

(1965) 10 BOM CK 0012

In the Bombay High Court

Case No : Civil Revision Application No. 258 of 1963

C.P. Sugandha Bhandar and Co., Kamptee

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-10-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Contract Act, 1872 — Section 151, 152, 161

Citation : (1966) MhLj 555

Hon'ble Judges : B.N. Deshmukh, J

Bench : Single Bench

Advocate : B.H. Chati, for the Appellant; V.B. Padhye, for the Respondent

Final Decision : Allowed

Judgement

B.N. Deshmukh, J.—This revision application arises out of the dismissal of the suit of the plaintiff by the Judge of the Court of Small Causes, Nagpur. The plaintiff is a trader from Kamptee who ordered 24 rose water drums weighing 768 kilograms. They were loaded on 29-3-1961 at Rati-Kangala on the North-Eastern Railway, to Kamptee on the South-Eastern Railway. The consignment should have been delivered within a week but it was offered for delivery on 28-5-1961 when the plaintiff looked at the consignment, it was found that it was badly damaged. Ten drums were fully empty and fourteen drums were damaged and in leaking condition. Their crates were very much broken. He therefore claimed open delivery and the shortage noted in the certificate was 454 1/2 kilograms.

2. The plaintiff therefore gave a notice to the Union of India through the General Manager, South-Eastern Railway, Garden Reach Road, Calcutta, as per Ex. 17. This was a composite notice u/s 77 of the Indian Railways Act and section 80 of the Code of Civil Procedure. As no reply was received and no compensation was offered, the plaintiff ultimately filed the suit for recovering damages for the shortage. He valued the shortage of 454 1/2 kilograms at Rs. 1,394-04 nP. He

added to it Rs. 140/- as loss of profit at 10 per cent on the shortage. Ho also claimed Rs. 10/- by way of notice charges. The total claim is for Rs. 1,544-01 nP. In the suit the defendant is described as the Union of India (representing the South-Eastern Railway, Garden Reach, Calcutta.) The defence is to be found in the written statement Ex. 11. Though it is denied that the plaintiff is the owner of the goods that defence is not argued in this Court. As an endorsee of the railway receipt the plaintiff is the assignee or purchaser of the goods and the evidence led by the plaintiff in the trial Court has not been seriously challenged.

3. The other and the main technical defence is that the railway that booked the goods was the North-Eastern Railway. That railway has not been made a party. It was denied that any damage to the goods took place while the goods traveled on the railway line of the South-Eastern Railway. The shortage due to damage is accepted. However, it was denied that the shortage was due to the negligence or misconduct of the Railway Administration. It is further alleged towards the end of paragraph 3 that the damage was caused by the inevitable jolting and oscillation of the long journey over three railways, namely, North-Eastern Railway, Central Railway and South Eastern Railway, and the several transshipments that were involved at various junctions. It is further alleged that the goods were received in the damaged condition from the Central Railway at Ajani railway station and they were delivered to the plaintiff in the same condition by the South-Eastern Railway. No part of the damage occurred while the goods were in the possession of the South-Eastern Railway which delivered them, to the plaintiff. Hence the South-Eastern Railway not being the contracting railway nor the railway over whose route the damage took place, it is not liable as per provisions of section 80 of the Indian Railways Act.

4. On these pleadings the parties went to hearing. The learned Judge of the Court of Small Causes held that the goods were damaged as is described in the plaint and the value of goods would be as is claimed by the plaintiff. He also held that the plaintiff was the purchaser of the goods and as such was entitled to make the claim involved in the suit.

5. However, the learned Judge held that the contracting railway was the North-Eastern Railway and it was not made a party to the suit. The goods traveled over the North-Eastern Railway, Central Railway and South Eastern Railway. The damage that could be ascribed to the South-Eastern Railway was almost negligible and the learned Judge accepted the evidence of the railway servant that the goods in question were received in damaged condition from the Central Railway at Ajani Railway station.

6. Out of the several cases that were cited before him, the learned Judge accepted the judgment of the Patna High Court in Kannaiyalal Ram Narain and Co. Vs. The Union of India(UOI) and Others, and K. Chandrasekharam Subudi and Sons Vs. Union of India (UOI), . He preferred these judgments as against the judgment of the Madras High Court in P.R. Narayanaswami Iyer and Others Vs. Union of India, . As a result of this preference of the judgment of the Panta

High Court, the learned Judge held that each zonal railway represents a separate Railway Administration within the meaning of that expression as defined by section 3(6) of the Indian Railways Act. He also held that the liability of the Railway Administration for damages has been laid down in section 80 of the Railways Act and it is the contracting railway or the railway on whose route actual damage is proved to have occurred, which is responsible and not any other Railway Administration. In view of the findings which are summarized above, the learned Judge thought that the South-Eastern Railway which appears to have been made a party to the suit is not responsible because damage did not take place while the goods were in their possession. The damage took place before the goods were delivered by the Central Railway to the South-Eastern Railway. The contracting railway was not made a party and no damage is proved on the route of the South-Eastern Railway. The suit was therefore misconceived and came to be dismissed. Being aggrieved, the plaintiff has filed this revision application.

7. So far as the facts are concerned, not much argument was addressed to me. Even if an attempt was made on behalf of the Railway to challenge the findings of the Small Causes Court, I think there is ample evidence which justifies the findings given by the learned Judge except perhaps one. There is no doubt that the plaintiff is the purchaser of the goods and the evidence of the partner of the plaintiff-firm has gone unchallenged. He has produced the railway receipt and stated that the firm was the purchaser of the goods. The Small Causes Judge was right in believing this evidence and holding that the plaintiff was the owner of the goods. There is also no doubt that the damage has been caused as is described in the plaint. This fact is specifically admitted in the written statement, though the value is not admitted. I would agree with the learned Judge of the Small Causes Court and believe the evidence of the plaintiff's partner and hold that Rs. 1,394.00 was the value of the loss suffered, namely, the shortage of 454 1/2 kilograms of rose water. I would also accept the finding of the learned Judge that in case the plaintiff is entitled to damages, it could add Rs. 140/- as 10 per cent for the loss of profits and Rs. 10/- for notice charges. If the plaintiff is otherwise entitled to succeed, a decree for Rs. 1,544.04P would be passed.

8. The main argument that was addressed to me centered round the liability of the South-Eastern Railway or more appropriately the Union of India for the damage suffered by the plaintiff. It is not disputed that the three railways over which the goods of the plaintiff traveled belong to the Union of India. Even though the Union of India is the owner of all the three railways and even though the ultimate liability to pay damages may be of the Union of India, for the purpose of section 80 of the Railways Act each zonal railway represents a separate Railway Administration within the meaning of that expression as defined in section 3(6). On that footing it is argued before me that the liability to pay damages has been laid down by section 80 and that section makes only two Railway Administrations responsible for damages, the contracting Railway Administrations or the Railway Administration over whose route actual damage,

loss, injury, destruction or deterioration of the goods is proved. A Railway Administration which does not answer any of these descriptions is not liable.

9. On this footing, it is further argued that the North-Eastern Railway is the contracting railway in the present case. The defendant has led evidence to show that the goods were received in damaged condition at Ajani when the South-Eastern Railway took charge from the Central Railway. The damage whatever it was therefore caused between the acceptance of the goods at Rati-Kapgala station on the North-Eastern Railway and Ajani station on the Central Railway. The South Eastern Railway therefore is not responsible for the damage that the plaintiff may have suffered.

10. On behalf of the opponent reliance is mainly placed upon the judgment of the Patna High Court in Governor-General of India in Council Vs. Sukhdeo Ram Marwari and Another, which is subsequently followed by the same High Court in Kannaiyalal Ram Narain and Co. Vs. The Union of India(UOI) and Others, . On behalf of the applicant reliance has been placed upon the judgment of the Madras High Court in P.R. Narayanaswami Iyer and Others Vs. Union of India, . Both these cases contain an exhaustive discussion of the rival points of view. It was stated before me that there is no specific judgment of our High Court dealing with this question.

11. Before the question of liability is decided it would be necessary to note the provisions of the Indian Railways Act relating to the liability of the railways. Section 80 is the relevant section which deals with the liability of the railways when the goods are carried on the various Railway Administrations or what is described as "through traffic". Section 80, before the amendment of that section in 1961, was as follows :

Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

The above section is subsequently amended by Act 39 of 1961, but the section before that amendment would be the relevant section for the decision of this suit. The claim here relates to a consignment which was booked on 29-3-1961, whereas the amending Act 39 of 1951 became effective from 1-2-1962. The above section deals with a liability which is to arise irrespective of the terms of the contract.

12. The legislative history of this section points out that before this section was

enacted in 1390 when the Indian Railways Act (IX of 1890) was passed, some of the railway systems were in the habit of adding a condition while accepting goods for transport to far-off destinations. At that time, most of the railways were owned by different companies and there was hardly any railway owned or managed by Government. The originating Railway sometimes added a term to the railway receipt that it was responsible for damages caused so long as the goods were in its possession. The moment the goods were handed over in good condition to another railway, the liability of the originating railway would cease. In respect of such a contract, there was divergence of judicial opinion. In order to set at rest that controversy, section 80 of the Indian Railways Act was drafted in the year 1890. This section laid down as a matter of statutory provision that notwithstanding anything contained in the agreement the originating or the receiving railway as well as the railway on whose route actual damage is proved would be liable to the consignee. This section continued in its present form till the year 1961 until it came to be amended by Act 39 of 1961. Even the amendment would not be particularly useful for construing this section because the amended section further enlarges the responsibility of the Railway Administration. In place of two railways, namely, the receiving railway and the railway on whose route the actual damage is caused, even the railway on whose lines the destination station lies is also made liable.

13. When section 80 has laid down as stated above the responsibility on the railway Administration for damages, a further question arises as to what is meant by a Railway Administration. For that purpose, we shall have to go back to the definition of Railway Administration or Administration which is incorporated in section 3 (8). That definition is as follows:

"railway administration" or "administration" in the case of a railway administered by the Government means the manager of the railway and includes the Government and, in the case of a railway administered by a railway company, means the railway company.

This definition is an inclusive definition so far as Government-owned railways are concerned. According to this definition, when all the major railways are now owned by the Government, it would be the Government which would ultimately be liable to the citizen who deals with any of these zonal railways.

14. The main point to consider is whether the several zonal railways that now exist represent different Railway Administrations within the meaning of that expression as used in the Indian Railways Act. If they represent separate Railway Administrations, then the liability of the several Railway Administrations will have to be determined in terms of section 80 of the Act. If on the contrary, the several zonal railways represent one entity, namely, the Government which owns all these railways, then the liability of the Government could not be evaded by the mere fact that the damage or loss was caused to the goods while they were on the lines of a particular zonal railway.

15. The Patna judgment in Governor-General of India in Council Vs. Sukhdeo Ram Marwari and Another, which has been subsequently followed by that High Court, dealt with a liability which arose before the Indian Independence Act, 1947; All the major railways were formerly owned and managed by private companies but the Union of India gradually became the owner of the various railways. By about 1944 all the major railways became of the ownership of the Union of India. While referring to the Railway Administration referred to in section 80, one of the questions raised is that section 30 continued in its original form even after the Indian Independence Act. If the several zonal railways were not to be treated as separate entities for the purposes of this Act, then section 80 ought to have been amended. Since this is not done, the Railway Administrations over whom through traffic is to pass are necessarily the zonal railways of the Government.

16. However, it is worthwhile to remember that even today all the railways in this country do not belong to the Union of India. There are even today three kinds of railways; (i) the major railways which are owned and managed by the Union of India, (ii) the railways owned by certain District Boards and managed by Union of India and (iii) the railways which are owned and managed by Certain District Boards and private companies. This being the factual position relating to the ownership and management of the Indian traffic which covers a travel over private or company owned railways and the railways owned by the Union of India has got to be provided for. If the definition of "railway administration" includes the Government, then on a proper and rational construction of section 80 as well as section 3(6) of the Indian Railways Act, it would appear that all the major railways are one entity owned and run by the Union of India. It may be that for the purpose of the efficient running of the railways, they might have been divided into zones but after independence, particularly after the reorganisation of the railways in 1951, all the Government-owned railways would be one Railway Administration within the eyes of law.

17. The Patna judgment and most of the other judgments that were cited before me relate to the position when liability arose before the Indian Independence Act. The change of circumstances due to the passing of the Indian Independence Act and the ownership of the Union of India over all the major railways would make a difference and today it is idle to distinguish between one zonal railway and another zonal railway as representing separate Railway Administrations.

18. In this behalf, reference may be made to a judgment of the Nagpur High Court in Dominion of India v. Firm Museram Kishunprasad (A.I.R. 1950 Nag 85). That was a case where the consignment was made on 8-5-1946 from Rajahmundry Station on the M. S. M, Railway to Howbag Station on the B. N. Railway. That suit was filed against the Dominion of India as representing the B. N. Railway which was the terminal railway which delivered the consignment. The M. S. M. Railway which was the contracting railway was not made a party. The Nagpur High Court held that the claim against the Dominion of India as

representing the B. N. Railway could not succeed because the B. N. Railway was neither the contracting railway nor was it shown that the damage or loss was done while the goods were in their station. However, while coming to this conclusion, the judgment specifically refers in two places to the fact that the position before the Indian Independence Act was being taken into account for arriving at that conclusion. In paragraph 8 of that judgment, for instance, the following observation is to be found:

Further, merely suing the Governor-General as representing the entire State-owned railways (at least before the Indian Independence Act was passed which is the case here) is not a proper form of suit because that would render S. 80 otiose and meaningless.

In paragraph 9 of the judgment we also find the following observations:

This suit was filed before the recent amendment of the Civil Procedure Code, and whatever may be the position after the Indian Independence Act it is clear that the suit as laid ought to have been against one or the other railway administration or both. Suing the Governor-General would not make the railway administration a party as it is not only contrary to the scheme of the Act but would also make S. 80 of the Act inoperative.

Even though the conclusion reached in the Nagpur judgment is that the terminal railway which delivers the goods would not be liable in terms of section 80 of the Indian Railways Act, the judgment emphasises again and again the fact that the legal position found holds good only before the Indian Independence Act.

19. A view contrary to that taken by the Patna High Court has been taken by the Madras High Court in P.R. Narayanaswami Iyer and Others Vs. Union of India, . In this judgment, an exhaustive survey of the history of ownership of the various railways of the Indian Union is taken as also various cases dealing with the position prior and subsequent to the Indian Independence Act are taken into account. The Division Bench is clearly of the opinion that the interpretation of the definition of "railway" administration"" after the Indian Independence Act and after the transfer on ownership of all the major railways to the Union of India, must lead to the conclusion that at present there is only one owner of the railways so far as the State-owned railways are concerned. The provisions like section 77 of the Indian Railways Act as also section 80 of the CPC are merely procedural and lay down certain formalities before a claim could be successfully pleaded in a Court of law. The incurring of a liability of the right to recover damages is a matter of substantive rights. The provision relating to giving of notices is a purely technical provision and it does not decide or create a liability in a party where it does not exist.

20. Section 72 of the Indian Railways Act lays down that the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of that Act, be that of a bailee under sections 151, 152, and

161 of the Indian Contract Act. This is therefore a section which creates the liability of a Railway Administration. Since there are more Railway Administrations than one and since through traffic is going to travel over more Railway Administrations than one, there is a further provision in this Act in the form of section 80. Section 72 itself indicates the responsibility of the railways subject to the other provisions of the Act. The other relevant provisions would be section 77, section 80 and section 140. When goods travel over the railways of more than one Railway Administration, section 80 lays down the respective liability of the various Railway Administrations. Section 77 provides that before such claim could be made against a railway in a Court of law, the claim shall be lodged with the Railway Administration within six months from the date of the delivery of the goods for carriage. A claim is therefore required to be preferred in writing and when any claim or notice is to be served upon a Railway Administration, section 140 of the Indian Railways Act lays down the manner in which that notice or document of claim shall be served.

21. Mr. Padhye who appeared for the railways said that section 80 should be interpreted in conjunction with section 77. Section 77 requires a claim to be preferred. He says that such a claim is to be served upon the railway concerned on the Manager of that railway when it is a railway administered by the Government. Reference to "the Manager" of the railway in section 140 is indicative of the fact that the Railway Administration contemplated in section 80 is each of the separate zonal railways though owned and managed by the Government. Even though the Union of India is the owner of all the major railways, there are separate Managers for the several zonal railways and those are the Managers contemplated by section 140 of the Indian Railways Act.

22. It is difficult to countenance this argument. Sections relating to procedure cannot and do not create liability. It is well-known that statutory notices to the Government found in various enactments are only matters of procedure and are not matters of substantive rights. Failure to give a notice might result in the dismissal of the suit but that does not alter the situation. The provisions relating to notices to the Government are meant to prevent vexatious suits against the Government and facilitate the composition of just claims made by parties against the Government which may result in avoiding unnecessary litigations. The purport and the function of notices to the Government is therefore entirely different and it has nothing to do with the substantive question of liability which accrues from the statutes themselves.

23. While referring to the question of notice u/s 77, Mr. Padhye relied upon a judgment of the Supreme Court in *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, . In that case the consignment traveled over the G. I. P. Railway, the East Indian Railway and the Bengal Assam Railway before it reached the Darjeeling Himalayan Railway. The Supreme Court in that case was primarily concerned with the consideration of sufficiency of notice u/s 77 of the Indian Railways Act. The facts disclosed in the judgment of the Supreme Court

point out that within six months of the date of the initial issue of the goods to the Central Railway at Wadi Bunder, correspondence was started by the consignee which was addressed to the Manager of the Darjeeling Himalayan Railway. The goods were handed over to the Central Railway on 7th June 1946 and a partial delivery was given in September 1946. The remaining 90 bales arrived at the destination station on 21st December 1946. In September 1946, after the partial delivery was received the consignee started correspondence addressed to the Manager of the Darjeeling Himalayan Railway. Subsequently after an open delivery of the remaining bales was taken on 21st December 1946, a notice u/s 80 of the CPC was addressed to the Secretary of the Railway Department, Government of India, on 29th January 1948. On these facts one of the questions that was raised was that there was no proper notice u/s 77 of the Indian Railways Act to any of the railways. It was held up to the High Court that there was no proper notice either to the G. I. P. Railway or the East Indian Railway or the Bengal Assam Railway and that point was not seriously argued before the Supreme Court. The Supreme Court took the view that the suit was properly dismissed against the said three railways but the position was different so far as the Darjeeling Himalayan Railway was concerned. There was correspondence in September 1946 with the Manager of the Darjeeling Himalayan Railway and that would be sufficient notice within the meaning of section 77 regarding the claim of the consignee. While referring to the dismissal of the suit relating to the other railways themselves, what the Supreme Court says in paragraph 22 is as follows:

Upon the language of S. 77 it would appear that a notice thereunder must be given to every railway administration against whom a suit is eventually filed. No such notice was given by the appellant to the G. I. P. Railway administration or the E. I. Railway administration or the B. A. Railway administration within six months of booking the consignment and, therefore in so far as they are concerned the suit must be held to have been rightly dismissed.

Mr. Padhye therefore argues that the Supreme Court has laid down that the other Railway Administrations must be given a notice. At that time also the G. I. P. Railway, the E. I. Railway and the B. A. Railway were of the ownership of the Union of India and even then the Supreme Court says that separate notices were necessary u/s 77 of the Indian Railways Act.

24. So far as the notices u/s 77 are concerned, the judgment of the Madras High Court to which I have referred earlier also considers this question and says that section 77 seems to refer/to only one notice and a notice to any of the zonal railways owned by the Union of India would be good enough in the absence of any specific and clear provision in section 77 of the Indian Railways Act. So far as the Supreme Court judgment is concerned, it was again considering the case where the liability arose before the Indian Independence Act and that judgment in my opinion would not assist us in the interpretation of the notice u/s 77 after the Indian Independence Act. What is contemplated by section 77 is a notice to different Railway Administrations. The main point therefore that falls for

consideration is as to what is meant by "railway administration"" after the Indian Independence Act. If all the major railways are now owned by the Union of India and the Railway Administration includes the Government, one notice u/s 77 of the Indian Railways Act would be good enough provided it is given in the manner laid down in section 140. In the present case, one notice has been given and that is addressed through the General Manager of the South Eastern Railway which is the terminal railway which delivered the goods. That -prima facie would be a good notice u/s 77 of the Indian Railways Act.

25. Incidentally it also means that the claim that is to be made out is only against the Union of India. Even though the claim may arise while the goods were on the route of any particular railway, the liability is of the Union of India to make good the loss. The Union of India is one and the liability would therefore be one and indivisible.

26. The applicant relies upon some of the observations in the judgment of this Court in Civil Revision Application No. 135 of 1962 decided on 20-3-1965 (Union of India v. Gulabrao). The facts of that revision application show that the goods were booked from a station on the Northern Railway to a station of the South-Eastern Railway. When a claim for damages was made, the defendant that was sued was the Union of India owning the South-Eastern Railway through its General Manager. The plea in that case was that the plaintiff had failed to prove that the goods were really damaged while they were in possession of the South Eastern Railway. In that case, the goods were never delivered at all as they were lost. The question of notice was also raised though rather faintly. Dealing with the question of notice, this is what is observed in that judgment:

That the goods are lost is patent because they have not been delivered and no reply was sent to the plaintiff where notices were sent either u/s 77 of the Railways Act or u/s 80 of the Code of Civil Procedure. It is no answer to this contention to say that notices should also have been sent to the contracting railway administration separately. Notices have been sent to the Union of India which undoubtedly owns all these railway administrations and nothing prevented the endorsee from making enquiries and placing fact before the plaintiff or before the Court.

Dealing with the further arguments addressed in that case, the relevant observations for our purpose are as follows:

Once the goods are found to have been lost and it is not shown by the railways that they were lost as a result of accident or fire and in the absence of any information as to how the goods were dealt with, there is no escape from the conclusion that the goods were lost by the Union. Whether they were lost when the goods were at one point or another on the route will then become immaterial.

I therefore hold that it was not necessary for the plaintiff to specifically mention the railway administration which was the contracting party initially the Union of India having been impleaded and which adequately represented the railway

administration as a whole.

The approach therefore seems to be that one notice u/s 77 of the Indian Railways Act addressed in the manner provided by section 140 is good enough. It may be that in technical compliance of section 140 of the Indian Railways Act the notice will have to be addressed to the Manager of the railway. Which specific railway should be preferred for the notice is not mentioned in section 77. I am therefore inclined to think that a notice to any one of the railways which has handled the goods of a particular consignor or consignee is a good notice. The function of this notice is to apprise the Railway Administration of the claim, so that they may investigate the claim and settle it up if it is genuine. This notice would be good notice if the facts are brought to the notice of any of the railways over whose routes the goods have traveled. The Union of India being the sole owner of all the railways, the place of damage is irrelevant as is observed in the judgment of the Bombay High Court quoted above. If the place of damage is irrelevant, then the name of the zonal railway over which the place may lie would also be irrelevant. The substantive liability is that of the Union of India and the Government which owns all the railways is included in the definition of "railway administration". I would therefore prefer the view expressed by the Division Bench in P.R. Narayanaswami Iyer and Others Vs. Union of India, and hold that the plaintiff has proved the damages against the Union of India. The plaintiff has given enough and sufficient notice as per Ex. 17 addressed to the Union of India through the General Manager of the South Eastern Railway which railway delivered the goods. It is not necessary for the present plaintiff to prove that the damage was really caused when the goods were being handled by the South Eastern Railway. Whether the damage is caused when the goods were in possession of the North Eastern Railway or the Central Railway or the South Eastern Railway is irrelevant. Whatever the damage takes place, it takes place on a Railway Administration belonging to the Union of India. All these three railways represent only one Railway Administration within the meaning of that expression as used in section 3(6) of the Indian Railways Act.

27. In this view of the matter, the plaintiff's claim ought to succeed. I would therefore allow this revision application and pass a decree in favour of the plaintiff as prayed for in the plaint. The plaintiff will also be entitled to costs in both the Courts. Decree accordingly.