
(1930) 11 CAL CK 0022
In the Calcutta High Court

Duni Chand Ram Saran Das Chopra

APPELLANT

Vs

Secy. of State and Others

RESPONDENT

Date of Decision : 12-11-1930

Acts Referred:

Railways Act, 1890 — Section 140, 77

Citation : AIR 1931 Cal 585

Hon'ble Judges : Suhrawardy, J; Jack, J

Bench : Full Bench

Judgement

Suhrawardy, J.—The facts of the case are that the plaintiff-appellant consigned six bales of woollen goods to be carried from Howrah to Amritsar. At Amritsar it was discovered that three of the bales were missing. It is not necessary to go more fully into the facts of the case and the evidence, as it has been found by both the Courts below that the goods were lost in transit between Howrah and Burdwan and that was on account of wilful neglect of the servants of the E. I. Ry. Company. The plaintiff's suit was thrown out by the Courts below on the ground that there was no proper notice u/s 77, Railways Act (9 of 1890). What happened was that on the nondelivery of the goods the plaintiff sent a notice to the Traffic Manager of the N. W. Ry. on whose line was Amritsar to which the goods were consigned. A copy of the notice was sent to the Agent of the E. I. Ry. It has been found that the liability for the loss of the goods rested on the E. I. Ry. and the learned Additional District Judge says:

The E. I. Ry. administration could be made liable u/s 80 as the goods were booked at its Howrah station but the claim against it was barred for want of service of notice u/s 140 on its Agent and absence of preferring claim against it u/s 77 of the Act.

2. Mr. Banerji for the appellant has taken several grounds. In the first place he argues that nondelivery of the goods does not amount to loss and therefore no notice u/s 77 is necessary. This contention must fail as it is settled in this Court that nondelivery amounts to loss. The second point urged by Mr. Banerji is that

under the general law the carrier is liable for the loss of the goods wherever and in whomsoever's custody it may have occurred. This contention also must fail as the Carriers Act is not made applicable in the case of railways except to a very limited extent.

3. The last point taken by him is of some substance. The learned advocate argues that the sending of the copy of the notice to the Agent of the E. I. Ry., was equivalent to giving him notice u/s 77, Railways Act. I do not think that the view urged by him should be accepted. Section 77 says that

a person shall not be entitled to compensation for the loss or destruction or deterioration of goods delivered to be carried by a railway, unless a claim has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the goods.

4. The section accordingly contemplates that there should be a proper notice of the claim preferred in writing to the railway administration from which the compensation is sought or which is asked to settle the claim. According to the wording of the section it is clear that the notice must be addressed to the railway administration from which the compensation is demanded. In the present case what the plaintiff did was that he sent his claim u/s 77 to the Traffic Manager of the N. W. Ry., holding it liable for damages and sent a copy of it to the Agent of the E. I. Ry. " for his information. " The copy that was sent is headed " the Traffic Manager, N. W. Ry. " and in the body a request is made by the Commercial Claims Settlement Bureau of India who sent the letter to this effect : "I beg to submit this claim and request your early settlement of the claim. " That clearly refers to the Traffic Manager of the N. W. Ry., to whom the notice was addressed. A copy of this notice was sent to the Agent of the E. I. Ry., with a note added at the foot forwarded to the Agent of the E. I. Ry. for information. " Mr. Banner argues that by sending this copy to the Agent of the E. I. Ry., the appellant intended to make a claim against the E. I. Ry. administration u/s 77, Railways Act. I do not think that it can be construed in the way suggested. In the first place it is only a copy of the notice-addressed to some other railway administration. In the second place it was forwarded to the Agent of the E. I. Ry. for his information only. There is nothing to show that the plaintiff ever intended to recover compensation from the E. I. Ry. There is authority for the view that notice u/s 77 to one railway administration cannot avail a party for a claim against another Railway Administration: E. I. Ry. Co. v. Jethmull Ramanund [1902] 26 Bom. 689. There the facts were that the claim was made to a railway administration for nondelivery of goods. That company at once informed the E. I. Ry. Company of the plaintiff's claim and gave it notice that in case the plaintiff sued them they would expect the E. I. Ry. to bear all the expenses. Sir Lawrence Jenkins, C. J., held that though the E. I. Ry. Company had knowledge of the plaintiff's case, there was no sufficient compliance with the provisions of Section 77 read with Section 140, Railways Act. The learned Chief Justice observed:

In my opinion it is not enough that the E. I. Rye. Company may have become aware that a claim was made by the plaintiffs in respect of the delivered goods; nor is it open to us to say that the E. I. Ry. Company is in as good a position as if the formalities of Section 77 had been observed.

5. That case seems to me to be a stronger case than the one before us, though in one sense it is distinguishable as in the present case the plaintiff did something in approaching the E. I. Rye. By sending a copy of the notice to its Agent. But I do not think that this circumstance in any way affects the provisions of Section 140, Railways Act. The Bombay case was subsequently followed by this Court in, the case of Tilackchand Flaherty v. E.I. Rye. Co. 12 C. W. N. 165. There the claim was made to another railway company, but not the E. I. Rye. Company by whom the goods had been received. The suit against the E. I. Ry. was held to be not maintainable by virtue of Sections 77 and 140, Railways Act, on the ground that no notice of the claim was given to the E. I. Ry. administration.

6. Section 77 requires a claim to be preferred to the railway administration from which compensation is to be recovered. Section 140 gives the mode in which notice of claim u/s 77 should be served. It says that the notice must be served upon the Manager or Agent or should be left at his office or it should be forwarded by registered post addressed to the Manager or Agent. In the present case there was no-notice u/s 77 and therefore mere sending a copy of the notice addressed to the Traffic Manager, N. W. Rye. To the Agent of the E. I. Ry. was not serving a notice required by law and was no service u/s 140, Railways Act.

7. In this view I am of opinion that the plaintiff's claim must be held to be barred by the provisions of the Railways Act; although I have every sympathy with the plaintiff when it has been found that the defendant company is responsible for the loss of the plaintiff's goods. This appeal is dismissed.

8. We direct in the circumstances of the case that each party will bear his costs in all the Courts.

Jack, J.

9. I agree.