
(1926) 04 PAT CK 0011
In the Patna High Court

East Indian Railway Company

APPELLANT

Vs

Bhimraj Srilal

RESPONDENT

Date of Decision : 23-04-1926

Acts Referred:

Railways Act, 1890 — Section 140, 140(c), 77

Citation : AIR 1926 Patna 413

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—This appeal arises out of a suit for compensation for non-delivery of a bale of cotton goods consigned to the defendant, the East India Railway Co., at Howrah, for carriage to Rafiganj, a station on the line of the said Company, Both the Courts below decreed the suit and the Railway Co., has come up in second appeal to this Court.

2. The second point for consideration is whether the suit is incompetent for want of notice as prescribed by Section 77 of the Indian Railways Act.

3. The facts found are that the bale was consigned on the 9th of July 1920; that several letters were sent by the plaintiff who is the consignee, to the Divisional Traffic Manager making claim for compensation for non delivery of the goods; all these letters were within six months from the date of consignment and they were replied to by the Traffic Manager. On the 20th of January 1921 the plaintiff sent a registered notice to the Agent through his pleader claiming compensation for the loss of the goods. The suit was brought on the 21st of May 1921, and in the plaint the cause of action was alleged to have accrued on the 24th of July 1920, when the bale ought to have been delivered at Rafiganj.

4. The learned Munsif found that the notice to the Agent was within six months from the date when the cause of action accrued to the plaintiff, and that the cause of action arose when the goods were not delivered to the plaintiff. He further found that letters claiming compensation had been sent to the Divisional

Traffic Manager, and he, apparently, was of opinion that such letters amounted to a notice as prescribed by law. The learned District Judge, on appeal, did not base his decision upon the first ground taken by the learned Munsif which was clearly wrong. The notice required by Section 77 of the Indian Railways Act has to be given within six months from the date of delivery of the goods for carriage by railway and not from the date on which goods ought in ordinary course to be delivered to the consignee. The learned District Judge however has held that the notice to the Traffic Manager was a good notice to the Agent within the meaning of Sections 77 and 140 of the Indian Railways Act. He relied for this purpose upon a decision of this Court in the *East Indian Railway Co., v. Kalicharan Ram Prasad* AIR 1922 Pat 106. He further referred to the fact that in the railway receipt (Ex. 7), granted by the Railway Company on receipt of the goods, there were certain conditions printed on the back, one of which was that notice was to be given to the Divisional Traffic Manager in case of loss: otherwise the Railway will not hold itself responsible; and the learned District Judge concludes from this that the railway will be responsible if notice was given to the Divisional Traffic Manager. He further referred to the fact that the replies sent by the Traffic Manager show that he had power to settle claims and he therefore considered that powers had been delegated to him by the Traffic Manager and held that the notice given to the Traffic Manager was a sufficient notice according to law.

5. It is clear on reference to Sections 77 and 140 of the Indian Railways Act that a notice must be given to the Agent of the Company before a suit for compensation for loss can be entertained. It is settled law that notice to a subordinate officer of the Railway Company is not a sufficient compliance with the provisions of the law, and the learned District Judge does not base his decision on such ground nor has it been argued before us on behalf of the plaintiff respondent that a notice to the Traffic Manager was a sufficient notice as required by law.

6. The question however is whether a notice to the Traffic Manager can be considered to be a notice to the Agent. The decisions of the various High Courts on this point are almost uniform. In the *Agent E.I. Ry. Co. v. Ajodhiya Prasad* AIR 1919 Pat 42 a Division Bench of this Court held that a notice u/s 77 of the Indian Railways Act, to be valid notice must be served upon Agent or Manager of the Company and not upon a subordinate official of the Railway Co., and that any communication addressed to the District Traffic Manager is not a notice in accordance with the requirements of Section 77 read with Section 140 of the Indian Railways Act. In *Janki Das v. Bengal Nagpur Railway Co.* (1911) 16 CWN 356, Sir Lawrence Jenkins held that a notice of claim for loss of goods despatched by rail given to the Goods Superintendent did not comply with the requirements of Sections 77 and 140 of the Railways Act. In the *Assam Bengal Railway Co. Ltd. v. Radhika Mohan Nath* AIR 1923 Cal 397 a Division Bench of the Calcutta High Court held that a service of notice on the Traffic Manager was not a sufficient compliance with the Act and the notice must be given to the Agent of the Company. The Bombay High Court has taken the same view in the

G.I.P. Railway Company Vs. Chandulal Sheopratap, . The same view was taken by the Allahabad High Court; see Cawnpore Cotton Mills Co. Ltd. Vs. Great Indian Peninsula Railway, and the cases cited therein, and by the Lahore High Court; see Paras, Das v. East Indian Railway (6a) and B.B. & C.I. Ry. Co. v. Manohar Lal Parwin Chand AIR 1923 Lah 84 . In A. Mahadeva Ayyar Vs. The South Indian Railway Co., a Full Bench of the Madras High Court considered the question of notice, and two of the learned Judges composing the Full Bench held that where the notice u/s 77 read with Section 140 of the Railways Act is sent to the District Traffic Superintendent and there is nothing to show that the power of the Agent to receive such notices had been delegated, to that Official, or that the Railway Company by its rules or course of conduct had held out to the public that the notices might be sent to that officer instead of the Agent and it is not proved that the Agent became aware of the notice within the prescribed time a suit for damages for short delivery of goods against the Railway Company would not be maintainable. Kumaraswami Sastri. J., however held that Section 140 was only an enabling provision and that its object was to see that notice provided for by it somehow reaches the Agent, and that in cases where a subordinate railway official sends on the notice to the Agent or informs him of its contents within six months, there is & substantial compliance with the requirements of the Act, and that an Agent can depute a subordinate officer of the company to receive the notice. In_ South India Ry. Co. Vs. S.P.R.S. Narayana Iyer, similar view was expressed by the Madras High Court where it was held that if it is found that the notice required by Section 77 of the Act has not been given to the Agent of the Railway, but was sent to some subordinate officer of the Railway, the plaintiff, in order to succeed, must prove either that the power of the Agent to receive notice u/s 140 of the Act had been delegated to the subordinate officer who had actually received the notice or that the Company by its rules, or course of business had held out to the public that notices ought to be given to such officer instead of to the Agent.

7. These Madras decisions, therefore, proceed on the principle that the notice has to be given to the Agent, and although the notice might be addressed to a subordinate officer of the Railway Company, yet if that notice actually reaches the agent within the prescribed time, it would amount to a sufficient compliance with the requirements of the law. A similar view appears to have been expressed by this Court in Durga Prasad v. G.I.P. Railway AIR 1924 Pat 98 where a claimant who had failed to comply with Clause (c) to Section 140 of the Railway Act was held entitled to prove that the notice was in fact delivered to the Agent under Clause (a) to the section. In that case the notice was addressed to the Agent, E.I. Railway, at Howrah, but the office of the Agent was not at Howrah but at Fairlie Place, Calcutta. The notice was received by the General Traffic Manager of the East Indian Railway at Howrah, who then sent the letter to the Divisional Traffic Manager who, after carrying on a correspondence with the plaintiff for sometime, finally wrote to him denying the liability of the Railway Company. It was held that although the notice was not served in accordance with Clause (c)

of Section 140, yet if, in fact, the notice reached the Agent, as contended for by the plaintiff in that suit, it was good service under Clause (a) of Section 140. In my opinion this is a sound view of the law, and if it can be shown by the plaintiff that a notice of claim for loss of goods, although addressed to a subordinate officer of the Railway Administration, did actually reach the Agent within the time prescribed by law, it would be a sufficient compliance with the requirements of the law. All the High Courts, however, agree in holding that a notice must be actually given to the Agent. In the present case it has not been shown that the notice sent to the Divisional Traffic Manager reached the Agent. In fact the plaintiff himself did not consider the notice to the Divisional Traffic Manager to be a sufficient compliance with the law inasmuch as he himself sent a duly registered notice to the Agent on the 20th of January 1921. This was, however, beyond six months from the date of delivery of the goods to the Railway Company, and was not a compliance with the requirements of Section 77 of the Act.

8. As regards the observation of the learned District Judge that there was a delegation of power to the Traffic Manager and that therefore the notice to the Traffic Manager was a valid notice, I am of opinion that this contention is not sound. In the first place no such plea was taken by the plaintiff. No issue was raised on the question of fact as to whether there was a delegation of the powers of the Agent to the Traffic Manager. There is absolutely no evidence on the point except the printed conditions on the back of the receipt given by the Railway Company to the consignor when the goods were delivered to the Company. One of the conditions on the back of the receipt was that notice must be given to the Divisional Traffic Manager before a claim CAN be entertained. That did not in any way amount to a delegation of the powers of the Agent to receive notices prescribed by Section 77 of the Act to the Traffic Manager. It was simply a condition prescribed for speedy investigation into claims. No doubt, it had been held in the Madras High Court, and also in some of the other High Courts, that a delegation of authority will be presumed from rules framed by the Railway Company or from the course of conduct of the Railway Company which might lead the public to believe that notice given to a particular officer of the Company would be a valid notice u/s 77 of the Act. But in the present case there is no such allegation and no such proof. The fact that a particular officer is appointed by the Agent to investigate into and settle claims for loss of goods does not show that the Agent delegated his powers to receive notice to such officer. I am clearly of opinion that in the present case it has not been shown that the Divisional Traffic Manager had any delegated powers to receive the notice, and that the notice given to the Traffic Manager was not a sufficient compliance with the requirements of law.

9. Under the circumstances it is clear that the present suit cannot be maintained for want of notice to the Agent within six months of the date of delivery of the goods and the claim of the plaintiff must therefore be dismissed. This appeal is decreed and the plaintiff's suit dismissed. The ground of dismissal, however, is a

technical ground and the plaintiff has actually suffered loss on account of the non-delivery of the goods to him. I am, therefore, of opinion that although the suit is dismissed he is not liable to pay costs. Therefore, although the appeal is decreed, no costs are allowed to the appellant in any Court.

Ross, J.

10. I agree.