

(1957) 05 CAL CK 0014
In the Calcutta High Court
Case No : Civil Revn. No. 959 of 1956

Balchand Badriprasad

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 20-05-1957

Acts Referred:

Limitation Act, 1908 — Section 19

Citation : AIR 1957 Cal 666

Hon'ble Judges : Renupada Mukherjee, J

Bench : Single Bench

Advocate : Subodh Kumar Bhattacharjee, for the Appellant; Bhabesh Narain Bose, for the Respondent

Judgement

Renupada Mukherjee, J.—The facts involved in this Rule are practically admitted and upon those facts the only issue of law which arises is the issue of limitation upon which the two Courts below have taken two divergent views.

2. The petitioner firm was the holder and endorsee of an invoice and railway receipt in respect of 89 bales of jute dispatched from Forbes Ganj to Cossipore Road on the then East Indian Railway. The entire consignment was delivered on 13-9-1951 when it "was found that 26 bales of Jute had arrived in a wet condition. A damage certificate was issued to the petitioner by the Goods Supervisor of Cossipore Road on 27-10-1951 assessing damage at 20 per cent of the value of the damaged bales each of which weighed 3 1/2 mds. The petitioner firm wrote several letters to the railway administration for payment of damages calculated at Rs. 1,001/- but the claim was repudiated on 14-1-1952. So the petitioner firm instituted this suit on 2-1-1953 for recovery of the above amount.

3. The only defence of substance raised by the Union of India as representing the railway was that the suit was barred by limitation inasmuch the suit was not instituted within one year from the date of delivery of the goods which was 13-9-1951. The trial Judge held that limitation would run from that date, but the damage certificate amounted to an acknowledgment of liability within the

meaning of 8. 19, Limitation Act, and had saved limitation. The Full Bench which heard the matter u/s 38, Presidency Small Cause Courts Act, took a different view of the effect and implication of the damage certificate holding that it did not amount to an acknowledgment of liability and in that view of the matter dismissed the suit. The petitioner has come up to this Court in revision challenging the legality and propriety of the order- of the Full Bench.

4. The only question mooted by the parties in this Rule was whether the damage certificate in question amounted to an acknowledgment of liability on the part of the railway and as such, whether it served to extend the period of limitation. There is no doubt that limitation in this case would be governed in the first place by Article 30 of the First Schedule of the Limitation Act which provides a period of one year as the period of limitation against a carrier for compensation for losing or injuring goods from the time when the loss or injury occurs. In this particular case delivery of the entire consignment of jute including the damaged bales was taken on 13-9-1951 and so prima facie limitation would run from that date. The suit having been instituted on 2nd January, 1953, that is, more than one year after the "date of delivery of the goods is, on the face of it, barred by limitation.

5. On behalf of the petitioner firm it was contended by Mr. Bhattacharjee that limitation was saved or rather extended by the issue of a damage certificate on 27-10-1951 which amounted to an acknowledgment of liability within the meaning of Section 19, Limitation Act and which gave a fresh lease of limitation to the petitioner for the institution of the suit. The damage certificate runs in the following terms:

1469/51 dated 20-9-51 without prejudice. E.I. Ely.

Certificate of damage and shortages. Date 27-10-51.

Consignment of 89B/S Jute weighing 311/20. Bonked from Forbesganj to Cossipore Road, Invoice Or R/R No. 393/OS4089. 5-9-1951. Send or Murlidhar Om prokash. Consignee self endorsed to Bal Chand Badri Prosad.

R/RXXXXXXXXXX

Condition of packages at time of survey 26 B/S. Jute delivered on 13/9 in wet condition due to heavy rain assessed @ 20 per cent, vide Sc P. A.'s letter No. C. 12 dated 14-9-51. Weight of goods -- 31/2 mds. each I agree to the above without prejudice.

Gaji. Goods Supervisor. Consignee for B. Chand B Pd. Cossipore Rd E. I. Rly

30.X.51 28/X

6. Mr. Basu appearing on behalf of the opposite party contended, on the other hand, that the damage certificate contains only an appraisalment of the extent of damage caused to the consignment and in no sense can it be construed to be an acknowledgment of liability on the part of the railway. I shall now examine which

of these two rival contentions is correct.

7. In this connection, Mr. Bhattacharjee on behalf of the petitioner cited a case reported In Jainarain Vs. The Governor-General of India, (A), and contended that an acknowledgment of liability need not necessarily be

"a specific and direct acknowledgment of the particular liability which is sought to be enforced, but if there is an admission of facts of which the liability in question is a necessary consequence, there would be an acknowledgment within the meaning of Section 19."

Mr. Bhattacharjee submitted that the acknowledgment in the damage certificate that 20 per cent, of the goods had been damaged as a result of heavy rains amounted to an admission in effect that the petitioner firm was entitled to be recouped from the railway for the loss sustained to that extent. I am unable to agree with this interpretation of the damage certificate put by Mr. Bhattacharjee. The liability of the railway in this particular case depends upon two salient and equally important facts, the first fact being that damage had in fact been caused to the jute bales in transit and the second fact being that the damage was caused by negligence or misconduct on the part of the railway officers. The damage certificate was an admission of the first fact, but on the Other important fact it is completely silent and silence in this case can be no means be taken to be equivalent to an admission. In the case cited above Chakravarti, J., as he then was, held upon a construction of a letter written by a responsible railway officer that all the elements constituting the liability of the railway had been admitted in the letter. In this case there is no such admission with regard to one of two important facts upon which the liability of the railway depended. Mr. Bhattacharjee cited another case reported in Haji Ajam Goolam Hoosein v. Bombay and Persian Steam Navigation Co., ILR 26 Bom 662 (B). This case is also not to the point because the liability of the carriers in that case was held to have been acknowledged upon a construction of two letters which were held to be sufficient acknowledgment of liability to give a fresh starting point for limitation. In the present case mere ascertainment of the quantum of damage by a Goods Supervisor who cannot be said to be unauthorised agent of the railway unaccompanied by an admission of the railway that the negligence or misconduct of its officers was responsible for the damage, cannot be said to be an acknowledgment of liability within the meaning of Section 19. Limitation Act. In my opinion, the Full Bench has taken the correct view of law in holding that the period of limitation was not extended by the damage certificate in this case.

8. Mr. Bhattacharjee prayed for a remand of the case to the trial Judge so that his client might prove negligence or misconduct on the part of the railway officers. I think this prayer is misconceived. Negligence or misconduct on the part of the railway "officers becomes Irrelevant In this case except in so far as admission of such negligence or misconduct would appear from the damage certificate itself which is relied on by the petitioner as a document acknowledging the liability of the railway. No extraneous proof is admissible on this point and so

there would be no point or sense in remanding the case to the trial Judge.

9. On grounds set forth above, I discharge this Rule.

10. Regard being had to the circumstances of this case I direct that the parties will bear their own costs in this Court.