

(1996) 09 GAU CK 0036

In the Gauhati High Court

Case No : Misc.Appeal (First) No. 147 of 1993

Assam State Co-Operative Marketing and

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Contract Act, 1872 — Section 151, 151

Railways Act, 1890 — Section 77(1), 77(1), 77(2), 77(2)

Citation : (1997) 1 GLJ 258 : (1997) 1 GLT 572

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : P.Khataniar, K.K.Mahanta, K.Basar, H.P.Barman, H.K.Nath, Advocates appearing for Parties

Judgement

1. This appeal has been filed against the judgment dated 20.4.93 passed by the Member, Railway Claims Tribunal, Guwahati Bench in application No.566 of 1991.

2. In this case 122 bags of toor dal were booked from Morena to New Gauhati on 8.6.88. The consignment reached destination on 2.7.88 and was unloaded on 20.7.88. The delivery was taken by the applicant on 16.9.88. 32 bags were found damaged by water and there was a shortage of 298 Kgs from 8 bags which were found in torn and loose condition as per the Assessment Delivery Report dated 30.9.88. The claim was made by the applicant for the loss and damage sustained by them. The Railway took the stand that they are not liable for the loss and damage in view of section 77 (2) of the Railway Act. Section 77 (2) of the Railway Act provides inter alia as follows :

"(2) The Railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non delivery of goods carried by railway, arising after the expiry of the period of (seven days) after termination of transit."

3. On the basis of this defence, the claims was rejected by the Tribunal though the Tribunal round inter alia as follows :

"It is difficult to say whether the shortage and damage to the consignment had occurred during the transit or within 7 days after the termination of transit or afterwards."

4. The liability of the Railway as a carrier does not come to an end immediately as pointed out by the Apex Court in the case reported in AIR 1996 SC 395 (The Union of India vs. The West Punjab Factories Ltd), wherein the Supreme Court pointed out as follows :

"The responsibility of the railway is under section 77 of the Indian Railways Act (No.9 of 1890) and that responsibility cannot be cut down by any rule. It may be that the railway may not charge wharfage for three days and it is expected that a consignee would take away the goods within three days. It is, however, urged that the railway is a carrier and its responsibility as a carrier must come to an end within a reasonable time after the arrival of goods at the destination, and thereafter there can be no responsibility whatsoever of the railway. It is further urged that three days during which the railway keeps goods without charging wharfage should be taken as reasonable time when its responsibility as a carrier ends; thereafter it has no responsibility whatsoever. Under section 72 of the Indian Railways Act, the responsibility of the railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway is, subject to the other provisions of the Act, that of a bailee under sections 151, 152 and 161 of the Indian Contract Act (No.9 of 1872). This responsibility in our opinion continues until terminated in accordance with sections 55 and 56 of the Railways Act. The railway has framed rules in this connection which lay down that unclaimed goods are kept at the railway station to which they are booked for a period of not less than one month during which time the notice prescribed under section 56 of the Railways Act is issued if the owner of the goods or person entitled thereto is known. If delivery is not taken within this period, the unclaimed goods are sent to the unclaimed goods office where if they are not of dangerous, perishable or offensive character they are retained in the possession of the railway. Thereafter public sales by auction can be held of unclaimed goods which remain with the railway for over six months. This being the position under the rules so far as the application of sections 55 and 56 is concerned, it follows that even though the responsibility of the railway as a carrier may come to an end within a reasonable time after the goods have reached the destination station its responsibility as a warehouseman continues and that responsibility is also the same as that of a bailee.

Reference in this connection is made to Chapman vs. Great Western Rly Co, (1880) 5 QBD 278. In that case what had happened was that certain goods had arrived on March 24 and 25. On the morning of March 27, a fire accidentally broke out and the goods were consumed by the fire. The consignor then sued the railway as common carrier on the ground that liability still subsisted when the goods were destroyed. The question in that case was whether the liability of the railways was still as common carrier, on March 27 or was that of warehouseman.

The question was of importance in English law, for a common carrier under the English law is an insurer and is liable for the loss even though not arising from any default on his part while a warehouseman was only liable where there was want of proper care. It was held that the liability as a common carrier would come to end not immediately on the arrival of the goods at the destination but sometime must elapse between the arrival of goods and its delivery."

5. The unwillingness to take responsibility by the Railway by taking resort to section 77 (2) also came up for consideration before different High Courts and in AIR 1974 Allahabad 255 (Firm Naraindas Pitamchand vs. Firm Shaker Lal Mohandas & others) the Court in paragraphs 8, 9 and 10 laid down the law as follows :

"8. Subsection (1) of section 77 of the Railways Act, therefore, makes it incumbent on the Railway Administration to deal with the goods put in its care as a bailee is bound to take. Section 151 of the Contract Act specifies that in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstance, take of his own goods of the same bulk, quality and value as the goods bailed. It would, therefore, be clear that the Railway Administration has to take the same amount of care for the goods as a man of ordinary prudence not only during the period of transit of the goods from the station of origin to the station of destination, but for a period of 30 days after the termination of the transit. The nature of the care that has to be taken during the period of transit has also to be taken during the period of 30 days after the termination of the transit. It, therefore, becomes further clear .that the railway administration is wholly responsible for the consignment for the period of 30 days after the goods had reached the destination station as also during the period of transit. In case, there is a loss, destruction, damage or deterioration of goods during this period of 30 days, Railway Administration is equally liable for the same.

9. Subsection (2) of the section 77 of the Railways Act specifies that the Railway Administration shall not be responsible for any such loss, destruction, damage, deterioration or non delivery of the goods after a period "of 30 days from the termination of the transit. It is, therefore, apparent that the protection of the Railways under section 77 (2) can only arise in a case where loss occurs after the expiry of the period of 30 days. Therefore, where the goods are lost, or damaged or deteriorate after a period of 30 days from the date of the termination of the transit, the Railways can takes a plea successfully that they are not liable under the law. But if the loss takes place within the period of 30 days, the provisions of section 77 (2) of the Act will have no application and the Railway Administration will be liable for the same.

10. In this case the plaintiff came with the case that the loss, damage and deterioration etc, had taken place while the goods were with the Railways. Once this plea is taken it is for the Railways to explain as to how they dealt with the goods in their charge not only during the period of transit, but for the

subsequent period of 30 days after the goods have reached the destination station. In this case, there is no evidence to show that the goods remained intact during the full period of 30 days after the goods have reached the destination station. The burden was on the Railways to show that no loss, destruction; deterioration etc had taken place not only during the period of transit but also in the subsequent period of thirty days, after the goods had reached the destination station. In my opinion, therefore, the Railway Administration cannot successfully plead in defence the bar of section 77 (2) of the Railways Act."

6. The same thing came up for consideration before the Madhya Pradesh High Court in 1991 (2) TAC184 (Union of India vs. Western Coal Fields Ltd & another) wherein in paragraph 7, the law has been laid down as follows :

"Last argument of the learned counsel of the defendant No.1 appellant is that the claim for damages made by the plaintiffrespondent No.1 was barred by limitation in view of subsection (2) of section 77 of the Indian Railways Act. In the opinion of this Court, the said argument of the learned counsel for the defendant No. 1 appellant is also misconceived and cannot be accepted. Subsection (2) of section 77 of the Act applies to a case where the alleged loss on which the claim for damages is made arises after the expiry of the period of 7 days after the termination of transit. It is in such a case that it has been provided in the said subsection that the Railway Administration shall not be responsible for the loss. In the present case, it was not the case of the defendant No. 1 appellant at any stage that the alleged loss in respect of which the claim for damages was made by the plaintiffrespondent No. 1 had arisen not during the period of transit as alleged by the plaintiffrespondent No. 1 but after the expiry of the period of 7 days after the termination of transit. In the circumstances, subsection (2) of section 77 has no application in the present case."

7. This being the position of law and as I respectfully agree with the decisions of Allahabad and Madhya Pradesh High Court, I find that the judgment of the Tribunal cannot be sustained and the same stands quashed, and this appeal is allowed. The claim of the claimant for amount of Rs.9,222.47 shall stand decreed with interest @ 9% PA from the date of delivery i.e. 16.9.88.

8. I have heard Sri HP Barman, learned Advocate for the appellant and Mr. P. Khataniar, learned Advocate for the respondents.