

(1982) 02 PAT CK 0010
In the Patna High Court
Case No : A.F.O.D. No. 1187 of 1971

Barakar Engineering and Foundry Works Ltd.	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 18-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9
Railways Act, 1890 — Section 80

Citation : (1982) ACJ 527 : AIR 1982 Patna 140 : (1982) 30 BLJR 355

Hon'ble Judges : Satyeshwar Roy, J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : S.K. Mazumdar, for the Appellant; D.K. Sarkar, for the Respondent

Final Decision : Allowed

Judgement

1. The appellant filed a suit for a decree for Rs. 16,900/- besides interest and costs against the Union of India representing North-East Frontier Railway on the allegation that a part of the goods booked by it for carriage by railways was not delivered.

2. According to the plaintiff's case, certain steel goods were booked in two wagons from Khusri Pandra Branch siding on the Eastern Railway to Dimapur Manipur Road on the North-East Frontier Railway. Goods of one of the wagons were duly delivered but those in Wagon No. NRDC 65129 Invoice No. 12, never reached the destination and the total goods in that wagon remained undelivered. The plaintiff lodged his claim on 9-8-1965 before the CCS, N. F. Railway, Pandu and the Garrison Engineer, Dimapur who was the consignee also made a claim. Since the railway authorities did not respond, the suit had to be brought after service of notice u/s 80 of the Civil P. C. The amount claimed represented the price of 13 M. Tonnes of fabricated steel structures which were not delivered.

3. The Union of India filed a written statement indicating that it was appearing for self and on behalf of North-East Frontier Railway and denied the liability. Both

sides led evidence and the learned Subordinate Judge decided the merits of the claim in favour of the plaintiff. This finding has not been challenged as erroneous before us by the learned counsel for the respondent.

4. Further the court below held that as the plaintiff failed to prove that the loss occurred on the North-East Frontier Railway, the suit has to be dismissed in absence of the Eastern Railway as a party to the suit on which the consignment was booked. The plaintiff has now appealed.

5. Mr. S. K. Mazumdar appearing for the appellant has contended that the learned Subordinate Judge committed a serious error in not taking into account the amended provisions of Section 80 of the Railways Act as amended by Act 39 of 1961 and in relying upon the decisions given earlier on the basis of the old section. The argument appears to be well founded.

6. Before 1961 amendment, the section provided for institution of a suit against the railway administration where either the consignment was booked or the loss actually occurred. After the amendment, the plaintiff had been allowed to file his suit, apart from the administrations contemplated by the old section against the railway administration on whose railway the destination station lies. The language of Clause (b) of Section 80 as it now stands is clear in this regard and no other condition for the maintainability of suit has been prescribed. The decisions given earlier before the section was amended have no application now. Our view is supported by the decision in *Firm Kaluram Ram Narayan, Bilaspur Vs. Union of India (UOI)*, . The present suit was filed in 1968. The decision of the court below without examining the amended section is wholly illegal and has to be set aside and it has to be held that the suit filed against the North-East Frontier Railway on which the destination station lies is maintainable.

7. In the result, this appeal is allowed, the decision of the court below is set aside and the suit is decreed with pendente lite and future interest and costs of both courts.