
(1967) 10 AP CK 0006

In the Andhra Pradesh High Court

Case No : Second Appeal No. 326 of 1964

Dasa K. Lakshmiah

APPELLANT

Vs

Union Government and Another

RESPONDENT

Date of Decision : 26-10-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101, 80
Contract Act, 1872 — Section 151, 152
Evidence Act, 1872 — Section 101
Railways Act, 1890 — Section 72, 77

Citation : AIR 1969 AP 386(1)

Hon'ble Judges : Satyanarayanarao, J

Bench : Single Bench

Advocate : T.S. Narasinga Rao and E. Subrahmanyam, for the Appellant; S.P. Srivastava and A.S. Prakasam, for the Respondent

Judgement

1. The plaintiff is the appellant in this second appeal. The appeal arises out of a suit for recovery of a sum of Rs. 770 principal and interest. The defendant is the Railway Administration which is represented by the General Manager. The 2nd defendant in the suit is the person who agreed to sell certain woollen goods to the plaintiff. The consignment of goods was sent by the 2nd defendant to Hindupur, the plaintiff's place. The order was booked on 24-7-1957 and the goods were handed over to the railway to be despatched to the destination on 13-9-1957. The goods, however, were not delivered to the plaintiff as they were lost. The plaintiff thereupon issued a notice to the General Manager, Southern Railway, Madras, and sent copies thereof to the General Managers, Central Railway, Bombay, General Manager, Eastern Railway, Calcutta and the General Manager, Northern Railway, Delhi. The plaintiff did not receive any of the goods or their value from the defendants. He, therefore, filed the suit out of which this second appeal arises on 4-10-58.

The plaintiff seeks to make the defendant liable on the ground that the Railway Administration is a bailee under Sections 151 and 152 of the Indian Contract Act

and the standard of care expected of them is as laid down in S. 152. The plaintiff's case is as bailees, the standard of care required of them is as under the Contract Act. They acted negligently and, therefore, they are liable to pay the plaintiff the value of the goods as claimed in the plaint. Of the General Managers of the Railways, the General Manager, Southern Railway and the General Manager, Central Railway alone appeared in the case and the others reappeared in the case and the others remained ex parte. The defendants inter alia denied their liability because according to them there is no negligence on their part and they have discharged their duty enjoined by law by taking precautions for the safety of the goods.

2. The principal question, therefore, that arose for decision in the Courts below was whether the defendants were guilty of negligence in the matter of the transport of the goods that were despatched through the railway. The learned trial Judge held that no negligence was established and, therefore, the defendants were not liable. This decision was affirmed by the lower appellate Court and hence this second appeal.

3. The question to be considered is whether the finding of the Courts below that there was no negligence on the part of the defendants is correct. Normally, the question of negligence is based on facts established by evidence in the case. As pointed out in several decisions, the facts on which the negligence is based is one thing and the correctness of the inference from the facts is another thing. The finding of facts which are the basis for establishing negligence which have been found by the Courts below cannot be disturbed. But the inference from the facts established being a question of law, it is open to the second appellate Court to reconsider the question.

The foundation for the liability being the general law relating to the standard of care which a bailee is required to take and there being no dispute in the case regarding the basis of liability, the case which the bailee is required to take of the goods bailed to him is that of a man of ordinary prudence would take of his goods of the same bulk and quality and value. The bailee in the absence of a special contract is not responsible for the loss, deterioration or destruction of the goods bailed if he has taken the same amount of care of the goods as described under the Contract Act. This position is also established by decision. The case which is required is also established by decisions.

The care which is required of the railways as bailees has been adverted to by the Supreme Court in *Union of India (UOI) Vs. Udho Ram and Sons*, . At p. 423, their Lordships observed:

"The responsibility of the Railways under S. 72 of the Indian Railways Act is subject to the provisions of sec. 151 of the Indian Contract Act. Section 151 states 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 circumstances, take of his own goods of the same bulk, quality and value as the

goods bailed. Needless to say that an ordinary person travelling in a train would be particular in keeping an eye on his goods, especially when the train stops. It is not, therefore, imposing a higher standard of care on the Railway Administration when it is said that its staff, especially the Railway Protection Police specially deputed for the purpose of seeing that no loss takes place to the goods, should get down from the wagon and keep an eye on the wagons in the train in order to see that no unauthorised person gets at the goods."

In *M.K. Manickam Chettiar Vs. Union of India and Another*, , the head-note says:

"The measure of responsibility of bailees as laid down in S.151 of the Contract Act, i.e., take reasonable care of the goods entrusted to them applies to the Railway Administration in this country. It is, of course, open to the Railway Administration under S. 72 of the Railways Act to delimit their responsibility by a special contract where goods are sent at owner's risk. Sec .74-A of the Act casts the onus of proof of negligence of misconduct on the part of the railway on the plaintiff only in two cases, viz., when the goods are in a defective condition as a result of which they are liable to deteriorate and where the packing of the goods are defective. In all other cases the primary onus of a bailee to show that he has taken reasonable care of the goods, is on the railway."

This decision indicates that the onus of proof is on the railway to establish that they have taken reasonable care of the goods and all the precautions necessary to see that the goods are safely exported to the place of destination.

4. The facts relevant for decision of the case are as follows: As stated above, the consignment started its journey after booking under the railway note dated 13-9-57. The train in which the consignment was booked was the passenger train and it started its journey from Cawnpore to Jhansi and from Jhansi to Itarsi and from Itarsi to Amla and from Amla to Nagpur. It is common ground that the goods safely arrived at Amla Station. Thereafter, the loss was discovered at Pondorna which is a station near Amla. The goods were dispatched in a wagon which had no lock but only a revetment and a seal -tape. It was also established by evidence that there is a railway protection force attached to the train and the train reached at 11-15 p.m. on the 19th at Amla Station. It reached Pondorna at 12-30 a.m. where it was discovered that the consignment was lost along with others. One bale was recovered on 20th at 4. a.m and that is part of the other bales that were lost.

It is admitted that there is no railway protection force for the goods after they reached Amla and it must be remembered that there is a gradient which means that the train has to go slowly. It is established by evidence that during the period from 11-30 p.m. to 1-30 a.m. practically midnight, which is very favourable for thieves to steal, there was no protection force. The reason given for this by D. W. 5, the Sub-Inspector of Police, Railway Protection Force, at Amla was that there was no protection force because between Amla and Nagpur there were no criminal activities. It seems to be a curious reason to give that the

property would not be protected during midnight especially when the passenger train halts at every railway station. According to his evidence, therefore, the protection force would be allowed only when there is theft. This reason is unconvincing. The absence of protection force probably facilitated the thieves to break open the revetment by getting over the foot-board and obtaining access to the inside of the wagon. In my opinion this is a gross violation of the duty of the railway authorities to protect the goods that have been entrusted to them for transit. It is also in the evidence that if Ellis lock is used for the wagon it cannot be opened. It is also in the evidence of D. W. 8 that the lock could not be used to the wagon in question. Sufficient precautions should have been taken to see that there is proper lock which could not be easily broken in order to protect the property.

In *Bikramkishore Manikya Vs. Ali Ahmad*, (2), it was held that the deliberate omission to padlock a wagon in which the goods consigned are loaded, though the usual practice was not to padlock, is misconduct and the railway company is liable for loss of or damage to goods. It is the duty of the Railway Administration to establish what precautions they took for the protection of the property. The appointment of a railway protection police force is one important protection which is usually adopted. This is referred to in *Union of India (UOI) Vs. Udho Ram and Sons*, .

5. The lower appellate Court held that as the theft was committed in a running train, the railway is not liable. In *Union of India (UOI) Vs. Udho Ram and Sons*, , it was held that by reasons of the negligence of the railway authorities if theft occurs in a running train or when the goods are in transit, the railway is liable. In my opinion, therefore, these facts which have been established by evidence are sufficient to infer that there is negligence on the part of the railway authorities and, therefore, they should be liable to the plaintiff.

6. The learned advocate for the respondent urged that I should not interfere with findings of fact and cited the decision of the Supreme Court in support of his contention. I agree with the contention. I am not interfering with the facts which have been found by the Courts below. I am only drawing inference from the facts found and the inference is one different from the lower appellate Court. The lower appellate Court thought that these circumstances are not sufficient to constitute negligence, I differ from it. Therefore, the finding of the Courts below that there is no negligence cannot be confirmed.

7. There are two other points raised by the learned advocate for the respondent. It was argued by the learned advocate for the respondent that there is no notice under S.77 of the Railways Act and there is valid notice under S. 80 C. P. C. The trial Court pointed out that these questions were not raised either in the written statement or at the time of framing the issues in the case and, therefore, they could not be allowed to be raised. But all the same the validity of the notice under S. 80, C. P. C. and the absence of notice under S. 77, Railways Act, were raised and argued in the appellate Court. The appellate Court held that S. 77

applies only to cases where compensation is claimed for non-delivery of goods but not to cases where the suit is for loss, destruction or deterioration. As rightly pointed out by the learned counsel for the appellant, the view of S. 77 taken by the learned appellate Judge is wrong. Section 77 of the Indian Railways Act was considered in *Union of India v. M. Pullappa* AIR 1958 AP 475 and it was held that loss includes loss to owner by reason of non-delivery also. There also the view that S. 77 does not apply to compensation for non-delivery was canvassed and their Lordships held that S. 77 would exclude those classes of cases where there was a willful withholding of the goods by the railway company and loss would include loss to the owner on account of non-delivery or misdelivery also. In view of this decision the view taken by the lower appellate Court cannot be sustained. See *Martab Ali Vs. Union of India*, In that case construing S. 77, the Bombay High Court held:

"The word "loss" in S. 77 must include loss arising from whatever cause. Thus, it includes a claim on the footing of non-delivery, or negligence, or wrongful detention or conversion on the part of the Railway Administration."

8. The learned advocate for the appellant raised the question that notice required by S. 77 of the Railways Act will be on the same lines as notice required under S. 80, C. P. C. and therefore it is unnecessary to issue the notice under S. 77, Railways Act. A notice under S. 80, C. P. C. may be construed as a combined notice under both S. 77 of the Railways Act and under S. 80 of the Civil P.C. In support of this contention he cited the decisions in *Moolji Bhai Manecklal and Co. v. Dominion of India*, AIR 1952 Nag 22 and *Dharamsi Liladhar Vora Vs. Union of India (UOI)*, and an unreported decision in *M. Ramamurthi v. Union of India* represented by General Manager, B. N. Rly., Unreported Judgment in 1955 ALT 67.

9. But he is faced with another, difficulty. That is about the validity of the notice under S. 80 C. P. C. Exhibit B-20 is the notice which the plaintiff gave. Exhibit B-20 was issued on 18-1-1958 to the General Manager, Southern Rly., Madras. Copies of it were sent to the General Managers, Northern Railway, Delhi, Central Railway, Bombay, South Eastern Railway, Calcutta, Copies of this notice have been sent to the other General Managers and they were received by them. Vide Exs. A-4 to A-7. The notice under S. 80, Civil P.C., may be treated as a combined notice and also an individual notice to the General Managers of the various Railways. Both the notices are intended to give information to the Railway Authorities about the loss of the consignment in transit. That information is contained in the notice.

G. G. in *Governor-General in Council Vs. Gujrathi Sankarappa* being minor by next friend and paternal uncle Moroji, is a case u/s 80, Civil P. C. A. notice claiming damages for loss of goods in railway transit was sent to the Member-in-Charge of the Railway Board as the competent authority to deal with the matter. This notice was forwarded by the Railway Board to the General Manager, M. and S. M. Railway as the competent authority to deal with the matter, It was held

that the notice was proper notice u/s 80, Civil P.C. In support of that principle The Governor-General of India in Council Vs. G. Krishna Shenoy, ; Chekka Subrahmanyam Vs. The Union of India (UOI), ; A. Sankunni Menon Vs. South Indian Railway and Others, ; K. Ramaswami Naicker and Another Vs. Secy. of State, and Bholaram Shibdhan, Firm Vs. Gpvermpr-General in Council, were relied on . See the observations at page 840 in the above-mentioned case. Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, , relates to a case under Sec. 77 of the Railways Act and the question was whether the requirements of Sec. 77 were complied with by sending a letter. Their Lordships held in that case by a majority judgment:-

"The High Courts in India have taken the view that the object of service of notice under this provision is essentially to enable the railway administration to make an enquiry and investigation as to whether the loss, destruction or deterioration was due to the consignor's laches or to the willful neglect of the railway administration and its servants and further to prevent state and possibly dishonest claims being made when owing to delay it may be practically impossible to trace the transaction or check the allegations made by the consignor. In this connection I may refer to a few of the decisions. They are: Shamsul Huq Vs. Secy. of State, ; A. Mahadeva Ayyar Vs. The South Indian Railway Co., : Governor-General in Council Vs. Gouri Shanker Mills Ltd., , Meghji Hirjee and Co. v. B. N. Rly. AIR 1939 Nag 141 . Bearing in mind the object of the Section it has also been held by several High Courts that a notice under Sec. 77 should be liberally construed. In our opinion that would be the proper way of construing a notice under that section. In enacting the section the intention of the legislature must have been to afford only a protection to the railway administration against fraud and not to provide a means for depriving the consignors of their legitimate claims for compensation for the loss of or damage caused to their consignments during the course of transit on the railways."

This principle equally applies to the construction of the notice u/s 80, Civil P.C. In that case they held that a letter is sufficient compliance with the requirements of Sec. 77 of the Railways Act. It therefore follows that the notice given to the other General Managers of the Railway in the form of copy of the letter addressed to the General Manager. Southern Railway is valid. Such a notice might be treated as one under Sec. 77 Railways Act and u/s 80, Civil P.C. As stated already the requirements of Sec. 77. also are satisfied. Even though this point was not taken at the proper time I did not want to shut the respondent out at this stage. Therefore the point has been dealt with.

10. The conclusion therefore is that the objections raised by the respondents learned Advocate cannot be accepted. I have already found that there is negligence on the part of the railway administration. The plaintiff is entitled to the amount claimed in the plaint.

11. One point however, should be considered. That relates to the liability of the 2nd Defendant. I do not think it is necessary to determine it in these proceedings

because under the terms of the contract the matter is only referable to arbitration and the plaintiff is not entitled to any relief against the 2nd defendant particularly as he is now getting the amount from the railway administration.

12. I, therefore, allow this appeal, set aside the decrees of the Courts below and grant a decree in favour of the plaintiff for the amount as claimed in the plaint. The plaintiff is entitled to costs throughout against is entitled to costs throughout against the 1st defendant, Central Railway. The decree is only against the Central Railway. No leave.

13. Appeal allowed.