
(1981) 08 MP CK 0001
In the Madhya Pradesh High Court
Case No : F.A. No. 106 of 1976

Brijmohandas Harnarain and another	Vs	APPELLANT
Punjab National Bank and another		RESPONDENT

Date of Decision : 07-08-1981

Acts Referred:

Contract Act, 1872 — Section 62
General Clauses Act, 1897 — Section 9
Railways Act, 1989 — Section 73, 77, 78

Citation : (1982) J LJ 92

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : R.P. Verma, for the Appellant; J.P. Sanghi for Respondent No. 1 and S.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.—This judgment will also govern the disposal of First Appeal No. 107 of 1976 (Brij Mohandas and another v. Punjab National Bank and others), as they arise out of a common judgment.

2. These appeals have been directed by the defendant-appellants against the judgment and decree dated 6th May 1976, passed by the 2nd Additional District Judge, Hoshangabad, in Civil Suit No. 10-B of 1972 and Civil Suit No. 11-B of 1972.

3. The plaintiff Bank had instituted Civil Suit No. 10-B of 1972 against the defendant-appellants as well as against respondent Nos. 2 and 3 (a) and (b), for the recovery of a sum of Rs. 15,894 including interest, and future interest at 11% per annum. The trial Court decreed the claim of the plaintiff-Bank for Rs. 11,489.53 P. against the defendants 1 (a) and (b)/appellants as well as against the defendant-respondent No. 2, with future interest at the rate of 6% per annum on the principal amount of Rs. 10,000.00 from the date of the filing of the suit till realization. The plaintiff-Bank's suit against respondent Nos. 3 (a) and

(b) was, however, dismissed with costs. In Civil Suit No. 11-B of 1972, the plaintiff-Bank had instituted a suit for the recovery of Rs. 47,680.78 P. against the defendant Nos. 1 (a) and (b) /appellant as well as against defendant-respondent Nos. 2 and 3 (a) and (b), inclusive of interest, and claiming further future interest at the rate of 11% per annum from the date of the suit till realization. The trial Court, decreed the suit for Rs. 43,096.75 P. with future interest at the rate of Rs. 6 per annum from the date of the filing of the suit till the date of realization against the defendants 1 (a) and (b)/appellants as well as against the defendant-respondent No. 2. The plaintiff's suit against the defendant-respondent Nos. 3 (a) and (b) was, however, dismissed with costs. In these two appeals, the defendant Nos. 1 (a) and (b)/appellants alone have challenged the judgment and decree passed against them.

4. The facts not disputed by the parties in the two suits are, that the appellants and the defendant respondent No. 2 are Grain-merchants of Piparia. The appellants had Current and Cash Credit Account with plaintiff-Bank and they were allowed Bill discounting facilities by the plaintiff-Bank. On 23-1-1970, the defendant-respondent No. 2 had booked 125 bags of Batri Dal and 100 bags of Deshi Gram from Piparia railway station to Cochin railway station, he himself being the consignee of the goods through Railway receipts Nos. D 670035 to D-670041. On 24-1-1970, the defendant-respondent No. 2 had drawn up seven demand drafts of Rs. 5,000 each in respect of the afore-mentioned railway receipts. Again on 28-1-1970, the defendant-respondent No. 2 booked 55 bags of Teora Dal under railway receipts No. B 670112 from Piparia railway station to Arumuganeria railway station and 110 bags of Teora Dal under railway receipt No. 670242 on 9-2-1970 from Piparia railway station to Hugli railway station. In both these consignments also, the Consignor himself was the Consignee of the goods. On 28-2-1970, the defendant-respondent No. 2 had drawn up two demand-drafts of Rs. 5,000 and Rs. 10,000 respectively in respect of these two railway receipts referred to above. The defendant No. 2, the Consignor of the aforesaid goods had obtained delivery of the goods from the railway through some of his counter-parts at Cochin, Arumuganeria and Hugli, on executing indemnity bonds within the period from 13-2-1970 to 6-3-1970 on the ground that the original railway receipts were lost. The aforesaid goods were booked under the 9 railway receipts mentioned earlier.

5. The plaintiff's case in both the suits was, that the defendant Nos. 1 (a) and (b)/appellants and the defendant-respondent No. 2, used to send their goods to different places and they were granted a facility to present the railway receipts of those goods along with demand drafts (Hundi) drawn either by themselves or endorsed in their favour for the value of such goods and to receive its amount by re-endorsing those railway receipts and the demand-draft in favour of the plaintiff-Bank (hereinafter referred to as the plaintiff). The plaintiff used to send those railway receipts along with the demand-draft to the drawee and used to collect its amount along with the Bank Commission from such drawees against the delivery of those documents. On 24-1-1970, the defendant-respondent No. 2

drew 7 demand-drafts and after endorsing those 7 demand-drafts and 7 railway receipts Nos. 670035 to 670041 (Exhs. P-9 to P-15) in favour of the defendant Nos. 1 (a) and (b)/Appellants, who in turn re-endorsed them in favour of the Bank and presented the same for discounting after deducting Bank commission of Rs. 16 in each case. The Bank paid the total sum of Rs. 34,880 to the defendant Nos. 1 (a) and (b)/Appellants. The defendant-appellants withdrew the said amount from their account by transferring the same in writing to the account of respondent No. 2. On 28-2-1970, the appellants further presented the other two railway receipts No. 670112 (Ex. P-26) and No. 670242 (Ex. P-25), along with two demand-drafts drawn up by the defendant-respondent No. 2 and duly endorsed in favour of the defendant-appellants for discounting to the plaintiff-Bank after re-endorsing them in favour of the Bank. Accordingly, the Bank, after deducting Rs. 16 and Rs. 31 respectively as Bank Commission, paid to the defendant No. 1, Rs. 4,984 and Rs. 9,969, which were withdrawn by the appellants from the plaintiff-Bank on the same day by transferring the said amounts in writing to the account of defendant No. 2. The Bank, thereafter, forwarded the aforesaid 9 railway receipts, along with all the demand-drafts, to the respective places through the Banks for collection of the amounts from the drawees, but the same were dishonoured as the drawees failed to retire the same.

6. After the documents were dishonoured, the Bank called upon the appellants on 24-4-1970 to take back the documents and to refund the amounts of Rs. 34,000, Rs. 888, Rs. 4,984, and Rs. 9,969, as also the Bank Commission of Rs. 112, Rs. 16 and Rs. 31 respectively with interest. Thereupon, the appellants brought the defendant-respondent No. 2 to the Bank on 25-4-1970 and paid a sum of Rs. 1,100 to the Bank by getting it transferred from the account of defendant No. 2 and also gave to the Bank three fresh demand-drafts dated 24-4-1970, for a total sum of Rs. 50,000 duly endorsed in favour of the Bank in respect of the railway receipts and requested the plaintiff Bank for re-discounting the aforesaid 9 railway receipts, and assured that they shall see that those documents were positively retired by the Drawees named therein. But these documents were also not retired by their Drawees, and therefore, the defendant, appellants were liable for the same.

7. Since the railway receipts, Exhs. P-9 to P-15, Ex. P-25 and Ex. P-26 were endorsed in favour of the plaintiff against the discounting of the bills, the plaintiff had become the owner of the goods booked under the said railway receipts and the plaintiff or the endorsee thereof, was entitled to delivery of those goods. The defendant respondent No. 2 had no right to take delivery of those goods by executing indemnity bonds on the false ground that the original railway receipts were lost. The plaintiff also contended that the employees of the respondent--defendant Nos. 3 (a) and (b) were in collusion with the respondent No. 2 and that there was no justification for the defendant-respondent Nos. 3 (a) and (b) to deliver the goods to a wrong person, i. e. the defendant No. 2. The plaintiff, therefore, contended that the defendant No. 2 was liable for illegally obtaining

the delivery of the goods and the defendant No. 3 was liable for effecting delivery to the defendant No. 2 in collusion with him, who was a wrong person and not entitled to take the delivery of the aforesaid goods.

8. The defendants 1 (a) and (b)/Appellants and defendant-respondents 3 (a) and (b) only contested the suit, while defendant-respondent No. 2 preferred to remain ex-parte throughout. The defendant-appellants' defence was that of a total denial. They denied their having endorsed the above referred to railway receipts and the demand-drafts as also having discounted them in their account with plaintiff. The appellants also denied that they had either obtained payment of the demand-drafts or that they got the amount credited in their account or that they got the amount transferred from their account to the account of the defendant-respondent No. 2.

9. The Railways defendant-respondents Nos. 3 (a) and (b) admitted delivery of the goods under the railway receipts Exhs. P-9 to P-15, Ex. P-25 and Ex. P. 26 to the defendant respondent No. 2 against the indemnity bonds, but contested the suit on the ground that at the time of the delivery of the goods, they had no knowledge of the fact that the railway receipts in question were endorsed in favour of the plaintiff and that they had acted in good faith and under the provisions of the Railways Act in effecting delivery of the goods to the defendant No. 2 after obtaining the necessary indemnity bonds from him and that there was no negligence on their part. On the contrary, the plaintiff-Bank had acted with negligence in not informing the Railways in time that the railway receipts in question were endorsed in its favour.

10. The learned trial Court decreed the Plaintiff's suit only against the appellants and defendant No. 2 for the amounts stated earlier, but dismissed the plaintiff's claim as against the defendant No. 3 with costs, holding that there was no collusion between the employees of the railways, and the defendant No. 2, and that the railways were justified in accepting the indemnity bonds and making delivery of the goods under the provisions of the Indian Railways Act and the Goods Tariff Rules, having no knowledge of the endorsement of the railway receipts in favour of the plaintiff. The defendant Nos. 3 (a) and (b), were, therefore, absolved from their liability.

11. The learned counsel for the appellants first contended that the defendant-appellant Brij Mohan Das had signed the railway receipt (Exs. P-9 to Ex. P-15, Ex. P-25 and Ex. P-26) in the capacity of an attesting witness and not as an endorsee. This argument is not acceptable to us, the same being wholly fallacious. The evidence of Narayandas (D. W. 3) shows that the demand-drafts when presented to the plaintiff-Bank for discounting either in D. D. or in B. C., there arose no necessity for attestation by any witness, either on the railway receipt or on any other document. No law was cited before us to show that these documents required attestation by a witness. In these circumstances, the statement of Brij Mohan Das is wholly false that he had signed the railway receipts and other documents as an attesting witness.

12. The learned counsel for the appellants next contended that the defendant-appellants could not be held liable for the claim of the plaintiff as the appellant, Brij Mohan Das had specifically instructed in the pay-slips (Exs. P-16 to P-22, Ex. P-27 and P-28) to transfer the money from his account to the account of defendant-respondent No. 2 after collection of the amount and that he had never given any direction or consent either in writing or otherwise to the plaintiff-Bank to transfer any amount from his own account to the account of the defendant-respondent No. 2, but the plaintiff-Bank transferred the amount before collection, it was also contended that the defendant-appellant Brij Mohan Das did not in any way act in collusion with defendant-respondent No. 2. But, in our opinion, these arguments are without any foundation and contrary to the evidence on record.

13. The Accountant of the Bank, Shri R. S. Pare stated that when demand draft is discounted and the amount is credited to the account of a party or paid to him in cash, such demand drafts are said to be discounted in D. D. and when the amount of a demand-draft is paid to the party after the collection of the money from the Drawee, such demand-drafts are called Bills for collection and are said to be presented in B. C. It is pertinent to note that the defendant-appellant Brij Mohan Das was examined as D. W. 2, and in his evidence he has nowhere stated that he had presented the demand-drafts and the railway receipts to the plaintiff in B. C. or that the plaintiff-Bank had transferred the amount of those documents from his account to that of the respondent No. 2's account against his instructions.

14. The learned trial Judge, after scrutinising the entire evidence relating to the pay-in-slips and discussing the same in paragraphs 16 to 18 of his judgment, came to the conclusion that the pay-in-slips in question were presented to the plaintiff-Bank for discounting in D. D. No valid reasons were put forth before us to disagree with the said findings of the learned Judge. We, therefore, accept the said findings that the pay-in-slips were presented for discounting in D. D, and not in B. C. This fact finds further support from the transfer debit vouchers (Exhs. P-23 and Ex. P-29) as well as from the credit vouchers (Exhs. P-24 and P-30). A perusal of the transfer Debit vouchers, Ex. P-23 dated 24th Jan. 1970 for Rs. 34,888/- and Debit Voucher, Ex. P-29 dated 28-2-1970, for Rs. 9,969/-, Rs. 4984/- and Rs. 14,953/- make it distinctly clear that the defendant-appellant Brij Mohan Das had signed the same with a clear instruction to transfer the amounts to the account of Shah Ashok Kumar and Company (defendant-respondent No. 2). Similar is the position in respect of the credit-vouchers Ex. P-24 dated 24-1-1970 for Rs. 34,888 and Ex. P-30, for Rs. 14,953. These documents clearly show that the defendant-appellant Brij Mohan Das had given instructions to the plaintiff-Bank to transfer the said amounts from his account to the account of the defendant respondent No. 2 and that the said amounts were transferred accordingly on the same day which were withdrawn by the defendant-respondent No. 2. Brij Mohan Das has admitted his signatures on the transfer debit vouchers Exs. P-23 and P-29, but has stated that they were obtained on Blank forms for which there is no basis. The plaintiff has sufficiently proved by oral and

documentary evidence that the amounts in question were transferred from the account of the defendant-appellant Brij Mohan Das to the account of the respondent No. 2 under the instructions of Brij Mohan Das and there are no reasons shown before us to disbelieve the said evidence.

15. As regards the question of collusion of the defendant-appellant Brij Mohan Das with the defendant-respondent No. 2, there is ample evidence to support the allegations made by the plaintiff-Bank in this behalf. A perusal of the statement of Shri R. B. Pare (P. W. 1), the Accountant of the plaintiff-Bank will go to show that Brij Mohan Das himself had presented all the railway receipts in question with 7 demand drafts of Rs. 5,000 each and two demand-drafts of Rs. 5,000 and Rs. 10,000 respectively, which were credited to his current account on the relevant dates as will be clear from the debit and credit vouchers. The evidence of the Cashier, Shri B. P. Shukla (P. W. 2) further shows that Brij Mohan Das had gone to the plaintiff Bank on 25-4-1970, when he was told that the documents were dishonoured, and therefore, Brij Mohan Das himself presented 3 fresh demand-drafts, Exhs. P-155, P-157 and P-159, for Rs. 12,500, Rs. 7,500 and Rs. 30,000 respectively, for discounting them in D. D., while the old 9 demand-drafts were returned to Brij Mohan Das. This witness further stated that these documents were again dishonoured by their respective Drawees. These facts fully establish that the appellant Brij Mohan Das was in league and collusion with the defendant No. 2 who had obtained delivery of the goods by fraudulently executing the Indemnity bonds. The learned trial Judge was, therefore, right in holding the appellants and defendant No 2 jointly and severally liable, and there are no reasons to differ from the said findings.

16. The learned counsel for the appellants further contended that the demand-drafts and the railway receipts were never presented to the respective drawees and had they been presented, they would have retired the documents. There is no substance in this submission, firstly for the reason that the defendant-appellants have not taken such a plea in their written statement, and secondly, the plaintiff-Bank has specifically pleaded in the plaint, Para 6, that all the documents were sent to the respective places for collection from the drawees, but none of them were retired by the drawees named in the documents. From these pleadings, it is implicit that the documents were presented to the drawees who refused to retire them. In reply to this plea, the defendant-appellants in para 6 of their written statement simply denied the fact for want of knowledge. This apart, the plaintiff-Bank adduced positive evidence to the effect that the documents were sent for collection to the drawees, but the same were received back unretired. There is thus no substance in this argument.

17. Lastly, the learned counsel for the appellant contended that since the 9 old demand-drafts were substituted by three new demand-drafts, Exhs. P-155, P-157 and P-159, in respect of which the learned trial Court held that the same were not endorsed by the appellants, by reason of which the appellants could not be fastened with the liability to pay the money covered by them, and therefore,

on the principles of novation of contract u/s 62 of the Contract Act, the old contract and the liability thereunder came to an end and the plaintiff Bank could not be permitted to fall back on the original 9 demand-drafts, and ask for a decree on their basis. In our opinion, this line of arguments is wholly misconceived.

18. Section 62 of the Indian Contract Act deals with Novation of Contract/agreement. It comes into effect only when a new contract is substituted for the existing contract, superseding the old. Novation means wiping out the original contract and bringing into existence a new valid contract. But in case the new contract is invalid, it cannot serve as novation, and the original contract continues to hold the field unless the rights under it are expressly abandoned. [See *Dammulal Babulal Jain v. Mohammad Bhai Haji Suleman Kachhi* 1955 NL 742 : AIR 1955 Nag. 306 at p. 311 and *Pannalal v. Labhchand* AIR 1955 MB 49 at p. 56]. The execution of the fresh demand drafts in satisfaction of the debt or liability covered by the earlier demand drafts do not necessarily mean that the original debt or liability is extinguished. The fresh demand-drafts may operate as a substitute for the earlier and the original liability covered by the earlier demand-drafts is kept in abeyance pending the discharge or otherwise of the fresh drafts. In case of fresh demand drafts being dishonoured, the endorsee can fall back on the earlier one.

19. In *Sundar Das and another v. Puran Singh* AIR 1922 Lah. 56 it was held as under:

.....The giving of a hundi in payment of the price of goods sold operates as a payment, only if the Hundi is honoured, and that if the Hundi is dishonoured the right to sue on the original cause of action is revived. So the giving of the second Hundi would operate as a discharge of the first one, only if the new contract could be legally enforced.

In the present case, the second transaction of giving fresh demand drafts (Exhs. P-155, P-157 and P-159) dated 24-4-1970, was not real but absolutely false and a complete fraud on the part of the appellants and defendant No. 2 as the goods covered by the demand-drafts and the railway receipts in question were already taken away by the defendant No. 2 between 13-2-1970 to 6-3-1970 by executing indemnity bonds on the ground that the original railway receipts were lost by him. (See the evidence of V. S. Mani (C. W. 1), B.V. Reddy (C. W. 2), A.V. Ram Krishna (C. W. 3) and D. N. Pujari, all examined on commission). In these circumstances, the plaintiff-Bank was fully justified in falling back on the earlier demand-drafts and the railway receipts endorsed in its favour by virtue of which the title of the goods vested in it.

20. As stated earlier, the trial Court has dismissed the suit as against the Railways [Defendant-respondents Nos. 3 (a) and 3 (b)]. The learned counsel for the appellants, therefore, submitted that the respondent Nos. 3(a) and (b) were also liable and invoking the provisions of Order 41, rule 33 of the Code of Civil

Procedure, urged that on the basis of collusion, the Railways [defendant-respondents Nos. 3 (a) and (b)] should also be held jointly and severally liable for the plaintiff's claim as held by a Division Bench of this Court in Punjab National Bank v. Beni Prasad and others 1961 MPLJ 380.

21. As against this, the learned counsel for the respondent No. 3 submitted that under the circumstances of this case, the Railways were absolved from all the liability under the provisions of the Indian Railways Act and Goods Tariff Rules. We shall, therefore, examine the necessary provisions of the Act. Section 78 of the Indian Railways Act (hereinafter called the Act) reads as under:

78. EXONERATION FROM RESPONSIBILITY IN CERTAIN CASES.

Notwithstanding anything contained in the foregoing provisions of this Chapter, a railway administration shall not be responsible--

xx xx xx

(b) for the loss, destruction, damage, deterioration or non-delivery of animals or goods in case where there has been fraud practised by the consignor or the consignee;...

It would be relevant here to refer to clause (3) of section 77-C of the Act, which runs as under:

S. 77-C (3) -- A railway administration shall not be responsible under sub-section (1) or sub-section (2) for any damage, deterioration, leakage or wastage occurring after the expiry of the period of seven days after the termination of transit as defined in sub-section (3) of section 77.

In sub-section (5) of section 77 of the Act, the transit terminates on the expiry of the free time allowed (after arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage. In Chapter I, under Rule 197 of the Supplementary Goods Tariff No. 3, which was in force from 1st July 1960, the free time has been shown 5 working hours for loaded wagons waiting to be released by the owners including wagons with sender's lock.

22. Having regard to the aforesaid provisions of the Act and the Goods Tariff No. 3 referred to above, we have to see whether the said damage by delivery of goods to the defendant No. 2 was caused to the plaintiff after the expiry of the period of 7 days after the termination of transit period as provided in sub-section (3) of section 77-G read with sub-section (5) of section 77 of the Act, in order to fix the responsibility of the respondent Nos. 3 (a) and (b). A perusal of the evidence of B. J. Reddy (C. W. 2) (examined on commission) will go to show that the goods of the consignments relating to 7 railway receipts, Nos. 670035 to 570041 (Exhs. P-9 to P-15) were received at the destination station on

12-2-1970 and delivered to the defendant No. 2 on 19-2-1970 on execution of Indemnity Bond. The evidence of D. N. Pujari (3 D. W. 1 examined in C. S. No. 10-B of 1972) will go to show that the goods of the Railway receipt No. 670242 (Ex. P. 25) were received at the destination station on 20-2-1970 and delivered to the defendant No. 2 on 6-3-1970 on execution of Indemnity Bond. Similarly, the evidence of V. M. Mani (C. W. 1, examined on commission) will go to show that the goods of Railway Receipt No. 670112 (Ex. P-26) were received at the destination station on 22 2-1970 and delivered to the defendant No. 2 on 1-3-1970 on execution of Indemnity Bond.

23. Here it would be relevant to refer to section 9 of the General Clauses Act, 1897 (Act No. X of 1897). Sub-section (1) of section 9 of this Act provides that in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of the days or any other period of time to use the word "to". Sub-section (2) further provides that the section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the 14th day of January, 1887. It, therefore, follows that section 9 only lays down the statutory recognition to the well established principle relating to the interpretation of statutes that ordinarily in computing time, the rule observed is to exclude the first day and to include the last day. Applying the terms of section 9 and the general rule of construction of Statutes, the date on which the goods were received at the destination stations has to be excluded. On perusal of the evidence referred to in paragraph 22 above, it is thus clear that as regards the railway receipt No. 670242 (Ex. P. 25) its goods were received at the destination station on 20-2-1970 and delivered to the defendant No. 2 on 6-3-1970, that is, much after the expiry of the period of seven days after the termination of transit as defined in section 77-C (3) and section 77(5) of the Railways Act, and as such the defendant/Respondents Nos. 3 (a) and (b) were totally absolved of their liability as far as the goods covered by the railway receipt No. 670242 (Ex. P-25) were concerned. But because the goods covered by the railway receipt Nos. 670035 to 670041 (Exhs. P-9 to P-15) and railway receipt No. 670112 (Ex. P-26) are concerned, the same were delivered to the defendant No. 2 before the expiry of the period of seven days after the termination of transit, and therefore, the respondent Nos. 3 (a) and (b) were not so absolved of the liability under the provisions of section 77-C (3) read with section 77(5) of the Railways Act.

24. But applying the provisions of clause (b) of section 78 of the Act, reproduced in para 21 above, we find that the respondent Nos. 3 (a) and (b) cannot be held responsible even in respect of the goods covered by the railway receipts Nos. 670035 to 670041 (Exhs. P-9 to P-15) and No. 670112 (Ex. P 26) the goods of which were wrongly delivered before the expiry of the period of 7 days after the termination of transit. We have already discussed earlier that the defendant No. 2 had obtained delivery of the goods booked through the relevant railway receipts by executing Indemnity Bonds on the false ground that the original

railway receipts were lost, and had thus practised fraud upon the Railways in obtaining the goods. The defendant No. 2 was admittedly the consignor as well as the original consignee of the goods covered by all the railway receipts. The plaintiff Bank too had not intimated to the destination railway stations about the endorsements of the same railway receipts in favour of the appellants and further re-endorsements by them in favour of the Bank. The Railway administration was thus quite unaware of these changes. In these circumstances, the Railways [Respondent Nos. 3 (a) and (b)] could not be held responsible for the delivery of the said goods to the defendant No. 2 and consequent loss to the plaintiff on that account.

25. The contention of the learned counsel for the appellants that in similar facts and circumstances, the Division Bench of this Court in *Punjab National Bank v. Beni Prasad and others* has held that the Railway Administration, the defendant / respondents 3 (a) and (b) were also liable jointly and severally with the defendant-appellants is incorrect. Beni Prasad's case (*supra*) does not help the appellants in the present case as the facts and circumstances of that case, with regard to the respondent No. 3 are quite distinguishable from the facts of the present case in the sense that in Beni Prasad's case (*supra*), it was not established by the Railway Administration at all as to when the goods reached the destination station and on what date the goods were delivered to the defendant No. 2 on Indemnity Bond. It was also neither pleaded nor proved as to what was the free time. [See paragraphs Nos. 20 and 22 of Beni Prasad's case (*supra*)]. But as discussed in paragraphs 23 and 24 above, in the present case, the defendant/respondents Nos. 3 (a) and (b) have satisfactorily proved all these facts which absolve the Railway Administration from the alleged liability. Section 73 of the Railways Act (in Chapter VII) entitled as "Responsibility of Railway Administration as Carrier", contemplates general liability of the Railway administration and the subsequent sections in the Chapter lay down the exceptions to the general liability which if proved will exclude the application of general liability as in the instant case. It appears that the provisions of section 77-C (3) and section 78(b) of the Act which also form a part of Chapter VII of the Act, were not brought to the notice of the Division Bench which decided Beni Prasad's case (*supra*).

26. For the reasons stated above, both these appeals fail and are hereby dismissed with costs. The appellants in both the appeals shall bear their own costs as well as the costs incurred by the respondent No. 1 and respondent Nos. 3 (a) and (b) of these appeals. Counsel's fees if certified, in each case of these appeals.