith, in which it says: The Prophet (blessings and peace of Allah be upon him) said: “Food for food and vessel for vessel.” This hadith provides a guideline on liability for destroyed items.

It says in *Al-Mawsu`at al-Fiqhiyyah* (1/226): We do not know of any difference of opinion regarding the fact that if the destroyed item can be replaced, it should be replaced with something similar, and if it can only be evaluated, then the liable person should pay its value. And we know of no difference of opinion regarding the fact that when estimating the value of a thing, one should take into account its value in the place where it was destroyed. End quote.

Therefore the driver is liable for replacing the syringes, and he can keep the damaged ones.

If the factory can fix these syringes by re-sterilizing them and repackaging them, then they should

do that, and the driver is responsible for the cost of that remedial work, by way of helping him and reducing the harm for him.

And Allah knows best.