

(1971) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Civil Revision No. 993 of 1970

Firm Kaluram Ram Narayan, Bilaspur

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-04-1971

Acts Referred:

Railways Act, 1890 — Section 80

Citation : AIR 1973 MP 145 : (1978) ILR (MP) 497 : (1972) 17 MPLJ 768 : (1972) MPLJ 768

Hon'ble Judges : Bishambhar Dayal, C.J

Bench : Single Bench

Advocate : J.N. Nagrath, for the Appellant; S.N. Mukerjee, for the Respondent

Final Decision : Allowed

Judgement

Bishambhar Dayal, C.J.

This is a revision against the judgment of the Court of Small Causes dismissing the plaintiff's suit against the Union of India representing the general Manager, South Eastern Railway. The facts are not in dispute. The plaintiff consigned certain goods on 15th July, 1968 from a station on the Western Railway. The goods were to pass through the Central Railway and were to be delivered at a station on the South Eastern Railway. When the goods reached the destination station on 25th July, 1968 they were delivered the same day. But 63 bags were found damaged and one bag was found torn and short in weight. The plaintiff has claimed a loss of Rs. 642.10 against the railway of the destination station. The Court below has found that the loss was due to negligence of Railway servants by supply of a leaking wagon and the suit would have been decreed but for the fact that the Court below was of opinion that the suit could not be decreed against the South Eastern Railway as the negligence due to which the loss occurred was of the Western Railway which supplied a leaking wagon. The Court has not found where the rains occurred and on which railway the loss might have taken place on account of the rains.

Learned counsel for the applicant has contended that in view of the clear language of Section 80 of the Indian Railways Act as introduced by the amendment in 1961, the plaintiff has a right to recover his loss from defendant railway administration and the Court below was, therefore, wrong in dismissing the suit. The relevant part of the present Section 80 of the Act may be read as follows:--

"80. A suit for compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted,--

(a) *****

(b) if the animals or goods were, booked through over the railway of two or more railway administrations against the railway administration to which the animals or goods were delivered for carriage or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred....."

It may be noted here that before this part of Section 80 was amended in 1961, Section 80 had the following provision :

"..... a suit for compensation for loss, destruction, deterioration of animals or goods where the animals or goods were booked through over the rail-ways of two or more railway administrations, may be brought either against the railway administration to which the animals or goods were delivered by the con-signor thereof or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred."

Originally, the liability of the railway administration with which the goods were booked was based on breach of contract and that administration was by large number of decided cases, held liable even if the loss occurred while the goods were in transit on any other railway administration. But that railway administration on which the loss or destruction occurred was also held liable on tort. This liability was crystallized into a statutory liability by Section 80 of the Railways Act as it stood before the amendment of 1961. Under the section before amendment the railway ad-ministrations over which the goods were carried were divided into only two classes:

- (1) the administration with which the goods were booked and
- (2) the administration on which the loss actually occurred.

Thus in order to fasten liability on any particular railway administration, apart from proving the essential facts that loss had occurred due to the negligence of railway servants somewhere before delivery, it was only necessary either to prove that the goods were booked with it or that the loss actually occurred while the goods were on that railway administration. Thus the distinction between contractual liability and tortuous liability was also done away with.

Now after the amendment of 1961 such railway administrations have been

divided into three classes:--

(1) with which the goods were booked;

(2) on whose railway the destination station lies; and

(3) on which the loss, injury, destruction, damage or deterioration occurred. This change would be meaningless if, for making the railway administration on whose railway the destination station lies, it would still be necessary to prove that the loss occurred on that railway administration. The clear purpose of this amendment is to make its liability based on the fact of the destination station lying on it just as the liability of the railway administration with which the goods are booked is based on, that fact and not on the loss occurring while the goods were on it.

Section 76-D of the Act further makes it clear that all the concerned railway administrations are deemed to be contracting administrations and their liability, if it arises u/s 80, will be the same.

In the present case, since the destination station lay on the railway system of the non-applicant, it was liable to pay the compensation claimed as the loss was due to the negligence of the railway servants in supplying a leaking wagon. The quantum of damage has not been challenged.

The revision is, therefore, allowed and the plaintiff's suit is decreed with costs in both the Courts. Counsel's fee in this Court is fixed at Rs. 50/-.