
(1959) 10 AHC CK 0020
In the Allahabad High Court
Case No : Civil Revision No. 741 of 1952

Ahmad Hasan

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 20-10-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1960 All 530

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : Aqiq Hasan, for the Appellant; Jagdish Swarup, for the Respondent

Final Decision : Allowed

Judgement

V.D. Bhargava, J.—This is an application in revision by the plaintiff against an order of dismissal in a suit filed by him for compensation for non-delivery of the goods.

2. The plaintiff was a dealer inter alia in cigarettes and he had purchased 50,000 cigarettes from the National Tobacco Company Limited of India. They were supplied from their depot at Unnao and were packed in two cases, and were handed over to the railway authorities at the Ajgain railway station to be dispatched to Amroha on 8-11-1950 and railway receipt No. 678514 was issued to the plaintiff. At Amroha only one package of the consignment was delivered but not the other. Thereafter a notice u/s 77 of the Railways Act and Section 80 C. P. C. were given to the Chief Commercial Manager, East Indian Railway on 5-12-50 and since the Railway did not pay the damages, hence the suit.

3. The defence inter alia was that the notice u/s 77 of the Railways Act and u/s 80, Civil P. C. were invalid notices as the name of the station of dispatch had wrongly been given as Unnao and not Ajgain.

4. The Small Cause Court held that so far as the notice u/s 77 of the Railways Act, is concerned, as it was not necessary, the mistake was immaterial, but since

notice u/s 80 was necessary and since this mistake had occurred, relying on a decision in *Dominion of India v. Roopchand* 1950 All LJ 595, it held that the notice was bad. In that case the number of the railway receipt was wrongly given. The cause of action of a suit for damages is on account of the contract entered into between the parties, and if a wrong number of the railway receipt is given then the very basis of it may be said to have been wrongly given. In the present case the number of the railway receipts was correctly given and it was always open to the railway authorities to find out from the number given the details of the consignment and I do not think that the mistake in the present case has materially affected the cause of action.

5. In a similar case given in *Begraj Gadhuraam Vs. E.I. Ry. Co. and Another*, , the name of the station from where the consignment was dispatched was wrongly given as Ahmedabad instead of Aserva. But the number of the railway receipt was correctly given. The trial court had held in that case that the notice must be such as would enable the Administration to see at once the identity of the consignment without further enquiry at other station or stations. The High Court observed that the section itself did not prescribe any such thing, and it was always a question of fact to be determined in view of the circumstances of each particular case whether the notice was sufficient or not. In the present case I think the railway authorities were aware of the non-delivery of the consignment and they could easily find it out. I think the notice was a proper notice. In the circumstances the suit has wrongly been dismissed.

6. I, therefore, allow the revision, set aside the decree of the lower court and decree the plain tiff's suit with costs throughout.