

(1921) 09 MAD CK 0007
In the Madras High Court

A. Mahadeva Aiyar

APPELLANT

Vs

The South Indian Railway Company Limited

RESPONDENT

Date of Decision : 06-09-1921

Acts Referred:

Railways Act, 1890 — Section 140, 77

Citation : (1921) 14 LW 684 : (1922) 42 MLJ 202

Hon'ble Judges : Odgers, J;Kumaraswami Sastri, J

Bench : Full Bench

Judgement

1. This is a Civil Revision Petition u/s 25 of Act IX of 1887 in which we are asked to revise the order of the Subordinate Judge of Cochin

dismissing S. C. No. 1 of 1919 on his file. The whole case has been referred, first by a single Judge to a Divisional Bench, and then by that Bench

to a Full Bench.

2. The suit was one for damages against the South Indian Railway Company for short delivery of goods and it was dismissed for failure to notify

plaintiff's claim within 6 months as required by Section 77 of the Railways Act read with Section 140. The former section says: ""A person shall not

be entitled to a refund of an over-charge in respect of animals or goods carried by railway or to compensation for the loss, destruction or

deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or

on his behalf to the Railway Administration within 6 months from the date of the delivery of the animals or goods for carriage by railway."" ""Railway

Administration"" is defined in Section 3(6) of the Act as meaning the Railway Company itself and clause 5 of the same section says that ""Railway

Company includes any persons, whether incorporated or not, who are owners or lessees of a Railway or parties to an agreement for working a

Railway"". Now the South Indian Railway Company is registered in England, and without some further provision the service of notices on such a

body would be a matter of considerable difficulty and doubt. Such a provision is S- 140 which is obviously intended for the benefit of the public to

facilitate the service of notices. It runs thus : ""Any notice or other document required or authorised by this Act to be served on a Railway

Administration may be served, in the case of a Railway administered by the Government or a Native State, on the Manager and, in the case of a

Railway administered by a Railway Company, on the Agent in India of the Rail-? way Company.

(a) By delivering the notice or other document to the Manager or Agent; or

(b) By leaving it at his office; or

(c) By forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under part III of the Indian Post

Office Act, 1866."

3. The effect of the sections referred to above is to bar plain-tiff's claim in this suit unless he can show that he has complied with the requirements

of the law as regards service of notice of] claim. Now, in the present case it is not suggested that any] written claim was preferred to the Railway

Administration itself as defined above : or that any notice was addressed, much less served, as required by Section 140 to the Agent of the South

Indian Railway Company within the time allowed. The only notice which could be said to be served within 6 months was the original of Ex. J.,

which was sent to the District Traffic Superintendent, Cannanore. The Subordinate Judge finds as a fact that it is not proved that the Agent was

aware of this notice within the prescribed period; and as one of the learned referring Judges puts it ""there is no evidence to show that the notice in

fact reached the Agent, nor is there evidence of any course of business by which it would automatically do so."" I have carefully examined the very

meagre record in the case to see if there is any evidence from which it could be deduced that the power of the Agent to receive notices u/s 140

had been delegated to the District Traffic Superintendent or that the Railway Company by its rules or course of conduct had held out to the public

that notices might be given to such an officer instead of the Agent, and thus estopped themselves from raising this technical defence. I can find

none. There is merely the evidence of a goods clerk (Plaintiff's witness 1) to the effect that parties usually send their claims to the District Traffic

Superintendent, who is empowered to settle them up to Rs. 100. (The present claim is for Rs. 171.) The rules of the Company are not in evidence,

and no notification is referred to.

4. I can therefore find no ground for interference and would dismiss the Civil Revision Petition with costs.

Kumaraswami Sastri, J.

5. This revision petition arises out of a suit filed by the petitioner against the South Indian Railway Company to recover Rs. 171-4-0, the price of

cloths consigned through the Railway Company and not delivered. Notice of the claim was addressed and sent to the District Traffic

Superintendent, Cannanore. One of the defences raised was that the claim was unsustainable as notice was not sent to the Agent as required by

Section 140 of the Railways Act. The Subordinate Judge dismissed the suit on the ground of want, of notice to the Agent within 6 months of the

loss. He held that it had not been proved that the notice to the District Traffic Superintendent was by the rules of the Company equivalent to notice

to the Agent. The petition originally came on before Courts Trotter, J, who was of opinion that the defence was wholly without merit but that owing

to the important questions of law raised, it should be decided by a Bench. The petition came on before the learned Judge and Sadasiva Ayyar, J,

who referred the case to a Full Bench. After referring to the conflicting authorities, Sadasiva Ayyar, J. formulated the following questions for

consideration.

(1) Where there is a well known practice or where there is a rule made by the Company by which claims for loss are made to the District Traffic

Superintendent and are dealt with by him either in the first instance (in some cases) or finally (in others) is notice to the said official within six

months sufficient compliance with the provisions of Section 77 of the Railways Act, whether on the ground of estoppel or otherwise ?

(2) Should the word "may" in Section 140 of the Railways Act be construed as meaning "must"?

(3) If the agent has somenow knowledge of the claim made against the Railway Company within 6 months, is the plaintiff entitled to maintain the suit ?

6. So far as the provisions of the Railways Act are concerned they require notice of claim to be given and enable the party to give notice either to

the Administration, which means the Railway Company itself at its Registered Office, or to the Agent or Manager in India. When notice is sent to

Registered Office or to the Agent in India, there is no difficulty. It would be Sufficient compliance if, instead of sending the notice to the Agent, it is

addressed to the Railway Company at its Registered Office.

7. On the question as to whether the provisions of Section 140 would be sufficiently complied with if the notice is sent to an officer to whom the

Agent or the Railway Company ask the public to submit all claims for loss or damage or if the person to whom the notice has actually been sent,

sends it on, or informs the Agent of its contents, within the prescribed period of six months, the authorities are conflicting. In The Secretary of State

for India in Council v. Dip Chattel Puddar I.L.R.(1896) Cal, 306 notice given to the Traffic Superintendent was held to be sufficient but that it was

open to the party to show that the notice served on the Traffic Superintendent reached the Agent or Manager within 6 months from the date of the

non-delivery of the goods. In V. Woods v. Meher Ali Bepari (1908) 13 Cal W.N. p. 24 , Holmwood and Sharfuddin, JJ. were of opinion that

though notice of claim u/s 77 of the Railways Act must be served on the Agent as provided by Section 140 it does not require actual physical

service but that it would be sufficient ""if the findings of fact are such that it must be inferred that the Agent had full knowledge and notice of the

claim."" This case was followed in Ram Gopal v. The Agent B, B and C.I. Railway (1911) 13 I.C. 297. In Janki Dass v. The Bengal-Nagpore

Railway Company (1911) 16 Cal. W.N. 356 the notice was given to the Goods Superintendent to whom, under Rule 57 of the Goods Tariff

published by the Railway Company, written claims had to be made. This was held to be a sufficient compliance with the provisions of Section 140

by the District Judge but Jenkins, C. J. reversing the decision observed, ""the method of service permitted by this section has not been followed; nor

has it been shown that the claim has been otherwise preferred to the Railway

Administration so as to satisfy the requirements of Section 77 "" . The decisions in 13 Cal. W. N. 24 were not referred to. In the East Indian Railway Company v. Ram Autar I.L.R.(1907) Cal. 194 the notice was served on the Claims-Superintendent but there was no evidence that the Claims-Superintendent was authorised by the Agent to receive such notices on his behalf. Chatterjee and Beachcroft, after referring to Janki Dass v. The Bengal-Nagpore Railway Company (1915) 20 Cal. W.N. 696 . The East Indian Railway Company v. Babu Madho Lal (1913) 17 C.W.N. 1134 and Radha Kishen Chooni Lal v. East Indian Railway Company (1913) 19 C.W.N. 62 and distinguishing Woods v. Meher Ali Bepari (1908) 13 C.W.N. 24 on the ground that there was no finding that claims were usually referred by the Agent to the Claims-Superintendent or that the notice actually reached the Agent, observed : ""The law requires that the notice should be on the Agent and we think the notice must be on the Agent and whether a particular office is authorised by the Agent to receive such notices on his behalf is a question of fact that must be decided on the evidence."" In Kalachand Shaha v. The Secretary of State for India (1916) 21 C.W.N. 751 it was held that a notice to the Traffic Manager was insufficient. It was found as a fact by the lower Court that notice of the claim was not brought before the Agent within 6 months. The learned Judges were inclined to the view that there could be no estoppel against the express provisions of Sections 77 and 140 of the Railways Act. In East Indian Railway Company v. Ramgati Ram I.L.R. (1913) ILR C.L.J. 180 Stephen and Mullick, JJ. were of opinion that a notice served on the District Traffic Superintendent was not sufficient compliance with Sections 77 and 140 of the Act and a similar view was taken in The Agent, East Indian Railway Company v. Ajodhya Prasad (1918) 49 Ind Case 498. In Nadir Chand Shaha v. Wood, 3 it was held that service of notice on the Traffic Manager was not a sufficient compliance with the provisions of the Act. Mitra and Caspersz, JJ. were of opinion that the word ""may"" in Section 140 ""means that, if a plaintiff is desirous of serving an effective notice of claim, the notice must be directed to the Manager or Agent, as the case may be"" and dissented from Periannan Chetty v. The South Indian Railway Company I.L.R.(1898) . Mad, 137. They refused to send the case down for a finding whether the

Traffic Manager was authorised by the Agent to receive the notice as the question did not arise on the pleadings and no evidence was adduced on

the point,

8. In *The Great Indian Peninsular Railway Company v. Chandra Bai* I.L.R.(1906) All. 552 Stanley, C.J. and Burkitt, J. held that notice of a claim

prescribed by Section 77 may be given either to the Railway Administration as defined in Section 3, Sub-clause 6, or in any of the ways mentioned

in Section 140, and that in view of the express provisions of the sections, service on the General Traffic Manager was insufficient. There was no

question in this case as to the Traffic Manager having been authorised by the Agent to receive such notices or of the notice having as a matter of

fact been communicated to him in the usual course of official correspondence. his case was followed in *G.I. P. Railway Company v. Ganpal Rai*

I.L.R(1911) . All. 544.

9. In *The East Indian Railway Company, v. Jethmull* I.L.R(1904) . 26 Bom. 669 the notice was served on the Traffic Manager. Tyabji, J. was of

opinion, that Section 77 was only intended to protect the company against stale claims and to compel persons to make their claims within a

reasonable time so as to enable the Railway Company to, make enquiries and, if satisfied, to pay the claims, that Section 140, was only an enabling

section and not exclusive and compulsory since notice on the Administration would be sufficient and that as the General Traffic Manager was an

important officer of his company, and the principal officer charged with the duty of investigating claims made against the company, service on him

was sufficient. It should be observed that the claim was against the B. B. and C. L. Railway Company and the East Indian Railway Company, and

that notice was sent by the plaintiff to the Traffic Manager of the B. B. and C. I. Railway Company and no notice was sent directly to the E. I.

Railway Company. The notice was however communicated by the former to the latter company and this was held by the learned Judge to be

sufficient. On appeal by the East Indian Railway Company, it was held by Jenkins, C. J. and Crowe, J. that the notice was insufficient to charge the

East Indian Railway Company as it was not shown that any claim was preferred direct to the East Indian Railway Company and the letters written

by the B. B. and C. I. Railway Company did not amount to a notice on plaintiff's

behalf. The learned Judges do not deal with the question whether the notice Would be sufficient against the B. B. and C. I. Railway Company to whose Traffic Manager the notice was sent, nor is there any disapproval of the view taken by Tyabji, J. as to the sufficiency of the notice so far as the B. B. and C. I, Railway Company is concerned, This case was followed in B. B. and C. I, Railway Company v. Sante-Lal (1903) All. Weekly Notes 235. In G.I.P. Railway Company v. Dewashi I.L.R.(1908) 31 Bom. 634 it was held by Russellaud Batty, JJ. that delivery of the notice u/s 140 must be in exact compliance of the terms of the section and must be delivered to the Agent at his office,

10. So far as the Madras High Court is concerned the authorities are uniform. In Periannan Chetty v. The South Indian Railway Company I.L.R.(1908) . 32 Mad. 137 it was held that notice to the Traffic Manager is good notice if it in fact reached the Agent within six months, Subramania Ayyar and Benson, JJ. were of opinion that Section 140 simply provided for one mode of service the other being service on the Railway Company at the Head Office in England and observe ""We do not think that Section 140 precludes a claimant from showing that the notice required by Section 77 did in fact, reach the Agent, within the limited time, though not in one of the modes prescribed by Section 140. The case of The Secretary of State for India in Council v. Dip Chand Podder I.L.R.(1896) Cal. 306, to which the learned Counsel for the Company has drawn our attention in connection with another point, supports the view that we have taken as to the construction to be placed on Section 140 ""In The Madras and Southern Mahratta Railway Co., Ltd., Madras Vs. Bhimappa and Another, , the notice of claim was served on the Traffic Manager under a rule made by the Railway Company that all applications, for loss should be made to the nearest Station Master and the Traffic Manager, Dharwar. The learned Judges, (Benson, O.C.J. and Sankaran Nair, J.) followed Perignnan Chetty v. The South Indian Railway Company ILR (1898) Mad. 137, and observed that if a mode of service is prescribed by the Company and is observed by the party claiming relief it is not open to the Railway Company to plead that the notice is insufficient.

11. In Seshachallam Chetty v. The Traffic Manager H. H. the N. G. S. Railway Co., Ltd. ILR (1911) Mad. 65, it was held by Sundara Ayyar, J.

that though the proper person on whom notice should be served is the Agent, it may be shown by evidence that some other officer of the company had authority to receive the notice either by showing that he was the person who according to the practice of the company dealt with the claims of the particular character in question or that there were rules framed by the Railway Company authorising him to receive the notice or in some other legal manner.

12. I do not think there is sufficient reason to dissent from the views taken by the Madras High Court in the decisions above referred to. So far as

Section 140 is concerned it is only an enabling provision and gives the party the option of serving the notice on the Agent or Manager of the

Railway Company instead of on the Railway Administration at its registered office. Section 140 refers to three modes by which service may be

effected, namely, (1) delivery of the notice to the Manager or Agent personally, (2) leaving it at his office and (3) sending it by registered post. The

second and third methods are not personal service but a person is relieved from further liability if he leaves the notice at the Agent's office or sends

it by registered post, even if the notice for some reason does not actually come into the Agent's hands. The object of the section is to see that the

company gets notice and there is no magic in the methods provided for by the section to see that it reaches him, if as a matter of fact the notice

comes into his hands. Supposing the plaintiff adopts the method of sending the notice by post without registration and the Agent admits receipt of

the notice, which is otherwise valid, there is no reason for holding that non-registration is such a vital defect that it invalidates the notice. The CPC

provides for modes of service of summons and notices. I do not think it can be said that where a party without objection receives and admits

receipt of the summons or notice, he can fail to appear and plead the mode by which he received the process as an excuse.

13. So far as notices of action are concerned the substantial point is whether they reached the person to whom the law requires notice to be given;

and the method by which he received it is a matter which is of comparative unimportance and a deviation from the methods prescribed in the

section will in my opinion be only an irregularity. In *Union Steamship Co. of New Zealand v. Melbourne Harbour Trust Commissioners* L.R. 9 Ap.

Cas. 365 Sir Robert Collier delivering the judgment of their Lordships of the Privy Council, observed, ""Some cases have been quoted for the purpose of showing that notices of action are not to be construed with extreme strictness, a rule to which their Lordships subscribe. Cases have been quoted in which notices of action have been upheld which would have been bad upon special demurrer or perhaps upon general demurrer; but those cases have no bearing on the present, where the notice of action is not in form or substance a compliance with the Act.

14. In cases where a subordinate official sends on the notice to the Agent or informs him of its contents within six months I think, there is a substantial compliance with the requirements of the Act, the essential consideration being the question whether the Agent had notice of the claim so as to enable him to take steps for the protection of the interests of the Company. I am of opinion that *Woods v. Meher Ali Bepari* (1908) 13 Cal.

W.N. 24, Periannan Chetty v. The South Indian Railway Co. I.L.R.(1898) Mad. 137, The Madras and Southern Mahratta Railway Co., Ltd., Madras Vs. Bhimappa and Another, , and Seshachellam Chetti v. The Traffic Manager, The N.G.S. Railway Company I.L.R.(1911) Mad. 65, were rightly decided, and would follow them in preference to the decisions that put a strict and literal interpretation on Clauses, (a) (b) and (c) of Section 140.

15. There is nothing in the Act that prevents the Railway Administration or its Agent or Manager from deputing an officer to receive the notice required by Sections 77 and 140 on its behalf. It is unlikely that the Agent or Manager would attend personally to losses and in the ordinary course of business he would depute the Traffic Manager or District Traffic Superintendent to investigate into the matter and report to him. Instead of receiving the notice and passing it on to the officer concerned, the Agent or the Manager may, to save delay and official correspondence require the party making the claim to send the notice to the person to whom the Agent would in the ordinary course of business pass it on. The object of Section 77 being to give the company prompt notice of the claim so as to prevent stale claims and to enable it to make prompt enquiry, there is no peculiar efficacy in its being addressed to the Agent, if the company thinks it fit to ask the person complaining to address its claims to a subordinate

official ordinarily dealing with such claims. I am unable to find any reason for the contention that an Agent cannot depute a subordinate officer of

the company to receive the notice and as pointed out in East Indian Railway Company v. Ram Autar (1915) 20 C.W.N. 696, the question

whether a particular officer is authorised by the Agent to receive such notices on his behalf is a question of fact to be determined in each case.

Agency may be proved either by direct evidence of authority Or by a course of conduct which in the opinion of the Court would justify the

inference that the subordinate official was authorised by the Agent to receive notices on his behalf.

16. I would answer the first and third questions in the affirmative. As regards the second question, I think Section 140 is an enabling provision and

that the word ""may"" does not mean ""must"" so as to make other modes of service ineffectual even in cases where the notice has actually reached

the Agent or where the contents of the notice have been communicated to him by the subordinate who receives the notice.

17. In the present case it is admitted that the notice was not sent to the Agent and there is no evidence that the Agent had notice within the

prescribed period. The petition fails and is dismissed with costs.

Odgers, J.

18. I agree with the Judgment just pronounced by my Lord and have nothing to add.