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**(1953) 04 MAD CK 0002**  
**In the Madras High Court**  
**Case No : A.A.O. No. 413 of 1950**

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|-------------------------------|----|------------|
| Dominion of India and Another |    | APPELLANT  |
|                               | Vs |            |
| Nagardas and Co.              |    | RESPONDENT |

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**Date of Decision :** 17-04-1953

**Acts Referred:**

Limitation Act, 1908 — Article 115, 30, 31

**Citation :** AIR 1955 Mad 235 : (1954) 67 LW 318 : (1954) 1 MLJ 666

**Hon'ble Judges :** Mack, J

**Bench :** Single Bench

**Advocate :** King and Patridge, for the Appellant; A.L. Narayana Rao, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mack, J.—Appellant is the Dominion of India and H. E. H. the Nizam of Hyderabad represented by the General Manager of the N. S.

Railway, Secunderabad. The appeal is against a remand by the Principal Subordinate Judge of Vijayawada reversing a finding of the District

Munsif that a suit filed by Nagardas and Co., merchants of Vijayawada, claiming Rs. 669 as damages in respect of dhoties lost in transit was time-

barred. The suit was remanded for fresh disposal on the other Issues.

2. The relevant facts are these: Two bales of dhoties Nos. 9588 and 9589 were consigned to Vijayawada on 18-3-1945 from Ahmedabad to the

plaintiff firm. Delivery was to be effected to the plaintiff at Vijayawada, the delivery station being on the Nizam's State Railway. The booking

station, i.e., Ahmedabad was on the B. B. and C. I. Railway. There is no dispute as regards one bale No. 9589 which was delivered to the plaintiff

intact. The other bale No. 9588 arrived at Vijayawada in a damaged condition.

The plaintiff took open delivery on 5-4-1945 after obtaining a certificate from the Commercial Inspector of the N. S. Railway. 140 pairs of dhoties valued at Rs. 661 were found to be missing from this bale. It is the plaintiff's case that he sent notices on 7-4-1945 to the Railway companies concerned i.e. the B. B. and C. I. Railway, G. I. P. Railway and the N. S. Railway claiming damages and he received no reply despite reminders. He did not issue the statutory notice u/s 80, Civil P. C., till 3-9-1946. Not receiving any reply even to this, plaintiff filed the suit on 31-3-1948 only against the N. S. Railway who contended, inter alia, that the suit was time-barred. Plaintiff's contention that the suit was governed by Article 115, Limitation Act, was rightly negated and is not pressed before me.

3. There are only two possible Articles, which apply to a case of this kind, viz., Article 30 or Article 31. Article 30 prescribes a period of one year against a carrier for compensation for losing or Injuring goods from the date when the loss or Injury occurs. Article 31 prescribes a period of one year against a carrier for compensation for non-delivery of or delay in delivering goods from the date when the goods ought to be delivered.

4. Prima facie, it would appear that the date on which these dhoties were found to be missing out of a single bale was the date on which the loss was found to have occurred and the governing Article would be Article 30. If Article 30 governs this case, the suit is, of course, rather hopelessly time-barred.

5. The District Munsif however took the view that Article 31 applied to the present case and his view was adopted by the learned Subordinate Judge who however on the basis of some decided cases held that applying Article 31 to the present case, the suit was not time-barred. The decisions relied on are authority for the position that in cases where the railway company after correspondence definitely refused or declared their inability to deliver the goods, the year prescribed by Article 31 runs from the date of such refusal or declaration.

I have been referred to a decision of mine -- Malladi Seetharama Sastri Vs. The Hyderabad State, in which the facts were rather different and Article 31 was applied. That was a war time consignment of machinery from Vijayawada to Lahore on 21-8-1944. On the 7th of November, the

consignee complained in a letter to the consignor that the goods had not reached him. A complaint was made by the consignor to the railway

company complaining of non-delivery and asking for payment of their value. Not receiving a reply, the consignor filed the suit on 31-10-1945,

within one year of the receipt of information of non-delivery.

I also held in that case that in 1944 Railways were afflicted by war conditions and congestion in transit, and that the delay of 2 months and 16 days

could not be considered to be an unreasonable period within which a railway company ought to have delivered the goods. The position would

have been wholly different if the machinery had arrived at Lahore packed, say, in one case or crate in a damaged condition, and on open delivery

it was found that certain parts of machinery had been abstracted in transit. If such had been the case, Article 30 would have been, I considered,

applicable and not Article 31.

6. In -- *The Governor-General in Council Vs. Khadi Mandali, Govinda Menon J.* followed *Malladi Seetharama Sastri Vs. The Hyderabad State*,

with approval and held that in that particular case the date from which limitation has to be computed was when the railway administration finally

intimated that delivery could not be made. In that case, several bales of cotton cloth were consigned at Rajapalayam in the South Indian

Railway for despatch to Guntur on 7-9-1944. The bales did not reach Guntur and at length after correspondence, it was not till 20-9-1945 that the

railway company informed the plaintiff of its inability to deliver the goods. That was a case of non-delivery pure and simple, and it was open to the

railway company at any time to trace out the bales which may have been miscarried and deliver them to the consignee. That decision like *Malladi*

*Seetharama Sastri Vs. The Hyderabad State*, is, I consider, no authority for the Article applicable when out of a single bale or package delivered,

some articles have been found to have been abstracted in transit.

In -- "*Palanichami Nadar v. Governor General of India in Council*" AIR 1946 Mad 133 (C), *Yahya Ali J.* took the view that Article 31 applied to

a case in which out of 15 bags of arecanuts consigned, there was an ultimate short delivery of 4 bags. He held that time began to run after the

definite refusal or declaration of inability to deliver by the responsible railway company.

7. I have also been referred to an earlier decision of the Patna High Court, -- Bengal and North Western Ry. Co. Ltd. Vs. Kameshwar Singh

Bahadur, . That was a case in which a consignment of 3229 bundles of steel rods weighing 851 maunds and 4 wooden frames were consigned

from a station on the East Indian Railway, to a station on the Bengal and North Western Railway on 27-8-1922. There were three deliveries on

14th, on 20th and on 21-9-1922. After the delivery operations were completed, it was found that there was a shortage of 248 maunds. The

wooden frames were delivered by road van on 5-10-1922. The suit was filed on 4-10-1923, i.e. within one year of the delivery of the wooden

frames which was a part of the same consignment. It was held in that case that Art. 31 applied. In this connection, Courtney- Terrell C. J.

observed that if the defendant rail way wished to take advantage of Article 30, the onus was upon them to prove when the loss or injury to the

goods actually occurred, and that more than a year has elapsed from that date.

The defendant-railway in that case took the position that no loss in fact occurred, and that the goods were delivered as received by them from the

East Indian Railway Co. It was of course Open to the Railway Company to have in the circumstances of that case traced the missing bundles of

rods and effected delivery of them even subsequent to 21-9-1922 on which date the delivery of the rods from the wagons which had arrived was

completed. The learned Bench, if I may say so with respect, quite rightly negated the contention of the railway company that in the circumstances

of that case the loss was discovered on 31-9-1922 and that the plaintiff had to sue for damages in respect of iron rods within a year from that date.

8. The position in the present case is however quite different. Here we have a clear abstraction of dhoties out of a single bale which the consignee

took, under open delivery, his case being that there were 140 pairs of dhoties missing from this bale which had obviously been abstracted or stolen

and therefore lost during transit. Had the entire bale itself not arrived at the station to which it was consigned, then Article 30 may have no

application as it would be difficult if not impossible for the consignee to say exactly when the loss or injury occurred. In such a case, Article 31

would apply and the period of limitation would be a year from the date when the goods ought to have been delivered. The present type of case is

one of common and frequent occurrence on railways when out of a package consigned, some articles are abstracted during transit, it may be

dhoties out of a bale as in the present case or fruit or vegetables abstracted out of a basket in transit and so on. It appears to me to be a matter of

importance, and public Interest which Article of the Limitation Act should apply to such cases. I have no hesitation in holding that the correct

Article is Article 30 and that any suit should be brought against a carrier within a year from the date on which the loss occurs. In this case, the loss

occurs when the package is opened and some of its contents found to have been abstracted in transit.

9. Mr. Narayana Rao for the plaintiff has strongly criticised the conduct of the railway administration for sending no reply to plaintiff's notices or

even to his statutory notice u/s 60, Civil P. C. In some decisions to which I have referred, the starting point of limitation has been taken to be the

date on which the railway administration finally intimated inability to deliver. The point immediately arises for consideration as to the date from

which limitation should run in cases in which the railway administration as in the present case sent no reply at all It must depend on the facts of each

case as in Malladi Seetharama Sastri Vs. The Hyderabad State, as to when the goods ought to have been delivered in cases where Article 31

applies.

10. In cases such as this, where I have no hesitation in holding that Article 30 applies, if I accede to the learned Advocate's contention that the

limitation period must commence from the date on which the railway administration expresses inability or refuses to deliver, in cases where they do

not reply at all to notices, there would be no starting point of limitation at all The learned Subordinate Judge came to the conclusion that the railway

administration had no available date for computing the period of one year under Article 31 and therefore the suit was not barred by time. That

would mean that the plaintiff could have filed the suit without any regard to time even 25 or 50 years hence.

This, as I have held, is a clear case covered by Article 30, Limitation Act; nor can the fact that a defendant railway Ignores a notice without any

reply have the effect of annihilating for ever any time bar of limitation and expose itself to a suit at any time in future. I hold that the suit is hopelessly

time-barred under Article 30, Limitation Act, and on different reasoning confirm the dismissal of the suit by the learned District Munsif. At the same time, I must deprecate strongly the failure of the railway administration to send any reply to the plaintiff to all his notices. This however does not relieve the plaintiff of his legal responsibility of not filing the suit within the one year's period prescribed. I would, in the circumstances, while allowing this appeal and restoring the order of the District Munsif dismissing the suit as barred by limitation, direct the parties to bear their own costs throughout.