

(1911) 03 AHC CK 0003
In the Allahabad High Court
Case No : Second Appeal No. 933 of 1912

Ganpatrai

APPELLANT

Vs

Great Indian Peninsula Railway Company

RESPONDENT

Date of Decision : 31-03-1911

Acts Referred:

Citation : (1911) 03 AHC CK 0003

Judgement

Sir John Stanley, Knight, C.J. and Banerji, J.—This appeal arises out of a suit for damages for non-delivery of a bale of goods consisting of gauze which was consigned by the plaintiff's agents in Bombay to him at Ghazipur on the 26th of March, 1908. The goods were lost on the Great Indian Peninsula Railway, and it is slated that they were stolen in transit and that the thief was tried and convicted of the theft. Amongst the defences filed by the Great Indian Peninsula Railway Company was one based on section 77 of the Indian Railways Act, namely, that no notice of action as required by law was given to that company.

2. The court of first instance found that no notice was given and dismissed the plaintiff's suit.

3. An appeal was preferred by the plaintiff, with the result that the lower appellate court held that the notice required by the Act had been waived by the defendant company; and also in view of the fact that an offer had been made to the plaintiffs for payment of a sum of Rs. 499-7-3 in satisfaction of his claim, the company could not now be allowed to go behind this offer and set up the technical ground of defence that no notice of the claim had been served within the meaning of the section above referred to. Accordingly that court reversed the decision of the court below so far as regards the Great Indian Peninsula Railway Company, and allowed the plaintiff's claim as against that company but dismissed it as regards the East Indian Railway Company.

4. From the decree of this court the present appeal has been preferred, and the main grounds of appeal are two : first, that no notice having been served within the meaning of section 77 of the Indian Railways Act, the suit was bound to fail

as against the Great Indian Peninsula Railway; that there was no waiver of the requisite notice, and that the court below was therefore wrong in allowing the plaintiffs' claim. There is a further ground of appeal, namely, that the suit is barred by limitation, not having been brought within one year from the date on which the goods ought to have been delivered.

5. As regards the first question it is not disputed that notice was not served upon the Great Indian Peninsula Railway Company pursuant to the provisions of section 77 of the Indian Railways Act. That section provides that "a person shall not be entitled to compensation for the loss of goods delivered to be carried by railway unless his claim to compensation 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 for carriage by railway." u/s 140 of the same Act a notice or other document required, or authorized by the Act to be served on a railway administration "may be served in the case of a railway administered by a railway company, as is the Great Indian Peninsula Railway Company, on the agent in India of the Railway Company, by delivering the notice or other document to the agent; or by leaving it at his office; or by forwarding it by post in a prepaid letter addressed to the agent at his office and registered under part III of the Indian Post Office Act of 1866." The mode of service upon the Great Indian Peninsula Railway Company would ordinarily in the absence of a provision such as this, be effected by service upon the company at their head office in London. This mode of service had been prescribed, no doubt, for the purpose of saving the delay and the expense which would attend service in London. In this case no service either u/s 140 or directly upon the defendant company in London was effected. Consequently it would seem that the learned Munsif was right in holding that the suit could not be maintained. The learned District Judge, however, was of opinion that section 140 was not exhaustive and that a mode of service was prescribed by a condition which appears on the back of the receipt form in use on the Great Indian Peninsula Railway on the consignment of goods to them for carriage. The condition runs as follows:--

That all claims against the railway for loss or damage to goods must be made to the clerk in charge of the station to which they have been booked before delivery is taken, and that a written statement of the description and contents of the articles missing, or of the damage received must be sent forthwith to the traffic superintendent of the district, or goods superintendent at Bombay, Wadi Bundar, in which the forwarding or receiving station is situated; otherwise the railway will be freed from responsibility.

6. The learned Judge observes that "this paragraph lays down the procedure to be followed by consignors in case of the loss of goods and it forms part of the legal contract between the Great Indian Peninsula Railway Company and the consignor." He held that where a consignor sends in a claim in accordance with the provisions of the said paragraph, the railway company is bound to treat it as a proper notification of his claim to compensation within the meaning of section

77, and that it is not then necessary to serve a notice in any of the ways mentioned in section 140 or otherwise; He found upon the evidence that the plaintiff did prefer his claim in writing to the traffic superintendent of the district in which the receiving station is situate, and that the assistant to the traffic manager, East Indian Railway, after communicating with the Great Indian Peninsula Railway, entertained the plaintiffs' claim and offered to pay him Rs. 499-7-3, the value of the goods lost. He therefore held that the notice which was given by the plaintiff was sufficient notice within the meaning of section 77. He further found that by the offer of the assistant traffic manager of the East Indian Railway to pay Rs. 499 odd damages, the Great Indian Peninsula Railway must be taken to have waived their right to the notice required by law. "We are unable to agree with the learned District Judge in the view which he formed. If the learned Judge had read the condition on the receipt form following the one upon which he relied, he would have found that it was not the intention of the company that the provision upon which he relied should relieve the plaintiff from the necessity of complying with section 77 of the Indian Railways Act. Condition 5 provides that by section 77 of the Indian Railways Act, 1890, "a person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway company within six months from the date of the delivery of the animals or goods for carriage by the railway."

7. This condition gave notice to the consignors that section 77 of the Railways Act must be complied with. Paragraph 4 must be read in connection, with it, and reading the two conditions together, it is obvious that it was not intended by condition 4 to get rid of the obligation which lay upon the plaintiff of giving notice of action as required by section 77 of the Indian Railways Act. This was expressly decided in the case of Great Indian Peninsula Railway Company v. Chandra Bai (1906) I.L.R., 28 All., 552 by a Bench of which one of us was a member. In that case the provision of section 77 were considered, and also of section 140. It was pointed out that the notification of a claim prescribed by section 77 may be given either to the railway administration as defined in section 3, sub-section (6), or in any of the ways mentioned in section 140; that it was necessary for the plaintiff to prove service of notice of his claim upon the Great Indian Peninsula Railway Company at their office in London or else in any of the ways prescribed in section 140, and that there having been no proof of any such service, and the time of such service having expired, the suit was not maintainable. The learned District Judge, referring to this and other rulings, observes that these rulings were in his opinion not applicable to the present case, as in none of the cases which resulted in those rulings, did the defendant railway company ever admit the claim of the plaintiff or offer to settle it out of court. "Moreover, the question whether compliance with the directions contained in paragraph 4 of the notice mentioned hereinbefore meets the requirements of section 77 and renders the service of

notice u/s 140 unnecessary was never raised in those cases." As we have pointed out, the directions contained in paragraph 4 obviously do not avail the plaintiff in view of the fact that in the subsequent paragraph the necessity for the observance of section 77 is expressly stated. It appears to us that the learned District Judge must have overlooked paragraph 5 which succeeds the paragraph upon which he relied.

8. Then as to waiver, it is said that the assistant traffic manager of the East Indian Railway stated that he had authority from the deputy traffic manager of the Great Indian Peninsula Railway Company to give to the plaintiff Rs. 499-7-3 compensation, and it is contended that this amounted to a waiver of notice on the part of the Great Indian Peninsula Railway Company. We are unable to hold that there was any waiver. In the first place the district traffic manager of the Great Indian Peninsula Railway Company repudiated the allegation that he gave any authority for the making of any offer to the plaintiff. The assistant traffic manager was not summoned to prove the letter of authority which he alleged he had received. There is nothing to show that the Great Indian Peninsula Railway Company ever waived their right to notice of the claim. On the contrary, they in their written statement relied upon the absence of notice, and there is nothing upon the record to justify us in holding that they waived their rights in this respect. Even if it be assumed that the Great Indian Peninsula Railway Company authorized the assistant traffic superintendent of the East Indian Railway Company to make an offer, such an offer would be without prejudice to their rights, and the offer not having been accepted, it could not be held that they were not entitled to rely upon the pleas which they had set up in their defence. Upon this point, therefore, we think that the learned District Judge was wrong in reversing the decision of the court of first instance.

9. There is besides this another ground of defence which appears to us to be fatal to the plaintiffs' claim, and that is the plea based on the statute of limitation. Article 31 of the Limitation Act (Act No. IX of 1908) prescribes the period of limitation for a suit for compensation for non-delivery of goods. In this article the former article of limitation was modified and certain words introduced, so as to adapt the article to the case of a claim such as the present one for damages or compensation for non-delivery of goods. The article is as follows:--"Against a carrier for compensation for non-delivery of or delay in delivering goods, one year from the time when the goods ought to be delivered." The goods, as we have said, were consigned to the plaintiffs on the 26th of March, 1908, and the suit was not instituted until the 9th of August, 1909. The period within which the goods in this case ought to have been delivered would not exceed a fortnight, or at the outside three weeks from the time when the goods were consigned at Bombay. Several months over and above one year from this time, therefore, had elapsed before the suit was instituted. As an answer to this plea, it is contended that there was an acknowledgement which took the case out of the statute of limitation, That acknowledgement is the letter from the assistant traffic superintendent of the East Indian Railway Company offering to

pay the sum of Rs. 499-7-3, in full satisfaction of the plaintiffs' claim. There is no evidence before the court which would justify us in holding that the Great Indian Peninsula Railway Company ever gave authority to the assistant traffic superintendent of the East Indian Railway to make this offer. There is no evidence that the Great Indian Peninsula Railway Company ever admitted liability in respect of this sum. We, therefore, are unable to say that there was any such acknowledgement by the Great Indian Peninsula Railway Company such as would prevent the operation in their favour of the Statute of limitation.

10. Upon these two main points which have been taken by the learned vakil for the defendant railway company, we think that the appeal should be allowed, and we must set aside the decree of the lower appellate court so far as regards the Great Indian Peninsula Railway Company. We, accordingly, allow the appeal of the company, set aside the decree of the lower appellate court and restore the decree of the court of first instance. Under the circumstances we make no order as to the costs of this appeal, or as to the costs in the lower appellate court.