

(1922) 04 AHC CK 0041
In the Allahabad High Court

Firm Ram Sahai Chhidda Lal

APPELLANT

Vs

The East Indian Railway Company

RESPONDENT

Date of Decision : 19-04-1922

Acts Referred:

Railways Act, 1890 — Section 77
Railways Act, 1890 — Section 77
Railways Act, 1890 — Section 77

Citation : 66 Ind. Cas. 578

Hon'ble Judges : Gokul Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The plaintiff-applicant despatched two consignments of brass ware from Delhi to Aligarh on the 20th of April 1920. These consignments did not arrive at their destination and the plaintiff, after correspondence with the Divisional Traffic Manager, Cawnpore, served a notice on the Agent of the East Indian Railway Company on the 6th of December 1920, admittedly more than six months after the delivery of goods. The plaintiff thereupon instituted the present suit for recovery of damages for loss of goods. He was met with an objection by the defendant East Indian Railway to the effect that the suit did not lie as the notice contemplated by Section 77 of the Railways Act, IX of 1890, had not been given.

2. The learned Judge of the Court of Small Causes has come to the conclusion that the notice which had to be given in the present case u/s 77 of the Railways Act was a notice to the Agent of the Company and that any correspondence with, or notice to, the Divisional Traffic Manager at Cawnpore would be of no avail. It is true that the notice contemplated by Section 77 of the Indian Railways Act and, having regard to Section 140 of the same Act, in the case of State Railways, managed by a Company, is served on the Government or on the Agent of the Company managing the Railway or the Manager of the Government. In the present case whatever interpretation might be put on the correspondence

between the Divisional Traffic Manager and the plaintiff, it cannot amount in law to a notice on the Agent of the defendant Company.

4. This point is covered by the case of Great Indian Peninsula Railway Company v. Chandra Bai 28 A. 552 : 3 A. L. J. 329 : (1906) A. W. N.101, where the plaintiff had given notice to the General Manager, and in that case it was held that it was not equal to a notice on the Agent as contemplated by the aforesaid Sections, so that on this point the Trial Court was correct. The other point argued before me, was that, having regard to the terms printed on the back of the receipt given by the Railway, no notice was necessary. A reference was made to paragraph No. 5 commencing with the words "all claims, etc," and it was argued that, having regard to this special condition, the notice contemplated by Section 77 of the Indian Railways Act was not necessary. This point, too, has been the subject of a decision of this Court; [see Great Indian Peninsula Railway Company v. Ganpat Rai 10 Ind. Cas. 122 : 33 A. 544 : 8 A. L. J. 513, and a Bench of this Court has held that a condition like that does not absolve the person who claims to make the Railway Company liable from the necessity of giving the notice contemplated by Section 77 of the Indian Railways Act. This ground of attack also fails. I, therefore, dismiss this application for revision and confirm the decree of the Trial Court with Costs.